BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 5/2000

In the matter of:

Status Management Services Ltd **Appellant**

Vs.

Securities & Exchange Board of India **Respondent**

APPEARANCE:

Shri Mihir J Thakore
Sr. Counsel

Shri Jayesh Desai
Advocate **for the**
Appellant

Ms. Poonam A Bamba
Division Chief, SEBI

Mr. Rajasekhar Reddy
Legal Officer,
SEBI **for the Respondent**

ORDER

This appeal, by M/s. Status Management Services Limited, the appellant herein, is directed against the order dated 17th December, 1999 made by the Securities & Exchange Board of India, the Respondent herein. The impugned order captioned "Directions under section 11(1) and 11B of the SEBI At, 1992 – Vanishing companies" is a common order addressed to 49 companies and 84 company directors, debarring them from carrying on any capital market related activities, raising funds from the capital market, dealing in securities etc. The Appellant Company is aggrieved as having considered it as one of the "vanishing companies" and subjected to the impugned direction.

The Appellant Company was incorporated as a private limited company on 8th April 1993. According to the company's Memorandum of Association, the main objects to be pursued by the company on its incorporation are:

> "1. Subject to the approval of SEBI and other authorities where required to carry on all or any of the business in all the branches of Registrars to the Issue, Manger to the Issue, Transfer agents, financial advisors, consultants, data procurement and recording centers and development, consultancy.
>
> 2. To act as financial consultants, management consultants and provide, arrange, render,

advice, service, consultancy in the filed of capital market, to promote/incorporate companies, investment, leasing, finance hire-purchase, instalment, trading, merchant banker, general administrative, project report secretarial, commercial, financial, legal economic, labour, industrial, public relations, scientific, technical, direct/indirect taxation and other levies, statistical, accountancy, quality control and data processing

3. To act as investment advisers and financial advisers".

The Appellant company was converted into a public limited company vide special resolution passed on 21st March 1995. Thereafter on 13th March 1996 the Appellant issued a prospectus offering 10 lakhs equity shares of Rs. 10/- each to the public. Registered office address of the Appellant was shown at 205, Suchet chambers, 1224/5 Nai Wala, Bank Street, Karol Bagh, New Delhi 110005.

In the wake complaints from individual investors and Investor Associations that quite a large number of companies after raising funds from the public by issuing prospectus had disappeared from their notified address, leaving the investors high an dry, concerned authorities like Department of company Affairs, Reserve bank of India and Respondent decided to take action and co-ordinate their efforts to track down these companies and book them for default. A Central Co-Ordination and Monitoring Committee was set up as a joint mechanism, consisting senior officers of DCA, RBI and SEBI. To begin with, 80 companies were identified by the Respondent, mainly based on the reports form various stock exchanges, as vanishing companies, by adopting the following criterion:

companies which did not comply with listing requirements such as submitting various returns and reports to the stock exchanges(s) for a period of 2 years and

where no correspondence has been received by the stock exchanges for a long time and

no office of the company is located at the mentioned registered office address.

Since the companies were reportedly not found at their last reported address to serve show cause notices, public notice seeking their explanation before proceeding against them was issued in the news papers by the Respondent. It has been stated that the cases of those companies, which had responded to the public notice were considered separately. But those companies which did not respond to the public notice were proceeded exparte and directions were issued against all of them by a common order directing that the companies and the directors named in the impugned order – " to disassociate themselves in every respect from the capital market related activities, not to raise funds from the capital market, not to deal in securities and not be associated with any of the intermediaries in the capital market, for a period of 5 years". The Appellant Company is one of the companies identified as vanishing company and subjected to exparte order. The present appeal is directed against the said order of 17.12.1999 issued by the Respondent.

The learned Counsel, appearing for the Appellant company submitted, that the Respondent's decision identifying the Appellant as a vanishing company and subjecting it to penal consequences is untenable as the Appellant did at no point of time vanish, as alleged. He submitted that the Respondent's claim that they had issued a show cause notice to the Appellant company and its directors remain unsubstantiated as neither a copy of the notice nor even the exact date of issuance of such notice has been furnished. Even assuming that show cause notice was issued, it would have gone only to the Appellant's old Karolbagh address, as is evident from the address shown in the public notice. He submitted that even on 14.9.1999, the date on which the public notice including the Appellant's name therein was issued, the Respondent showed the registered office of the Appellant at the Karol Bagh address despite notifying the change of address to Registrar of Companies and Delhi Stock Exchange. The learned Counsel submitted that the Appellant's registered office was shifted from Karol Bagh to Lajpat Nagar

and from there to Rohini mainly due to change in management and for functional reasons and the requisite information regarding change of address was filed with the Registrar of Companies and Delhi Stock Exchange. Photo copy of the endorsement from them acknowledging receipt of the intimation relating to shifting office to the present address at Rohini, as piece of evidence, was produced in support of the submission. He also submitted that the fact that the impugned order addressed to the Appellant's Rohini address had reached the Appellant company goes to the prove the Appellant's existence at the given address i.e. A/74, Sector 8, Rohini, Delhi 110 085 and awareness of the same by the Respondent. Since the Appellant had not received the notice stated to have issued before 14.9.1999 i.e. date of public notice, the same could not be replied. According to the learned Counsel on seeing the public notice dated 14.9.1999 the Appellant vide letter dated 21.9.1999, requested the Respondent to send a copy of the show cause notice stated to have been sent, to enable it to reply. But the Respondent did not respond. A copy of the said letter stated to have been sent to the Respondent, annexed to the Appeal was relied on to support this. He also submitted that the Appellant had been filing returns with Delhi Stock Exchange and the Registrar of Companies. Photocopies of acknowledgements stated to have been issued by them in this behalf were produced. Copies of the audited Annual Accounts of the Appellant for the years 1996-97, 1997-98 and 1998-99 and acknowledgement from the Income Tax authorities showing filing of Return for the Assessment Year 1999-2000 filed with the Appeal were also cited as evidence to show that the Appellant company existed at the given address. The learned Counsel urged that since the impugned order is of far reaching consequence made exparte, without giving the Appellant an opportunity to present its case, the same need to be set aside and the matter be remanded with direction to the Respondent to decide the matter after adequate opportunity to present the case is given to the Appellant.

Ms. Poonam A Bamba, learned Representative appearing for the Respondent submitted the back ground in which the impugned order was issued and also the PIL filed by an Investors Association in the Allahabad High Court seeking Court's intervention to protect the interests of investors in the hands of those companies which had vanished after raising money from the public. Stand taken by the Respondent in the said PIL was also explained. She laboured considerably to establish that the Appellant is one of the vanished companies. In support, she mainly relied on Delhi Stock Exchange's version that the Appellant Company was not operating from the given address. She submitted that since the Appellant failed to file returns/ reports and documents. Delhi Stock Exchange and Registrar of Companies had informed them that prosecutions have been launched against the Appellant. According to the learned Representative, a representative of Delhi Stock Exchange had done physical verification of the premises stated to be occupied by the Appellant and only after satisfying the factual position that the Appellant was not at the address, the report was submitted. Stock exchange being a responsible institution, report from them need to be taken at face value and that the exchange had reported in writing that the Appellant was found not operating even at its latest address mentioned in the appeal i.e. at A-1/74 Sector 8, Rohini, New Delhi 110 085.

I have very carefully gone through the rival contentions and the facts placed before me. My views thereon are discussed in the following paragraphs.

It is a mandatory requirement under section 146 of the Companies Act, 1956, that a company shall, as the day on which it begins to carry on business, or as from the thirtieth day after the date of its incorporation, whichever is earlier, have a registered office to which all communications and notices may be addressed and that this address be notified to the concerned Registrar of Companies. Any change in the situation of registered office is required to be notified to the Registrar of Companies within 30 days of the change. The section requires that the registered office shall not be removed out side the city, town or village where it is situated, except on the authority of a special resolution of the company. But, if the change is from one State to another, it will require the approval of the Company Law Board. Registered office address is the official address of a company where shareholders, creditors, and others, can reach the company. Listed companies are expected to keep up date the address with the

concerned stock exchanges also for functional reasons. Failure to notify the address or change of address to Registrar of Companies is an offence under the Companies Act. The prescribed format in which address is notified to the Registrar is a public document available for inspection by the public in the Registrar's office. The relevance of notifying the address to Registrar is, to enable the public to know the whereabouts of the company, in case need arises. The Companies Act does not prohibit a company shifting its registered office from one place to another. All that the act requires is to follow the procedure and notify the change to the Registrar. But frequent change of address, though legally unobjectionable, motive is suspect.

There cannot be two views as to the question of taking deterrent action in accordance with the procedure established by law, against those companies, which had dupes the public and vanished. As Supreme Court observed in the case of Radheshyam Khemka vs. State of Bihar (1993) 77 Com. Case 356, investors are often taken for a ride by unscrupulous company management. To quote the observations of the Supreme Court in this regard: -

> "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 incharge of management widened. A situation has been reached today where in the bulk of the companies many individuals who have property rights as share holders 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 not direct contact between them. The promoters of such companies are not even known to many investors in shares of such companies. It 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 if 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"

It is absolutely necessary that those fly by night operators are sternly dealt with and investors interests are protected. However, utmost care is required in a mass action like the instance case, to ensure that only those companies, which had duped the public and disappeared are attacked, and not those who could not represent their case because of communication gap. Disqualification imposed by the impugned order if enforced against an existing company would perhaps work against the interests of the investors, as the company's activities remain virtually frozen by the order.

It has been stated in the impugned order itself that "in response to the public notice, 26 directors and 31 companies have submitted their explanation, which is under consideration. Whereas the remaining 84 directors and 49 companies as mentioned in the Annexure to the public notice have failed to submit any explanation to the show cause notice/public notice. In view of the failure of the above said companies to submit the statutory reports, directors report and other required reports and financial statements to the stock exchanges which is in violation of the provisions of Securities Contracts (Regulation) Act and in the absence of any explanation from such directors/companies to the alleged violations and proposed action I am constrained to take a view that the said directors/companies as named in the Annexure to this direction, have no explanation to offer in respect of the above said violation of the clause of the listing agreement and in respect of directors as proposed to be issued against them under section 11B of SEBI Act as mentioned in the show cause notices/public notices issued to them". The Respondents in their reply to the Appeal had also stated that "SEBI was contained to proceed exparte in the matter. The impugned directions were therefore issued by SEBI after taking into account the facts on record".

It is very clear from the portion of the order extracted that the Respondent had acted in a very fair manner, as they had not hurried with any action against those who had responded to the notice and that their cases were considered separately. Since others had failed to respond, and taking into consideration the gravity of the situation, the Respondent had to take suitable action and obviously it could be done only exparte. Since it was an enmasse action against 49 companies and 84 directors and the decision was largely based on the information furnished by the concerned stock exchanges, the Respondent cannot be blamed for identifying any company as a vanishing company, if the material furnished by the stock exchange in respect of that company was inadequate or was incorrect. In the instant case, the Appellant had submitted that it had not received any show cause notice from the Respondent. The Respondent had also not produced any evidence to show that the show cause notice issued to the Appellant could not be served, as the Appellant was found not at the given address. However, when the public notice was issued on 14.9.1999 the Appellant reportedly responded to that by issuing a letter on 21.9.1999. But the learned Counsel could not tell the Tribunal the mode of sending the letter for want of details readily with him. But a copy of the said letter has been annexed to the Appeal. It is also seen from the photocopy of the fee receipts and acknowledgement from the stock exchange and Registrar of Companies that the Appellant had filed certain documents with those authorities. The authenticity of these receipts and acknowledgement was questioned by the learned Representative of the Respondent submitting that the same authorities had written to them that they had initiated penal action against the Appellant and its directors for default in filing returns/reports. In view of the divergent position stated by the parties, in the absence of further evidence it is difficult to come to any definite conclusion on the question as to whether the Appellant had vanished or not. Taking into consideration the gravity of the allegation and the effect of the impugned order, it is felt that the matter need be further probed, which this Tribunal cannot do. This is a matter which require further investigation by the Respondent, as it involves examination of the records available with the Delhi Stock Exchange, concerned Registrar of Companies and the appellant. It appears that the Respondent had gone by the statement furnished by the Delhi Stock Exchange, Registrar of Companies, the statutory authority with whom the company has to notify change of address, had not given any report about the whereabouts of the appellant company as born out of his records that too in the context of the appellant claiming that the change of address had been notified to the Registrar. The following version of the Respondent from their reply shows that the investigation to locate the company was incomplete.

> "the registered office address of the appellant as per the prospectus was 205, Suchet Chambers, 1224/5, Nai Wala Bank Street, Karol Bagh, New Delhi - 110 005. It is incorrect on the part of the appellant to state that the proper intimation to the stock exchanges and the Registrar of the Companies (ROC) was given about the shifting of their registered office. It may be stated here that Delhi Stock Exchange vide its letters dated March 18, 1999, June 16, 1999, July 10, 1999 and October 15, 1999 (copies of these letters enclosed as Annexure III) informed SEBI and the Task Forces respectively that the office premises of the appellant was personally visited by the officers of the stock exchange and the appellant company could not be traced at its last given address and its whereabouts could not be known from the neighbours. It was further informed that the officers of the stock exchange also visited the office of the Registrars of Companies, as well as contacted the statutory auditors of these companies. However, these efforts have not yielded results. DSE is exploring other possibilities to track down these companies.

Though the Respondent had questioned the authenticity of the appellant's version of intimating the change of address to registrar and Delhi Stock Exchange, little has been done to explain as to what the official acknowledgement stated to have been issued by these agencies, as produced by the appellant conveyed? There is no denial of issuance of acknowledgement from Registrar of Companies and Delhi Stock Exchange, on record Delhi Stock Exchange's reference to the 'last given address' in its report dated 16.6.99 appears to be to the Karolbagh address, which according to the appellant, they had left long ago. The assumption that the 'last given address' referred to by Delhi Stock Exchange was Karolbagh address, is based on the information of the registered office shown in the public notice issued by the respondent, which obviously is based on the input given by Delhi Stock Exchange. The frank admission that the visit of the stock exchange official to the office of Registrar of Companies and contacting the statutory auditors

have not yielded results indicate the deficiency in tracing the appellant's address. Since Delhi Stock Exchange and Registrar of Companies and Respondent being members of the Task Force constituted to track down the vanishing companies factual verification in the light of the submission made by the appellant with reference to documentary evidence should not be a problem. Inspection of the records of the appellant may also be considered to reach at the truth.

As already observed those companies which had vanished with the investor's money need to be located and punished as per the law. But if there is any possibility of tracking down those rogue companies and restoration of funds to the investors is possible, action should be oriented to achieve that goal. Such an action would be more in the interest of investors who had lost their money. In the instance case I find from the latest audited annual accounts of the appellant annexed to the Appeal that the Appellant was carrying on business in the year 1998-99. The financial position as disclosed therein as per the summary extracted below is also note worthy.

Particulars ScheduleAs at 31.3.98 SOURCE OF FUNDS

Share Capital I 38, 365, 500.00 8, 365, 500.00

Reserve & Surplus II 60, 110, 046.61 60, 097, 071.75

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Total Rs. 98, 475, 546.61 98, 462, 571.75

APPLICATION OF FUNDS

Fixed Assets III 182, 541.82 231, 800.71

Investments IV 80, 542, 000. 00 78, 497,000.00

Current assets, loans &

advances V 34, 339, 123. 29 35, 787, 531.04

Less: Current liabilities &

Provisions VI (16, 786, 675.00) (16, 280, 860.00)

MISCELLANEOUS

EXPENDITURE VII

(To the extent not written off

or adjusted) 198, 556. 50 227, 100. 00

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Total Rs. 98, 475, 546. 61 98, 462, 571. 75

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The Appellant's annual accounts disclose a positive net worth and a nominal operational profit. The Balance sheet and Profit and Loss Account filed with the appeal do not indicate that the Appellant is dormant. If the financial position as disclosed in the annual account is to be

accepted, the impugned direction per se may require reconsideration. However, I do not want to make any comments at this stage on the merits of the exparte order against the Appellant.

Taking into consideration the financial position as disclosed in the Appellant's Annual Accounts for the year 1998-99 that the impugned order was made exparte and that the Appellant had requested for a hearing and readiness to furnish all the relevant facts, it is felt that it would be more in tune with the interests of investors to re-examine the status of the appellant, after giving a reasonable opportunity of being heard. For this purpose, the respondent will issue /serve notice on the appellant at its registered office address as furnished in the Appeal memorandum and the appellant will receive and respond to the notice and present its case before the Respondent, within the time frame fixed by the Respondent and thereafter considering the Appellant's submission the Respondent may pass suitable orders in accordance with the law.

In view of the facts and circumstances discussed above, the impugned order to the extent it applies to the appellant, is set aside and the matter is remanded for de novo consideration and suitable orders by the Respondent after affording the Appellant a reasonable time frame. If the appellant fails to make use of the opportunity provided to present its case within the time frame, the Respondent is at liberty to pass such order as is deemed fit in the facts and circumstances of the case.

Thus the appeal is allowed by way of remand.

(C. Achuthan)
Presiding Officer

Place: Mumbai
Date: August 2, 2000