## SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

**ORDER UNDER SECTIONS 11 AND 11B READ WITH SECTION 4 (3) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AGAINST M/S VICTOR GASKETS INDIA LIMITED**

CO/12/CFD/07/2004

### 1.0 Background

M/s Victor Gaskets India Limited (hereinafter referred to as "VGIL") is a company incorporated under the Companies Act, 1956 and having its registered office at "Magnet House", 4$^{th}$ Floor, N M Marg, Ballard Estate, Mumbai 400 038.

VGIL, vide their letter dated 1.11.2001 submitted an application to BSE requesting for exemption from the requirements of Rule 19 (2) (b) of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as "SC(R) Rules") for listing of their shares on The Stock Exchange, Mumbai (hereinafter referred to as "BSE"). The listing was to be done pursuant to a scheme of arrangement between Prefect Circle Victor Limited (hereinafter referred to as "Perfect Circle") and VGIL which scheme was approved by the High Court of Bombay. The said application was forwarded to Securities and Exchange Board of India (hereinafter referred to as "SEBI") by BSE vide their letter dated 8.11.2001. The said application was examined by SEBI and vide letter dated 8.3.2002, the stock exchange was advised to allow listing of the shares of VGIL on BSE subject to the following conditions:

(i) Compliance with the provisions of Clause No.8.3.5 of SEBI (Disclosure and Investor Protection) Guidelines, 2000 (hereinafter referred to as "the DIP Guidelines"), as amended till date.

(ii) Compliance with minimum capital requirement for listing.

Subsequently, vide their letters dated 4.4.2003 and 19.5.2003, BSE informed SEBI that the promoters of VGIL had acquired the shareholding of the foreign collaborators prior to March, 2002. They also informed us that the said shareholding had been classified as being in the "non promoter category" and consequently the non promoter shareholding of VGIL had decreased to 10.46%.

## 2.0 Show cause notice and hearing

In view of the fact that VGIL had violated one of the conditions subject to which SEBI had accorded permission for listing, show cause notice dated 28.7.2003 was issued by SEBI directing VGIL to show cause why exemption from the requirements of Rule 19(2)(b) of the SC(R) Rules granted to them on 8.3.2002 under Rule 19(7) of the SC(R) Rules should not be revoked.

VGIL vide their letter dated 5.9.2003 through their advocates, Little & Co. submitted their reply to the said show cause notice. In the said reply, VGIL made the following submissions:

(a) Under a scheme of arrangement between Perfect Circle and VGIL which was approved by the High Court of Mumbai vide its order dated 17.10.2001, the existing shareholders of Perfect Circle were to receive one equity share of Rs.2/- to each of VGIL for every one share held by them. The shareholding pattern of Perfect Circle at the time of sanctioning of the scheme of arrangement was as under:

| | |
|---|---|
| Promoters (Asia Investments Ltd. & Ors.) | 50.6% |
| Foreign Collaborators | 34.9% |
| Others | 14.5% |

Since the allotment of shares in the demerged entity was to be in the ratio of 1:1, the shareholding of the existing shareholders of Perfect Circle in VGIL remained the same. There was also no prohibition in the said scheme for subsequent transfer of shares by Dana Corporation (the foreign collaborator) from VGIL. In fact the scheme itself was undertaken to permit Dana Corporation to exit from the Asbestos business of Perfect Circle.

(b) After receiving appropriate approvals from the Reserve Bank of India, 14,55,000 shares of VGIL amount equivalent to approx 34.8% of the share capital of VGIL, held by Dana Corporation was purchased by the Indian promoters to enable Dana Corporation to exit from the asbestos business. The fact of this acquisition was communicated by Asia Investments Ltd. (Indian promoter) to the Delhi Stock Exchange and BSE vide their letter dated 27.2.2002. This fact was also communicated to SEBI by Asia Investments Ltd vide their letter dated 7.3.2002. In the said letters, Asia Investments Ltd had specifically recorded that the disclosure was being made in view of the fact that VGIL was seeking a listing on Delhi Stock Exchange and BSE.

(c) In view of the above, there was no suppression of facts from SEBI or the stock exchanges and there was a bonafide belief on the part of VGIL that nothing further needed to be done.

A personal hearing was granted to VGIL on 11.2.2004. In the course of the hearing, the representatives /advocates of VGIL made the following submissions:

(a) The issue on which they have been required to show cause is the change in shareholding pattern.

(b) VGIL was demerged from Perfect Circle as per the scheme of arrangement approved by the Bombay High Court. The de-merger itself was consequent to the decision of the foreign collaborator viz. Dana Corporation to exit the asbestos business worldwide.

(c) The application for listing was filed with the BSE on 1.11.2001. In February, 2002 the shareholders of VGIL bought out the shares of Dana Corporation.

(d) The percentage of public shareholding prior to the de-merger was 25% and subsequent to the de-merger and purchase by Asia Investments Ltd of the shareholding of Dana Corporation in May 2002 the public shareholding fell below 25%.

(e) On the date on which the exemption from the requirements of Rule 19(2)(b) of the SC(R) Rules was granted by SEBI, the public shareholding remained within the requirements of the DIP Guidelines.

(f) Asia Investments Ltd. informed SEBI regarding the acquisition of shares of Dana Corporation although being an unlisted company it was not required to do so.

In the course of hearing, VGIL was advised to submit details of acquisition of the shares of Dana Corporation by the promoters viz. Asia Investments

Ltd. and also to swear on affidavit as to whether they were now compliant with the conditions subject to which permission to list was granted.

Vide their letter dated 20.2.2004, VGIL submitted an affidavit sworn by Shri Akhil Kumar Aggarwal, Director that VGIL had received approval from the RBI on 12.12.2001 for allotment of equity shares and debentures to non-resident share holders and debenture holders. They also swore that the transfer of equity shares held by Dana Corporation to Asia Investments Ltd. was approved by the share transfer committee constituted by VGIL in its meeting held on 14.5.2002.

## 3.0 Consideration of issues

I have considered the facts of the matter, the reply and submissions of VGIL and other material on record. The following issues arise for consideration:

**A. Whether VGIL have violated / not complied with any or all of the conditions imposed by SEBI while granting approval for listing on the BSE.**

I note that Clause 8.3.5 of the DIP Guidelines provides for an application to the Board for relaxation from applicability of Clause (b) to Sub rule (2) of Rule 19 of the SC (R) Rules. Clause 8.3.5.1 of the said guidelines provides that an un-listed company may make an application to the Board for listing its shares without making an initial public offer if it satisfies the following conditions:

(i) Shares have been allotted by the unlisted company (transferee-company) to the holders of securities of a listed company (transferor-company) pursuant to a scheme of reconstruction or amalgamation under the provision of the Companies Act, 1956, and such scheme has been sanctioned by the High Court/s of Judicature.

(ii) The listing of the shares of the unlisted transferee-company is in terms of scheme of arrangement sanctioned by the High Court/s of the Judicature.

(iii) At least 25% of the paid-up share capital, post scheme, of the unlisted transferee-company seeking listing comprises shares allotted to the public holders of shares in the listed transferor-company…

I note that vide letter dated 7.3.2002, M/s. Asia Investments Pvt. Ltd., one of the promoters of Victor Gaskets informed SEBI that they are acquiring approximately 34.89% of the shares of VGIL from Dana Corporation, USA, the foreign collaborator. In this regard, they had pointed out that the said acquisition would be exempt from the requirement of making a public offer under Regulation 10, 11 and 12 of the SEBI (Substantial of Acquisition of Shares and Takeovers) Regulations, 1997. I also note that the said letter was addressed to SEBI one day prior to SEBI granting exemption under Rule 19(2)(b) in respect of the listing of the shares of VGIL.

From the captioned information, I note that even before the exemption from the requirements of Rule 19(2)(b) was granted to VGIL, the promoters had taken steps to acquire the shareholding of Dana Corporation, USA. The shareholding of Dana Corporation was not included in the promoter shareholding when the application for exemption for the requirements of Rule 19(2)(b) was filed with SEBI i.e. the shareholding of Dana Corporation was shown as public/non promoter shareholding. Therefore, through the acquisition of the shareholding of

Dana Corporation by Asia Investments Ltd., the public shareholding went below 25%. Thus even before the exemption was granted to VGIL, one of the conditions subject to which the exemption was granted was violated.

In this regard, VGIL in their reply to the show cause notice and in the course of hearing have mentioned that as per the provisions of the scheme of High Court of Bombay, there was no provision on subsequent transfer of shares by Dana Corporation. They have further submitted that the transfer of shares in favour of the promoters was approved by the transfer committee in its meeting dated 14.5.2002 and therefore the said acquisition can be said to have come into effect only subsequent to the approval granted for exemption from the requirements of Rule 19 (2) (b).

I note that an unlisted company is permitted to list its shares on a stock exchange without making an initial public offer subject to a condition that at least 25% of its shares are with non-promoters / public share holders of the listed transferor company. In this regard, it is useful to refer to Rule 19(2)(b) which provides as under :

"19. Requirements with respect to the listing of securities on a recognised stock exchange

(1) A public company as defined under the Companies Act, 1956, desirous of getting its securities listed on a recognised stock exchange, shall apply for the purpose to the stock exchange and forward along with its application the following documents and particulars

2) Apart from complying with such other terms and conditions as may be laid down by a recognised stock exchange, an applicant company shall satisfy the stock exchange that:
(a) Its articles of association provide for the following among others-

(i) that the company shall use a common form of transfer;

(ii) that the fully paid shares will be free from all lien, while in the case of partly paid shares, the company's lien, if any, will be restricted to moneys called or payable at a fixed time in respect of such shares;

(iii) that any amount paid-up in advance of calls on any share may carry interest but shall not entitle the holder of the share to participate in respect thereof, in a dividend subsequently declared;

(iv) there will be no forfeiture of unclaimed dividends before the claim becomes barred by law;

(v) that option or right to call of shares shall not be given to any person except with the sanction of the company in general meeting:

Provided that a recognised stock exchange may provisionally admit to dealings the securities of a company which undertakes to amend its articles of association at its next general meeting so as to fulfill the foregoing requirements and agrees to act in the meantime strictly in accordance with the provisions of this clause.

(b) At least ten percent of each class or kind of securities issued by the company was offered to the public for subscription through advertisement in newspapers for a period not less than [two days] and that applications received in pursuance of such offer were allotted fairly and unconditionally:

Provided that if a company does not fulfill the conditions, it shall offer at least 25 per cent of each class or kind of securities to the public for subscription through advertisement is newspapers for a period not less that two days and that applications received in pursuance of such offer were allotted. …

From the above, it is apparent that the condition precedent of 25% public shareholding of an un listed company which seeks listing without making a public offer was included in Clause 8.3.5.1 with a view to ensure that all companies which do not undertake a initial public offer ensure that level of shareholding. By failing to retain 25% public shareholding, as envisaged in Clause 8.3.5, I find that VGIL has failed to comply with the requirements of Clause 8.3.5 of the DIP Guidelines and thereby to comply with one of the conditions subject to which the approval was granted.

In this regard, I note that in the event of revocation of the approval granted under Rule 19 (2) (b) of the SC(R) Rule, the investors/shareholders of Prefect Circle would be adversely affected since they would be deprived of the existing avenue to divest their shareholding.

## 5.0 Order

Therefore, in exercise of the powers conferred on me under Sections 11 and 11B read with Section 4(3) of the SEBI Act, 1992, I hereby direct that the approval dated 8.3.2002 granted for exemption from the requirements of Rule 19 (2)(b) of the Securities Contracts (Regulation) Rules, 1957 shall be held in abeyance until M/s. Victor Gaskets India Ltd ensures that at least 25% of the paid-up share capital post scheme of Victor Gaskets India Ltd comprises of public shareholding.

**Place: Mumbai**
**Date: 01.07.2004**

**G.N. Bajpai**
**Chairman**
**Securities and Exchange Board of India**