

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER OF THE BOARD UNDER SECTION 11 AND 11B OF THE SEBI ACT, 1992

IN THE MATTER OF ORIENTAL REMEDIES AND HERBALS LIMITED AND ITS DIRECTORS

1. 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 are not traceable. These companies are identified as vanishing companies. Seven Task Forces for each region were also set up consisting of DCA Officers, SEBI Officers and the concerned Stock Exchange Officials 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 as under:

- 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 mentioned registered office address at the time of Stock Exchange inspection.

1.3 In the fourteenth meeting of the Calcutta Task Force held on 2.4.2002, 30 identified vanishing companies were in the Eastern Region of which two were in liquidation and 19 were traceable. The remaining 9 companies were found to be non-traceable by the Task Force. This included **Oriental Remedies and Herbals Limited** (hereinafter referred to as ORHL).

1. Public issue by Oriental Remedies and Herbals Limited

2.1 ORHL came out with a public issue of 18,80,000 equity shares of Rs 10/- each for cash at par through a prospectus dated 13.1.95. The issue opened on 16.2.95, the earliest closing date was 20.2.95 and the latest closing date 27.2.95. It has been stated in the prospectus that applications have been made to the Stock Exchanges at Calcutta and Bombay for listing of the shares. In page 10 of the prospectus, it was stated under the head "Project" that the company is setting up a plant in Himachal Pradesh to manufacture Ayurvedic, Homeopathic and Unani medicines and intermediaries from Herbs, Plants and Flowers which are available abundantly in the local market.

2. In page 12 of the prospectus, under the heading "Schedule of Implementation", the following is stated: "The schedule of implementation of various activities as estimated by the management of the company is details as follows:

Activity Commencement Completion

1. Acquisition of land and Site

Development Already completed Already completed

2. Building & Other Civil Works November, 1994 February, 1995

3. Placement of orders for Plant &

Machinery November, 1994 January, 1995

4. Delivery of Plant & Machinery January, 1995 February, 1995

5. Installation of Plant &

Machinery February, 1995 March, 1995

6. Trial Runs March, 1995 March, 1995

7. Commercial Production April, 1995 April, 1995"

3. In the prospectus, the address of the registered office of ORHL is given as 63, Rafi Ahmed Kidwai Road, Calcutta - 700016. Dr Pyush Agarwal, Dr (Mrs) Neelam Agarwal, Dr N Rai, Dr (Mrs) S Talwar and Shri Nagar Mal Agarwal are shown as directors. Their qualifications and experience are also mentioned.

1. Oriental Remedies and Herbals Limited – a vanishing company.

3.1 After the said public issue, the shares of ORHL were listed at stock exchanges including its Regional Stock Exchange i.e., Calcutta Stock Exchange. It has been found that ORHL has not been complying with various clauses of the Listing Agreement entered into by it with the Stock Exchanges 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 from 1996-97. The company also could not be contacted at its registered office by the Calcutta Stock Exchange and as per the physical verification report of the exchange, the company "was not found at its Registered Office Address". 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). ORHL was suspended from the Calcutta Stock Exchange w.e.f. 31.3.2000. This was communicated to SEBI by the Calcutta Stock Exchange by its letter dated 30.10.2000.

2. Show cause notice

4.1 In view of the above, a show cause notice dated 2.5.2000 was issued by SEBI to the ORHL calling upon it to explain why action, including prohibiting ORHL 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, specifically directions under section 11B of the SEBI Act. ORHL has responded by its letter dated 16.5.2000, stated that there has been some misunderstanding and that they look forward to the personal hearing to clarify. They had been given a personal hearing before the Chairman, SEBI on 26.08.2002. However their representatives have not turned up on that date. Since the company is not traceable at the address of its registered office, since none of the company's assets are found there and no business is being carried on there and since, the company had not been complying with the listing agreement nor replying to correspondence from the exchange, the presumption is irresistible that the funds raised by the public issue have been put to uses other than those for which they were promised to be in the offer document. It is also clear that that ORHL is a vanishing company as per the criteria laid down by the CMC for identification of vanishing companies.

4.2 Show-cause notices were also issued by SEBI on 15.5.2000 to all the Directors of ORHL, calling upon them to explain why action, including 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, specifically directions under section 11B of the SEBI Act.

By a letter dated nil, Dr. Talwar, one of the directors had informed that she had resigned from ORHL long before the violations. However, neither the date of resignation nor any documentary proof was given. SEBI wrote to her again for further clarification and copy of the resignation letter. However, there has been no response so far.

Two other directors, Dr. Pyush Agarwal and Dr. Neelam Agarwal had by their letters dated 30.5.2000, stated that there has been some misunderstanding and that they look forward to personal hearing to clarify.

By a subsequent letter dated 16.8.02, it was communicated to the aforesaid Directors of ORHL that they would be given a personal hearing before the Chairman, SEBI on 26.08.02. Two directors, Dr. Pyush Agarwal and Dr. Neelam Agarwal submitted through their Advocates' letters dated 22.8.2002 that they would be unable to attend the hearing since they are out of station and requested to postpone the hearing to the first week of October, 2002. Though the time sought by them is too long, their cases would be considered separately after giving them another opportunity of hearing. However, the remaining directors or their representatives did not turn up for the hearing which was scheduled on 26.8.2002.

3. Consideration of issues

5.1 In view of the fact that ORHL has failed to submit any explanation to the said notice despite service of the same nor appeared 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. 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 Further, 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. Suitable preventive action. Therefore, it would be necessary in the interest of investors and for healthy development of the securities market, that companies such as ORHL 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.

5.3 The Supreme Court in *RadhGeyshyam Khemka v. State of Bihar*, 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...."

The SAT in *Status Management Services Ltd. v. SEBI*, 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.

5.4 It is relevant to note that in *Integrated Amusements Ltd. v. SEBI*, the Securities Appellate Tribunal 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, clause 17.1(b) of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 also empower SEBI to issue such directions.

4. Direction

6.1 It is felt in the above circumstances that unless ORHL and its directors are debarred 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 take them for a ride. However notwithstanding such direct debarring, the directors of ORHL 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 debarring companies in which directors of ORHL have controlling or substantial interest from directly or indirectly raising moneys from the capital market.

6.2 Therefore I, in exercise of the powers conferred upon me under section 11(1) and 11B read with Sub Section (3) of Section 4 of the SEBI Act, hereby direct ORHL and its director Dr (Mrs) S Talwar 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.

Dated at Mumbai on this 27th day of September 2002.

G. N. BAJPAI

Chairman

Securities and Exchange Board of India