

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: Dr. T. C. NAIR, WHOLE TIME MEMBER**

**IN THE MATTER OF EUPHARMA LABORATORIES LTD. AND ITS DIRECTORS,
SHRI R V SHAH, SHRI SHRENIK SHAH, SHRI JAYANTI LAL M PATEL, SHRI
SUDHIR K AGARWAL & SHRI ASHOK SAXENA, MAHAVIR CAPITAL
SERVICES PVT. LTD., MAHAVIR SECURITIES PVT. LTD. AND ITS DIRECTOR,
SHRI RAJESH SHAH**

IN THE SCRIP OF EUPHARMA LABORATORIES LTD.

Date of hearing : 22-06-2007

Appearance of the parties

For the noticees:

1. No representation for Eupharma Laboratories Ltd. and its directors
2. Shri Rajesh Shah represented M/s. Mahavir Securities Pvt. Ltd. and Mahavir Capital Services Pvt. Ltd.

For the Securities and Exchange Board of India:

1. Shri P K Bindlish, Chief General Manager
2. Smt. Kshama Chavan, Legal Officer
3. Shri Jagannath Das, Manager

ORDER

**DIRECTIONS UNDER SECTIONS 11 AND 11B OF THE SECURITIES AND
EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 11 OF
THE SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES
RELATING TO SECURITIES MARKET) REGULATIONS, 2003**

1. M/s. Eupharma Laboratories Ltd. (hereinafter referred to as “Eupharma” or “the company”) was established as a proprietary concern in 1963 to market formulations procured on a loan-license basis. It set up its own manufacturing facility in 1964. With the admission of Mr. Bharat R.Shah, Mr. Shrenik R.Shah and Mr. R.V.Shah (HUF) as partners, the proprietary concern was converted into a partnership firm in

1977. The partnership concern was subsequently converted into a public Ltd. company during October 1994 known as Eupharma Laboratories Ltd.

2. The Securities and Exchange Board of India (hereinafter referred to as “the Board” or “SEBI”) received a complaint from one, Shri P M Patel who alleged that the price of the shares of Eupharma was manipulated. The complainant also mentioned that certain Gujarat based entities had offloaded the shares in the market that belonged to Shri Ramanlal V Shah (R V Shah), Chairman and Managing Director of the company.
3. Based on the aforesaid complaint, the Bombay Stock Exchange (hereinafter referred to as “BSE”) and the National Stock Exchange (hereinafter referred to as “NSE”) were directed to look into whether any fraudulent activity had taken place in the dealing in the scrip during the relevant period.
4. On completion of their investigation, BSE in its report dated December 31, 2002 observed that the holding of the promoters/directors and their relatives during the pre-issue and post issue periods did not match with the data as submitted by the company. The report further mentioned that the company had claimed to have allotted 33,19,600 shares in two tranches of 3,19,600 shares and 30,00,000 shares respectively to persons other than the promoters on a preferential basis at a premium of Rs.3/- per share. Based on the details of the preferential allotment by the company, it appeared that though the company claimed that it had allotted shares on preferential basis to non-promoter entities, it had in fact allotted the said shares to the promoter group. It was alleged that this was done to escape the lock-in period prescribed for shares allotted on preferential basis to promoters of companies.
5. The NSE in its report dated May 08, 2000, suggested that since the scrip was listed and traded on other stock exchanges and given the integrated nature of the markets, it was required to ascertain whether there has been any irregularity especially with

regard to the alleged sale of forfeited shares and other share transfer related issues pointed out by the complainant.

6. In view of the complaint and findings/suggestions of the exchanges in the matter, the SEBI initiated its own investigations into the dealing in the scrip of the company for the period between 01-11-1999 and 28-01-2000 ('investigation period'). During the investigations, the SEBI called for details from the company, brokers and clients who had dealt in the scrip. Summonses were issued to various person related to the case for the purposes of eliciting information and other required details.
7. The investigations conducted by the SEBI revealed that the company had issued 33,19,600 shares on preferential basis at a premium of Rs.3/- per share vide its extraordinary general meeting held on 25-08-1999 and the said shares were allotted on 24-11-1999 in two tranches – 3,19,600 shares (allotted to non-promoter entities/persons) and 30,00,000 equity shares (allotted to non-promoter entities/persons). It appeared that the company which claimed to have allotted shares to the persons other than promoters on preferential basis had in fact allotted shares to entities forming part of the promoter group in order to avoid the lock-in period on the preferential shares as per the SEBI Preferential Issue guidelines. Further, 2,47,700 equity shares which were issued earlier to the Indian public were forfeited on account of non-payment of allotment money. Subsequently, vide Board resolution dated July 31, 1999, the said shares were issued at par (Rs.10/-) to the promoters, their relatives and associates on private placement basis. In the allotment of the forfeited shares as said above, 20,000 shares were allotted to Ms. Kannan Desai. She was also allotted 35,000 shares on preferential basis. The preferential allotment was claimed to have been made to non-promoters entities/ persons. Besides Shri Govind Mathuradas, who was having the same address as that of Ms Kanan Desai, was allotted 40,000 shares in the above said preferential issue. It was also observed that M/s. Mahavir Capital Services Pvt. Ltd. (Mahavir Capital) and M/s. Mahavir Securities Pvt. Ltd. (Mahavir Securities) were allotted 2,10,000 shares each out of the preferential allotment of 30,00,000 equity shares on November 24, 1999. It was found that Mahavir Capital

and Mahavir Securities share common address which was the address of a branch office of the company. Thus, the company's branch, Mahavir Capital and Mahavir Securities were found to be located at the same address. It was also found that Rajesh Shah, authorized representative of Mahavir Capital and a director in Mahavir Securities was the Auditor of the company. In view of the above facts, the investigations had observed that Mahavir Capital and Mahavir Securities were related to the company. It appeared that the company which claimed to have allotted shares to the persons other than promoters on preferential basis had in fact allotted shares of entities forming part of the promoter group in order to avoid the lock-in period on the preferential shares as per the SEBI Preferential Issue guidelines issued on August 04, 1994. It was also found that the major sellers were those entities appearing in the list of top 50 shareholders and allottees of either preferential shares or shares that were re-issued after forfeiture by the company. The said sellers had utilized the shares received through the preferential issue and/or re-issue for the purposes of delivery.

8. In view of the above findings, it was alleged that the company and its directors by their commissions and omissions, had violated the provisions of the SEBI (Prohibition of Fraudulent and Unfair Practices Relating to Securities Market) Regulations, 1995 ('PFUTP Regulations') and also the SEBI Preferential Issue Guidelines relating to the lock-in of the shares. The allottees, Mahavir Capital and Mahavir Securities and its director, Shri Rajesh Shah were also alleged to have violated the provisions of the PFUTP Regulations.
9. Show cause notices (common show cause) dated 13-12-2005 was issued to Eupharma and its directors Shri R V Shah, Shri Shrenik Shah, Shri Jayanti Lal M Patel, Shri Sudhir K Agarwal and Shri Ashok Saxena. The said show cause notice charged them of having violated the provisions of Regulations 3, 5(1) (a) and 6 (d) of the SEBI (Prohibition of Fraudulent and Unfair Practices Relating to Securities Market) Regulations, 1995 and also Clause 13.3 of the SEBI Preferential Issue Guidelines relating to the lock in of the shares. The show cause notice enclosed copies of the documents which were relied upon in the matter. The notice required the above

mentioned persons to show cause as to why suitable directions including directions restraining them from buying, selling or dealing in securities for a suitable period of time in any manner should not be issued under Sections 11(4) and 11B of the SEBI Act, 1992. The show cause notice also intimated that they can inspect the documents relied upon in the matter.

10. I note that the show cause notices dated 13-12-2005 to the company and its directors were issued at the latest address available with the Board. The show cause notices so sent to them returned undelivered with the comment '*left the office*'. Addresses of the above mentioned persons were then obtained from the BSE and then show cause notices were again sent to the address so obtained from the BSE. I find that the show cause notices were again returned undelivered. I also note that the BSE could not make available the addresses of Shri Ashok Saxena and Shri Sudhir K Agarwal (two directors of the company). In view of the above, there was no other option left other than pasting the show cause notices at the latest address available with the Board, which was accordingly done. As regards Shri Jayantilal M Patel, director of Eupharma, the show cause notice was served on him. He replied to the show cause notice vide his letter dated June 29, 2006 intimating that he was an independent director and Advocate by profession and not much involved in the day to day affairs of the company.
11. Similarly, a common show cause notice dated 13-12-2005 was issued to Mahavir Capital and Mahavir Securities and its director Shri Rajesh Shah in the matter. The show cause notice charged them of violating the provisions of Regulations 3 and 6 (d) of the SEBI (Prohibition of Fraudulent and Unfair Practices Relating to Securities Market) Regulations, 1995. The show cause notice enclosed copies of the documents which were relied in the matter. The notice required them to show cause as to why suitable directions including directions restraining you from buying, selling or dealing in securities for a suitable period of time in any manner should not be issued against them under Sections 11(4) and 11B of the SEBI Act, 1992. The show cause notice also informed them that if they so desire, can inspect the documents relied upon in the

matter. The noticees in their replies dated January 10, 2006, March 31, 2006 and June 22, 2006 stated that they were not guilty of any violations and suspect fraud by the company and requested that they be absolved.

12. All the above said noticees were granted opportunities for personal hearing before me on 02-06-2007. There was neither appearance nor representation on behalf of the company and its directors. However, Shri Rajesh Shah, Director of the Mahavir Securities, represented Mahavir Capital and Mahavir Securities and made his oral submissions.
13. I have perused the show cause notices issued to the company and its directors, Mahavir Capital, Mahavir Securities and Shri Rajesh Shah. I have also noted the contents of the reply dated June 29, 2006 received from Shri Jayantilal M Patel, director of the company, replies dated January 10, 2006, March 31, 2006 and June 22, 2006 of Mahavir Capital and Mahavir Securities and replies dated January 05, 2006, March 31, 2006, June 22, 2006 and July 01, 2006 of Shri Rajesh Shah. After perusing the above said documents, I find that the following issues arise for my consideration -
 - a) *Whether preferential shares were allotted by the company without consideration?*
 - b) *Whether book entries were made to show allotment of shares on preferential basis?*
 - c) *Whether the company and its directors contravened the provisions of the SEBI Disclosure Guidelines?*
 - d) *Whether the company and its directors have violated the provisions of Regulation 3, 5(1) (a) and 6(d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 1995?*
 - e) *Whether Mahavir Capital and Mahavir Securities and its director Shri Rajesh Shah had violated the provisions of Regulations 3 and 6 (d) of the SEBI (Prohibition of Fraudulent and Unfair Practices Relating to Securities Market) Regulations, 1995?*

f) What would be the directions that need to be issued to the noticees in the present case?

14. I note that the investigations conducted by the SEBI revealed that the company came out with a preferential issue of 33,19,600 shares on a private placement basis at a premium of Rs.3/- per share vide its extraordinary general meeting held on August 25, 1999. The said shares were allotted on 24-11-1999 in two different tranches, wherein the first tranche of 3,19,600 equity shares were said to be allotted to persons other than the promoters and the second tranche of 30,00,000 equity shares were also said to be allotted to persons other than promoters. I note that the list of allottees of the shares on preferential basis as mentioned above had been enclosed with the show cause notice. Further, 2,47,700 equity shares which were issued earlier to the Indian public were forfeited on account of non-payment of allotment money. Subsequently, the said shares were re-issued at par (Rs.10 /-) to the promoters, their relatives and associates on private placement basis vide Board Resolution dated 31st July, 1999. I also note that company has also issued 1 crore equity shares on preferential basis at a premium of Rs. 7/- per share to persons other than promoters during May 2000.
15. I note that the details regarding the allotment of 33,19,600 shares on preferential basis during August 1999 and that of the forfeited shares were summoned from Shri R V Shah, Managing Director of ELL. With regard to the preferential allotment of 33,19,600 shares, the investigations had alleged that none of the allottees of those shares had made any payment for such allotment. I note that when Shri R V Shah was asked whether the company received funds against the allotment of shares, he had replied that he cannot explain more than whatever was available in the records. I note that the investigations had found that the money for the allotment of 29,44,600 shares had been debited from the account of Shri R V Shah and R V Shah (HUF). With regard to the transfer of funds, Shri R V Shah had replied in an evasive manner and stated that he was not aware of accounting system and therefore cannot comment. Further, when queried as to how those 'allottees' had been categorized as 'other than

promoters' when actually the money for such allotment was transferred from his own accounts, he again gave an evasive reply and stated 'I don't know'.

16. The investigations had found that no money had actually been received for the allotment of a majority of the 33,19,600 shares issued on preferential basis. It was noted that the amount (Rs.3,41,25,000/-) was available to the credit of certain creditors of the Company in the books of accounts of the Company. These funds due to the creditors were transferred on December 31, 1999 in the books of account of the company to the credit of R V Shah's current account and it was shown that 26,25,000 shares had been issued to them @ Rs.13/- each. However, no shares were allotted/issued to them. It is improper on the part of the company to allot shares when the funds were credited to the account of R V Shah's current account (the Managing Director of the company) and not to the share application account of the Company. When R V Shah was questioned as to the credit entries in his account from the account of the company he gave an evasive reply. I find that Shri R V Shah always gave evasive replies which were a major hindrance to the investigation. This can be observed from his depositions given to the investigating officer during the investigations. One such instance was that when queried that if the credit entries were not passed, he would not have had enough money to facilitate the allotment of shares in the preferential issue, for which he stated that he did not remember. This fact becomes more suspicious when it was found that the credit entries were for entities other than those to whom the allotment was made.
17. Further it was noted that 3,19,600 shares were allotted to various entities in the first tranche. The consideration for the said allotment was not received by the Company directly from the entities but the same was credited by debiting the RV Shah-HUF account. Investigations tried to ascertain whether Shri R V Shah had received the consideration from the entities which were used by him to allot shares. However the investigation revealed that the money was not paid by the entities to Shri R V Shah before allotment and the allotment was based solely on the basis of money available with R V Shah-HUF account. It is to be noted that the beneficial owners of these

shares was Shri R V Shah only. From the statement of one Ms. Jyoti Thakkar on behalf of Prabhavanti Thakkar (who had been allotted 50,000 shares on preferential basis on November 24, 1999), it was noted that payment was made to the account of R V Shah-HUF after the allotment had already been made. In this case payments for these shares was made in two lots – Rs. 5,00,000 on November 29, 1999 and Rs. 1,50,000 on February 18, 2000, i.e after the allotment.

18. It is noted that when Shri R V Shah was asked to produce details of all the shares sold/bought by him, R V Shah-HUF and the other Directors till date, he produced details of only the shares bought and sold by him during the period April 01, 1999 to March 31, 2000 (8230 shares bought and 40700 shares sold). On being asked to explain the drop in share holding by approximately 1,88,900 shares of himself and Shri Shrenik Shah (his son) as per the details furnished in the distribution schedule on November 24, 1999, Shri R V Shah stated that he did not remember anything now and could not explain.
19. I note that with respect to the shares allotted to Shri Bhupendra Patel, it was found that 5000 shares were transferred by Shri R V Shah without obtaining any consideration at the time of the transfer. The shares were sold by Shri Patel on December 23, 1999 whereas the payment was made to Shri R V Shah only on February 08, 2000. Likewise, in the case of Ms Jyoti Thakkar, 25,000 shares were transferred to her on November 05, 1999 while the payment for the same was received only on November 22, 1999. It is seen that Shri R V Shah had transferred shares to some entities without receiving any consideration on the date of transfer, facilitating the off-loading of the shares in the market and getting the money subsequently. Thus it indicates that Shri R V Shah has sold and transferred shares in the names of various entities without having received any payment at the time of sale. These entities made payments to Shri R V Shah much after they had sold these shares in the market. This clearly brings out the malafide intention on the part of Shri R V Shah to try to offload the shares.

20. I note that with respect to the preferential allotment of 33,19,600 equity shares, it was observed during the investigations that inspite of declaring that the allotment is made to persons other than promoters, the allotment was made to the promoters, their relatives and associates. The allotment of 2,47,700 forfeited shares was made to the promoters, their relatives and associates, which also included the name of one Ms. Kanan Desai, to whom 20,000 shares was allotted out of the forfeited shares. Ms. Kanan Desai was also allotted 35,000 shares in the preferential allotment which was claimed to have been made to non-promoters entities/ persons. Besides Shri Govind Mathuradas, who was having the same address as that of Ms Kanan Desai, was allotted 40,000 shares in the above said preferential issue.
21. As, Ms Kanan Desai was allotted shares from the re-issue of forfeited shares which were only allotted to promoters, their relatives and associates, it is established that Ms. Kanan Desai forms part of the promoter group. The investigations have brought out that no consideration was received from her for the allotment of shares. I note that Ms. Kanan Desai in her deposition had stated that one of their associate firms, Synectic Investment Services (company owned by Ms Kanan Desai) had discounted bills of exchange for the company in 1997-98 amounting to approximately Rs.15.5 lacs and that the company had defaulted on payments on the due dates as all the cheques bounced. She also stated that the company in January 1999 proposed a schedule for repayment of outstanding dues by way of post dated cheques. As the cheques so issued bounced on presentment, Synectic had filed a case against the company for dishonoring of the cheques. After negotiations, Shri R V Shah had decided to repay Synectic by allotting shares of the company from his account against full and final settlement of dues and that he was not willing to settle the dues in any other manner other than allotting the shares of Eupharma to them. The shares were then allotted in three tranches -20000 shares were allotted to Ms. Kanan Desai on October 05, 1999, second and third tranches of 35000 shares to Ms. Kanan Desai and 40000 shares to Govind Mathuradas were allotted on February 19, 2000. She also stated they were told to apply for shares as per formats provided by Shri R V Shah. Shri R V Shah had asked her to apply for 20000 shares that would be allotted from

the forfeited shares lying with the Company and the rest 75000 shares were to be allotted in preferential allotment. She further stated that shares along with transfer deeds signed by her and Shri Govind Mathuradas were handed over to Synectic. I note that Ms. Desai had categorically stated that shares were allotted to her and Shri Mathuradas only for the purpose of repaying the amount that was due to them by the company. Ms. Desai refused any association with the company or its directors/promoters. Shri R V Shah admitted that shares were allotted to Ms Kanan Desai and Shri Mathuradas in lieu of the credit lying with them in the name of Synectic. Shri R V Shah admitted that no money was received by the company for the purpose of allotting these shares on preferential basis and these shares were allotted to Ms Kanan Desai and Shri Mathuradas to settle the outstandings of the company payable to Synectic. Thus, I find that the statement made by the Company to BSE while seeking the listing of re-issued forfeited shares that these shares had been allotted to promoters, their relatives and associates was untrue to the extent of allotment of shares to Ms Kanan Desai.

22. It is therefore clear that the funding for the allotment of 33,19,600 shares on preferential basis was done from the accounts of Shri R V Shah / R V Shah – HUF and that the company did not receive any funds in its share application account. A false declaration was given to the BSE stating that those shares had been allotted to entities other than promoters and that the same were freely transferable. On being asked as to how these shares were categorized as being allotted to other than promoters while filing documents with the stock exchanges, Shri R V Shah merely stated that he did not know. The said declaration had resulted in making the shares transferable, while should have been locked in as per the provisions of the Preferential Issue Guidelines issued by SEBI.
23. I also note that the allegation of 33,19,600 shares were issued to promoters entities/promoter related entities is further substantiated by the fact that Shri R V Shah had obtained blank transfer deeds from Mahavir Capital and Mahavir Securities to whom allotments had been made in the preferential issue. I note that 2,10,000 shares each

were allotted to Mahavir Capital and Mahavir Securities in the preferential allotment out of the total 33,19,600 shares so issued. The authorized representative of both the entities, Shri Rajesh Shah had stated that no payment was actually made for acquiring these shares and that this allotment was only a book entry to facilitate the transfer of funds from the account of Shri R V Shah with the company. Thus, there was no allotment made to Mahavir Capital and Mahavir Securities. As stated earlier, Rajesh Shah is the auditor of the company and it can be inferred from such relationship that the two entities had aided the promoters/directors of the company in their fraudulent design.

24. From the above, it is concluded that the shares were allotted without consideration being made to the company and shown as issued to non-promoters so as to avoid the mandatory lock in period. At this juncture, I wish to note that the violations took place in 1999. However, in the show cause notice issued to Eupharma and its directors, violation of provisions 13.3 of SEBI Preferential Issue Guidelines has been mentioned. The appropriate provisions of the law violated by Eupharma and its directors would be clause 9 of Guidelines for Disclosure and Investor Protection relating to Preferential Issues, 1994 (issued on 04-08-1994). I am however conscious that the wrong quoting of the provision would not make any difference as far as the violation is concerned. I note that Clause 9 of the said guidelines prescribes that the shares allotted on a preferential basis will not be transferable in any manner for a period of 5 years from the date of allotment. The relevant clause 13.3 of SEBI (Disclosure and Investor Protection) Guidelines, 2000, is similar in content with Clause 9 of Guidelines for disclosure and investor protection preferential issues, 1994, though the period of 'lock-in' differs. Thus, the act of the company and its directors are in contravention with the provisions of the SEBI Guidelines relating to 'lock-in'. In this process Shri R V Shah was ably assisted by Mahavir Capital and Mahavir Securities confirmed by the statements recorded from its authorised representative i.e. Rajesh J Shah. I also note that in his depositions, Shri R.V. Shah had denied any relationship with the Mahavir Entities. However, when he was confronted with the submissions of Shri Rajesh J. Shah, Shri R. V. Shah admitted

- knowing Shri Rajesh J. Shah but stated that he was not aware of any association of Shri Rajesh J. Shah with the two companies i.e. Mahavir Capital and Mahavir Securities. The submissions seem to be false and misleading. In light of this, I conclude that the Mahavir entities have aided Shri R V Shah in the fraudulent transaction with regard to the preferential issue.
25. With regard to the claim of Shri R.V. Shah that shares were allotted to Mahavir Capital and Mahavir Securities, I find that in reality no shares were ever allotted to them and it was just a book entry to facilitate transfer of funds. These shares were allotted to promoter groups. This allotment was done just to avoid the lock-in period and to offload the shares in the market to make profit. I also note that the holding of the directors of the company namely, Shri R. V. Shah and Shri Shrenik R. Shah had decreased from 16,56,400 and 8,90,050 shares to 14,72,900 and 8,84,650 shares respectively as seen from the post-issue distribution schedule of Eupharma.
26. From the depositions of Shri R.V. Shah, I observe that he gave evasive replies and vague answers. For example, he stated *"I don't recollect exactly what relation the company had with the entities"*, *"I cannot explain more than whatever is available in the records"*, *"I do not remember"* etc., which showed an attempt to hide certain facts. Again when asked about the addresses of Shri Sudhir K Agarwal and Shri Ashok Saxena, who were the directors of the company, Shri R.V. Shah replied that their addresses are not available with him. The attitude of Shri R V Shah in giving evasive replies during the investigations leads only to one conclusion that he did not extend any co-operation to SEBI in its fact finding exercise and wanted to conceal material information.
27. I also find that the modus operandi of making paper entries was that Shri R V Shah was having credit balance in the accounts of the company so he was having a right to withdraw from the company an amount equal to the credit balance shown against his name. He withdrew the amount from the accounts of the company and transferred it in his personal name. This money was then shown as a loan to Mahavir Securities P

Ltd. and Mahavir Capital Services P. Ltd. for the purpose of purchase of shares. For this purpose a book entry of allotment of shares in preferential issue was shown. Shares were allotted in the name of Mahavir Securities P Ltd. and Mahavir Capital Services P Ltd. Statement of Shri Rajesh Shah – authorized representative of Mahavir Capital Services P Ltd and Mahavir Securities P Ltd. was also recorded on November 03rd and November 23rd 2004 during the investigation. In those statements, he inter alia stated that

“Mr. R. V. Shah planned for preferential issue of shares and in the course of issue he approached above two companies for using their name for allotment of shares and to be a subsequent beneficiary. I remember the entire work was done through paper entries. However no funds were actually transferred from the two Mahavir entities to Eupharma. This was only a book entry done at the request of Shri R V Shah. No shares were ever physically given to Mahavir Securities P Ltd. and Mahavir Capital Services P. Ltd. Shri R V Shah had taken blank transfer deeds signed by the directors of Mahavir Securities P Ltd. and Mahavir Capital Services P. Ltd. with the assurance that he will get the funds actually transferred and shares will be allotted but as a matter of security, he was taking the signed transfer deeds. The probable reason for this action of Shri R V Shah might have been to off-load these shares in the market at a later date.”

In support of his claims he also submitted copies of the balance sheets of Mahavir Capital and Mahavir Securities P Ltd and stated that there was no transaction in the shares of Eupharma by either of the two companies. He also stated that *“we do not know how and when theaforesaid shares were allotted to us”* He further stated that

“The transfer deeds were given as a matter of security that if the shares are allotted to us out of the funds given by Shri R V Shah. As stated earlier he wanted to withdraw money from the accounts of Eupharma. For this purpose he wanted to transfer the funds in the names of Mahavir Securities and Mahavir Capital Services. He had stated that he would transfer these funds back in the name of Eupharma and this would be shown as subscription

money for the shares allotted on preferential basis. He had also taken blank signed transfer deeds from us for the aforesaid shares that were supposed to be allotted to us. I would like to state that there was no actual transfer of funds from Shri R V Shah and no shares of Eupharma were ever received by us. This was only a paper entry job done by Shri R V Shah”.

From the above it is clear that all the shares allotted to Mahavir Capital Services P Ltd and Mahavir Securities P Ltd. on preferential basis was actually allotted to the account of Shri R V Shah despite Eupharma giving its auditor certificate dated 7th January 2000 to BSE that these shares had been allotted to entities other than promoters. This wrong declaration has resulted in making the shares transferable, while it should have been locked in as per the provisions of the Preferential Issue Guidelines issued by SEBI. The contention that these shares were issued to the promoters only further corroborated from the fact that Shri RV Shah had obtained blank transfer deeds from some entities to whom allotments had been made in the preferential issue. As may be seen that 2,10,000 shares each were allotted to two entities – Mahavir Capital Services P Ltd and Mahavir Securities P Ltd. Their authorized representative Shri Rajesh Shah admitted that no payment was actually made for acquiring these shares and that this allotment was only a book entry to facilitate the transfer of funds from the account of Shri R V Shah with the company.

28. I note that during the Investigation, statement of one, Shri Dikul Patel, Executive Director of M/s J K Securities, Member, NSE, who also dealt for its clients in the shares of the company during the period of Investigation, was also recorded. In his statement, he submitted that one of its clients namely Shri Bhupendra Patel had sold 5000 shares. He further stated that as per the information provided by Shri Bhupendra Patel, he had bought these shares from Shri R V Shah. He also stated that he was an employee of Anand Mercantile Co-Operative Bank and that Shri Rakesh Patel, who had an account with their bank had approached him for buying 5000 shares of Eupharma at Rs.13/- per share and required him to pay Rs.65000/- by way of a Demand Draft in favour of R V Shah (HUF) towards payment for these shares. On being asked as to why he made the payment for those shares much after the dates on

which he sold them, he replied that Shri Rakesh Patel gave him the shares and asked for the payment as stated above. As regards the sale of shares much before the receipt of consideration from Shri Bhupendra Patel, Shri R V Shah gave an evasive reply stating that he could not explain this and that he did not remember anything. Shri R V Shah was also asked to comment on the fact that a number of shares of the company had been delivered in the market before they were actually listed in the exchange. Shri Shah again gave an evasive reply and stated that *'I cannot explain this and I do not remember anything now'*.

29. From the above discussion, I find as follows:

- a) 33,190,600 shares of Eupharma were allotted on preferential basis to various entities without consideration being paid by the allottees to the company
- b) Consideration had moved from few of the allottees to the account of Shri R V Shah / R V Shah – HUF without the same going to the share application account of the company.
- c) Shares allotted to Mahavir Capital Services P Ltd and Mahavir Securities P Ltd. on preferential basis was actually allotted to the account of Shri R V Shah despite Eupharma giving declaration vide its letter dated 20th December 1999 and its auditor certificate dated 7th January 2000 to BSE that these shares had been allotted to entities other than promoters.
- d) False and misleading declaration was given to the exchanges that the shares allotted on preferential basis was made to non-promoter entities
- e) No consideration was paid by Mahavir Capital and Mahavir Securities for the allotment of 2,10,000 shares each. Only book entries were made in the books of accounts of the company
- f) Entities/persons had made payments only after the shares allotted on preferential basis to them and also the payment was made to the accounts of Shri R V Shah/R V Shah – HUF and not to the account of Eupharma.
- g) The share holding of the directors namely, Shri Ramanlal V. Shah and Shri Shrenik R. Shah have substantially decreased from 16,56,400 and 8,90,050 shares to 14,72,900 and 8,84,650 shares respectively (totaling to 1,88,900

shares decreased) and the total holding of directors and their relatives decreased from 34,93,600 to 33,04,500 shares by 1,89,100 shares during the pre-issue and post- issue of shares on preferential basis during November 1999.

h) Shri R V Shah, director of Eupharma, was non-cooperative from the beginning as can be seen from his evasive answers

30. I, therefore, conclude that the shares on preferential basis were allotted without adequate consideration and shown as issued to non promoters so as to avoid the mandatory lock in as per the clause 9 of Guidelines for disclosure and investor protection preferential issues, 1994, thus enabling them to offload freely in the market. I, therefore find that the Eupharma and it director Shri R V Shah had dealt in the scrip in a fraudulent and unfair manner. They have given false and misleading information / declaration to the exchanges and have also indulged in making false / bogus entries in the accounts of the company.
31. I also hold the other directors of the company who were in charge and responsible for the conduct of the company's business are equally responsible and liable for the violations as established above. Thus, in view of the above, I find that the company and its directors have contravened the provisions of Regulations 3, 5(1) (a) and 6(d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 1995.
32. However, as regards Shri Jayantilal M Patel, Director of Eupharma, it was submitted that he was an independent director in the company and not involved in the day to day affairs. In the absence of adequate material to prove his participation in the unfair and fraudulent activities in the matter, benefit of doubt is given to him.
33. I also find that Eupharma and its directors were actively assisted by Mahavir Capital and Mahavir Securities and its director, Shri Rajesh Shah in their unfair and fraudulent practices. Their connivance has also been admitted through their

authorized representative Shri Rajesh Shah in his deposition mentioned above. In view of the same, I find Mahavir Capital and Mahavir Securities liable for having violated the provisions of Regulation 3 and 6 (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995.

34. Therefore, I, in exercise of powers conferred upon me by virtue of Section 19 read with Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 further read with Regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Practices Relating to Securities Market) Regulation, 2003, hereby direct as under:

- i. M/s. Eupharma Laboratories Ltd. and its directors namely, Shri Ramanlal V Shah, Shri Shrenik Shah, Shri Sudhir K. Agarwal and Shri Ashok Saxena shall not access the securities market, or buy, sell or deal in securities in any manner whatsoever, directly or indirectly for a period of one year.
- ii. M/s Mahavir Capital Services Pvt. Ltd and M/s Mahavir Securities Pvt. Ltd and its director, Shri Rajesh Shah shall not access the securities market, or buy, sell or deal in securities in any manner whatsoever, directly or indirectly for a period of one year.
- iii. The proceeding against Shri Jayantilal M. Patel in the matter is disposed of without any directions.

35. The directions as above shall come into force with immediate effect.

DATE: 13.01.2009

T. C. NAIR

PLACE: MUMBAI

**WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**