SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

In the matter of directions under section 11 read with section 11B of the SEBI Act, 1992 to Tuscon Exports Limited and its directors

WTMO/7/CFD/09/03

1.0 Background

1.1 A Co-ordination and Monitoring Committee (hereinafter referred to as the 'CMC') was set up jointly by the Department of Company Affairs (hereinafter referred to as 'the DCA') and the Securities and Exchange Board of India (hereinafter referred to as 'SEBI') in 1999 in respect of companies which raised money from the public and which were not traceable. These companies were identified as vanishing companies. A Task Force for each region was also set up consisting of Officers of DCA, SEBI and the concerned Stock Exchange to assist the CMC in identifying vanishing companies in the region and recommending the action to be taken by DCA and SEBI against such companies.

1.2 In the fifth meeting of the CMC held on 1.7.2000, the criteria for identifying vanishing companies has been laid down and companies that met the following criteria were to be considered as vanishing companies:

a) Companies which have not complied with listing requirements / filing requirements of Stock Exchange / Registrar of Companies respectively for a period of 2 years.

b) Where no correspondence has been received by the Exchange from the company for a long time.

c) Where no office of the company is located at the registered office address at the time of Stock Exchange inspection.

1.3 The Calcutta Stock Exchange (CSE) vide letter dated 7.3.2000 stated that Tuscon Exports Ltd. (hereinafter referred to as "TEL") could not be traced at its Registered Office address during the physical verification conducted by CSE. In the meeting of the co-ordination and Monitoring Committee held on 25.2.2003, was identified as one of the vanishing companies in the Eastern Region. Further, in the meeting of the Calcutta Task Force held on 18.6.2003 it was decided to initiate prosecution and lodge First Information Report (FIR) against TEL.

2.0 Public issue by TEL

2.1 TEL came out with a public issue of 66,15,000 equity shares of Rs 10/- each for cash at premium of Rs.20/- through a prospectus dated 12.12.1995. The issue opened on 30.1.1996, the earliest closing date was 3.2.1996 and the latest closing date 9.2.1996. It has been stated in the prospectus that applications have been made to the Stock Exchanges at Mumbai, Madras and Calcutta for listing of the shares.

2.2 In the prospectus, the address of the registered office of TEL is given as BA-80, Sector I, Salt Lake Calcutta. The names, addresses, qualifications and experience of the directors are mentioned below :

1. Shri Ranjeet Chouraria

   Director

   Tuscon Exports Ltd.

   8-, B-A, Block, Salt Lake,

   Kolkata

2. Shri Ramesh Fatehpuria

   Director

   Tuscon Exports Ltd.

   29/6, Chetla Centre Road,

Kolkata – 700 029

3. Shri Pradeep Chouraria

4. Smt. Manju Chouraria

3.0 TEL – a vanishing company.

3.1 After the said public issue, the shares of TEL were listed at The Stock Exchange, Mumbai (BSE), Madras Stock Exchange, Calcutta Stock Exchange, its Regional Stock Exchange and Calcutta Stock Exchange (CSE). It has been found that TEL could not be traced at its registered office during physical verification conducted by CSE. Further, TEL has not been complying with various clauses of the Listing Agreement entered into by it with the Stock Exchange viz., not submitting statutory reports, directors reports and other required reports, not furnishing financial results including Cash Flow Statements, Balance sheet and Profit & Loss Account etc. to the concerned Stock Exchange. The non-compliance of listing agreement by the said company is in violation of the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as SCRA). TEL was suspended from CSE w.e.f. 6.6.1997. This was communicated to SEBI by the CSE by its letters dated 10.7.2002.

4.0 Show cause notice

4.1 In view of the above, a show cause notice dated 2.5.2000 was issued by SEBI to TEL calling upon them to explain why action, including specific directions under section 11B of the SEBI Act prohibiting them from accessing the capital market for a period of five years should not be taken under the SEBI Act and the Securities Contracts (Regulation) Act, 1956. Similar show cause notices dated 16.11.2000 were also issued to the directors, after getting their relevant details from CSE. The Calcutta Stock Exchange (CSE) vide letter dated 7.3.2000 stated that TEL could not be traced at its Registered Office address during the physical verification conducted by CSE. Further, in the meeting of the co-ordination and Monitoring Committee held on 25.2.2003, was identified as one of the vanishing companies in the Eastern Region and in the meeting of the Calcutta Task Force held on 18.6.2003 it was decided to initiate prosecution and lodge First Information Report (FIR) against TEL.

4.2 TEL and its directors were also given an opportunity of a personal hearing before me on 14.8.2003. TEL and its directors namely Shri Ranjeet Chouraria and Shri Ramesh Fatehpuria failed to respond and appear for personal hearing. Shri Pradeep Chouraria

and Smt. Manju Chouraria were represented by M/s Halai & Co. in the hearing before the member. They submitted that Pradeep Chouraria and Manju Chouraria had resigned from the Board of Directors w.e.f 15.12.2000 and 1.5.1997 respectively and submitted copies of Form 32 in evidence of the same. They also submitted the said persons were not involved in the management of the company.

5.0 Consideration of issues

5.1 In view of the fact that TEL and its directors viz. Shri Ranjeet Chouraria and Shri Ramesh Fatehpuria have failed to submit any explanation to the said notice (despite service of the same) and to appear before me, I conclude that they have no explanation to offer in respect of the violations of the clauses of the listing agreement and in respect of the proposed directions under section 11B of SEBI Act, as mentioned in the show cause notices issued to them. I find that the failure to submit the reports and annual accounts by such companies to the stock exchange is in violation of the provisions of the Listing Agreement read with section 21 of Securities Contracts (Regulation) Act, 1956.

5.2 In respect of Pradeep Chouraria and Manju Chouraria, I find that since they were not involved in the management of the company and since they are no longer directors of the company, no action needs to be taken against them.

5.3 I further note that the vanishing of companies after raising moneys from the public is a matter of grave concern. These violations and the non-traceability of the companies of this kind are detrimental to the interest of investors and to the integrity of securities market. Besides they have also eroded the confidence of the investors and the credibility of the capital market, which calls for suitable preventive action. Therefore, it is necessary in the interest of investors and for healthy development of the securities market, that companies such as TEL and their directors who have vanished after raising money from the public should be prevented from accessing the capital markets again in future. Such a step would protect the investors from being duped by such vanishing companies. The above measure would also help in restoring confidence of investors and promoting integrity of securities market as it would give signal to the market that the fly by night operators will not be allowed to access the capital market.

5.4 I also note that the Supreme Court in *RadhGeyshyam Khemka v. State of Bihar*[1], observed as follows:

> "Originally the concept of a company implied an association of persons for some common object having a juristic entity separate from that of its members. In due course the gap between the investors in such companies and those in charge of management widened. A situation has been reached today where in the bulk of the companies many individuals who have property rights as shareholders and to the capital to which they have directly or indirectly contributed, have no idea how their

contributions are being utilised. It can be said that the modern shareholder in many companies has simply become a supplier of capital. The savings and earnings of individuals are being utilised by persons behind such corporate bodies, but there is no direct contact between them. The promoters of such companies are not even known to many investors in shares of such companies. It is a matter of common experience that in some cases later it transpires to the investors that the promoters had the sole object to form a bogus company and foist it off on the public to the latter's detriment and for their own wrongful gain. In this process the public becomes the victim of the evil design of the promoters who enrich themselves by dishonest means without there being any real intention to do any business...."

5.5 I further note the Securities Appellate Tribunal (SAT), in *Integrated Amusements Ltd. v. SEBI* **[2]**, has held that SEBI has power under sections 11 and 11B of the Securities and Exchanges Board of India Act, 1992 (hereinafter referred to as "the SEBI Act") to debar vanishing companies and their directors from accessing capital markets for fixed periods of time. Further, in *Status Management Services Ltd. v. SEBI*, [2000] 26 SCL 491], the SAT has observed that there can be no two views on question of taking deterrent action in accordance with the procedure established by law, against those companies which had duped the public and vanished. I also note that clause 17.1(b) of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 also empower SEBI to issue such directions.

6.0 Direction

6.1 In view of the above, I find that unless TEL and its directors, who neither responded nor appeared for personal hearing before me are restrained from accessing the capital market for a period of five years, there is every possibility that they may again raise money from the investors and defraud investors. It is possible that the directors of TEL may resort to floating new companies, acquiring existing companies or using companies in which they hold substantial interest to raise money from the public. Hence, it is necessary to take preventive measures restraining companies in which directors of TEL have controlling or substantial interests from directly or indirectly raising moneys from the capital market.

6.2 Therefore , in exercise of the powers conferred upon me under section 11(1) & (4) and 11B read with Section 19 of the SEBI Act, I hereby direct Tuscon Exports Limited and its directors, Shri Ranjeet Chouraria and Shri Ramesh Fatehpuria to disassociate themselves in every respect from the capital market related activities and not to access the capital market for a period of five years. I also direct more specifically that the public companies in which the above directors hold controlling or substantial interest shall not be allowed to raise funds from the capital market for a period of five years.

Date: 25.09.2003 **T M Nagarajan**

Place: Mumbai **Whole Time Member**

Securities and Exchange Board of India -+

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[1] [1993] 77 Com Cas 356.

[2] [2000] 27 SCL 458.