

SECURITIES AND EXCHANGE BOARD OF INDIA

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

IN THE MATTER OF CILSON FINANCE AND INVESTMENT LIMITED

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 1.6.2000, 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.**

2.0 Public issue by Cilson Finance and Investment Limited

2.1 Cilson Finance and Investment Limited (hereinafter referred to as CFIL) came out with a public issue of 10,00,000 equity shares of Rs 10/- each for cash at par through a prospectus dated 18.4.95. The issue opened on 23.5.95, the earliest closing date was 26.5.95 and the latest closing date 2.6.95. It has been stated in the prospectus that initial listing applications have been made to the Stock Exchanges at Delhi, Bombay, Magadh and Calcutta for permission to deal in shares. In page 9 of the prospectus, it was stated that the funds raised by the public issue would help to strength its infrastructure and increase its fund based activities, namely, leasing, hire purchase, placement of ICDs, bill discounting and making investments in the primary and secondary markets.

2.2 In page 10 of the prospectus, detailed financial projections are given for four years upto the year ended 31st March 1998. The profit after tax is projected to be (rupees in lacs) 0.86, 51.41, 80.21 & 100.68 and the book value (in rupees) is projected to be 10.04, 11.64, 12.95 & 14.90 respectively for the four years.

- 3. In the prospectus, the address of the registered office of CFIL is given as E 4/10, Malviya Nagar, New Delhi - 110 017. Shri CM Jha, Shri LK Jha, Shri BM Jha, Shri SC Jha and Shri LB Singh are named as the directors of the company. Their qualifications and experience are also mentioned.**

3.0 Cilson Finance and Investment Limited - a vanishing company.

3.1 After the said public issue, the shares of CFIL were listed at stock exchanges including its Regional Stock Exchange i.e., Delhi Stock Exchange. It has been found that CFIL 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, distribution schedule and other required reports, not furnishing financial results including Cash Flow Statements, Balance sheet and Profit & Loss Account, quarterly results etc., not furnishing details of AGM, Board meetings to the concerned Stock Exchange from 1996-97. No disclosure as required under regulation 8(3) of the Takeover Regulations was made.

- 2. The company also could not be contacted at its registered office by the Delhi Stock Exchange and as per the physical verification report of the exchange, the company "does not exist at the address of its Registered Office". 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). CFIL 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.**
- 3. The Registrar of Companies, NCT of Delhi & Haryana, has informed SEBI by a letter dated 19.6.2002, that the company had submitted its last balance sheet as on 31.3.1995 and annual report dated 21.10.1994. It was also informed that the ROC has launched prosecution against the company for offences under sections 159, 220 and 146 of the Companies Act, 1956. These facts prima facie show that CFIL fell under the criteria laid down by the CMC for identifying vanishing companies.**

4.0 Show cause notice

4.1 In view of the above, a show cause notice dated 13.7.1999 was issued by SEBI to the CFIL calling upon it to explain why action, including prohibiting CFIL 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. CFIL has responded by its letter dated 20.8.1999, stated that the address of the registered office of the company had been changed to "227A, 2nd Floor, Prakash Mohalla, East of Kailash, New Delhi - 110 065" and that failure to inform change of address was due to negligence of the

staff. It was also requested that the delay may be condoned and proceedings dropped. On receipt of this letter, the company was removed from SEBI's list of suspected vanishing companies, as it had responded to SEBI's show cause notice.

4.2 However on a physical verification carried out by the Delhi Stock Exchange (hereinafter referred to as DSE) at the instance of SEBI (communicated to SEBI vide DSE letter dated 27.12.1999), it was found that the company does not exist at the given address. SEBI had issued a letter dated 31.1.2001 to the company advising it to produce certain documents, which has also been returned undelivered.

4.3 The company had been given a personal hearing before the Chairman, SEBI on 30.11.2002 by a notice dated 11.11.2002. The said notice was sent to the said new address. However, the notice was returned with an endorsement 'wrong address'. No representatives of the company had turned up for the hearing on 30.11.2002. In view of the above circumstances, I deem that there has been sufficient service on the company of the hearing notice. 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 or from SEBI, 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 CFIL is a vanishing company as per the criteria laid down by the CMC for identification of vanishing companies.

4.4 Show-cause notices were also issued by SEBI on 13.7.1999 to all the Directors of CFIL, including Shri L.B. Singh, 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. The other directors, Shri BM Jha, Shri CM Jha, Shri LK Jha and Shri SC Jha have already been debarred from accessing the capital market for a period of five years by SEBI's order dated 17.12.1999.

4.5 By a letter dated 11.11.02, it was communicated to Mr. LB Singh that he would be given a personal hearing before the Chairman, SEBI on 30.11.02. Mr. LB Singh appeared in person for the hearing and also submitted a written reply. He has submitted that he resigned from the directorship of the company and his resignation was accepted on 21.12.1998. He has also enclosed copy of the Form 32 filed with the ROC in this regard. He has also stated that he was unaware of the company's activities and activities of its whole time directors and had not attended any Board meetings. He has been instructed to keep SEBI informed of the whereabouts of Shri CM Jha and other directors. His case is therefore being considered separately.

5.0 Consideration of issues

5.1 In view of the fact that CFIL has failed to submit any explanation to the said notice despite service of the same or 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. The failure of the company to submit the reports, annual accounts and other reports and information 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. Therefore, it would be necessary in the interest of investors and for healthy development of the securities market, that companies such as CFIL 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 preventive 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 *Radheyshyam 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 Securities Appellate Tribunal 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. This position has also been clarified by section 11(4) of the Act, as inserted by the SEBI (Amendment) Act, 2002.

6.0 Direction

6.1 Accessing the capital market by CFIL cannot be ruled out. It is felt in the above circumstances that unless CFIL is debarred from accessing the capital market for a period of five years, there is every possibility that it may again raise money from the investors and take them for a ride. SEBI vide its order dated 17.12.1999 debarred the following directors of the company, namely, Shri BM Jha, Shri CM Jha, Shri LK Jha and Shri SC Jha. However notwithstanding such direct debarring,

the directors of CFIL 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 the delinquent directors of CFIL 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 and 11B read with Sub Section (3) of Section 4 of the SEBI Act, hereby direct CFIL to disassociate itself 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 its directors mentioned in its prospectus, namely, Shri BM Jha, Shri CM Jha, Shri LK Jha and Shri SC Jha hold controlling or substantial interest shall not be allowed to raise funds from the capital market for a period of five years from the date of issue of this order.

Dated at Mumbai on this the 27th day of December 2002.

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