

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: DR. K. M. ABRAHAM, WHOLE TIME MEMBER**

ORDER

DIRECTIONS UNDER SECTIONS 11B AND 11(4) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND REGULATION 44 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997 IN THE MATTER OF WASHINGTON SOFTWARES LIMITED

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI) had investigated into the irregular transactions in the scrip of Washington Softwares Limited (hereinafter referred to as WSL) for the periods, October 18, 1999 to March 3, 2000, May 2, 2000 to June 20, 2000 and July 3, 2000 to July 25, 2000 as the price of the scrip in Bombay Stock Exchange Limited (hereinafter referred to as BSE) had experienced huge volatility. During the course of investigation, it was noticed that, out of the 34,99,000 shares allotted to public in June 1996, WSL had forfeited 33,61,000 shares on October 3, 1999 and that the said forfeited shares were reissued at the rate of Rs.7.50 (at a time when the share price was Rs. 20.50), *vide* Board Resolution dated December 15, 1999. It was alleged that, out of the forfeited shares, WSL had allotted 16,88,400 shares during December 1999/January 2000 to its group entities who were promoted and controlled by Mr. Sanjay Sonawani (Chairman of WSL) and Mr. Abhay Shastri (Managing Director of WSL) and were alleged to be group entities acting in concert with the promoter directors of WSL. Such allottees were Suryoday Finmark Consultants Private Limited, Suryoday Engineering Limited, Suryoday Service Stations Limited, Shashtri Foods and Vegetables Limited and Pushpa Prakshan Limited. It was alleged that, by virtue of the aforesaid acquisition, the

holding of Mr. Sanjay Sonawani, Mr. Abhay Shastri along with Suryoday Finmark Consultants Private Limited, Suryoday Engineering Limited, Suryoday Service Stations Limited, Shashtri Foods and Vegetables Limited and Pushpa Prakshan Limited had increased to 73.75% of the total equity capital of WSL. It was also found that, pursuant to the aforesaid allotment, WSL had further allotted 4,69,000 shares by way of preferential issue to the promoters and other entities in July, 2000. Out of the said 4,69,000 shares, 2,42,500 shares were allotted to Suryoday Finmark Consultants Private Limited and 11,500 shares were allotted to Suryoday Engineering Limited. Thus, it was *inter alia* alleged that Mr. Sanjay Sonawani, Mr. Abhay Shastri along with persons acting in concert had acquired within a period of twelve months, by way of reissuance of forfeited shares and preferential allotment 19,42,400 shares (16,88,400 acquired by reissuance and 2,42,500 shares acquired by Suryoday Finmark Consultants Private Limited and 11,500 shares acquired by Suryoday Engineering Limited in preferential allotment) of WSL. Though, the aforesaid acquisitions increased their shareholding in WSL from 49.28% to 75.64%, they had failed to make a public announcement as required under Regulation 11(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as Takeover Regulations). In view of the above, SEBI issued a common notice dated June 29, 2009 to Mr. Sanjay Sonawani, Mr. Abhay Shastri and the other directors of WSL, namely, Mr. Vinod Sonawani, Mr. Rohidas Kumbharkar and Mr. Mitesh Kulkarni along with persons acting in concert asking them to show cause as to why one or more or all action(s) under Regulations 44 and 45(6) of the Takeover Regulations and Section 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 should not be initiated against them. As the aforesaid show cause notices were returned undelivered with the remark "left", the same were subsequently affixed through the Pune Stock Exchange Limited (PSE) at the place of business and/or last known address of the noticees. PSE, vide letter dated October 29, 2009 had confirmed the affixture of the same. Thereafter, WSL, Suryoday Finmark Consultants Private Limited, Suryoday Engineering Limited, Suryoday Service Stations Limited, Shashtri Foods and Vegetables Limited and

Pushpa Prakshan Limited, vide their separate letters dated December 3, 1999 filed their replies to the show cause notice. The same are being considered in the later part of this Order. WSL in its reply also informed about the death of Mr. Rohidas Kumbharkar, its former director. A copy of the death certificate was also submitted in this regard. Mr. Mitesh Kulkarni, vide letter dated February 1, 2010 filed his reply to the show cause notice. SEBI has not received any replies from the other persons mentioned in the show cause notice.

2. Thereafter, an opportunity of personal hearing was granted to the persons/entities covered under the show cause notice dated June 29, 2009, on February 10, 2010. Mr. Sanjay Sonawani appeared on his own behalf (including WSL) and on behalf of Suryoday Finmark Consultants Private Limited, Suryoday Engineering Limited, Suryoday Service Stations Limited, Shashtri Foods and Vegetables Limited and Pushpa Prakshan Limited. He made submissions on the lines of the reply filed by the respective entities. Mr. Vishvas Bokil appeared and made submissions on behalf of Mr. Mitesh Kulkarni. There was no representation on behalf of Mr. Abhay Shastri and Mr. Vinod Sonawani.

3. I have considered the show cause notice dated June 29, 2009, the replies received from the entities (as mentioned above), the submissions made during the hearing and other material available on record. In view of the death of Mr. Rohidas Kumbharkar, the proceedings initiated against him would abate. As no reply has been forthcoming from Mr. Abhay Shastri and Mr. Vinod Sonawani, I am constrained to proceed against them on the basis of material/ documents available on record including the show cause notice. The fact that WSL had allotted shares to various entities as mentioned in the show cause notice is not in dispute. It was alleged that WSL had allotted 16,88,400 shares to the following entities:

Sr. No.	Name	No. of shares allotted
1	Suryoday Finmark Consultants Private Limited	3,39,470
2	Suryoday Engineering Limited	3,35,900
3	Suryoday Service Stations Limited	3,37,016

Sr. No.	Name	No. of shares allotted
4	Shastri Foods & Vegetables Limited	3,34,614
5	Pushpa Prakashan Limited	3,41,400
	Total	16,88,400

4. The said allotment is not in dispute. In its reply dated December 3, 2009, WSL stated that approximately 16,88,000 shares were allotted to the aforesaid companies. WSL further contended that, though, some of the directors were common in the aforesaid companies, it could not be alleged that they fall under the definition of persons acting in concert. WSL further denied the allegation that the aforesaid companies were promoted and controlled by Mr. Sanjay Sonawani and Mr. Abhay Shastri. According to it, the said companies were promoted by various entities and that Mr. Sanjay Sonawani and Mr. Abhay Shastri were having nominal shareholding in the aforesaid companies. WSL also stated that Mr. Abhay Shastri had no control over Suryoday Finmark Consultants Private Limited and that the said company was promoted and controlled by Mr. Sanjay Sonawani and Mr. Amol Shastri. According to WSL, it had 250 entities as promoters and that the individual holdings of Mr. Sanjay Sonawani and Mr. Abhay Shastri were not over 5% during the investigation period. Suryoday Finmark Consultants Private Limited, Suryoday Engineering Limited, Suryoday Service Stations Limited, Shashtri Foods and Vegetables Limited and Pushpa Prakashan Limited, vide separate letters dated December 3, 2009 made similar submissions. According to them, they had not violated the provisions of the Takeover Regulations while acquiring the shares of WSL. Mr. Mitesh Kulkarni, vide letter dated February 1, 2010 *inter alia* stated that he was appointed on the Board of Directors of WSL on January 3, 2000 and had resigned on March 7, 2000. He also submitted a copy of his letter dated March 7, 2000 sent to WSL mentioning therein his intention of resigning from the directorship of WSL. As stated earlier, the acquisition of 19,42,000 shares of WSL by Suryoday Service Stations Limited, Suryoday Engineering Limited, Suryoday Finmark Consultants Private Limited, Pushpa Prakashan Limited and Shastri Food and Vegetables Limited during the period between December 1999 and July 2000 are not in dispute. The allegation in the show cause notice was that, by virtue

of the said acquisition, the shareholding of Mr. Sanjay Sonawani and Mr. Abhay Shastri along with Suryoday Finmark Consultants Private Limited, Suryoday Engineering Limited, Suryoday Service Stations Limited, Shashtri Foods and Vegetables Limited and Pushpa Prakshan Limited in WSL increased from 49.28% to 75.64%. If Suryoday Service Stations Limited, Suryoday Engineering Limited, Suryoday Finmark Consultants Private Limited, Pushpa Prakashan Limited and Shastri Food and Vegetables Limited are to be treated as persons acting in concert *inter alia* with Mr. Sanjay Sonawani and Mr. Abhay Shastri, then a public announcement in terms of Regulation 11(1) of the Takeover Regulations was mandatory in respect of the above increase. Admittedly, no such public announcement was made. Therefore, the sole issue that needs to be examined is whether while acquiring 19,42,400 shares of WSL during the period between December 1999 and July, 2000, Suryoday Service Stations Limited, Suryoday Engineering Limited, Suryoday Finmark Consultants Private Limited, Pushpa Prakashan Limited and Shastri Food and Vegetables Limited acted in concert with Mr. Sanjay Sonawani and Mr. Abhay Shastri. If answer to the said question is in the affirmative, they are guilty of contravening Regulation 11(1) of the Takeover Regulations, otherwise not. For ease of reference, Regulation 11(1) of Takeover Regulations is reproduced hereinbelow:

“No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 percent or more but less than 75 per cent of the shares or voting rights in a company, shall acquire either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5 per cent of the voting rights in any period of 12 months unless such acquirer makes a public announcement to acquire shares in accordance with the regulations”.

5. The contention of WSL that Suryoday Service Stations Limited, Suryoday Engineering Limited, Suryoday Finmark Consultants Private Limited, Pushpa Prakashan Limited and Shastri Food and Vegetables Limited do not fall under the

category of persons acting is not acceptable in the facts and circumstances of the case. In his statement to SEBI on January 27, 2003, Mr. Abhay Shastri (promoter of WSL) *inter alia* stated, “*approx 16.88 lakh shares (approx. 24% of the total paid up capital of the company) were issued to a group of 5 entities – M/s. Shastri Food & Vegetables Ltd., M/s. Suryoday Engineering Ltd., M/s. Suryoday Finmark Consultants Pvt. Ltd., Pushpa Prakashan Ltd., Suryoday Service Stations Ltd.- who are part of the promoter group, as the promoters of Washington Software are also the promoters of these entities*”. Though, the copy of the said statement was provided with the show cause notice, the same remained uncontroverted. Suryoday Service Stations Limited, Suryoday Engineering Limited, Suryoday Finmark Consultants Private Limited, Pushpa Prakashan Limited and Shastri Food and Vegetables Limited have not in their replies denied that they do not belong to the promoter group of WSL. It is also not in dispute that Mr. Sanjay Sonawani and Mr. Abhay Shastri belong to the promoter group of WSL. Further, I also note that SEBI had initiated adjudication proceedings *inter alia* against Mr. Sanjay Sonawani and Mr. Abhay Shastri, Mr. Vinod Sonawani, Suryoday Service Stations Limited, Suryoday Engineering Limited, Suryoday Finmark Consultants Private Limited, Pushpa Prakashan Limited and Shastri Food and Vegetables Limited in respect of the violation of Regulation 11(1) of the Takeover Regulations. The Adjudicating Officer, vide order dated July 31, 2008 found that they had contravened Regulation 11(1) of the Takeover Regulations and accordingly, imposed a consolidated penalty of Rs.2,00,000/-. Thus, the available material on record suggests that Suryoday Service Stations Limited, Suryoday Engineering Limited, Suryoday Finmark Consultants Private Limited, Pushpa Prakashan Limited and Shastri Food and Vegetables Limited are persons acting in concert with the promoters of WSL. Apart from the vague statement of WSL, the noticees could not convincingly establish that Suryoday Service Stations Limited, Suryoday Engineering Limited, Suryoday Finmark Consultants Private Limited, Pushpa Prakashan Limited and Shastri Food and Vegetables Limited are not persons acting in concert with Mr. Sanjay Sonawani and Mr. Abhay Shastri. It is an admitted fact that WSL had further allotted 2,42,500 to Suryoday Finmark Consultants Private Limited and

11,500 shares to Suryoday Engineering Limited by way of preferential issue, *vide* resolution u/s 81(1A) of the Companies Act, 1956 passed on April 3, 2000. Considering the above and in the absence of anything in the contrary to establish that Suryoday Service Stations Limited, Suryoday Engineering Limited, Suryoday Finmark Consultants Private Limited, Pushpa Prakashan Limited and Shastri Food and Vegetables Limited are not persons acting in concert, I am unable to accept the plea of WSL in this regard. Once they are found to be persons acting in concert, their acquisitions should be clubbed with the shareholding of the promoters of WSL, Mr. Abhay Shastri and Mr. Vinod Sonawani for examining the applicability of the Takeover Regulations. Consequently, they were supposed to make a public announcement in respect of the said increase, which was admittedly not made. Therefore, I do not have any hesitation to hold that Suryoday Service Stations Limited, Suryoday Engineering Limited, Suryoday Finmark Consultants Private Limited, Pushpa Prakashan Limited and Shastri Food and Vegetables Limited along with Mr. Abhay Shastri and Mr. Vinod Sonawani have contravened Regulation 11(1) of the Takeover Regulations. I also note they had not notified the stock exchanges about the details of the proposed acquisition in advance in terms of Regulation 3(3) of the Takeover Regulations nor did they file with SEBI, the report giving all details in respect of the acquisition as required under Regulation 3(4) of the Takeover Regulations.

6. I note that the show cause notice was issued in respect of the violation of Regulation 11(1) of the Takeover Regulations. Though, it is alleged in the show cause notice that Mr. Sanjay Sonawani, Mr. Abhay Shastri, Mr. Vinod Sonawani, Mr. Rhidas Kumbharkar and Mr. Mitesh Kulkarni along with persons acting in concert, Suryoday Service Stations Limited, Suryoday Engineering Limited, Suryoday Finmark Consultants Private Limited, Pushpa Prakashan Limited and Shastri Food and Vegetables Limited consolidated their holding, Mr. Mitesh Kulkarni in his reply stated that he was appointed as a Director of WSL on January 3, 2000 and had resigned from the Board on March 7, 2000. He also submitted copies of Form 32 evidencing the said appointment and resignation. According to

him, he was not holding any shares in WSL and had not attended even a single board meeting of WSL. Considering the facts of the present case, Mr. Mitesh Kulkarni cannot be said to have violated Regulation 11(1) of the Takeover Regulations. In the absence of any reply/submissions from Mr. Abhay Shastri and Mr. Vinod Sonawani, it is inferred that they also belong to the promoter group of WSL.

7. In view of the above, it is held that Mr. Sanjay Sonawani, Mr. Abhay Shastri and Mr. Vinod Sonawani alongwith the persons acting in concert namely, Suryoday Finmark Consultants Private Limited, Suryoday Engineering Limited, Suryoday Service Stations Limited, Shastri Foods and Vegetables Limited and Pushpa Prakashan Limited together acquired within a period of twelve months, by way of reissuance of forfeited shares and preferential allotment of shares, 19,42,400 shares i.e. 26.36% of the total paid-up share capital of WSL and by not making a public announcement, they have contravened Regulation 11(1) of the Takeover Regulations. Considering the totality of the case, I dispose of the show cause notice, as ordered hereinbelow.

8. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(4) and 11B thereof and Regulation 44 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, hereby restrain Mr. Sanjay Sonawani (Permanent Account Number ACZPS9915M), Mr. Abhay Shastri (Permanent Account Number ACZPS9667G), Mr. Vinod Sonawani (Permanent Account Number Not available), Suryoday Finmark Consultants Private Limited (Permanent Account Number AACCS3508E), Suryoday Engineering Limited (Permanent Account Number AACCS3503R), Suryoday Service Stations Limited (Permanent Account Number Not available), Shastri Foods and Vegetables Limited (Permanent Account Number AACCS3507M) and Pushpa Prakashan Limited (Permanent Account Number AABCP0137H) from accessing the securities market and further

prohibited from buying, selling or otherwise dealing in securities, either directly or indirectly for a period of one month.

9. The proceedings against Mr. Rohidas Kumbharkar has abated on account of his death.

10. The show cause notice dated June 29, 2009 issued against Mr. Mitesh Kulkarni is disposed of without directions, for the reasons stated above.

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

**DR. K.M.ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**

**PLACE: MUMBAI
DATE: MARCH 29, 2010**