

SECURITIES AND EXCHANGE BOARD OF INDIA

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

IN THE MATTER OF ANIK SHIP BREAKING INDUSTRIES LIMITED AND ITS DIRECTORS

1.0 Background

1.1 Investigation in the case of M/s Anik Ship Breaking Industries Limited (hereinafter referred to as ASBIL) was initiated by SEBI based on a complaint received from M/s Skindia Finance Ltd., wherein it was alleged that unusual trading took place in the scrip of the company from 25.06.97 to 23.12.97. NSE was also requested to conduct an investigation. While carrying out preliminary investigation it was found that certain entities related to ASBIL had made applications in the public issue of ASBIL which was made in 1996. It was suspected that the funding for these applications which were made through stock invests came indirectly from ASBIL itself. Accordingly, investigation was initiated into possible violations of DIP Guidelines and Section 77 of the Companies Act in course of a public issue. The investigation has been concluded.

2.0 Public issue of ASBIL

2.1 ASBIL came out with a public issue of 1,09,31,100 equity shares of Rs. 10/- each for cash at par through its prospectus dated 31.01.1996. The issue opened on 27.02.96 and closed on 09.03.96. After allotment the shares were listed on NSE, BSE, Rajkot and Ahmedabad Stock Exchanges.

2.2 The terms of payment of the public issue was Rs 2.50 on application and Rs 7.50 on allotment.

3.0 NSE Report

3.1 On investigation, NSE found that there was a sudden spurt in trading volumes during the period 25.06.97 to 23.12.97. It was found that the sellers were persons or entities who were the original allottees in the public issue who were likely to be connected with the promoters of ASBIL. It was also found that the company had failed to mobilise allotment money from its shareholders.

4.0 Manipulations in the public issue

4.1 On examination of the data, provided by the records of the registrar to the issue and the banks which issued stock invests, the following facts came to light.

4.2 Stock invest issued by Bank of Rajasthan – It was found that 8 stock invests were issued by the Versova branch of the Bank of Rajasthan, Mumbai for the public issue of ASBIL with which 8 applications were made, as given in the following table.

Stock Invest No.	Name and address of the applicant	Number of shares applied	No. of shares allotted	Amount (Rs.)
876178	Deepal Mehta Atit Shopping Ent.Pvt. Ltd. Shop No.10, Off Apna Bazar, D N Nagar, Andheri (W) Mumbai - 400 053	400000	389300	1000000

876179	Ramesh Shah 53, Juhu Alaknanda, Gulmohar, X - Road No.10, Juhu-Vile-Parle (W), Mumbai - 400 049	400000	389300	1000000
876180	Kaushal Mehta Atit Shopping Ent.Pvt. Ltd. Shop No.10, Off Apna Bazar, D N Nagar, Andheri (W) Mumbai - 400 053	400000	389300	1000000
876181	Kashmira Mehta Atit Shopping Ent.Pvt. Ltd. Shop No.10, Off Apna Bazar, D N Nagar, Andheri (W) Mumbai - 400 053	400000	389300	1000000
876182	Rajesh Mehta Atit Shopping Ent.Pvt. Ltd. Shop No.10, Off Apna Bazar, D N Nagar, Andheri (W) Mumbai - 400 053	400000	389300	1000000
876185	Pina Shah 53, Juhu Alaknanda, Gulmohar, X – Road No.10, Juhu-Vile-Parle (W), Mumbai - 400 049	200000	194700	500000
876187	Dhayalal Shah 281, New Reay Road, Cabin No.11, Darukhana, Reay Road, Mumbai - 400 010	600000	584000	1500000
876188	Ramesh Shah 281, New Reay Road, Cabin No.11, Darukhana, Reay Road, Mumbai - 400 010	200000	194700	500000
	TOTAL	3000000	2919900	7500000

These 8 applicants applied for 30 lakhs shares and were allotted 29,19,900 shares on 14.05.96. It was found from the bank records that at the time of issue of the above stock invests, a single lien was marked on a fixed deposit standing in the name of one Rajesh Mehta (fixed deposit a/c no 559). On allotment, the amount of Rs. 75 lakhs was debited neither from this account nor from the account of the applicants, but from the account of one M/s RR Investments towards payment of application money for shares allotted to the above mentioned 8 applicants. It is found from the account details of M/s RR

Investments that it is a partnership concern and that its partners are Ramesh Shah, Pina Shah, Rajesh Mehta and Kashmira Mehta. These four people are among the 8 applicants who made applications through stock invests as mentioned above.

4.3 Stock invests issued by United Western Bank – Four stock invests for an amount of Rs 25 lakhs were issued by the Lower Parel branch of the United Western Bank, Mumbai in the name of 4 persons who have the same address as given in the following table.

Stock Invest No.	Name and address of the applicant	Number of shares applied	No. of shares allotted	Stock Invest Amount (Rs.)
016494	Vaishali V Mehta B - 42, Mehta House, Off New Link Road, Andheri (W), Mumbai - 400 058	250000	243300	625000
016495	Suresh B Mehta B - 42, Mehta House, Off New Link Road, Andheri (W), Mumbai - 400 058	250000	243300	625000
016496	Jasumati Mehta B - 42, Mehta House, Veera Ind.Estate, Off Link Road, Andheri (W), Mumbai - 400 058	250000	243300	625000
016493	Vipul Mehta B - 42, Mehta House, Veera Ind. Estate, Off Link Road, Andheri (W), Mumbai - 400 058	250000	243300	625000
	TOTAL	1000000	973200	2500000

The four persons made an application for 10 lac shares and were allotted 9,73,200 shares. The stock investor issued against a deposit of Rs 25 lakhs made in stock invest deposit account no 95/30. This was a joint account held by five persons including the four applicants and was introduced by M/s RR Investments. On allotment of shares to these applicants, the application

money was debited not from this deposit account but from the account of M/s RR Investment held in United Western Bank, Lower Parel branch.

4.4 Therefore, a total of 38,93,100 shares amounting to approximately 35% of the public issue has been funded by M/s RR Investments through the above stock invests.

4.5 On 14.5.96, the account of M/s RR Investments maintained with Bank of Rajasthan received a credit of Rs 100 lacs from the account of one M/s Deepal Corporation. One of the partners of M/s Deepal Corporation, Mr Rajesh Mehta was also a partner of M/s RR Investments. Of this amount Rs 75 lakhs was debited against the issue of 8 stock invests mentioned in para 4.2 above and the balance of Rs 25 lakhs was transferred to the account of M/s RR Investments maintained with United Western Bank, Lower Parel Branch on 14.05.96. This amount of Rs 25 lakhs was later debited from that account towards the four applications mentioned in para 4.3 above.

4.6 On the same day – 14.5.96, M/s Deepal Corporation received an amount of Rs.100 lacs from ASBIL through instrument no 002154 drawn on Times Bank.

4.7 On enquiry M/s Deepal Corporation had stated by its letter dated 18.06.2002 that the amount of Rs 1 crore received by it from ASBIL on 14.05.96 was in part payment of a loan given by it to ASBIL. It also stated that the loan given by it was secured by creating a lien on subscription money to be received by Times Bank in connection with the public issue. However, they say that copy of the lien letter is not available with them.

4.8 In the statement given to SEBI and recorded under section 11(3) of the SEBI Act on 10.06.2002, Mr. Ramesh Shah and Mr. Rajesh Mehta on behalf of themselves and as representing others have stated that the shares of ASBIL

allotted to them were sold to M/s Meeti Investments and Consultancy Services Pvt. Ltd. This company was shown as a group company in the prospectus of ASBIL.

4.9 In view of the above facts, summons were issued to the Managing Director of ASBIL and to Shri IB Lakhani, Shri PP Bhuta, Shri RK Irani and Shri AB Lakhani, who were directors of ASBIL as named in the prospectus, at the addresses given in the prospectus, to appear in connection with the investigation into the public issue of ASBIL. However, none of them have chosen to appear in response to the summons.

4.10 In response to SEBI's queries, the Ahmedabad Stock Exchange has vide its letter dated 1.7.2002 informed that ASBIL is "not complying with the Listing Requirement of our Exchange since October, 1999. They have not submitted the Annual Returns, Financial Results and any other documents during the year : 2000 – 2001, 2001 – 2002 and all the letters forwarded by our Exchange to the last known address of the company M/s. Anik Ship Breaking Industries Ltd. are also being returned undelivered and therefore it is a fit case to declare this company as a vanishing company". The case of ASBIL has accordingly been referred to the Vanishing Companies Cell of SEBI for further action.

5.0 Show Cause Notice

5.1 Pursuant to the above findings of investigation, it was decided to initiate action under section 11B of the SEBI Act against the directors of ASBIL. Therefore, show cause notices dated 08.08.2002 were issued to the above directors communicating to them the above facts and calling upon them to show cause as to why directions under section 11B of the SEBI Act should

not be passed against them including directions debarring them from accessing the capital market for a period of five years.

5.2 They were given a period of 15 days within which to submit their reply. However, none of them have replied to the show cause notices so far nor have communicated with SEBI.

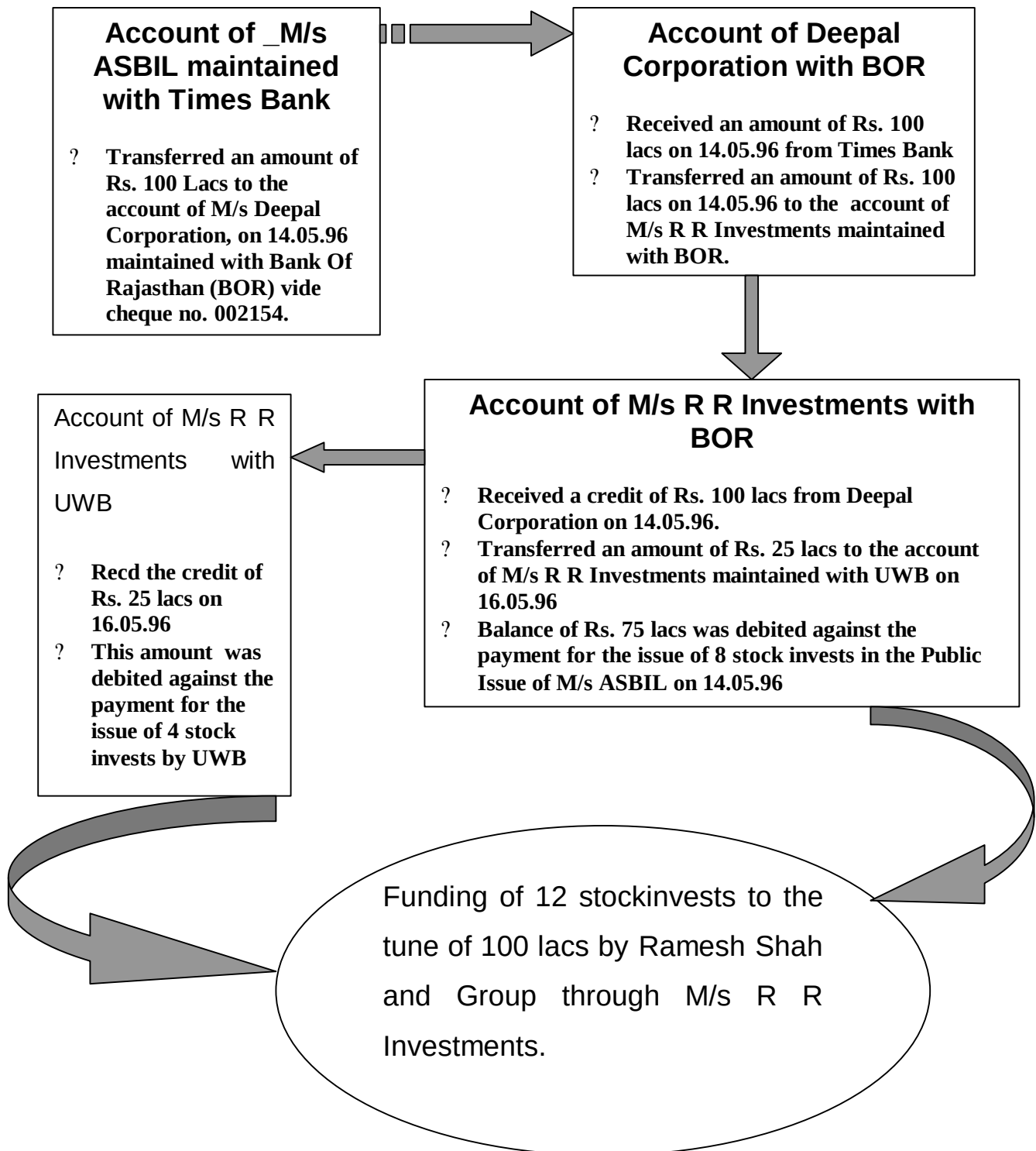
5.3 They were also given an opportunity of personal hearing before the Chairman on 14.09.2002, which was communicated to them by SEBI's letter dated 28.08.2002. The date for hearing was later postponed to 16.09.2002 and communicated to them by SEBI's letter dated 30.08.2002. However, none of them have chosen to appear before the Chairman despite the opportunity granted to them.

5.4 In above circumstances, it has been decided to proceed exparte against the above-named directors.

6.0 Consideration of the issues

6.1 The facts stated in paragraph 4 of this order have been established by contemporaneous records and books of account of the Registrar to the Issue, and the records of the Bank of Rajasthan and the United Western Bank, which are maintained by them in the ordinary course of their business.

6.2 The flow of funds has taken place as follows:



- 6.3 In this case, the entire issue has been staged managed by the company and its promoters. If 35% of the issue was not subscribed by the above mentioned applicants, the entire issue would have failed. 35% of the allotments have been made through finances indirectly made available by ASBIL itself. If the issue had failed due to non receipt of minimum subscription, the company would have been required to repay the application moneys paid by the other innocent investors as per section 69(4) of the Companies Act within the time specified therein. In default, the directors would have become jointly and severally liable to repay the money to the investors. This provision was intended to safeguard the amounts paid by the appellants until such time as the minimum subscription as disclosed in the prospectus is received by the company.
- 6.4 The SEBI (Disclosure and Investor Protection) Guidelines, 2000 specify that a minimum of 90% of the issue should be disclosed as the minimum subscription. Though the genuine subscriptions received (after excluding the above mentioned applicants) was way below this mark, the company has proceeded to make the allotments. This is a gross violation of section 69 of the Companies Act and the DIP Guidelines. The Supreme Court has held that retention of subscription money in violation of section 69(4) may amount to offences on part of the directors and promoters under sections 405 and 409 (Criminal breach of trust) of the Indian Penal Code where mens rea is established¹.
- 6.5 Section 77(2) of the Companies Act prohibits any public company from directly or indirectly financing the purchase or subscription by any person of its own shares. This provision was made to prevent trafficking by a company in its own shares, thereby influencing the price of its own shares.

¹ *Radhey Shyam Khemka v. State of Bihar*, [1993] 73 Com Cases 356.

In view of the facts found as detailed above, it is clear that the company and its directors have grossly violated this section.

7.0 Conclusion

- 7.1 In view of the grave nature of the violations, such events have the potential to destroy the investors confidence in the integrity of the primary markets. I am of the considered view that if the investor's interest in the primary market is to be revived, it is absolutely essential that in the future such occurrences do not take place.
- 7.2 It is felt in the above circumstances that unless the directors of ASBIL are debarred from accessing the capital market for a period of five years, they may again raise money from the investors through a similar bogus issue and the investors will be taken for a ride. However notwithstanding such direct debarring, the directors of ASBIL 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 ASBIL have controlling or substantial interest from directly or indirectly raising moneys from the capital market.
- 7.3 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 the directors of ASBIL, Shri A. B. Lakhani, Shri P.P. Bhuta, Shri C.P. Bhuta, Shri I.B. Lakhani and Shri R.K. Irani 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 the 23rd day of October, 2002.

G. N. BAJPAI
Chairman
Securities and Exchange Board of India