

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of M/s Lotus Eye Hospital and Institute Limited (PAN: AABCK9701E)

Background of case:

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) was in receipt of a letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the Ministry of Corporate Affairs (hereinafter referred to as “MCA”) vide which MCA has annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA has also annexed the letter of Serious Fraud Investigation Office (hereinafter referred to as “SFIO”) dated May 23, 2017 which contained the data base of shell companies along with their inputs.
 2. SEBI as a market regulator is vested with the duty under section 11(1) of the SEBI Act, 1992 (hereinafter referred to as “SEBI Act”) of protecting the interests of the investors in securities and to promote the development of and regulations of securities markets by appropriate measures as deemed fit.
 3. SEBI was of the view that companies whose names are included as shell companies by SFIO and MCA, were potentially involved in
 - (a) Misrepresentation including of its financials and its business and possible violation of SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as “LODR Regulations”) and/or
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- (b) Misusing the books of accounts/funds of the company including facilitation of accommodation entries to the detriment of minority shareholders and therefore reneging on the fiduciary responsibility cast on the board, controlling shareholders and key management person (KMP)
4. SEBI was also of the view that investors should be alerted on the possible enforcement action by various authorities leading to potentially significant impact on the price of the stock.
5. Therefore, in the interest of investors, SEBI took the pre-emptive interim measures under Section 11(1) of SEBI Act, 1992, in respect of listed shell companies including M/s Lotus Eye Hospital and Institute Limited (hereinafter referred to as “**LEHIL**” / “**Company**”), vide its letter dated August 7, 2017, based on the view stated at para 3 and 4 above. SEBI placed trading restrictions, on the promoters/directors so that they do not exit the company at the cost of innocent shareholders. In view of the said objective, SEBI vide the said letter dated August 7, 2017 also placed the scrip in the trade to trade category with limitation on the frequency of trade and imposed a limitation on the buyer by way of 200% deposit on the trade value, so as to alert them trading in the scrip. The said measures were initiated by SEBI pending final determination after verification of credentials and fundamentals by the exchanges, including by way of audit and forensic audit if necessary. The measures also envisaged, on the final determination, delisting of companies from the stock exchange, if warranted. By virtue of these measure, trading in scrip was not suspended but allowed under strict monitoring so that investors could take informed investment decisions, till SEBI and Exchanges completed their detailed examination of such companies.
6. Pursuant to the same, Bombay Stock Exchange Limited (hereinafter referred to as “**BSE**”) vide notice dated August 7, 2017 and National Stock Exchange of India Limited (hereinafter referred to as “**NSE**”) vide notice dated August 7, 2017, to all its market participants, initiated actions envisaged in the SEBI letter dated August 7, 2017 in respect of all the listed securities as identified by MCA and communicated by SEBI, with effect from August 8, 2017.

7. On August 09, 2017, SEBI further advised the Exchanges to submit a report after seeking auditor's certificate, from all such listed companies, providing the status of certain aspects of the company like company's compliance requirement with Companies Act, whether company is a going concern and its business model, status of compliance with listing requirements, etc.
8. LEHIL vide its letter dated August 08, 2017 had made a representation stating as under:
- (a) We are shocked to learn that our Company has been included in the list of shell companies and trading has been suspended.*
 - (b) We have never received any kind of intimation as of date seeking for any documents or any kind of explanations in respect of non compliance of statutory requirements. Our company is in full operation and has been complying with various requirements of different statutory authorities and regulators.*
 - (c) Lotus Eye Hospital and Institute Limited started by Dr. S. K. Sundaramoorthy, one of the leading ophthalmologist of India with a vision to provide quality eye services to the general public at affordable cost, Lotus has originally incorporated as private limited company and later converted to public company and subsequently the shares of the company got listed on NSE and BSE, since its inception company has grown steadily over the period and this year company has planned to declare dividend also.*
 - (d) Further Dr. S. K. Sundramoorthy and his team of ophthalmic experts, who are highly qualified with vast experience, offer comprehensive eye care to hundreds of patients daily at our state -of-the- art hospitals in Coimbatore, Tirupur, Salem, Mettupalayam and Kochi in South India.*
 - (e) Lotus is known for its excellence in Ophthalmic services with personalized Care and is committed to pioneering in the technological revolution in eye care and rendering service to thousands of patients from across the globe to see the world better than ever before.*
 - (f) The Board of the Company appoints Dr. S. K. Sundaramoorthy, Chairman cum Managing Director along with prominent business men and professionals as independent directors.*
 - (g) Under these circumstances, we wish to be advised the reason for inclusion of our company*

in the list of shell companies and also the reason for which the trading has been suspended.

- (h) *In case you need any specific information we shall be happy to furnish the same and comply with the requirements. We enclose the audited financial statements of the company for the past three years for your immediate perusal.*
- (i) *In the interest of the Company and our valued shareholders, we request you to kindly treat this as most urgent and shall be glad to have your feedback in the matter.*

9. In the meantime, aggrieved by the aforesaid letters dated August 7, 2017 issued by SEBI, BSE & NSE, LEHIL filed an appeal No. 199 of 2017 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"). The Hon'ble SAT vide order dated August 23, 2017 directed the following:-

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2. As the appellant has already made a representation to SEBI against the said ex-parte order dated 7th August, 2017, Counsel for the appellant on instruction seeks to withdraw the appeal with liberty to pursue the representation filed before SEBI. Accordingly, we permit the appellant to withdraw the appeal with liberty to pursue the representation pending before SEBI.

3. SEBI is directed to dispose of the representation made by the appellant as expeditiously as possible and in any event within a period of three weeks from today. It is made clear that passing of any order on the representation made by the appellant would not preclude SEBI from further investigating the matter and initiate appropriate proceedings if deemed fit....”

10. The Hon'ble SAT in the matter of *J. Kumar Infra Projects Limited vs. SEBI* dated August 10, 2017 held that the measures taken by SEBI vide its letter dated August 07, 2017 was in the nature of quasi-judicial order and the same has been passed without investigation. Without prejudice to the powers enumerated in section 11(1) of SEBI Act, SEBI has been granted

power under section 11(4) and 11B of SEBI Act, 1992 to pass order in the interests of investors or securities market by taking any of the measures enumerated therein either pending investigation or inquiry or on completion of such investigation or inquiry. The inquiry under section 11B of the SEBI Act can also be caused to be made by SEBI.

11. SEBI vide letter dated August 28, 2017 had advised LEHIL to provide following information:

- (a) Summary of dealings of the Company with or through Mr Atul Hiralal Shah and Mr. Anil Hiralal Shah, either directly or indirectly, including the nature and quantum thereof. Provide details of the all transactions along with supporting documents.
- (b) Details of Association of the company, whether direct or indirect, with Mr Atul Hiralal Shah and Mr. Anil Hiralal Shah. Also provide the details of MoUs, if any, signed by the company with aforesaid entities/their associates.
- (c) Details of employees on the rolls of the Company, their respective roles, remuneration received qualifications and experience for the job. Details of Provident Fund contributions made by the Company for the aforesaid employees. For ease of furnishing the information, broad categories of roles: Blue collar, Junior management, Middle management, senior management, may be given in a consolidated manner.

12. LEHIL vide its letter dated August 30, 2017 submitted the information sought by the SEBI's letter dated August 28, 2017, which are as under:

- (a) Reply to query I: It may please be noted that neither the Company nor the Promoters have dealt with or through Mr. Atul Hiralal Shah and /or Mr. Anil Hiralal Shah at any given point of time. Hence we do not have any details/ supporting to provide.
- (b) Reply to query I: It may please be noted that neither the Company nor the Promoters have associated directly or indirectly with the said Mr. Atul Hiralal Shah and Mr. Anil Hiralal Shah. Hence we do not have any details / supporting / MoU to provide.

- (c) Reply to query 3: The details of 365 employees of LEHIL as on July 31, 2017 are enclosed. The electronic challans of payment of Employees provident fund form the month of April 2017, June 2017 and July 2017 are enclosed

Hearing and Reply:

13. Pursuant to the decision of Hon'ble SAT that the communication of SEBI dated August 7, 2017 is in the nature of quasi-judicial order, SEBI vide communication / email dated September 01, 2017, granted an opportunity of hearing to LEHIL on September 04, 2017. The delivery of said email was failed. Due to non-delivery of SEBI's email dated September 01, 2017, the company did not receive the communication to appear for hearing scheduled on September 04, 2017. Therefore, LEHIL vide email dated September 06, 2017 requested for another opportunity of hearing. Accordingly, the hearing was rescheduled and SEBI vide communication dated September 07, 2017, granted an opportunity of hearing to LEHIL on September 08, 2017.
14. Mr. P. Eswaramoorthy, Practicing Company Secretary and Dr. S.K. Sundaramorthy, Chairman & Managing Director (CMD) Authorized Representatives (collectively referred to as "ARs") appeared for M/s Lotus Eye Hospital and Institute Limited and made oral submissions, which are summarized as under:
- (a) LEHIL had come with an Initial Public Offer (IPO) in the year 2008 for approximately Rs. 38 crore. The copy of the prospectus for the same is submitted.
- (b) ARs stated that there is no arrangement with any entity for market making during IPO in the year 2008. Keynote Corporate Services Limited was the lead manager to the IPO issue. The friends and family member had recommended the name of Keynote Corporate Services Limited.
- (c) ARs also stated that they did not observe any unusual price movement in the year 2009.

- (d) LEHIL is well known hospital in Southern India. LEHIL is performing eye surgery including cataract surgery etc. Approximately 900 patients visit hospital daily.
- (e) Company had complied with listing requirement under LODR Regulations with stock exchanges, filed annual return with MCA and filed income tax return with income tax department.
- (f) Company neither had any relation nor indulge in any transaction with Mr. Atul Hiralal Shah and Mr. Anil Hiralal Shah. At the time of IPO, adviser to IPO advised to meet many people, therefore, a meeting was scheduled in Ahmedabad, for which letter of request was sent to all the brokers. Therefore, a letter might have gone to Mr. Atul Hiralal Shah and Mr. Anil Hiralal Shah to attend the meeting. However, CMD of the company does not know them.
- (g) Company had never issued any GDRs.
- (h) Company also has the ISO certification and has won numerous awards in the area of public health.

15. Pursuant to SEBI's letter dated August 9, 2017, NSE submitted its report (received on August 29, 2017) stating that, Company is compliant with five clauses of LODR Regulations and paid the fine under Standard Operating Procedures. Company has submitted the auditor certificate certifying that Company has complied with all requirements of Companies Act and also filed annual return with Ministry of Corporate Affairs for last 3 years, filed annual income tax return for last 3 assessment years (i.e. 2014-15, 2015-16, 2016-17) within due date mention under section 139 of Income Tax Act, 1961 and there are no other pending disputes with the Income tax Department. The Auditor has also certified that there have been no events as specified in the auditing standard, in the company which affect the going concern status of the company and company did not had any default in repayment of any due in respect of loan taken from bank and financial institution. As per NSE report the number of shareholders are 7581 as on June 30, 2017. However, no specific recommendation was made by NSE.

Consideration:

16. On perusal of the materials available on record, the following prima facie/potential issues arise for consideration.

- (a) Whether there is prima facie evidence of misrepresentation including of its financials and/or its business and possible violation of LODR Regulations by the company.*
- (b) Whether there is prima facie evidence to show that the company is misusing the books of account/funds including facilitation of accommodation entries to the detriment of minority shareholders and therefore the board, controlling shareholders and KMP are reneging on the fiduciary responsibility cast on them.*
- (c) In view of the determination on the above issues, pursuant to SAT Appeal and the order of SAT in the said appeal, whether, in view of the representation of the Company, the action envisaged in SEBI letter dated August 7, 2017 needs reconsideration.*

17. On the basis of documents available on record, my observations on above issues are as under:

Issue No. 1. *Whether there is prima facie evidence of misrepresentation including of its financials and/or its business and possible of violation of LODR Regulations by the company.*

Issue No. 2. *Whether there is prima facie evidence to show that the company is misusing the books of account/funds including facilitation of accommodation entries to the detriment of minority shareholders and therefore the board, controlling shareholders and KMP are reneging on the fiduciary responsibility cast on them.*

18. Based on the replies given by the company in response to SEBI's queries, prima facie observations are as under:

- (a) The Company is a going concern and is in existence for the past 20 years. The Company's business is that of operating a chain of hospitals providing eye care services which is under health care sector. The company generates revenue directly from patients as well as from insurance companies, their TPAs and other corporates.
- (b) Company's tangible assets are ₹43.30 cr., ₹46.99 cr. and ₹46.86 cr. in FY 2015-16, 2014-15 and 2013-14 respectively. Detailed list has been submitted by the company.
- (c) As per Annual Report 2015-16, permanent employees of the company are 335. As per submissions made by the company, full details of the employees as well as proof of provident fund payment has been submitted.

19. From the above, I note the following:

- (a) The Company is a going concern and is in existence for the past 20 years.
- (b) The Company's business is that of operating a chain of hospitals providing eye care services which is under health care sector and approximately 900 patients visit these hospitals daily.
- (c) As on July 31, 2017, there are 365 employees of the company and these employees are linked to the company's business activity.
- (d) The tangible assets of the company also appear to be directly linked to the company's business activity.
- (e) There is no evidence available on record which reflects that the financials of the company are not in consonance with the operations/business activities of the company or that there has been misuse of books of accounts/funds.
- (f) Company had complied with listing requirement of LODR Regulations. As per the auditor certificate, Company has complied with all requirements of Companies Act and also filed annual return with Ministry of Corporate Affairs for last 3 years, filed annual income tax return for last 3 assessment years (i.e. 2014-15, 2015-16, 2016-17) within due date mention under section 139 of Income Tax Act, 1961 and Company did

not have any default in repayment of any due in respect of loan taken from bank and financial institution

20. In view of the above, I do not find any evidence of misrepresentation by the company, misuse of the books of accounts / funds of the company or violation of LODR Regulations.

Issue No. 3. *In view of the determination on the above issues, pursuant to SAT Appeal and the order of SAT in the said appeal, whether, in view of the representation of the Company, the action envisaged in SEBI letter dated August 7, 2017 needs reconsideration.*

21. In view of no evidence of misrepresentation by the company, misuse of books of accounts / funds or violation of LODR Regulations, I am of the considered view that the actions envisaged in SEBI's letter dated August 7, 2017 against LEHIL are liable to be revoked.

ORDER

22. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby, revoke the actions envisaged in SEBI's letter dated August 07, 2017 and the consequential actions taken by Stock Exchanges against M/s Lotus Eye Hospital and Institute Limited.

23. Accordingly the representation dated August 08, 2017 is disposed of.

24. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories for information and necessary action.

25. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs and Serious Fraud Investigation Office for their information.

-Sd-

DATE: SEPTEMBER 13, 2017

PLACE: MUMBAI

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**