

## ADJUDICATION ORDER NO: A& E/BS:34/2008

**ORDER UNDER RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 IN THE MATTER OF ADJUDICATION PROCEEDINGS AGAINST SHRI. SANJAY SONVANI, SHRI. ABHAY SHASHTRI SHRI. VINOD SONAWANI, SURYODAY SERVICE STATIONS LIMITED, PUSHPAPRAKASHAN LIMITED, SURYODAY FINMARK CONSULTANTS PRIVATE LIMITED SURYODAY ENGINEERING LIMITED AND SHASTRI FOODS & VEGETABLES LIMITED,**

1. Pursuant to the investigation conducted by Securities and Exchange Board of India (hereinafter referred to as 'SEBI') into the dealings in the scrip of Washington Software Limited ( hereinafter referred to as WSL) I was appointed as the adjudicating officer to inquire into and adjudge under Section 15I read with Section 15 H of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act'), the violation of the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred as Takeover Regulations) alleged to have been committed by entities Suryoday Service Stations Limited, Pushpa Prakashan limited, Suryoday Finmark Consultants private limited Suryoday Engineering Limited, Shastri foods and Vegetables limited, and the promoters/ directors of WSL Shri. Sanjay Sonvani, Shri. Abhay Shashtri and Shri. Vinod Sonawani (hereinafter collectively referred to as "the acquirers") by consolidating their holdings without making mandatory public announcement and public offer in terms of the provisions of Regulation 11(1) of the Takeover Regulations.
2. It is alleged that during the period December 1999 to January 2000, the company WSL had allotted substantial number of shares to its group/associated companies consequent upon reissue of forfeited shares in the following manner.

S. No	Name of the company	No. of Shares
1	Suryoday Finmark Consultants Pvt. Ltd	339470
2	Suryoday Engineering Limited	335900
3	Suryoday Service Stations Limited	337016

4	Shashtri Foods& Vegetables Limited	334614
5	Pushpa Prakashan Limited	341400
	Grand Total	1688400

3. Subsequent to the re issue the capital structure of the company is stated to be the following

S. No	Category	No. of shares	Percentage
1	Promoters	34,00,000	49.28
2	Related entities (persons acting in concert)	16,88,400	24.47
3	Indian Public	18,10,600	26.25
	Total	68,99,000	100.00

4. It is apparent from the capital structure mentioned above that the promoters along with persons acting in concert had consolidated their holding from 49.28% to 73.75%. In this regard SEBI investigation report states that all the above stated promoter group companies are promoted by Shri Abhay Shastri and Shri. Sanjay D Sonawani who also happened to be the promoter/director of WSL. Shri Abhay Shastri is stated to the Managing Director and Shri. Sanjay D Sonawani is stated to be the Chairman of WSL. Hence the acquirers are connected to each other by virtue of having common promoter/directors and thus under common management and control. The acquisition of 24.47 % by the persons acting in concert has resulted in the increase of the consolidated holding of the acquirers from 49.28% to 73.75%. In this regard the provisions of Regulation 11(1) as it stood at the relevant time of the said transactions provided the following

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

months unless such acquirer makes a public announcement to acquire shares in accordance with the regulations”

5. It is alleged that as the acquisition of 24.47% of the shares was much beyond the limit of 5% prescribed by the Takeover Regulations, the acquirers were bound to make the public announcement and open offer in terms of the provisions of the Takeover Regulations. As it is alleged that no public announcements and offer are made in terms of the Takeover Regulations, the present adjudication proceedings have been initiated against the acquirers.

### **NOTICE AND REPLY**

6. A Show Cause Notice (hereinafter referred to as ‘SCN’) dated July 17, 2006 was issued to the acquirers in terms of the provisions of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing penalties by Adjudicating Officers) Rules, 1995 (hereinafter referred to as the Rules), requiring the acquirers to show cause as to why an inquiry should not be held for the violation alleged to have been committed by them.
7. The SCNs were returned undelivered with the remark “shifted”. Subsequently efforts were made to serve the SCN on the acquirers. In this regard Shri. Abhay Shastri, Managing Director of WSL accepted the notice on behalf of the acquirers. Subsequently vide his letter dated April 6, 2007 Shri. Abhay Shastri submitted that due to heavy bad debts the company is almost non-functional and there are no operations for the last two years. The acquirers also sought ten days for submission of further reply in the matter. Later, vide his letter dated April 14, 2007 Shri. Abhay Shastri submitted the following:
  - Washington Software Ltd was initially incorporated as Suryodaya Syntered Products Ltd. with a view to manufacture sintered products. However, due to recession in the automobile industry in late 90’s , the call money on shares was not received. Then shareholders did not pay balance amount on calls even after various and repeated reminders. After completing all the statutory formalities, the company (SSPL), forfeited the shares and offered the same to existing

shareholders on pro-rata basis (Annex I) but there was no response from the existing shareholders . Procedure followed by the company for the re-issue was:

**A) Procedure followed by the Company**

Before re allotment

- 1) Reminder dated 20/7/1999 for payment of Rs 7.50 before 05/08/1999
- 2) Reminder dated 25/8/1999 for payment of Rs 7.50 before 10/09/1999  
(registered post)
- 3) Meeting held on 03/10/1999 for authorizing forfeiture
- 4) Notice for forfeiture issued on 04/10/1999 by registered post
- 5) Meeting held on 15/10/1999 for re-issue
- 6) Offer to existing shareholders

After the above formalities the forfeited shares were offered to existing shareholders on pro-rata basis and based on the response received same were re-issued..

**B) Total No of Equity Shares forfeited – 33,61,300**

**Equity shares list already submitted**

**C) Market price of the Security at the time of re-issue –Rs 4.00 each**

**D) Paid up value of forfeited shares – Rs 2.50 each**

**E) Price at which these shares are re-issued – Rs 7.50 each**

Further, the Company required capital for its working hence it had come out with preferential allotment after completing all the formalities. EGM was called on 3<sup>rd</sup> April 2000 for preference shares and actual allotment after completion of all formalities was made on 3<sup>rd</sup> July 2000. In this issue two associate concerns (Suryodaya Finmark Consultancy Pvt Ltd and Suryodaya Engg. Ltd 242500 Nos and 11,500 Nos respectively) bought shares.

Thus all the time shares were issued at much higher rate than they were quoted in market and none of the associated concern sold the same in the open market to gain any kind of profit from these transactions. Thereafter, the company's shares were traded in the range of Rs 3-4. For the last two years due to financial problems Stock Exchange Fees and Registrar fees were not paid and scrips were not traded on market.

This at all times the promoter had intention to run the company and they did not gain directly or indirectly any such transaction.

As mentioned in my earlier letter I have resigned from various companies on the following dates :

Sr. No	Name of the Company	Date of Resignation
1	Washington Software Ltd	17 <sup>th</sup> April 2001
2	Suryodaya Engineering Ltd	1 <sup>st</sup> November 2002
3	Suryodaya Engineering Ltd	1 <sup>st</sup> November 2002
4	Shastri Foods & Vegetables Ltd	1 <sup>st</sup> November 2002
5	Pushpa Prakashan Ltd	1 <sup>st</sup> November 2002

8. Considering the reply and taking into account the nature of the violations, it was decided to conduct an inquiry in the matter and acquirers were advised to attend the inquiry scheduled on June 5,2007. In this regard it is noted that the notices to the companies were returned with the remark shifted. However the notices issued to the promoters/directors Shri Abhay Shastri, Shri. Sanjay D Sonawani and Shri. Vinay Sonawani were returned by the postal authorities with the remarks "Not Claimed". Refusal to accept the hearing notice issued in the adjudication proceeding clearly indicate that the promoters/directors were avoiding any further query in the matter. Considering the same, the inquiry is further proceeded on the basis of the evidence available on record.

## **CONSIDERATION OF EVIDENCE AND FINDINGS**

9. The issue for consideration in the matter is whether the acquirers (promoter group along with persons acting in concert) acquired the shares of WSL in violation of the provisions of Regulation 11(1) of the Takeover Regulations. It is noted from the facts of the case that the company forfeited some shares and reissued them to the existing shareholders. Though in his reply dated April 14, 2007 Shri. Abhay Shastri refers to Annexure 1, the same was not forwarded along with the reply. In this context it is pertinent to note that the said reply did not refute the allegation contained in the SCN that shares were allotted to promoter group entities in the following manner

S. No	Name of the company	No. of Shares
1	Suryoday Finmark Consultants Pvt. Ltd	339470
2	Suryoday Engineering Limited	335900
3	Suryoday Service Stations Limited	337016
4	Shashtri Foods & Vegetables Limited	334614
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10. With regard to the question whether the promoter directors of WSL, Shri. Abhay Shashtri Shri. Sanjay Sonwani and Shri. Vinod Sonawani had acted in concert with the associated/group companies namely Suryoday Service Stations, Pushpapakashan Limited, Suryoday Finmark Consultants Private Limited, Suryoday Engineering Limited and Shastri Foods and Vegetables Limited in acquiring the shares of the target company in violation of the provisions of the Takeover Regulations, it is pertinent to note that Regulation 2(b) of the Takeover Regulations 1994 defines an acquirer in the following manner

“Acquirer means any person who acquires or agrees to acquire shares in a company either by himself or with any person acting in concert with the acquirer. The Honourable Securities Appellate Tribunal in Appeal No: 12 of 2001 Naagraj Ganeshmal Jain Vs. P. Sri. Sai. Ram Adjudicating Officer, observed that a person

becomes an acquirer by virtue of his action- who acquires or agrees to acquire shares etc. The identification is thus action related. Further the above definition of acquirer, read along with the definition of persons acting in concert as contained in regulation 2(1)(d) implies that the commonality of objective between the acquirer and the persons acting in concert clearly mandate that their actions should not be viewed in isolation. Hence in cases where shares have been acquired pursuant to a common objective, the aggregate share holding of the acquirers and the persons acting in concert have to be taken into account to determine whether the threshold limit prescribed under the regulations have been violated or not.

11. In this context, it is noted from the facts of the case that subsequent to reissue of shares to the group companies resulting in acquisition of 24.47 % shares by the persons acting in concert also increased the consolidated holding of the acquirers from 49.28% to 73.75%. This fact has not been refuted by the acquirers in the reply dated April 14, 2007. Though the exact date of such acquisition has not been submitted by the acquirers, the acquirers did not dispute the allegation in the SCN that the same took place during the period December 1999 to January 2000 as evidenced from the capital structure of the company.
12. Hence on the basis of the facts and circumstances of the case and the evidence available on record it is concluded that the promoters along with the persons acting in concert had acquired the shares of the target company during the period December 1999 to January 2000 in the manner stated above. In view of the same, the aggregate shareholding of the promoters and the entities have to be taken in to account to see whether the threshold limit prescribed under the regulations have been violated as the said acquisition resulted in further consolidation of the holding of the promoters of the company.
13. As stated before, acquisition of 24.47 % by the persons acting in concert has resulted in the increase of the consolidated holding of the acquirers from 49.28% to 73.75% of shares of WSL. In this regard, it is also pertinent to note that consolidation of holdings is permitted to a certain extent up to 5 % in terms of the provisions of the Takeover Regulations. However, even if benefit of 5% of

consolidation of holding as permitted under Regulation 11(1) of the Takeover Regulations 1997 is accorded to the acquisition, still as the acquisition amounts to 24.47% of shares, it has crossed the threshold limit prescribed under the regulations.

14. It is noted from the facts of the case no public announcement and offer has been made by the acquirers and the persons acting in concert in accordance with the mandate of Regulation 11(1) of the Takeover Regulations. In this regard, Section 15 H of the SEBI Act existing it stood at the relevant time of acquisition provided the following.

“If any person who is required under this Act or rules or regulations made thereunder, fails to make a public announcement to acquire shares at a minimum price, he shall be liable to a penalty of an amount not exceeding five lakh rupees.”

Hence the violation committed by the acquirers attract the penalty mentioned above. Though, it is noted from the reply submitted by Shri. Abhay Shastry that he had resigned from the board of WSL with effect from April 17, 2001, as the violation is prior to his resignation the same cannot be treated as a mitigating factor.

15. The provisions of Section 15J of the SEBI Act, 1992 and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely:

1. The amount of disproportionate gain or unfair advantage wherever quantifiable, made as a result of default
2. The amount of loss caused to an investor or group of investors as a result of the default
3. The repetitive nature of default

16. In the present adjudication proceedings, with regard to the loss caused to the investors, the same has to be assessed in terms of the requirement of public announcement and offer to be made to the public to acquire shares in terms of the provisions of the Regulations when the prescribed threshold limit was crossed by way of the said acquisition. However, no quantifiable figures are available to



assess the exact loss caused to the investors it is noted that the investors were deprived of an open offer. Hence taking into account the mandate of Section 15 H of the SEBI Act as it stood at the time the violation was committed by the acquirers, and considering the facts and circumstances of the case, I am of the view that the violation committed by the acquirers attract the penalty. However, considering the fact that the violation was on account of reissue of forfeited shares to existing shareholders to infuse capital to the company and also taking into account the submissions of the acquirers that none of the allottees sold the shares in open market to gain any kind of profit I am of the view that a lenient view may be taken with regard to the penalty warranted in the matter.

### **ORDER**

17. In view of the violation of Regulation 11(1) of the Takeover Regulations committed by the acquirers as stated above, in exercise of the powers conferred under Section 15 I and Section 15 H of the SEBI Act, 1992, read with Rule 5 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I, hereby impose a consolidated penalty of Rupees Two Lakh (Rs.200,000) on the acquirers namely Shri. Sanjay sonvani, Shri. Abhay Shashtri and Shri. Vinod Sonawani, Suryoday Service Stations Limited, Pushpa Prakashan Limited, Suryoday Finmark Consultants Private Limited, Suryoday Engineering Limited, and Shastri foods and Vegetables Limited.
18. The penalty shall be paid by way of demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to the Chief General Manager, Investigation Department ID-7, Securities and Exchange Board of India, Plot No: C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051.

19. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 copies of this order are sent to the acquirers and to the Securities and Exchange Board of India.

**Place: Mumbai**

**Biju .S**

**Date : July 31, 2008**

**Adjudicating Officer**