

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**

**CORAM: V. K. CHOPRA, WHOLE TIME MEMBER**

**ORDER**

**{Under Section 11B of the Securities and Exchange Board of India Act, 1992 and Regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995 against Magan Industries Ltd and its promoter/director, Shri Dasharath Singh Shekhawat}**

**1.0 BACKGROUND**

- 1.1 The company was incorporated in January 1991 as Magan Lease & Finance Ltd. with the objective to undertake the business of hire-purchase, leasing and to finance lease operations of all kinds. The company diversified into the manufacturing of cotton yarn and changed its name to Magan Industries Ltd in February 1992. The scrip of the company was listed at Bombay Stock Exchange Ltd. (BSE) and Ahmedabad Stock Exchange Ltd. (ASE).
- 1.2 The company informed to the exchange about the proposal to buy back its shares vide its letter dated July 05, 2002. The price and volume of the scrip thereafter started rising. Subsequently however, while withdrawing the proposal of buy-back, the company vide its letter dated July 08, 2002 informed the exchange that the proposal of buy-back was made inadvertently instead of bonus issue of shares. Thereafter, the company had published number of advertisements through Ahmedabad based advertising agency, Garima Communications. The advertisements were published in prominent business newspapers between July 10, 2002 to July 12, 2002 regarding the proposed board meeting on July 15, 2002 to discuss financial results for the Quarter ended June 30, 2002 to decide on and declare dividend and issuance of bonus shares, subject to the approval of shareholders. Subsequent advertisements were published on July 22, 2002 and

July 23, 2002 declaring financial results for the year ending June 30, 2002 and other decisions taken by the Board of Directors on July 15, 2002. In this advertisement, certain information such as Diversification in Biotech & Pharmaceutical Formulation, Cash bonus 1:1 to Loyal Investors, 50% Dividend, Promoting concept of Emergency Medical Kit with 59 items, Prompt & efficient services to investors through CA Firm, Earnings 186% of Equity was given in bold font to attract the attention of gullible investors.

- 1.3 During the period between issuing the advertisement for proposal of buy back and the advertisements for dividend and bonus shares etc., it was observed that volume and price of the scrip suddenly shot up. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted investigation into the affairs of the company as to ascertain background impact of the advertisements. Investigations inter alia revealed that the promoter/director Shri Dasharath Singh Shekhawat had off-loaded the shares during the investigation period after an artificial market was created by way of false and misleading notice and advertisements to the detriment of the innocent investors. Shri Dasharath Singh Shekhawat, as the promoter/director of the company had thus defrauded the common investors violating the provisions of Regulations 3, 5(1) and 6 (a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as “PFUTP Regulations”). Further, the company had facilitated the promoter/director Shri Dasharath Singh Shekhawat by giving misleading advertisements in the press and in the process it had violated the provisions of Regulation 5(1)(a) & (b) of PFUTP Regulations.

## **2.0 SHOW CAUSE NOTICE**

- 2.1 Show cause notice dated June 09, 2005 was issued to Shri Dasharath Singh Shekhawat and another show cause notice dated December 8, 2006 was issued to the company advising them to show cause as to why directions under Section 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 11 of PFUTP Regulations including debarring them from accessing the securities

market and trading in securities should not be issued against them for the violations mentioned at paragraph no. 1.3 above.

### **3.0 REPLY TO THE SHOW CAUSE NOTICE**

3.1 A R Gupta & Associates, Advocates vide their letter dated July 25, 2005 while acting on behalf of Shri Dasharath Singh Shekhawat filed reply to the show cause notice and submitted as under:

3.1.1 That he had never placed the advertisement and was not the Managing Director of the company during the period of advertisement since he had resigned as Managing Director from the company w.e.f. May 05, 2000.

3.1.2 That he has been residing at Bangalore and had no knowledge about the business of the company.

3.1.3 That he had sold the shares as mentioned in the show cause notice well before the publication of advertisement and this could not have induced the public to buy the shares. Further, he sold the shares in the normal course of business for which he received an amount of only Rs 1.50 lakhs for selling / transferring the shares.

3.1.4 That he was only one of the directors during the financial year 2000-2001 and the fact is clear from the annual report for the said period.

### **4.0 PERSONAL HEARING**

4.1 Shri Dasharath Singh Shekhawat was given opportunity of personal hearing on 03.04.2007, 14.05.2007 and 05.06.2007 before me at SEBI's office at Mumbai which was not availed by him. The hearing notice to the company was posted on SEBI website on June 15, 2007 and hearing opportunity to the company was provided on July 05, 2007. The company neither filed its reply to the show cause notice nor availed the hearing opportunity on July 05, 2007.

## 5.0 CONSIDERATION OF ISSUES

5.1 I have carefully examined the show cause notices, replies thereof and other materials on record.

5.2 The company issued notice dated July 05, 2002 to the exchange informing them about the proposal to Buy-back its shares. However, immediately thereafter vide letter dated July 08, 2002, the Company has informed the exchange that it has inadvertently mentioned that the board will consider buy-back instead of bonus issue of shares. The price and volume of the scrip started rising from the date of the notice i.e. July 05, 2002 and even reached its highest level of Rs 5.35 on July 9, 2002. The company had issued number of advertisements through an Ahmedabad based advertising agency “Garima Communications”, details whereof are given below:

| News Paper        | Date of Advertisement |
|-------------------|-----------------------|
| Mumbai Samachar   | 12/07/02              |
| Business Standard | 12/07/02              |
| Economic Times    | 11/07/02              |
| Financial Express | 10/07/02              |
| Gujarat Samachar  | 10/07/02              |
| Sandesh           | 10/07/02              |

5.3 The advertisement was in notice format stating that “*the Board of Directors will meet at the registered office of the company on Monday, the 15<sup>th</sup> of July 2002 to transact the following business, among others.*

(A). *To consider and to take on record financial results for the Quarter ended June 30, 2002;*

(B). *To decide on and recommend declaration of dividend on equity share capital.*

(C). *To discuss and approve issue of bonus shares subject to the approval of the shareholders”.*

- 5.4 After the meeting of the Board of Directors on July 15, 2002, the company published another advertisement announcing the financial results for the quarter ending June 30, 2002 and the declaration made in the meeting in the following newspapers:

| <b>News paper</b>                                                                             | <b>Date of Advertisement</b> |
|-----------------------------------------------------------------------------------------------|------------------------------|
| Times of India, Indian Express, Loksatta, Mumbai Samachar, Business Line and Rajsthan Patrika | 22/07/2002                   |
| Danik Bhaskar, Statesman and Punjab Keshari                                                   | 23/07/2002                   |

- 5.5 In the above advertisement, certain information was given to public such as Diversification in Biotech & Pharmaceutical Formulation, Cash bonus 1:1 to Loyal Investors, 50% Dividend, Promoting concept of Emergency Medical Kit with 59 items, Prompt & efficient services to investors through CA Firm and Earnings 186% of Equity. All these informations were highlighted in bold to attract the attention of potential investors. The company which was in the business of hire purchase and leasing operations had also come up with the news during second week of July 2002 that the company was diversifying its activities into biotech and pharma sector and plans cultivation of herbs for herbal products.

- 5.6 As per SEBI (Disclosure and Investor Protection) Guidelines, 2000, a listed company proposing to issue bonus shares has to fulfill the requirement of the following SEBI guidelines:

- i. *Bonus shares can be issued only out of free reserves (i.e. reserves not set apart for any specific purpose) built out of the genuine profits or share premium collected in cash only.*
- ii. *A company which announces its bonus issue after the approval of the Board of Directors must implement the proposal within a period of six months from the date of such approval and shall not have the option of changing the decision.*
- iii. *Consequent to the issue of the bonus shares if the subscribed and paid up capital exceed the authorised share capital, a resolution shall be passed*

*by the company at its general body meeting for increasing the authorised capital.*

- 5.7 As per the above guidelines, the company was required to implement the proposal for bonus issue within six months from the date of such approval. This criterion was not complied by the company. Further, as stated above, SEBI (Disclosure and Investor Protection) Guidelines, 2000 also state that *“bonus shares can be issued only out of free reserves (i.e. reserves not set apart for any specific purpose) built out of the genuine profits or share premium collected in cash only”*. However, investigations revealed that the company did not have genuine profits and reserves for the Bonus issue as also for the announced dividend. The financial statement for the financial year ended on June 30, 2001 and June 30, 2002 submitted to the stock exchanges by the company as well as published in advertisement dated July 22, 2002 and July 23, 2002 were showing many discrepancies. It was observed that profit before tax and depreciation was lesser than the profit after tax and depreciation for the year ended June 2001 (PBT was Rs. 3.7 crores and PATD was Rs.3.82 crores). It was also observed that the company was incurring loss of Rs. 30 lakhs during the year ending March 31, 2002. Further, after three months the company had stated that it was making profit of more than Rs. 15 crores. The total of Rs. 11.85 crores under the head ‘Income from firm’ has been clocked in a single quarter (viz., 4th quarter). The company had reported a total profit before interest and tax (PBIT) to be Rs. 13.62 crores under the ‘Media software segment’ whereas the total revenue generated from this segment was reported to be Rs. 8.98 crores only (i.e. the profit was shown more than the revenue). There were inconsistencies in the announcement and action taken by the company i.e. the company had stated in the advertisement that Board would consider quarterly result and Board had come out with the annual audited result for year ended June 2002. The purpose of announcement of financial statement was apparently only to attract investor by presenting good financial records. SEBI (Disclosure and Investor Protection) Guidelines 2000 also state that consequent to the issue of the bonus shares, if the subscribed and

paid up capital exceed the authorised share capital, a resolution shall be passed by the company at its general body meeting for increasing the authorised capital. Further, after issuing the bonus shares to its shareholders, the company's paid-up capital was going to be doubled. In spite of these serious issues, there was no corporate action on part of the company to increase the authorised capital before recommendation of Bonus shares by the Board of Directors.

- 5.8 The company's shares were illiquid in market. The average volume in the scrip of the company was around 100 shares per day before May 2002 which rose to 86,600 shares per day during the investigation period. It was quite clear that the high rise in demand for the scrip was mainly because of the advertisements in the newspapers as also good financial results announced for the year ended June 2002. The company had also announced for the distribution of 50% dividend to the shareholders while in fact company had not distributed any dividend. Further, the company failed to respond to repeated reminders from SEBI on the issue.
- 5.9 The trading analysis on Ahmedabad Stock Exchange (ASE) reveals that after April 2001, the scrip was traded only once at ASE, on March 24, 2003, at price Rs. 0.25 when volume was 51,000 and afterwards there was no trading in the scrip. From the price-volume data obtained from the BSE, it was observed that the scrip was illiquid and volume traded in exchange was very meagre. From May 20, 2002 onwards, volume traded in exchange started rising. The volume was at its peak during the week when the company had come out with the advertisements. The price of scrip reached to its highest level at Rs 5.35 on July 09, 2002 when the volume crossed nine lakh on July 10, 2002. After this, the trading in the scrip in exchange again falls to negligible levels. The sudden rise in volume and price only for a short span of time coinciding with the period during which the company had come out with the proposal of corporate action, which was cancelled later on, clearly points to the evil design on the part of the company and its promoter/Director Shri Dasharath Singh Shekhawat to create artificial price and volumes of the scrip for their personal benefit.

- 5.10 During the investigation period large off-market deals were noted in the transaction statements of major shareholders of the company. Details of some of the transactions of Shri Dasharath Singh Shekhawat are given in following table.

| S. No | Date       | Share from          |            | No. of shares | To                  |            |
|-------|------------|---------------------|------------|---------------|---------------------|------------|
|       |            | Name                | Client ID  |               | Name                | Client ID  |
| 1     | 09-07-2002 | Dasharath Shekhawat | S 11045136 | 47000         | Not Known           | 12544437   |
| 2     | 10.07.2002 | Dasharath Shekhawat | S 11045136 | 3000          | Not Known           | 10004594   |
| 3     | 05-07-2002 | Shekhawat Holding   | 11832570   | 162800        | Dasharath Shekhawat | S 11045136 |

- 5.11 It was noted from the above table that Shri Dasharath Singh Shekhawat, promoter/director of the company had sold 50,000 shares in off-market deals. Shri Dasharath Singh Shekhawat was also a director of another company, Shekhawat Holding Pvt. Ltd., which had transferred 162,800 shares on July 05, 2002 from the demat account of Shekhawat Holding to the demat account of Shri Dasharath Singh Shekhawat and which were traded in the market.
- 5.12 Shri Dasharath Singh Shekhawat in his reply stated that he had no knowledge about the business of the company as he had resigned from the company as Managing Director w.e.f May 05, 2000. But the Annual Report of 2000-01 was noticed to have been signed by Shri Dasharath Singh Shekhawat as Director indicating thereby that he was involved in the functioning of the company and holding responsible position to sign Annual Accounts of the company even after resigning as Managing Director. From the search report, it was noted that Shri Dasharath Singh Shekhawat was continuing as Director as on June 17, 2005. Regarding the sale of shares, I find that he offloaded the shares during the period of advertisement as shown in the table under paragraph no 5.10 above. It can therefore be concluded that Shri Dasharath Singh Shekhawat had given advertisements in the media with the dubious intention to create demand for the company's shares in the market by first attracting innocent investors and later to offload such shares in the market.

5.13 Further, after the investigation period, I observe that the market price fell from Rs 2.10 to Rs 0.31, before trading was suspended w.e.f. January 27, 2004. It can thus be clearly seen that investors who bought the shares of the company during the investigation period, would have incurred losses.

5.14 After having considered all aspects of the matter, I find that the company and its promoter/director Shri Dasharath Singh Shekhawat committed fraud on shareholders of the company by issuing misleading advertisements highlighting bright and rosy picture about the company and its financial standing. During the period of advertisement, the promoter/director Shri Dasharath Singh Shekhawat offloaded the shares to deceive the innocent investors. The word “fraud” is defined under Regulation 2 (c) of PFUTP Regulations. Further, such fraudulent dealings in securities are prohibited under Regulation 3 of PFUTP Regulations. In this case, the actions of Shri Dasharath Singh Shekhawat who controlled the day to day affairs of the company during the period of investigation and as the man behind the false advertisement, is primarily responsible for his action and role in the matter. All his actions would come under the said definition of fraud especially when he off loaded the shares of his company at a price which was created artificially by employing schemes /device/ and / or act/ practice with an intent to defraud and to influence the investment decision of the investors. He has as such violated the provisions of Regulations 3, 5(1) (a) & (b) and 6(a) of PFUTP Regulations. The company facilitated its director Shri Dasharath Singh Shekhawat to off load the shares by way of misleading advertisement. The relevant provisions applicable in the instant case are reproduced hereunder.

#### **Prohibition of certain dealings in securities**

*3. No person shall buy, sell or otherwise deal in securities in a fraudulent manner.*

#### **Prohibition of misleading statements to induce sale or purchase of securities**

*5. (1) No person shall make any statement, or disseminate any information which -*

*(a) is misleading in a material particular; and*

*(b) is likely to induce the sale or purchase of securities by any other person or is likely to have the effect of increasing or depressing the market price of securities, if when he makes the statement or disseminates the information-*

*(i) he does not care whether the statement or information is true or false; or*

*(ii) he knows, or ought reasonably to have known that the statement or information is misleading in any material particular.*

### **Prohibition of unfair trade practices relating to securities**

*6. No person shall -*

*(a) in the course of his business, knowingly engage in any act, or practice which would operate as a fraud upon any person in connection with the purchase or sale of, or any other dealing in, any securities;*

## **6.0 ORDER**

6.1 Therefore, taking into consideration facts and circumstances of the case and in exercise of the powers conferred upon me under Sections 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11B of SEBI Act and Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, I hereby restrain Magan Industries Ltd and its promoter/director, Shri Dasharath Singh Shekhawat (PAN No. AHLPS1500P) from buying, selling and dealing or accessing the securities market in any manner for a period of two years.

6.2 This order shall come into force with immediate effect.

**Place: Mumbai**

**Date: August 21, 2007**

**V. K. CHOPRA**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**