

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

CORAM : Dr. T.C.NAIR, WHOLE TIME MEMBER

IN THE MATTER OF SHRI MAHENDRA A. SHAH

IN THE SCRIP OF M/s. SAWACA COMMUNICATIONS LTD.

DATE OF HEARING: 06.09.2007

Appearances:

For Noticees: None appeared

**For SEBI: Shri P K Bindlish, Chief General Manager
Shri Atul Agarwal, Manager
Ms. Kshama Wagherkar, Legal Officer**

ORDER

**UNDER SECTIONS 11 AND 11B OF SEBI ACT, 1992 READ WITH
REGULATION 4(a), (b) AND (d) OF SEBI (PROHIBITION OF
FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO
SECURITIES MARKET) REGULATIONS, 1995**

1. The scrip of Sawaca Communications Ltd. (hereinafter referred to as "SCL"/"the company") witnessed a significant price rise accompanied with significant increase in volume during the period October 1999 to March 2000. It was found that the price of the scrip ranged between Rs.19.35 on October 01, 1999 to Rs.106 on January 04, 2000.

2. In view of the above, Securities and Exchange Board of India (hereinafter referred to as "SEBI") vide order dated October 22, 2001 initiated investigations into the buying, selling and dealing in the scrip of SCL during the period October 1999 to March 2000.
3. The investigation interalia revealed that Shri Mahendra A. Shah (hereinafter referred to as "the noticee") along with M/s. Harvic Management Services Ltd. and M/s. Mayekar Investments Pvt. Ltd. were trading in the scrip through BSE members and were the largest contributors to the total volumes in the scrip. Further it was found from the records submitted by the brokers that these clients/sub-brokers formed a cartel and traded through the brokers/sub-brokers of BSE during the investigation period. Investigations further revealed that the trading pattern suggested that these entities/individuals were prima facie responsible for the creation of artificial volume and price rise in the scrip during the investigation period.
4. I observe from the records that Shri Rajesh N. Jhaveri was one of the promoters of the company. Further, I note that he was also the authorized representative of M/s. Rajesh N. Jhaveri (Proprietor: Shri Gautam N. Jhaveri, brother of Shri Rajesh N. Jhaveri). The investigation revealed that Shri Mahendra A. Shah transacted mainly through M/s. Rajesh N. Jhaveri.
5. The investigating team also observed that the total quantity traded during the period under consideration was approx 1.05 crore shares

and the gross quantity traded by Shri Mahendra A. Shah comes 19.61 lakhs resulting in approx. 19% of the total quantity traded on the exchange.

6. Accordingly a show cause notice dated October 26, 2003 was issued by SEBI to the noticee alleging the violation of provisions of Regulation 4(a), (b) and (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and calling upon it to show cause as to why suitable directions under Section 11 (4) (b) and 11B of SEBI Act, 1992 should not be issued.

7. The noticee, vide letter dated December 18, 2003 replied to the said notice as follows :

- *75% of the paid up capital of the company was not in the hands of the company promoters/directors or relatives. He has also denied that the company has not been complying with the listing requirement. He has denied that the shares of the company were not traded on regular basis prior to September 15, 1995. He has also denied that he was related to any of the allottees of preferential allotment dated January 5, 2000.*
- *He denied that Shri Satish R shah, Smt. Jyotsana Shah and M/s Sawaca Finance Ltd sold 2.5 lac, 2.58 lac and 4,01,500 shares during the period from October 1, 1991 to March 31, 2000. He further contends that these shares in Jumbo form from the said entities at price ranging between Rs.3 to Rs.10 per share on or about September 21, 1999 and then sent for transfer to RTA. It is possible that jumbo*

share certificate were split into certificates of marketable lot sometimes in October 1999.

- *He has denied the association with any of the entities mentioned in the show cause notice at page 6 and 7 of the show cause notice dated October 26, 2003 including M/s Harvic Management Services Ltd and M/s Mayekar Investments Pvt. Ltd. He also contended that the total shares sold by those entities were 1,46,000 shares which hardly formed any significant percentage of the total equity shares of the company. He also denies his association with any of the buyers (10,000 shares and above) alleged to be connected with him.*
- *He has stated that he was interested in the business of the company so he wanted to join the company by buying shares from original subscribers. For this, he approached Shri Satish R Shah in July-August 1999 and bought shares held by him and his family members. He also denies that he was the largest seller in the scrip of Sawaca Communications Ltd and that he resorted to creating artificial volume through Harvic Management or Mayekar Investment or otherwise. He also denies that he off-loaded shares through M/s. Rajesh N Jhaveri or others. He denied that 19% of the total quantity of the shares of the company traded by him could have any substantial impact on the price of the scrip. He has denied that M/s. Rajesh N JHaveri and M/s. Shrikant G. Mantri has done trades for him but accepts that Shri Rajesh N. Jhaveri was allotted share on preferential allotment. Further, he stated that neither Shri Rajesh N. Jhaveri nor he has been the promoter of SCL.*

8. An opportunity of hearing was granted to the noticee on January 22, 2004 when he appeared before the then Whole Time Member and made submissions. However, as the proceedings could not be completed during the tenure of the then Whole Time Member, the case was put up to me for consideration and in adherence to the principles of natural justice another opportunity of hearing was granted to the noticee on September 06, 2007. However, neither the noticee nor his representatives appeared on behalf of the noticee.
9. I have carefully considered the investigation report, the show cause notice issued, reply, submissions of the noticee and other relevant material available on record.
10. I am not convinced with the submissions made by the noticee in as much as he denied that all the persons whose names were figuring in the list of promoters of page 2 of the show cause notice actually were not the promoters of the company. This is due to the fact that he has not submitted any documents in support of his contention.
11. Further, regarding his contention that 75% of the paid up capital of the company was not in the hands of the directors/promoters or associates of the company, I note that the noticee has not submitted any documentary evidence in this regard. Rather, when asked by the Investigation Authority to submit document pertaining to share capital distribution schedule etc., the noticee did not cooperate with the investigation team.

12. I note from the records available as received from BSE that SCL has not complied with the listing requirements. Therefore, his contention that the company has complied with requirements of the listing agreement with BSE is unsustainable.
13. As regards his contention that the shares of the company were traded on a regular basis prior to September 1999, I find that the price volume data of scrip of the company does not support his arguments. Though he denies his association with the allottees to preferential allotment made by the company on January 5, 2000, he has to bear in mind that his association with Shri Rajesh N Jhaveri and other entities has already been explained in the show cause notice.
14. Regarding the sale of 1,46,000 shares by Havmore Stock Broking Pvt Ltd., Havmore Financial Services India Ltd., Aroma Fashions Ltd. and Goldmist Equifin Pvt. Ltd., I find that in isolation this much quantity may be little but taken together with the quantity sold by the noticee becomes substantial.
15. As regards his contention that he was not the largest seller in the scrip of the company, I find that he has sold over 19% of the share capital of the company and no other seller sold more than or equal to what he sold. I further note that trading volume of 19% is substantial. I note from the statement of Shri Rajesh N. Jhaveri that the orders and trades done by M/s. Rajesh N. Jhaveri were mainly for the noticee.

16. I am not convinced, in facts and circumstances of the case, with the contention that M/s. Harvic Management Services Ltd. and M/s. Mayekar Investments Pvt. Ltd. are not related to the noticee. I also note that Shri Pankaj A. Desai, Director of M/s. Mayekar Investments Pvt. Ltd. has stated that Shri Mahendra A Shah was introduced to them by office staff of M/s. Harvic Management Services Ltd. Therefore, I am convinced that Shri Mahendra A Shah is related and connected to both M/s. Harvic Management Services and M/s Mayekar Investments Pvt. Ltd.
17. Though the noticee submitted that he, Shri Rajesh N. Jhaveri and Shri Bhupendra A. Shah have not been promoters of the company, it does not make any difference to the role played by the noticee in the manipulation of the scrip. I am convinced that Shri Mahendra A. Shah is connected to Shri Rajesh N Jhaveri and M/s. Rajesh N. Jhaveri, acted as sub-broker to M/s. Shrikant G. Mantri. Regarding his contention that trades done by M/s. Rajesh N. Jhaveri through M/s Shrikan G. Mantri was not for him, I find from the document submitted by Ms/ Rajesh N. Jhaveri, which clearly indicates that the orders and trades done by these entities were only for the noticee.
18. Thus from the foregoing discussion it is very clear that the noticee is involved in creating a false and misleading appearance of the scrip in the market through entities connected with him and manipulated the market. Hence I have no doubt in holding that the noticee had knowingly engaged in fraudulent acts connected with the securities

market and violated provisions of Regulation 4(a), (b) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995 which read as under:

“Prohibition against Market Manipulation

4. No person shall -

(a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;

(b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market;

.....

.....

(c) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities;

.....

.....”

It is pertinent to note here that pursuant to the repeal of 1995 Regulations, the corresponding provisions are contained in Regulations 3 and 4 of Securities and Exchange Board of India

(Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

19. Therefore, in exercise of the powers conferred upon me by virtue of section 19 read with section 11 and 11B of the SEBI Act, 1992 read with Regulation 4(a), (b) and (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 read with Regulation 11 and 13 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market), 2003. I hereby direct that Shri Mahendra A. Shah be prohibited from associating with any corporate body from buying, selling or dealing in securities, directly or indirectly for a period of three years.

20. This order shall come into force with immediate effect.

Place: Mumbai

Date: 13.01.2009

T.C. NAIR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA