

**In Re: Moh Ltd.**

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

**Decided On :** May-18-2007

**Judge :** V Chopra

**Appellant :** In Re: Moh Ltd.

**Judgement :**

1.1 M/s MOH Ltd is an Ahmedabad based company mainly engaged in the field of Information Technology enabled services. Company was incorporated in February 1993 with the name of M/s MOH Granites Ltd. and was engaged in a business of granites processing, mining and exporting. The name of the company was changed to M/s MOH Ltd. in the year 2000 when company ventured into the IT field. The company came out with its IPO in August 1996 for Rs 8.70 crore to part finance granite project located at Mahesana in Gujarat. However, after the issue, information about the implementation of the project was not available.

1.2 M/s MOH Ltd. had issued an advertisement dated July 04, 2002 in prominent business newspapers to the effect that its Board of Directors will be meeting at registered office of the Company on July 15, 2002 to consider possibilities of the Buy Back of equity shares up to 10% of the share capital of the company at Rs 3 per share (Rs. 1 paid-up-share). The words like "Buyback of shares" and "Rs 3 per share" were given in bold font in the advertisement. At the time of publication of advertisement the shares of the company were trading around Rs. 0.25. The proposed buyback price was around 12 times of the trading price prevailing at the

time of publication of advertisement.

1.3 On perusing the Balance Sheet of MOH as on 31.03.2002, it was observed that MOH had no free reserves, share premium account and the proceeds of any shares to make it eligible for the buy-back of its shares in terms of Section 77A of the Companies Act.

1.4 In view of the above, investigation was conducted by Securities and Exchange Board of India (hereinafter referred to as "SEBI") into the buying, selling and dealing in the scrip of MOH, for the period May 2002 to July 2002 under the provisions of the SEBI Act, 1992 read with SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995 (hereinafter referred to in short as "PFUTP Regulations") and other relevant SEBI Regulations.

Investigations revealed that the company M/s MOH Ltd had acquired 100% shareholding in M/s Saturn Technologies Ltd, (hereinafter referred to as "Saturn") thereby making it 100% owned subsidiary. MOH had made a preferential allotment of 15 crore equity shares of Rs 1 paid up capital to the shareholders of Saturn as a consideration for an acquisition other than cash. Equity capital of MOH Ltd was Rs 10 crores (prior to acquisition of Saturn) which increased to Rs 25 crores after acquisition. The total turnover of Saturn was mere Rs 16 lakhs.

1.5 As per the details submitted by the company M/s MOH Ltd., it was observed that Saturn and MOH had common subscribers to the Memorandum of Understanding including Shri. Sunil Shah, CMD, M/s MOH Ltd indicating thereby that two companies were related entities. It was found during investigations that the shares allotted by MOH to the shareholders of Saturn had been dematerialised by the preferential allottees, since the top 50 shareholders of MOH were holding more than 17 crores shares as on May 31, 2002 compared to listed capital of 10 crores shares and around 14 crore of these shares were offloaded into the market after the publication of advertisement. It was noted that the preferential allotment was made before the date of the above advertisement.

1.6 During the meeting of July 15, 2002, attended by Shri. Sunil Shah, CMD and Shri. Chagan Bhai A. Manani, it was resolved that the proposal of buy back of equity shares was not likely to be useful to the company till complete package of restructuring of equity and debt was worked out. However, no advertisements were published regarding the outcome of Board Meeting in which the proposal was rejected. During the period from issuing the advertisement for buy-back till the time of withdrawal of buy back proposal, it was observed that volume and price of the scrip suddenly shot up. The entire chain of events of preferential allotment to related entities, the buyback of shares through buyback advertisement, reasons for the proposal of buy back being rejected and its impact on the volume of the shares suggested a clear involvement on the part of promoters/directors to create an artificial demand for the shares of the company and deceive the innocent investors. The company MOH and its Directors, Shri. Sunil M. Shah, Shri. Chagan Bhai A Manani, Shri. S. Sankaran, Shri. B. Palinicker and Shri. Manubhai Oghadlal Shah (hereinafter referred to as "Noticees"), therefore, had violated Regulation 4, 5(1) (a) & (b) and 6(a) of PFUTP Regulations by issuing misleading statements/advertisements, by employing schemes, devise, act or practice intended to defraud and to influence the investment decisions of the investors.

2.1 A show cause notice dated May 26, 2006 was issued to the Noticee advising them to show cause as to why directions under Section 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 11 of PFUTP Regulations 2003 including debarring them from accessing the capital market and trading in securities should not be issued against them for the violations mentioned at paragraph No. 1.4 above. A supplementary show cause notice dated June 22, 2006 was also issued to the promoters of the company viz. Shri. Sunil M. Shah and Shri. Manubhai Oghadlal Shah for the violations of Regulation 6(a) read with Regulation 3 of PFUTP Regulations, as they have off loaded unlisted shares of MOH in the secondary market. Accordingly, they were advised to show cause as to why a direction under Section 11 and 11B 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 Securities Markets) Regulations, 2003 should not be issued against them directing them to buyback the shares which were allotted on preferential basis and off loaded by them in secondary

market.

3.1 Shri. Sunil Shah replied to the show cause notice dated May 26, 2006 on behalf of the company, all directors and promoters by way of a common reply dated June 08, 2006. They stated that they had not issued any misleading statement or advertisement or had employed any scheme, devise, act or practice with any intent to defraud or influence any person. The Board had decided to consider the proposal of buy back and accordingly, an advertisement was released on July 08-09, 2002. They further added that the Board decided not to go ahead with the proposal at its meeting on July 15, 2002 and due intimation thereof was immediately given to the Stock Exchanges and SEBI.3.2 Though the subscribers to the Memorandum of Association of Saturn Technologies were common at the time of incorporation of Saturn, the said company was acquired by other persons later on. At the time of allotment of shares of MOH Ltd. to the shareholders of Saturn, the promoters of MOH were not entitled for any such shares. Further, MOH and Saturn were not the group/associate companies at that time.

3.3 With regard to the finding of off loading around 14 crore shares in the market after the publication of the advertisement, it is submitted that only 1 crore shares were traded during time slot 3 and 4 under the so called impact of the announcement for the buy back.

4.1 Shri. Manubhai Oghadlal Shah replied to the supplementary show cause notice dated June 22, 2006 vide his letter dated July 07, 2006 wherein he stated as follows: He was a director of M/s MOH Ltd., but was not involved in day-to-day affairs of the company and not a party to any decision related to the acquired shareholding in M/s Saturn., preferential allotment and published advertisement for proposal of Buy Back of shares of M/s MOH Ltd. He also stated that he had not attended meetings of the Board of Directors of M/s MOH Ltd. which rejected the proposal for Buy Back or which decided to make preferential allotment to the shareholders of M/s Saturn as he was not keeping good health. He also added that he had subsequently resigned as a director of M/s MOH Ltd. on October 01, 2001.

He further stated that he is a heart patient aged 70 years and not connected with the company since last 5 years. Hence, he requested to relieve him from the charges.

4.2 Shri. Sunil M. Shah had also replied to the supplementary show cause notice dated June 22, 2006 vide his letter dated July 07, 2006 wherein he stated as follows: He denied the issuance of any misleading statement or advertisement or had employed any scheme, devise, act or practice with any intent to defraud or influence any person. Advertisement in various financial newspapers was released on July 08-09, 2002 for the purpose of information about the Board meeting held to consider the proposal of buy back of equity shares as per the rules and the same can not be considered as open offer for the buy back of equity shares.

Company was of the view to consider possibilities of buy-back of its equity shares to enable the company to reduce its capital base by paying off higher exit value to investor and simultaneously kick off restructuring exercise. Company has duly intimated on time to the stock exchanges about the date of board meeting to transact the business of considering possibilities of buy-back of equity shares of the company required as per listing agreement.

It is general tendency at the stock exchanges to put such notices/intimation on the notice board of the exchanges whereby broking community will be kept aware of such developments.

However, it was apprehended that such action on the part of exchanges, will put broking community at liberty to fluctuate market price of equity shares of company being aware of such development.

Hence, it was thought fit to advertise the date of board meeting so that share holders of the company spread through out the country should be aware of the development and they should not get misled by rumours apprehended to be spread across the broking community. In view of that, advertisement for board meeting to consider the possibilities of buy-back of equity shares of the company was published in the interest of share holders and with the bona-fide intention of making them aware.

The Board decided not to go ahead with the proposal at its meeting on July 15, 2002 and due intimation thereof was immediately given to the Stock Exchanges. (He has also produced Xerox copy of board resolution and intimation letter addressed to stock exchanges).

For preferential issue of 15 crore equity shares of Re. 1 paid up share, the Ahmedabad Stock Exchange granted listing permission on December 21, 2001 vide their letter No. ASE/FLIST/HT/2001. Also, the company made an application for listing of above mentioned equity to the Mumbai Stock Exchange on December 24, 2001 vide their letter no nil in that regard Company has not received any reply from Mumbai Stock Exchange, and on the basis of listing permission given by Ahmedabad Stock Exchange the central depository services Ltd. (CDSL) and National Security Depository Ltd. (NDSL) dematerialized the shares.

Regarding listing application made to the Mumbai Stock Exchange, company received letter No. List/psr/rkk/rk/2003 dated February 06, 2003 from Mumbai Stock Exchange informing about the rejection of listing application.

He stated that the advertisement for buy back was released for the purpose of information of shareholders to know them about the Board meeting for the said purpose as per rules.

Though the subscribers to the Memorandum of Association of M/s Saturn were common at the time of incorporation of M/s Saturn, the said company was acquired by other persons later on. At the time of allotment of shares of M/s MOH Ltd. to the shareholders of M/s Saturn, the promoters of M/s MOH Ltd. were not entitled for any such shares. M/s MOH Ltd. and M/s Saturn were not the group/associate companies at that time.

Regarding the fact of off-loading around 14 crores shares in the market after the publication of the advertisement, he submitted that on the basis of the time slot analysis as shown in the show cause notice only 1 crore shares were traded under the so called impact of the announcement for the buy back.

He further stated they have not violated any provisions of PFUTP Regulations and requested to relieve them from the charges and close the matter.

5.1 An opportunity of personal hearing was granted on November 27, 2006 to the Noticee. Shri. Sunil M. Shah alongwith Shri Anish B Shah, Practising Company Secretary attended the hearing before me. He also represented Shri. Manubhai Oghadlal Shah and the company MOH Ltd. They also filed written submission wherein they have reiterated the submissions already made in their reply to show cause notice as stated above. Shri. Chagan Bhai A Manani, Shri. S. Sankaran and Shri. B.Palinicker did not attend the hearing.

6.1 I have carefully examined the show cause notices, replies thereof and other materials on record.

6.2 I observe that an advertisement dated July 04, 2002 regarding proposed meeting of the Board of Directors of MOH Ltd. to discuss buyback of shares was published in prominent newspapers such as Mumbai Samachar, Gujarat Samachar and Sandesh on July 08, 2002. This advertisement also appeared in the well known business newspapers like Economic Times, Financial Express and Business Standard on July 09, 2002. The following is the text of the advertisement: Notice is hereby given that the Board of Directors of the Company will be meeting at registered office of the Company on 15th July, 2002 to consider possibilities of the Buy Back of equity shares up to 10% of the share capital of the company at Rs 3 per share. (Rs. 1 paid-up-share) 6.3 The words "Buyback of shares" and "Rs 3 per share" in the above referred advertisement were given in bold font. At the time of publication of advertisement the shares of the company were trading around Rs 0.25. The proposed buyback price was around 12 times of the trading price prevailing at the time of publication of the advertisement.

6.4 It also appeared from the said advertisements that the company MOH was entering into the field of renewable energy systems introducing SunMoh Solar Energy Collector which converts the solar power into electrical energy.

6.5 Regarding the above advertisement, Shri. Sunil Shah, CMD of MOH Ltd stated that the buyback price of Rs 3 per share was fixed for the benefit of the

shareholders considering the company's progress and results. He also stated that the company was expecting to generate more revenue during the first half of the current year's operations in spite of global downturn. However, from the Balance Sheet as on March 31, 2002 it was observed that MOH had no free reserves or share premium account and the proceeds of any shares to make them eligible for the buyback of its shares in terms of Section 77A of the Companies Act, 1956. It was also found during the investigation period that MOH Ltd. was placed in 'Z' group by the Bombay Stock Exchange for its failure to comply with the provisions of listing agreement.

6.6 Thereafter, the Board of Directors of MOH Ltd. in their meeting held on July 15, 2002 which was attended by Shri. Sunil Shah, CMD and Shri. Chaganbhai A. Manani, had resolved that the proposal of buyback of equity shares is not likely to be useful to the company till complete package of restructuring of equity and debt is worked out. It is observed that no advertisement was published regarding the outcome of the Board Meeting in which the proposal of the said buyback was rejected.

6.7 The announcement of buyback of shares in normal circumstances would indicate confidence on the part of management of the company and the same is usually a good news for shareholders. The announcement that the company was considering buyback of 10% of the equity capital at Rs 3 per share when shares were trading around Rs 0.25 signalled the market that the company genuinely believes that fair value of the company shares was much more than market price. This obviously will induce the investors to buy shares. In view of this, it can reasonably be concluded that the motive behind the above advertisement was to deceive the investors by way of disseminating/issuing of false statement apparently with knowledge that they can not perform what they had stated in the newspapers. The process of announcing buy-back of shares and its subsequent withdrawal has resulted in a pecuniary loss to the investors who were influenced to purchase shares on the basis of the advertisement. No acceptable explanations were given by the Noticee in this regard.

6.8 With the above background, I have also examined the other factors which led to the advertisement for buy-back. I find from the annual report of MOH for the year 2001-2002 that it had acquired 100% shareholding in Saturn and thereby making it 100% owned subsidiary of MOH Ltd. In lieu of the same, MOH had made a preferential allotment of 15 crore equity shares of Rs 1 paid up share to the shareholders (20 individuals) of Saturn as a consideration for the said acquisition other than cash. Equity Capital of MOH Ltd. was Rs 10 crore (prior to acquisition of Saturn) which increased to Rs 25 crore after acquisition.

6.9 I also find that Saturn was having an equity of Rs. 1 crore and having a turnover of Rs 16 lakhs. This being the fact, Saturn was valued at Rs. 15 crore i.e. 15 times of the capital which was increased during the year itself. This aspect again raised suspicion behind the preferential allotment and hence the linkage between MOH and Saturn was examined. Details submitted by MOH vide letter No. SEBI/283/2002-03 dated May 23, 2003 indicated that Saturn and MOH have common subscribers to the memorandum of understanding including Shri Sunil Shah who is CMD of MOH. Saturn and MOH were, therefore, related entities. In their reply to the show cause notice, they admitted the said fact and further stated that Saturn was acquired by other persons later on and the common subscribers were there only at the time of incorporation. They also stated that the shares of MOH were only allotted to the shareholders of Saturn and the promoters of MOH were not entitled for any such shares. They even stated that MOH and Saturn were not the group / associate companies at that time. This contention, however, will not help them to contradict the intention behind the preferential allotment and subsequent advertisement with the aim to offload the shares in the market and to deceive the gullible investors.

6.10 I find that the shares allotted by MOH Ltd. to the shareholders of Saturn had been dematerialised by the preferential allottees as the top 50 shareholders of MOH Ltd. were holding more than 17 crore as on May 31, 2002 compared to listed capital of 10 crore shares. Out of this, around 14 crore of shares were offloaded into the market after the publication of the advertisement which was on July 08, 2002 and July 09, 2002. I also find that the top 50 share holders prior to the advertisement offloaded the shares and none of the said shareholders were in top

50 shareholders of MOH Ltd as on July 31, 2002.

6.11 I have also examined the price and volume movement of the shares prior to and after the publication of the aforesaid advertisement. I find that unusual price movement pattern was observed on BSE in the trading of equity shares during the period May 2002 to July 2002.

Sr. No.	Period	Average Price	Average Volume	Average Share
1	May 1, 2002 to June 3, 2002	Rs 0.25	205306	39
2	June 4, 2002 to July 3, 2002	Rs 0.12	4896287	398
3	July 4, 2002 to July 15, 2002	Rs 0.3	6683476	981
4	July 16, 2002 to July 31, 2002	Rs 0.15	3514548	190

6.12 I observe from the above table that in Time Slot 2 (one month period prior to the publication of the advertisement), volume in the scrip suddenly shot up compared to Time Slot 1. The average volume increased to more than 20 times during Time Slot 2 compared to Time Slot 1. In Time Slot 3 (the period between the advertisement and board meeting) the average volume increased substantially and no of trades increased to more than two times compared to Time Slot 2. The prices also increased to around 2.5 times in Time Slot 3 compared to Time Slot 2. The rise in volumes and prices can evidently be attributed to the advertisement published by MOH to buyback the shares at Rs. 3 per share. In Time Slot 4 the price of the scrip came down heavily towards its normal level i.e. the levels that were existent in Time Slot 1.

6.13 In the reply to the show cause notice, they have stated that only negligible portion of the shares were traded under the so called impact of the announcement for the buy back. This stand is not tenable as almost all the shares in the preferential allotment were offloaded into the market which I observed from the trading details of the scrip for the period June 01, 2002 to July 31, 2002. I also observed that the promoters of MOH Ltd., Shri. Sunil Shah and Shri. Manubhai Oghadlal Shah transferred 70,00,000 shares and 10,00,000 shares respectively which were ultimately sold in the secondary market during the investigation period.

6.14 It was found that the trading was negligible in the scrip before the investigation period and as such it is crystal clear that the entities who had traded in the shares of MOH had received the shares from the promoters and preferential allottees in off-market transactions. These entities in turn offloaded these shares in

the market to innocent investors on behalf of the ultimate sellers.

6.15 The entire chain of events from making the preferential allotment of shares to the shareholders of the related entity - Saturn, the advertisement for buyback of shares, reasons stated for the rejection of the buyback proposal, impact on the price/volume of MOH shares established an orchestrated ploy on part of the promoters to create an artificial demand for the shares of the company and induce innocent investors for purchasing shares so as to absorb shares by the promoters and related entities.

6.16 The promoters and directors have not given any convincing reply in the matter. Shri Sunil Shah in his written submissions admitted that Shri C.A. Manani, Shri. S. Sankaran and Shri. B. Palanikar were on the board of directors of the company at the relevant time. He also stated that they have resigned from the board of directors long back. It may be noted that the show cause notices against them were also duly affixed at their last known address. However, I find that Shri. Sunil M. Shah submitted a common reply to the show cause notice on behalf of the company MOH Ltd and its promoters/directors against whom show cause notice were duly served. Apart from the common reply, Shri. Manubhai Oghadlal Shah filed a separate reply to the show cause notice and also filed a separate submission dated November 27, 2006. He stated that he resigned from the directorship of the company on October 01, 2001 and since then he was not involved in any of the affairs of the company.

However, he has not produced any document to prove the same. On the other hand, I find from the shareholding pattern as on December 31, 2001 and September 30, 2002 published by BSE in the scrip of M/s MOH Ltd that Shri Manubhai O Shah was holding 15.55% and 4.07% of shares of M/s MOH Ltd respectively and he was shown as promoter of MOH on the said dates. As such it is clear that he was the promoter of the company during the period of the aforesaid preferential allotment, publication of misleading advertisement and withdrawal from the advertisement etc.

6.17 Having considered all aspects of the matter, I find that the Noticees had committed fraud on shareholders of MOH Ltd by issuing misleading advertisement

after the preferential allotment and subsequently withdrawing the promise given in the said advertisement.

Further, they had offloaded the shares in the secondary market to deceive the innocent investors. The word "fraud" is defined under Regulation 2(c) of PFUTP Regulations. Further, such fraudulent dealings in securities are prohibited under Regulation 3 of PFUTP Regulations.

In this case, the actions of the Noticee would come under the said definition of fraud especially when they made statements/advertisements after the said preferential allotment with a view to offload the shares of their company at a price which was created artificially by employing schemes/device/and/or act/practice with an intent to defraud and to influence the investment decision of the investors. In this matter they violated the provisions of Regulations 4(a) to (c), 5(1)(a) & (b) and 6(a) of PFUTP Regulations which are reproduced hereunder: (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; Prohibition of misleading statements to induce sale or purchase of securities 5. (1) No person shall make any statement, or disseminate any information which- (b) is likely to induce the sale or purchase of securities by any other person or is likely to have the effect of increasing or depressing the market price of securities, if when he makes the statement or disseminates the information- (i) he does not care whether the statement or information is true or false; or (ii) he knows, or ought reasonably to have known that the statement or information is misleading in any material particular.

(a) in the course of his business, knowingly engage in any act, or practice which would operate as a fraud upon any person in connection with the purchase or sale of, or any other dealing in, any securities; 7.1 Therefore, taking into consideration facts and circumstances of the case and in exercise of the powers conferred upon

me under Sections 19 of the SEBI Act read with Sections 11B of Securities and Exchange Board of India Act, 1992 and Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, I hereby restrain the Noticees viz. MOH Ltd, Sunil M. Shah, Shri. Chagan Bhai A Manani, Shri. S. Sankaran Shri. B.Palinicker and Shri. Manubhai Oghadlal Shah from buying, selling and dealing or accessing the securities market in any manner for a period of two years.

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