

In Re: Alfavision Overseas

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Court : SEBI Securities and Exchange Board of India or Securities Appellate Tribunal SAT

Decided On : Jan-12-2005

Judge : Madhukar

Appellant : In Re: Alfavision Overseas

Judgement :

1. The Securities and Exchange Board of India (for brevity's sake referred to as 'SEBI') vide an order dated October 21, 2003 had prohibited 'Alfavision Securities and Finance Limited' (hereinafter referred to as Alfavision) having its registered office at "Goyal House" 81, Janki Nagar Main, Indore-452 001 from accessing the capital market and buying, selling and dealing in securities for a period of two years. Further, the company was also directed under section 11D of SEBI Act, 1992, to cease and desist from violating Regulation 26 of SEBI (Depositories and Participants) Regulations, 1996 regarding processing of dematerialization requests within the stipulated period of 15 days. An Appeal u/s 15T of SEBI Act, 1992 was filed by Alfavision before the Hon'ble Securities Appellate Tribunal (SAT) challenging the aforesaid order and in the meanwhile praying for the stay of the impugned order. Hon'ble SAT refused the stay and matter was finally heard on October 14, 2004, wherein both the parties argued the case on merits.

2. During the hearing, the appellant had submitted that an opportunity of hearing was not granted to him by SEBI before passing the impugned order. It was however submitted on behalf of SEBI that Alfavision was communicated a date of

personal hearing before the then Whole Time Member, Shri A.K.Batra and the impugned order was passed as Alfavision failed to appear for personal hearing. However, it was submitted that a letter dated September 12, 2003 from the company seeking adjournment was received, after the scheduled date of personal hearing on 10.09.03.

3. The Hon'ble SAT having considered the submissions, vide its order dated October 12, 2004, while leaving all contentions open, remanded the case to SEBI for fresh disposal, after hearing the appellant. In the operative portion of the order, the Hon'ble SAT observed as under : "However, we are not inclined to set aside the impugned order, but we have no doubt that the appellant should have been heard before any order adverse to the appellant is passed. In that view of the matter we remand the case to the respondent for fresh disposal of the matter after hearing the appellant. The respondent shall dispose of the matter within 10 weeks of receipt of this order. The respondent is also at liberty to reduce period of debarment, if in accordance with law, and if equitable and taking into account that there was no interim order by this Tribunal staying the impugned order. Accordingly without setting aside the impugned order we direct the respondent to hear the appellant and pass fresh orders in accordance with law. All contentions are left open. As stated earlier the fresh order may also take into account the fact that the appellant has already suffered one year ban. It would be open to the respondent to confirm its earlier order, or set aside the earlier order to modify the earlier order as deem fit in accordance with law after hearing the appellant".

4. Pursuant to the order of Hon'ble SAT received by SEBI on November 03, 2004, a letter dated November 25, 2004 was sent by SEBI to Alfavision asking them to submit written submissions, if any, in addition to their already submitted reply dated June 21, 2003 to the show cause notice of SEBI. Alfavision in response to the said letter of SEBI vide their letter dated December 6, 2004 made their written submissions similar to that of their reply to show cause notice of SEBI dated June 9, 2003, except to the extent mentioned hereunder.

In the said letter they indicated certain discrepancies with respect to the dates mentioned in the annexure (indicating the delay in dematerialization) to the show

cause notice. It was further submitted that the company should not be punished for the manipulation and mistakes committed by Shri Sanjay Garg and Ms. Sapna Garg who have already been punished by SEBI. It was also submitted that there has been no complaint against the company either at the Exchange or before SEBI and the company has been regular in complying with the applicable laws. Lastly it was submitted that the order dated October 21, 2003 of SEBI has been in effect for more than a year and has proved fatal to the company and its reputation which had no previous track record of having indulged in manipulation.

5. An opportunity for hearing was granted to Alfavision on December 21, 2004, which was communicated by letter dated December 08, 2004. Due to administrative exigencies however, the said hearing had to be postponed which was duly communicated to the company vide letter dated December 17, 2004. A fresh date of hearing was fixed on January 03 2005, which was intimated to Alfavision vide letter dated December 23, 2004.

6. The hearing was held before me on January 03, 2005 wherein Shri Vijayesh Atre, Authorised representative of the company and Shri Vishnu Goyal, MD of the company appeared and made their submissions. Regarding delay in dematerialization, it was admitted on behalf of the company that there was delay in this regard due to non availability of trained staff and the concept being new. Regarding the association of Shri Sanjay Garg with the company, it was submitted that Shri Sanjay Garg was not connected with the company and had not joined the company at any point of time after being appointed the Chief Executive (CE)/Compliance Officer (CO) of the company. As I found from the records that the company had indicated the name of Shri Garg as CE/CO in the application forms for dematerialization submitted by the company to CDSL and NSDL and all concerned were acting on this belief, the representatives of the company were advised during the personal hearing, to show the records indicating that this fact of not joining by Shri Garg was communicated to depositories and other concerned.

After the conclusion of personal hearing the representative of the company requested for time to file written submissions. When their attention was invited to the time limit in terms of the directions of the Hon'ble SAT , they undertook to

move a suitable application before SAT for extension of time. Having considered their request and in adherence to the principles of natural justice, I granted the company time for filing written submissions subject to the condition that they would make a suitable urgent application before SAT latest by January 10, 2005 for extension of time. They were also advised to give an advance copy of the said application to SEBI before the said date. A letter dated January 03, 2005 in this regard was issued to the company by SEBI on the same date.

7. Official of SEBI made a phone call to the company on January 07, 2005 to confirm as to whether the letter dt. January 03, 2005 has been received by them. During the conversation it was informed by the company that they have already forwarded their written submissions on January 05, 2005 and therefore they do not require further time. As the written submission was not received, the company was requested to forward the same through fax and e-mail and as such the faxed written submissions were received on January 07, 2005. In the said written submissions it was stated by Alfavision that as the written submissions are being filed within three days, the time granted for submitting written submissions was not required and therefore they are not moving any application to Hon'ble SAT for extension of time.

Vide written submissions while admitting inter alia that they did not intimate depositories regarding the non-joining of Sanjay Garg as company's CE/CO, the company made following submissions: 1. That the allegation of the SEBI that Mr.Sanjay Garg and Mrs.Sapna Garg are related to Alfavision Overseas (India) Limited and its promoters is based on assumption and is not substantiated by any documentary evidence except the fact that Mr.Sanjay Garg is named as "Chief Executive" of the Company in documents filed with NSDL and CDSL. However, there is no document to substantiate the allegation made in show cause notice that Mr.Sanjay Garg acted as chief executive of the Company. The factual position as to this confusion has already been clarified by us in our earlier written submissions and once again we would like to submit that though Mr.Garg was appointed as chief executive and was expected to join the company, he never joined the company, acted as chief executive or signed any document as chief executive. The Noticee Company accepts its mistake of not taking necessary

steps for intimating NSDL, CDSL and other concerned about not joining of Mr.Sanjay Garg as Chief Executive of the Company afterwards. The Company, at that particular point of time could not envisage the consequences of not intimating the NSDL and CDSL and other concerned and ultimately landed into the Charge of price manipulation by Mr. and Mrs.Garg.

2. Mr.Sanjay Garg and Mrs.Sapana Garg are husband and wife and were directors of M/s.Ravi Vishnu Securities Limited at the time the alleged transactions entered into during settlement No.2000033 to 2000041 at BSE. Vide their reply dated July 03, 2003 they have admitted their mistake and your kind office proceeded to pass necessary order dated October 21, 2003 prohibiting them from dealing in share market, directly or indirectly, for a period of two years and in compliance with the said order they have ceased to hold their respective office of director of M/s.Ravi Vishnu Securities Limited.

Mr. & Mrs. Garg while admitting their mistake vide their reply dated July 03, 2003. clearly stated under para 5 as under: "5. That we acted all along independently and without in concert with any other person and the investment decision taken by us was our own and no other person has dealt in shares of the said company on our advise." Therefore the admission of Mr.& Mrs.Sanjay Garg clearly proves, while accepting their bona fide mistake, that there is no relation between them and Alfavision Overseas (India) Limited.

3. Based on the "Admission of Mistake" by Mr. and Mrs.Garg the SEBI vide order dated October 21, 2003, prohibited both of them from dealing in shares, directly or indirectly, for a period of two years.

4. Mr.& Mrs. Sanjay Garg are not promoters of Alfavision Overseas (India) Limited.

5. Mr.& Mrs. Sanjay Garg are not related to any of the promoters of Alfavision Overseas (India) Limited.

6. There is no benefit directly or indirectly accrued to Alfavision Overseas (India) Limited due to the transactions alleged to have been entered during settlement No.2000033 to 2000041 at BSE. 7. The total capital of the company consists of

31,52,600 equity shares of Rs.10/- each out of which 40,248 equity shares were traded during settlement No.2000033 to 2000041 at BSE (as per the show cause notice dated June 09, 2003 which amounts to 1.276% only of the total capital of the company and there is no evidence to show that out of 40,248 equity shares even a single share was out of the promoter quota.

8. As regards 11% holding of Ravi Vishnu Securities Limited, which is one of the basis of the show cause notice, we would like to submit that during the days of heavy public subscription Mumbai based investors used to subscribe the whole issue of small companies and therefore the 11% holding of the Ravi Vishnu Securities Limited can not be made a basis for a connection with Alfavision Overseas (India) Limited. Even in the case of the Noticee Company one of the Mumbai based investor had made application for the whole of the public portion. Therefore only 11% holding should not be made a basis for relationship between the Company and the Ravi Vishnu Securities Limited.

9. The other persons named in the show cause notice for being a party to the alleged transactions during settlement No.2000033 to 2000041 i.e. Mr.Dinesh Kumar Sharma, Mr.Mohanlal Garg, Mr.Rajesh Agrawal, Mr.Dharmendra Agrawal, Mr.Pradeep Joshi, Mr.Shyam Sharma etc. were never investigated as to their connection with Alfavision Overseas (India) Limited and the allegations in the show cause notice only states about their relationship with Mr.Sanjay Garg and Sapna Garg.

10. Mr.Dinesh Sharma is a qualified Company Secretary and was employed as Company Secretary of the Company up to 7th November, 2000. On 8th November, 2000 he resigned from the Company and traded in the shares of the Company.

11. Ravi Vishnu Securities Limited never had its registered office address at 81, Janki Nagar, Main Indore. 81 Janki Nagar is residence of Shri Vishnu Prasad Goyal, and also registered office of Alfavision Overseas (India) Limited.

12. Before 10th January, 2000 the registered office of Ravi Vishnu Securities Limited was situated at 114, Bhamori Plaza, Bhamori, Indore and after 10th

January, 2000 the same was shifted to 60, Nilamber Apartment, Shri Nagar "Main", Indore and was never situated at 81, Janki Nagar, Indore.

13. The dematerialisation of shares of the Company was delayed due to resignation of Shri Dinesh Shares, Company Secretary on November 08, 2000 and his lack of interest in the expeditious disposal of the dematerialisation before resignation which was one of the reasons for his resignation. The Company could not immediately appoint a qualified person to look after the demat activities and in the process the shares received for demat could not be sent to the electronic registrar of the Company for timely processing. The Company has accepted its bona fide mistake before your kind office in earlier submissions and a separate prosecution has been launched against the Company under the SEBI Act for the violation and there cannot be two punishments for the same violation.

14. None of the promoters, directors, their relatives are alleged to have indulged in the transactions during settlement No.2000033 to 2000041 or otherwise.

15. The Company has cooperated your kind office throughout the investigation proceeding and all desired information was provided without fail. " In view of above, the company requested SEBI to reconsider the restriction imposed vide order dated October 21, 2003 and withdraw the same with immediate effect.

I have carefully considered the record, oral and written submissions made by the company till date, the order dt. October 21, 2003 passed by Shri A K Batra, the then Whole Time Member of SEBI and the order dt.

October 12, 2004 of the Hon'ble SAT remanding the matter to SEBI for reconsideration & fresh disposal of the matter, as deem fit, in accordance with law after hearing the appellant.

Before proceeding in the matter on its merit, I would like to discuss in brief, the background of the matter.

8. M/s Alfavision Securities and Finance Limited was incorporated as a private limited company on June 02, 1994 and engaged mainly in lease and hire purchase syndication, arranging bill discounting and bridge loan against public issue/ right

issue, financial consulting, preparation of feasibility reports, inter-corporate deposits and investments. Subsequently on September 30, 1994, it was converted into a public limited company and changed its name from M/s Alfavision Securities and Finance Limited to M/s Alfavision Overseas (India) Limited, (hereinafter referred to as 'the company') on October 12, 1998 on account of the change in the main object of the company from financial activities to trading and other activities.

9. The scrip of the company which is listed on the Madhya Pradesh Stock Exchange (hereinafter referred to as 'MPSE') and the Stock Exchange, Mumbai (hereinafter referred to as the 'BSE') was suspended from trading at the MPSE from March 14, 2001 to April 17, 2001 on account of complaints regarding non-redressal of investor grievances.

10. SEBI also received complaints alleging delay on the part of the company in the dematerialization of the shares of the company as well as rejection by the company of the shares sent by the shareholders for transfer on flimsy grounds. The complaints against the company were examined. Based on the records available, it was observed that the company had in several cases, delayed the process of dematerialization of shares beyond the stipulated time of 15 days. Complaints were further received by SEBI regarding the price manipulation in the scrip of the company. Hence these complaints were forwarded to the BSE with an advice to conduct an investigation into the trading of the scrip on the exchange and examine the possibility of manipulation of the price of the scrip due to the delay in the dematerialization of the shares of the company. Thereafter BSE submitted the investigation report covering the period from November 6, 2000 to January 5, 2001 (relevant period).

11. The said report inter- alia noted that the price of the scrip at the BSE increased from Rs. 4.60 as on November 06, 2000 to Rs.19.15 as on December 29, 2000. The report further stated that major volumes in the scrip had been created by the sub-brokers of one of its member called MPSE Securities Ltd. These sub-brokers were also the members of MPSE. However amongst the said sub-brokers, major volumes were found to have been created by M/s Ravi Vishu Securities Ltd (for brevity's sake referred to as RVSL), an entity stated to be connected to and an

associate of the company. The report also noted certain instances where the trades of related persons were found to have matched. Based on these reports, it was surmised that there was a possibility that these trades were fictitious and meant to create artificial volumes and increase the price of the scrip of the company. The report further noted that the ultimate clients of MPSE Securities and the other brokers who had traded in the scrip during the said period were connected or associated with the company.

12. In view of the above facts, the Chairman, SEBI ordered on March 22, 2002, a formal investigation into the affairs relating to the buying, selling or dealing in the shares of the company. Pursuant to the same, information was called for from the clients who had carried out major transactions in the scrip of the company. Summons were also issued under section 11(3) of the SEBI Act, 1992 (hereinafter referred to as the Act) to the clients, brokers and the personnel of the company to appear on October 4, 2000 before the investigating authority at the office of the MPSE, Indore. Some of the summons issued to the clients could not be delivered as the address given by their broker was incorrect. The Managing Director of the company, Mr. Vishnu Prasad Goyal appeared before the Investigating Officer and his statement was recorded. It was noted by the investigating officer that he was trying to avoid answering some questions. Furthermore, the Principal Officer of the company Ms. Divya Gupta left the place of recording the statements without giving any reply to the remaining questions and without the permission of the Investigating Officer. Although summons were issued to Mr. Dinesh Kumar Sharma, Asst Company Secretary of the company, he did not appear before the investigating officer despite being informed of the same.

13. Information was also called for from the exchanges as regards the transactions carried out by the brokers on gross basis and net basis.

Further, the order log and trade log of trades in the scrip of the company were analyzed to ascertain the element of market manipulation in the trading of the scrip of the company. SEBI also obtained the information from Intime Spectrum Registry Ltd to examine the issue of the dematerialization of the company as well as from the Central Depository Services (I) Ltd and National Securities Depository Ltd (for

brevity's sake referred to as the 'CDSL' and 'NSDL' respectively). On perusal of the same, it was noted that the price of the scrip of the company which was put under compulsory dematerialized trading for all investors with effect from October 30, 2000, started rising immediately thereafter.

14. Based on the findings of the investigation, a notice dated June 9, 2003 was issued by SEBI to the company asking it to show cause as to why suitable directions be not issued under regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 read with Section 11 & 11B of the SEBI Act, 1992 including a direction to debar it from accessing the capital market for a particular duration. The company was also asked to show cause as to why a direction under Section 11D of SEBI Act, 1992 should not be issued against it directing it to cease and desist from violating the provisions of the byelaws of the Depository and SEBI (Depository and Participants) Regulations, 1996, in respect of processing of dematerialization requests within the stipulated period.

The company was directed to reply to the said notice within 21 days of the receipt thereof failing which it would be presumed that it has nothing to say in the matter and that SEBI would be free to take such action as deemed fit.

15. The company vide its letter dated June 21, 2003, inter alia submitted that both the company and its promoters were not involved in the manipulation of the shares of the company. The company had appointed Sanjay Garg as its Chief Executive to expedite the dematerialization of shares of the company. However, as Sanjay Garg refused to join the company, the process of de-materialization was affected. As such, the delay in the dematerialization of shares was mainly due to the non-availability of an experienced person to handle the work and due to the new concept introduced in the market relating to dematerialization. It was submitted that the company had no relationship with Sanjay Garg and did not have any knowledge about the manipulation of shares of the company.

16. Refuting the contention that they had not co-operated during the investigation proceedings, the company also denied that they left the place of recording of statement without the permission of the investigation officer. The company further

requested that a personal hearing be granted to them. Accordingly the company was advised to appear before me for a personal hearing held on September 9, 2003.

Despite the same, on the said date, neither did anyone appear on behalf of the company, nor did the company send any request for adjournment and the order dated October 21, 2003 was passed by SEBI. In an appeal no.13/2004 filed against the said order, Hon'ble SAT remanded the matter for its reconsideration after giving the company an opportunity of being heard.

17. In light of the aforesaid facts and circumstances of the case, I now proceed to pass this order on the basis of the records available including investigation report, show cause notice, replies submitted by the company from time to time, written and oral submissions made during the personal hearing.

18. On a cumulative analysis of the case, I find that a nexus clearly exists between the company and the persons who carried out several transactions in the scrip of the company including RVSL. The following details bring out that linkage.

As per the distribution schedule filed by the company with the stock exchange in terms of the filing requirement under the Listing agreement, RVSL held upto 11% stake in the capital of the company.

I have also noted that RVSL in its letter dated nil to BSE has mentioned the registered office address of Alfavision i.e., "Goyal House", 81, Janki Nagar Main, Indore - 452 001 which is also the residence of Shri Vishnu Prasal Goyal the MD of Alfavision, as the address of its administrative office.

One of the directors of RSVL, Mr. Sanjay Garg, was mentioned as Chief Executive of the company in the application cum master form received by CDSL. In the form submitted to NSDL also, Shri Sanjay Garg was mentioned as the Compliance Officer of the company. Both the forms were signed by Mr. Vishu Prasad Goyal, who is the Managing Director of the company.

The client-broker agreement of Mr. Sanjay Garg with RVSL was witnessed by Mr. Dinesh Kumar Sharma, company secretary of Alfavision. Mr. Sanjay Garg entered

into the agreement with RVSL on November 28, 2000, just before starting trading in the scrip of the company.

Mr. Sanjay Garg and Ms. Sapna Garg, both had traded through MPSE Securities Ltd and Sanjay Baxi, a member of BSE. As per the client agreement form, the husband of Sapna Garg is Sanjay Garg. Address of Mr. Sanjay Garg and Ms. Sapna Garg was similar i.e. 60/61, Neelambar Apt. Shrinagar Main Indore.

Ms. Sapna Garg is one of the directors of RVSL. In spite of being a director of a sub-broker, she traded through two other sub-brokers M/s Gunjan Securities Pvt. Ltd and Mr. Sharad Bhandari of MPSE Securities Ltd and through Sanjay Baxi. The client-broker agreement of Ms. Sapna Garg with Mr. Sharad Bhandari was witnessed by Mr.

Dinesh Kumar Sharma, company secretary of the company.

Mr. Mohanlal Garg, who also was found to have traded in the scrip of the company through the sub-broker of Bharat C. Bagri, Shakti Finsec Limited, was seen to have the same address as that of Mr. Sanjay Garg and Sapna Garg i.e. 60/61, Neelambar Apt. Shrinagar Main Indore. The client-broker agreement of Mr. Mohanlal Garg with the sub-broker M/s Shakti Finsec Pvt. Ltd. was witnessed by Mr. Dinesh Kumar Sharma, company secretary of the company. Mr. Mohanlal Garg entered into an agreement with the sub-broker only on November 17, 2000, just before he started trading in the scrip of the company.

Mr. Rajesh Agrawal and Dharmendra Agrawal had traded in the scrip of the company through RVSL. As per the client registration application form of Mr. Dharmendra Agrawal with RVSL, Mr. Dharmendra Agrawal has been introduced by Rajesh Agarwal. Further, the name of the witness of Sanjay Garg, in the client agreement form submitted with RVSL was mentioned as Rajesh and the signature of Rajesh matched with that of the introducer of Dharmendra Agarwal i.e. Rajesh Agarwal. Hence, it appeared that Rajesh Agarwal & Dharmendra Agarwal knew each other and both of them knew Sanjay Garg, and thereby both of them were connected/associated with the company and had traded in the scrip through RVSL.

Mr. Pradeep Joshi had traded in the scrip of the company through RVSL. As per the client registration application form of Mr. Pradeep Joshi with RVSL, Mr. Pardeep Joshi had been introduced by Mr.

Shakti. Further, it was noted in the client agreement form of Sanjay Garg with RVSL, that Mr. Shakti had put his name and signature on behalf of RVSL. Hence, it appeared that Mr. Pradeep Joshi was connected/associated with Sanjay Garg/RVSL and the company.

Mr. Dinesh Kumar Sharma who traded in the scrip during the period under investigation through Dilip Bhandari, a sub-broker of MPSE Securities Ltd, was the Company Secretary of the company till November 8, 2000. Moreover, Mr. Dinesh Kumar Sharma witnessed the client-broker agreements of Mr. Sanjay Garg, Ms. Sapna Garg and Mr.

Mohanlal Garg.

Mr. Shyam Sharma had traded in the scrip of the company through RVSL. The address of Shyam Sharma was shown similar to that of Mr.

Dinesh Kumar Sharma mentioned in the client registration form with the sub-broker Dilip Bhandari. Hence, it appeared that Shyam Sharma was related to Mr. Dinesh Kumar Sharma and hence to the company.

Mr. Baliram Yadav had traded in the scrip of the company through Gunjan Securities, another sub-broker of MPSE Securities Ltd. The name and signature of Baliram Yadav in the client registration form with Gunjan Securities matched with the signature put on the copy of Annual Report and letters sent by the company. Mr. B.R. Yadav had signed as the authorized signatory of the company which could lead one to infer that he was an employee of the company.

19. Thus a nexus between the company, RVSL, Mr. Sanjay Garg and Ms.

Sapna Garg among other persons is clearly established. I find that a majority of the transactions in the scrip of the company were executed by the officials of the company, Shri Sanjay Garg, Smt Sapna Garg and the Indore based clients who

are linked to Mr.Sanjay Garg/Ms.Sapna Garg/Company. It is also noted that these clients have also executed transactions through RVSL, in which Shri Sanjay Garg and Ms Sapna Garg are the directors. I have also noted that the total transactions executed by RVSL on behalf of these clients were 40248 shares, which accounted for 55% of the trading volume of total market volume during the relevant period. I find that these clients have traded amongst themselves and created artificial volumes and price in the scrip. The transactions of the above mentioned related clients were considerably large as compared to the total market transactions in the scrip during the relevant period and executed with an intention to create artificial volumes and to increase the price of the scrip. Some of the instances of which are as under: (a) On November 17, 2000 at 10:09:58, trade for 500 shares @ Rs. 6.95 was executed between RVSL on behalf of Rajesh Agrawal and Bharat Bagri on behalf of Shri Mohanlal Garg. RVSL had entered the order at 10:05:54 while Mohanlal Garg through Bharat C. Bagri had entered order at 10:09:58 i.e. within a time difference of only 4 min 4 Sec. With this trade the price increased from Rs. 5.60/- to Rs. 6.95/- i.e. by Rs. 1.35, a 24% rise from the previous closing rate.

(b) On November 21, 2000 at 12:49:20 the first and only trade of the day was executed for 200 shares @ Rs.10.30 between Mohanlal Garg (through Bharat Bagri, sub-broker of Shakti Finsec) and Sapna Garg (through Sharad Bhandari, sub-broker of MPSE Sec. Ltd.). The trade prior to this trade was executed at Rs 8.65. With this trade the price increased from Rs 8.65 to Rs 10.30 i.e., by Rs.1.65, a 19% price rise as compared to the last closing rate.

(c) On November 27, 2000 at 10:08:22 the first trade of the day was executed for 400 shares @ Rs. 11.20 was a cross deal of MPSE Securities, between sub-broker Sharad Bhandari on behalf of Pradeep Joshi and sub-broker, RVSL on behalf of Rajesh Agarwal. With this trade the price of the scrip rose from Rs.10.20 to Rs. 11.20 i.e., by Rs.1.00 (10% rise as compared to the last closing rate of Rs. 10.20 on November 24, 2000). Subsequently, all the trades during the day were executed at this price of Rs. 11.20.

(d) On November 28, 2000 at 10:24:54 the first trade of the day was executed for 100 shares @ Rs. 11.70 was a cross deal of MPSE Securities, between sub-

broker Sharad Bhandari on behalf of Pradeep Joshi and sub-broker, RVSL on behalf of Rajesh Agarwal. With this trade the price of the scrip rose from Rs.11.20 to Rs. 11.70 i.e., by Rs.0.70 (6.25% rise as compared to the last closing rate of Rs. 11.20 on November 27, 2000).

20. I have noted that once the price was increased from Rs. 3 to Rs. 16 through manipulative trades, Shri Sanjay Garg and Ms. Sapna Garg, among others, sold the shares at a higher price. Further manipulation of the price of the scrip was enabled by the company by taking more than 15 days to process the dematerialization requests of its shareholders, thereby reducing the floating stock in the market which hampered the true price discovery in the market. This led to the creation of scarcity of volumes and price rise in the scrip of the company immediately after the scrip was put under the category of compulsory dematerialized trading.

21. I find that as per the agreement entered into by an issuer company with the depository, the company is required to process the dematerialization within 15 days. Despite the same, in the case under consideration, the company delayed the dematerialization process beyond 15 days and thereby violated the provisions of Regulation 26 of SEBI (Depositories and Participants) Regulations, 1996.

22. From the records, I have further noted that although during the course of investigation, several clarifications were sought interalia from the company in connection with the dealings in its scrip, the company and its officials/related persons were not forthcoming in furnishing the information as sought by the Investigating Authority.

The officials of the company, Mr. Mohanlal Garg and Mr. Shyam Sharma and Mr. Dinesh Kumar Sharma did not respond to the letters sent to them. Sanjay Garg and Ms. Sapna Garg, the directors of RSVL, did not appear before the Investigating Authority at Indore for recording of statements in connection with the investigation process. Although the Managing Director of the Company, Shri Vishnu Prasad Goyal and its principal officer Ms. Divya Gupta appeared before the Investigating officer at Indore, they failed to furnish complete and true information and were evasive in giving complete information and thus did not co-operate with

the investigations proceedings. Moreover I have taken note of the fact that both the officials of the company left the place of recording of statement without the permission of the Investigating Authority.

23. Furthermore, although Ms Gupta stated that she did not know Mr.

Sanjay Garg and RVSL, Shri. Sanjay Garg is the Chief Executive and Compliance officer of the company and the address of the company is shown to be identical to that of its Chief Executive and Compliance officer in the application cum master form submitted by the company to CDSL and NSDL in September 2000. Both the forms are signed by Mr. Vishu Prasad Goyal, who is Managing Director of the company. From the above, it is apparent that the company did not intend to co-operate with the investigation proceedings. Further the company had given a statement during the investigation process that the maximum time taken by it for dematerialization requests was 10 days, whereas on going through the records I have noted that it is otherwise. In some instances, the time taken by the company for processing the dematerialization request is quite large, coming to even 100 days, whereas the company, in its reply to the show cause notice, stated that the delay in was due to the non-availability of staff and new concepts. These reasons cannot substantiate the long delay on the part of the company to process the dematerialization requests of its shareholders.

24. It is relevant to note the applicable provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995. Regulation 4 (a),(b) and (c) reads as under : 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) Indulge in any act which results in reflection of prices of securities based on transactions that are not genuine trade transactions;" 25. From the above, I find that there was a nexus between M/s Alfavision Overseas (India) Limited, M/s Ravi Vishnu Securities Limited, Sanjay Garg and Sapna Garg in manipulating the scrip of the company This was facilitated by the company by

delaying the dematerialization of shares, thereby resulting in reduction of floating stock in the market and hampered the true discovery price in the market. The same is not in accordance with sound market principles. I find that the company had indirectly through persons connected with it carried out substantial transactions in the scrip of the company and violated the provisions of Regulations 4(a), (b) and (c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 read with corresponding provisions of 2003 Regulations.

26. I note that the company has raised fresh objections vide its letter dated December 06, 2004 with respect to certain incorrect entries/dates mentioned in the annexure to the show cause notice issued by SEBI. SEBI vide its letter dated December 10, 2004 advised the company to furnish all documentary evidence in support of their objection regarding accuracy of the data, which was obtained by SEBI from their own registrar 'Intime Spectrum Registry Limited'(Registrar). In their reply dated December 13, 2004, Alfavision submitted that in the said annexure, the first three entries are incorrect which show that the date of document receipt by the company precedes the Dematerialization Request Number (DRN) date. The company questioned the correctness of the document relied upon by SEBI on the basis of few discrepancies pointed out by them.

27. I note that when this issue was taken up with the Registrar, 'Intime Spectrum Registry Limited', the registrar vide their letter dated December 20, 2004 informed that the said dates were given by the company itself to the Registrar. They also forwarded the document submitted by the company to them showing the dates, as mentioned in the annexure to show cause notice by SEBI. Even assuming, but not admitting the discrepancies pointed out by the company to be correct, I note that these instances were 21 in number whereas SEBI in its show cause had given around 340 instances altogether seeking their explanation for the delayed dematerialization, which ultimately resulted in reducing the floating stock in the market. No plausible explanation/justification was given by the company at any stage with respect to such inordinate delay except to the unacceptable excuse of non-availability of trained staff and the new concept.

28. In its written submission dt. January 05, 2005 also, I find that the company has not taken any new ground/defense and has reiterated its stand and submissions already available on records and which have already been examined hereinabove. Further, the company has failed to show any documents, as advised during the personal hearing, that the fact of non-joining of Shri Sanjay Garg was intimated to CDSL/NSDL and other concerned. In fact, this mistake was admitted by the company during the personal hearing and also in its written submissions dt.

05.01.05. In the given facts and circumstances of the case, I am of the view that despite their agreeing during the personal hearing to provide appropriate information in their written submission to SEBI for a review, the company failed to submit any new / material information, on the basis of which I could have taken a view other than what has already been taken by SEBI earlier.

29. In view of the facts and circumstances as aforesaid, I, in exercise of the powers conferred on me under Section 19 of the Securities and Exchange Board of India Act, 1992, read with Regulation 11 of SEBI (Prohibition of fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003 and Sections 11 and 11B of the SEBI Act, 1992, hereby confirm the earlier order dated October 21, 2003 against the company M/s.Alfavision Securities and Finance Ltd.

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