WTM/PS/74/IVD/ID-01/MARCH/2012

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

IN THE MATTER OF DATASOFT APPLICATION SOFTWARE (INDIA) LIMITED

In respect of Shalibhadra Securities Limited, Mr. Hemendra Shah, Mr. Rahul H. Shah, Ms. Sulochana Shah and Mr. Lalit C. Mehta

Date of hearing: July 08, 2011

Appearances:

For Noticees: Ms. Rinku Valanju, authorised representative for Shalibhadra Securities Limited
Mr. Hemendra Shah
Mr. J.J. Bhatt, Advocate authorized representative for Mr. Rahul H. Shah

For SEBI: Ms. Anju Mahendra, Presenting Officer
Ms. Medha Sonparote, Deputy General Manager
Ms. Anitha Anoop, Deputy Legal Adviser
Mr. Pradeep Kumar, Assistant Legal Adviser
Mr. Naveen Kumar, Manager

ORDER

Under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigation in respect of trading in the shares of Datasoft Application Software (India) Limited (hereinafter referred to as 'Datasoft') for the period from November 06, 2000 to January 25, 2001. The scrip of Datasoft, during the period of investigation was listed at the Bombay Stock Exchange (hereinafter referred to as 'BSE') and Ahmedabad Stock Exchange (hereinafter referred to as 'ASE').

2. The investigation *inter alia* revealed that Datasoft came out with preferential issue of 1,20,00,000 shares for cash @ ₹10 per share with a premium of ₹17 per share on April 27, 2000 pursuant to the resolution of the Board of Directors dated January 28, 2000 under Section 81(1A) of the Companies Act, 1956. The preferential issue was to be made to the persons other than the promoters. The amount for the shares in the preferential issue was to be paid in two tranches; firstly ₹1 per share towards the nominal value and a premium of ₹1.70 per share on the application and ₹9 towards nominal value

and ₹15.30 per share towards premium on first and final call before August 31, 2000. Later on, the time for payment of final call was extended by Datasoft till April 27, 2001 to give the allottees adequate time to pay the final call money. A total of 41 entities had applied for the preferential allotment of Datasoft. Out of these, 16 applicants had applied for 1,18,50,000 shares and they paid ₹3,19,95,000 towards application money. Later on, these 16 applicants had defaulted in making the payment of the call money. The application money of these 16 entities who had not paid the balance amount even after the extended time, was forfeited.

3. While investigating the flow of funds for the preferential issue of shares, it was revealed that out of the said 16 applicants, the share application money in respect of 10 applications for 74,31,000 shares amounting to ₹2,00,63,700 was found to have been paid through the account of one Shalibhadra Securities Limited (hereinafter referred to as 'Shalibhadra'). Shalibhadra was an NSE member till April, 2001 and was declared a defaulter for non-fulfillment of payment obligations.

4. On completion of the investigation, SEBI issued a Show Cause Notice (hereinafter referred to as 'SCN') dated December 31, 2009 to Shalibhadra, Hemendra Shah, Ms. Sulochana Shah, Mr. Rahul H. Shah and Mr. Lalit C. Shah (hereinafter collectively referred to as the 'noticees' and individually by their respective names) under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act'). The SCN alleged that Shalibhadra, its managing director, Mr. Hemendra Shah and his relatives had lent their names to one G.S. Sridhar and his group for making investments in the preferential issue of Datasoft. The SCN, also alleged that the acts of the noticees were in violation of Regulation 6(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as 'PFUTP Regulations'). Accordingly, the SCN called upon the noticees to show cause as to why suitable directions under Section 11 read with Section 11B of the SEBI Act including the direction of restraining them from accessing the securities market should not be initiated against them.

5. Noticees vide separate letters, all of which dated February 16, 2010 replied to the SCN. Before proceeding further, an opportunity of personal hearing was

granted to Shalibhadra, Hemendra Shah and Mr. Rahul H. Shah on July 08, 2011. The noticees namely Ms. Sulochana H. Shah and Lalit C. Mehta in their replies had refused the opportunity of personal hearing. On the date fixed for personal hearing, Ms. Rinku Valanju appeared as the authorized representative of Shalibhadra, Mr. Hemendra Shah appeared in-person and Mr. Rahul H. Shah appeared through Mr. J.J. Bhatt, Advocate.

6. The submissions of the noticees are almost similar and are as stated below:

- Shalibhadra was a broker registered with SEBI and Mr. Hemendra Shah was its director.
- Ms. Sulochana H. Shah, Rahul H. Shah and Lalit C. Mehta are the family members of Hemendra Shah who was approached by G.S. Sridhar.
- G.S. Sridhar had approached Hemendra Shah for seeking help to procure the subscription for the preferential issue of Datasoft. G.S. Sridhar also arranged finances for this purpose and Hemendra Shah used his family members' names by making applications in their names.
- The interaction/ involvement of the noticees in the matter were miniscule, technical and unintended.
- They had not played any role in the manipulation of the preferential issue of Datasoft which was used as a cloak for change in the control and management of Datasoft.
- The use of their names in the subscription, allotment etc., did not cause any harm, loss or injury to anyone on account of forfeiture of shares and its non-listing.
- There was no benefit, gain or any advantage to the noticees.
- The proceedings suffer from great delay and therefore are barred by limitation.
- The power to issue directions under Section 11(B) and Section 11(4)(b) is a drastic power having ramifications on the repute and livelihood of those against whom it is directed.

7. I have carefully considered the show cause notice issued by SEBI, the respective replies received and the material available on record. Based on these, the issue arises for my consideration is: Whether the noticees had acted in a fraudulent manner while making an application in the preferential issue of Datasoft?

8. Whether the noticees had acted in a fraudulent manner while making an application in the preferential issue of Datasoft?

a. I note that out of the total of forty one (41) entities who had applied for the preferential allotment in the scrip of Datasoft, 25 applicants had applied for mere 1,50,000 shares and they paid ₹4,05,000 as application money and the remaining 16 applicants had applied for as many as 1,18,50,000 shares and paid ₹3,19,95,000 towards application money. However, these 16 applicants had defaulted in making the payment of the call money and therefore their application money was forfeited. Thus, Datasoft forfeited over 1.18 crore out of 1.20 crore shares allotted under preferential issue through private placement

b. I note that out of these 16 applicants, the share application money in respect of 10 applicants for 74,31,000 shares amounting to ₹2,00,63,700 was paid through cheques bearing serial numbers 031949 to 031958 issued from the account of the noticee namely Shalibhadra (C/A 110150) maintained with the Central Bank of India, Share Bazar branch, Mumbai. The source of funds to the account of Shalibhadra is seen to be deposit of two cheques amounting to ₹2,02,77,500. The cheque issued from the account of Vision Technology India Limited was against the deposit of ₹2,00,00,000 received by them from one Burlington Finance Limited, Kolkata.

c. I note that the noticee namely Shalibhadra was a member of the National Stock Exchange till April, 2001. Later on, Shalibhadra was declared a defaulter at NSE for non-fulfillment of the payment obligations for trades executed on behalf of the companies namely Vivenasri Financial Services Limited, Harsha Pranav Securities Pvt. Limited and Newfin Financial Services Private Limited.

d. The noticees in their replies have submitted that one Mr. G.S. Sridhar approached Hemendra Shah, one of the noticees seeking help in procuring subscription to the preferential issue of Datasoft. It is important to note that G.S. Sridhar is the director of Newfin Financial Services Pvt. Limited and was closely connected with the companies viz., Harsha Pranav Securities Pvt.

Limited, Narven Finance & Investments Limited and Vevenasri Financial Services Limited at the relevant point of time. It is also noted that G.S. Sridhar arranged finances through his associate namely Narven Finance & Investments Limited. Further, Hemendra Shah used his family members' names by making applications in their names in the preferential issue of Datasoft.

In this context, I note that the funds amounting to ₹2,20,08,800 i.e., for about 81.50 lakh shares of Datasoft in the preferential issue had come from Narven Finance & Investments Limited. It is further seen that the amount contributed by Narven Finance & Investments Limited alone represents almost 54% of the post-issued paid-up capital of the company.

e. I note that upon allotment of the shares in the preferential issue of Datasoft, the delivery of shares of Datasoft was taken by one Tukaram, an employee of Vivenasri Financial Services Limited (a group company of G.S. Sridhar). This is further supported by the corroborative proof provided by Hemendra Shah, one of the noticees, in the form of the delivery register of Shalibhadra in which the said Tukaram had signed while taking delivery of the shares purchased by Shalibhadra on behalf of Vivenasri Financial Services Limited. Taking the above facts in consideration, one can say that the noticees had a relationship of trust and confidence with G.S. Sridhar and his group as high value transactions were undertaken amongst each other. Further, the fact that the noticees had lent their names to G.S. Sridhar and his group for making applications in the preferential issue of Datasoft casts serious suspicion on the role of the noticees in the entire scheme.

f. I further note that Shalibhadra participated in the preferential issue of Datasoft on the basis of an agreement dated November 17, 1999 entered between Shalibhadra and Datasoft for the preferential issue of 1.2 crore. It is seen that the said agreement was executed on a plain paper and major deviations were seen in the actual preferential allotment. Certain deviations are stated below:

S. No	Terms of Agreement	Deviations noted
1.	All the investors should be Angel Investors and not known to each other.	The investors were known to each other.
2.	A single investor should not subscribe for more than 2 per cent of increased share capital in one or more applications. 2 investors related to each other would be	The 16 applicants had applied for a little less than 5 per cent each of the increased share capital. If investments of related investors are considered, it far exceeds 5 per cent.

	considered as single investor.	
3.	Company would allot shares only in demat form.	The shares were actually allotted and delivered in physical form in July, 2000, despite the fact that the scrip had moved to compulsory demat in July, 2000.

I note that the applications made by the noticees did not bear PAN/ GIR numbers and IT Ward/ Circle/ District, thus breaching the instructions attached with the application form. Further, it is seen that the applications were submitted without mentioning the details pertaining to the demat account, though the shares were to be allotted in the demat mode. It is important to note that the shares were allotted and delivered in the physical mode.

g. It is noteworthy that none of the noticees have denied the act of lending names in the preferential issue of Datasoft. I also note that there were major deviations from the terms set out between Datasoft in consultation with Shalibhadra for making an application in the preferential issue of Datasoft. I note that Shalibhadra's bank account was used by G.S. Sridhar as the funds were transferred by his connected entities for routing the funds for different applicants which was allegedly provided by one of the group companies of G.S. Sridhar. This fact has not been disputed by the noticees. I observe that the acts of the Managing Director of Shalibhadra as submitted by the noticees cannot be treated as acts done in his personal capacity.

h. I note that the noticees, after making the application in the preferential issue had not followed up for the allotment or other procedures pursuant to application. Rather, they failed to pay the call money. This shows that the act of lending the names and accounts was deliberate on the part of the noticees to facilitate G.S. Sridhar in manipulating the preferential issue of Datasoft. I note that SEBI has initiated proceedings as against G.S. Sridhar and the same are pending.

i. Having regard to the above discussion, I am of considered view that the noticees have facilitated G.S. Sridhar and his group companies to facilitate these in making an application in the preferential issue of Datasoft in a fraudulent manner in violation of the provisions of Regulation 6(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995.

9. The noticee namely Rahul H. Shah (son of Hemendra Shah) has submitted that he was a minor at the time of the commission of the offence and the application in his name was made by his father, and therefore he cannot be held liable for the same. I have noted the submission of Rahul H. Shah about his date of birth, which is March 09, 1979. However, on the date of preferential issue, Rahul was 21 years old and thus it is clear that Rahul H. Shah was not a minor at the relevant point of time and the argument finds no merit.

10. I note that the present proceedings are not meant to expose and punish the possible manipulation by Datasoft or G.S. Sridhar. The proceedings are meant to be an example for people who lend their names without considering as to what manipulations/ frauds might be done in their names. I am therefore of the view that it is not necessary to establish any wrongdoing or manipulation on the part of the noticees. The very fact that names were lent is sufficient grounds for action.

11. Therefore, taking into consideration the facts and circumstances of the case, I, in exercise of the powers conferred upon me, under Sections 19 of the SEBI Act read with Sections 11 and 11B of the SEBI Act do hereby restrain Shalibhadra Securities Limited, Mr. Hemendra Shah [PAN: AAEPS 0940F], Ms. Sulochana H. Shah, Mr. Rahul H. Shah and Mr. Lalit C. Mehta from buying, selling or dealing in the securities market whatsoever or accessing the securities market, directly or indirectly, for a period of one year from the date of this order.

12. This order shall be served on all the recognized stock exchanges and the depositories to ensure that the entities mentioned above are not allowed to undertake transactions as prohibited above.

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

DATE : MARCH 5, 2012
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA