

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

IN THE MATTER OF DIRECTIONS TO M/S KSL AND INDUSTRIES LIMITED AND ITS PROMOTER UNDER SECTION 11(4) (b) READ WITH SECTION 11B OF THE SEBI ACT AND THE SEBI (FRAUDULENT & UNFAIR TRADE PRACTICES RELATING TO THE SECURITIES MARKET) REGULATIONS, 1992 IN THE MATTER OF PUBLIC ISSUE OF M/S PASHUPATHI CABLES LIMITED

1.1 M/s. Pashupati Cables Ltd. (hereinafter referred to as "PCL") came out with a public issue of 80,33,660 equity shares of Rs.10 each aggregating to Rs.803.36 lacs. (hereinafter referred to as "the issue") The issue opened on February 3, 1996 and closed on February 12, 1996. As per the 3 day and 78 day reports of the Lead Manager to the issue, M/s Kanoria Securities and Financial Services Ltd, the issue was fully subscribed.

1.2 Securities and Exchange Board of India (hereinafter referred to as SEBI) received from a complaint dated 27.5.1997 from one Mr. Pramod Kumar Agarwal alleging irregularities in the allotment and delivery of shares, subscription to the issue by way of dummy and fake applications and through fake stock invests and price-rigging at BSE. Chairman, SEBI vide Order dated 31.3.98 directed that an investigation be conducted into the said public issue and other allegations made by Shri Pramod Kumar Agarwal. Thereafter, further orders directing investigation were issued by Chairman, SEBI on 4.4.2000 and 19.12.2001.

1.3 As per the findings of the investigation report which was submitted on 31.5.2002, it was prima facie found that KS L & Industries Limited, formerly Krishna Texport (hereinafter referred to as "KSIL") had:

a. arranged finance to subscribe to the public issue of PCL to the extent of 60 lakh shares aggregating to Rs.300 lakhs i.e. around 80% of the net public offer.

b. acted in concert with PCL and Empey finance and Investment Pvt. Limited (hereinafter referred to as "Empey") with the objective of bailing out the issue and to get the shares of PCL listed on the BSE without any actual inflow of fund.

1.4 Show cause notices were issued to KSIL and its 4 promoters namely – Shri Ram Pratap Tayal, Shri Pravin K Tayal, Shri Navin K Tayal and Shri Sanjay K Tayal on 5.8.2002. Thereafter, KSIL was granted an opportunity of being heard in person before me on 16.9.2002. In their reply dated 20.8.2002, M/s. KSIL submitted that :

a. The following documents were not furnished to them

- (i) Copy of the complaint
- (ii) Summons for appearance to 12 applicants.
- (iii) Statement of Shri Manoj Maheshwari and Arvind Sharma
- (iv) Chairman's order dated 4.2.00
- (v) Communication dated 14.8.00

b. Shri Ram Pratap Tayal was not a director of KSIL.

c. KSIL replied on behalf of 12 investors, on their request for financial assistance. They requested State Bank of Indore to issue stock invests on behalf of the 12 applicants towards subscription in the said public issue. After issuance of the stock invests, the applicants decided to withdraw their application and they did so with intimation to KSIL prior to closing of the issue. Upon receipt of the withdrawal applications, the Registrars to the Issue and PCL informed the applicants that there would be no allotment in respect of these applications and that the applications had been rejected. In spite of the said fact, PCL deliberately and fraudulently encashed the stock invests. The amounts under the stock invests were refunded after a long time and after repeated follow up. Further, since PCL did not allot any shares to the applicants and hence there being no purchase of the shares by the applicants or KSIL, there was no contract between the applicants and PCL. Hence, KSIL was entitled to receive application money for and on behalf of the applicants.

d. The allegation that SEBI received letters from the applicants informing about withdrawal of the application is incorrect. The reasons for non appearance of the applicants is to the knowledge of the applicants alone and KSIL cannot be blamed for their absence. Further, Shri Manoj Maheshwari is no longer a employee of KSIL.

e. The allegation of KSIL using the names of the 12 applicants while applying in the said issue is not borne out by the stock invest register nor can an inference be drawn in this regard from the documents enclosed with the show cause notice.

f. They as well as the applicants were aware that all material times, once a stock invest is issued, payment against the same cannot be stopped by informing the bankers. Further, PCL as well as Registrars to the issue assured the applicants that the stock invest would not be encashed and that they would be returned. In view of the above, there was no possibility or desirability of requesting bankers to 'stop payment.'

g. The letter dated 27.4.98 issued by the State Bank of Indore to SEBI and Annexure Nos. IV & V to the show cause notice clearly demonstrates the incorrectness of the allegation. The comparison of the three charts contained in Annexures III, IV & V clearly show the inconsistency of the allegation of rerouting money by PCL to KSIL and of bailing of the issue. It is clear from the date of clearances of the stock invests, date of credit received in the account of PCL, date of debit in the accounts of PCL and the date of issue of pay orders of EMPEY that the aforesaid dates do not tally with one another.

h. No shares were issued in favour of any of the 12 applicants and hence there is no basis for coming to a conclusion that shares would have been offloaded in the open market at a later stage to deceive common investors.

i. The action which is contemplated against KSIL is an action under Section 11B of the SEBI Act and the said section does not apply to KSIL or any person mentioned in the show cause notice because

(i) it is not a person or Feed2 of persons referred to in Section 12 nor associated in the security market except as investor.

(ii) None of the contents of the show cause notice are in respect of any of the matter/s stipulated in the Section 11(A) of the SEBI's Act.

In the course of hearing before me, counsel for KSIL also submitted that SEBI cannot impose penalties under Section 11B of the SEBI Act. In this regard, they have referred to the order of the Securities Appellate Tribunal in appeals preferred by M/s. Sterlite Industries (I) Ltd. and M/s. BPL Ltd.

1.5 Subsequently, with a view to clarify the nature of the directions proposed to be given, a further show cause notice was issued in continuation of the earlier one to KSIL on 15.1.2003. In the said notice after narrating the facts of the matter and allegations of irregularities and violations, it was mentioned that on the basis of investigations conducted by SEBI, it was revealed that the whole facade of over subscription was planned and executed for the purpose of creating an illusion of over subscription merely for the purpose of getting the shares of PCL listed. In the circumstance, as a measure of investor protection and in order to maintain the integrity of the securities market, it was necessary to restrain persons who had indulged in acts which tended to lower the integrity of the securities market from accessing the capital market.

In their reply dated 3.2.2003, M/s. KSIL stated that :

a. The showcause notice refers to alleged acts/violations allegedly committed in February, 1996 i.e. about 7 years back. The notice is therefore grossly delayed and on that ground is required to be recalled.

b. The apex court (sic) in a number of pronouncements has held that delay in investigation / enquiry would itself vitiate the investigation / enquiry.

c. SEBI had issued a showcause notice dated 5.8.2002 calling upon them to show cause why directions under Section 11 and 11B of the SEBI Act should not be issued. The present showcause notice is, therefore, common in so far as directions under the aforesaid Sections are concerned. They had given a detailed reply to the aforesaid showcause notice. They reiterate and confirm the statements / contentions raised in their said reply and the same may be treated as part of this reply also since the present showcause notice is in respect of the same alleged acts/violations.

d. In the course of hearing before the Chairman, they had pointed out certain judgements based upon which it was submitted that no action could be taken against them or their directors under Section 11 and 11B of the SEBI Act.

e. Since the earlier note is also issued in respect of the same acts and no allegation in respect of the SEBI(Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 was made, they would be justified in presuming that SEBI does not intend to hold them guilty for the violations alleged to have been committed by them.

f. The findings of SEBI in respect of the alleged violations which would be given in the order passed by Chairman in the pending proceedings is bound to have an impact upon the present showcause notice.

g. They have not been furnished with a copy of the investigation report nor the material upon which the showcause notice has been issued. In the absence of the aforesaid, calling upon them to reply to the showcause notice is unjust and against the principles of natural justice.

A further opportunity to be heard in person was granted to KSIL on 25.3.2003. In the course of hearing KSIL was advised that they could submit further written submissions if they so decide and accordingly they have submitted written submissions vide letter dated 3.4.2003. In the said submissions, KSIL have contended / submitted that :

a. A reply dated 3.2.2003 has been sent to the notice dated 15.1.2003 and contentions raised in their previous reply to show cause notice dated 5.8.2002 may be treated as part of this reply. The said reply may also be treated as part of present submissions.

b. Despite specific requests till date they have not been furnished with copy of the investigation report on the basis of which the show cause notices have been issued and in the absence of the said report, the notices are unjust and against the principles of natural justice.

c. The showcause notice refers to a violation that was allegedly committed in February, 1996. The showcause notice therefore suffers from gross delay and laches.

d. No violation of the SEBI(Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 have been committed and on reading the regulation, none of them apply to the allegation set out in the showcause notice.

2.0 I have considered the documents on record, the replies of KSIL and the promoters, the submissions made during the hearings before me and thereafter.

2.1.1 I note that as against the net offer of 80,33,600 shares, applications received were for 80,95,000 shares i.e. the issue was over subscribed 1.007 times. I also note that of the applications received, 14 applications were made for 5 lakh shares each aggregating to 70 lakh shares i.e. 87.14% of the net offer and that of these 14 applicants, 12 had the same address i.e. Kamat Industrial Estate, 396, V.S. Marg, Prabhadevi, Mumbai 400025 and were accompanied by stock invests of Rs. 25 lakhs each, issued by the State Bank of Indore, Dadar, Mumbai. The remaining 2 applications had the same address i.e. 7, Shanteri Sadan, 49, R.A. Kidwai Road, King Circle, Mumbai 400019. These applications were accompanied by stock invests of Rs.25 lakhs issued by The State Bank of Madura, Matunga, Mumbai. The details of the applications accompanied by Stockinvests issued by State Bank of Indore are as under:

Sl.No.	Name of Applicant	S I No.	S I Date	Amount	Clearing Date
1.	Manoj Maheshwari	228434	9.2.1996	25,00,000	23.5.1996
2.	Paresh Soni	228435	9.2.1996	25,00,000	24.5.1996
3.	Madhukar Lad	228436	9.2.1996	25,00,000	25.5.1996
4.	Arvind Sharma	228437	9.2.1996	25,00,000	28.5.1996
5.	Ganesh Tambe	228438	9.2.1996	25,00,000	30.5.1996
6.	Rajan Tawade	228439	9.2.1996	25,00,000	31.5.1996
7.	Deepak Manjrekar	228440	9.2.1996	25,00,000	1.6.1996
8.	Purusha Das	228441	9.2.1996	25,00,000	4.6.1996
9.	Nandu Patola	228442	9.2.1996	25,00,000	5.6.1996
10.	Rajesh Chavan	228443	9.2.1996	25,00,000	6.6.1996
11.	Ganesh Thote	228444	9.2.1996	25,00,000	7.6.1996
12.	Sunita Chavan	228445	9.2.1996	25,00,000	8.6.1996

As per the records of stock invests issued by State Bank of Indore, Dadar all 12 Stock invests were issued against a certificate of Deposit in the name of KSIL bearing Receipt No.634 dated 8.2.96 for Rs.500 lakhs.

2.1.2 On a scrutiny of statement of accounts of PCL with Union Bank of India, Nariman Point Branch (A/c No. CA-26148), I note that the amounts received by way of credit through realization of the stock invests was immediately transferred to the account of Empey at the same branch (A/c No.CA-1567). Further, the funds so received were immediately routed to the account of KSIL by way of pay orders. The details of the same are as follows:

Date of purchase	Pay Order	In favour of	Amount	Credited at
21.5.96	75470	KSIL	2500000	SBI, Dadar
23.5.96	75496	KSIL	2500000	SBI, Dadar
24.5.96	75502	KSIL	2500000	SBI, Dadar
25.5.96	75529	KSIL	2500000	SBI, Dadar
28.5.96	75552	KSIL	2500000	SB OF Indore, Dadar
30.5.96	75586	KSIL	2500000	SB OF Indore, Dadar
31.5.96	75621	KSIL	2500000	SB OF Indore, Dadar
1.6.96	75645	KSIL	2500000	SB OF Indore, Dadar
4.6.96	75680	KSIL	2500000	SB OF Indore, Dadar
5.6.96	75724	KSIL	2500000	SB OF Indore, Dadar
6.6.96	75745	KSIL	2500000	SB OF Indore, Dadar
7.6.96	75753	KSIL	2500000	SB OF Indore, Dadar

2.1.3 It is alleged that KSIL had provided funds to its employees and associated persons to subscribe to the public issue in order to ensure that the minimum subscription required was received and after closure of the issue, the applications were withdrawn, but the stock invests were encashed by PCL and the money received was credited to KSIL.

2.1.4 KSIL, in their replies have stated that:

a) A comparison of the 3 charts contained in annexures III, IV & V of the show cause notice show the inconsistency of the allegation of rerouting of money to KSIL by PCL and of bailing out the issue. It is clear from the dates of clearance of stock invests, date of credit received in PCL's account, date of debit in PCL's account in favour of EMPEY and the date of issue of pay orders by EMPEY that the dates do not tally with one another.

b) The Company had only financed money for purchasing shares to the various applicants as named in the show cause notice dated 5.8.2002.

c) In spite of the request made by the 12 applicants to withdraw their application, PCL deliberately and fraudulently encashed the stock invest. The amounts under stock invest were refunded only after repeated follow up. Therefore, PCL did not allot any shares to the applicants and thus there was no purchase of shares by the applicants or KSIL since the offer of purchase was withdrawn by the applicants before acceptance by PCL, there was no contract between them and therefore KSIL was entitled to receive the application money for and on behalf of the applicants

d) They as well as the applicants were aware at all material times that once a stock invest is issued by a banker, payments cannot be stopped. Further PCL as well as the Registrars to the issue assured the applicants that the stock invest would not be encashed and would be returned back. In view of the above, there is no question of requesting the bankers to stop payment; the conduct of KSIL and bankers is bonafide.

e) The allegation of KSIL using the names of 12 applicants while applying in the various public issues is not borne out by the stock invest register nor can any inference be drawn in this respect from the documents enclosed with the show cause notice. Even if it is assumed that the register shows the names of the persons used by KSIL, only 4 out of 12 applicants figure in the names mentioned on the stock invest

f) Shri Manoj Maheshwari is no longer an employee of KSIL; similarly, Shri Arvind Sharma is not associated with KSIL.

g) No proper steps have been taken to secure presence of the applicants in exercising powers under Section 11(3) of the SEBI Act and the presumption drawn that they are either non existent or employees is without any basis apart from being patently

contradictory and that too in the face of specific denial from the Company.

2.1.5 The reply of KSIL is unsatisfactory. I note that applications were made by 12 applicants for a total of 60 lakh shares using 12 stock invests issued by State Bank of Indore, Dadar Branch. These stock invests were issued against the security of Deposit in the name of KSIL. I also note that of the 12 applicants, 2 appeared before the Investigating Officer and submitted that they had borrowed Rs.25 Lakh each from KSIL in order to apply in the issue. KSIL in their replies have also admitted that they have provided finance to make applications in the issue. If, as stated in their reply, KSIL had only extended finance to the applicants to purchase the shares, the refund by the company should have been credited to their respective accounts. But a perusal of the account statement of PCL shows that funds from the encashment of the stock invests were transferred to KSIL and not the applicants for the shares. I find the statement of KSIL that since no shares were allotted to the applicants, there was no contract between the applicants and PCL and hence KSIL was entitled to receive the refund, as unsatisfactory. Since KSIL was not an applicant and merely provided funds to the applicants, they had no privity of contract with PCL and were not entitled to any refund. Moreover, it is significant that these applicants who applied for 80% of the issue size withdrew their applications immediately after closure of the issue.

2.1.6 I note that 2 of the applicants, Manoj Maheshwari and Arvind Sharma have stated that they were employees of KSIL and that they knew that other employees had also applied to the issue. Further, they have also admitted to using the address of KSIL in the application. Further, KSIL have stated that Manoj Maheshwari is no longer their employee. In view of the above, I find that KSIL has made applications through its employees. I reject the contention of KSIL that proper steps were not taken to secure presence of the applicants and find that summons were issued to the applicants several times and all necessary steps were taken to secure their presence and record their statements.

2.1.7 The contention of KSIL that PCL deliberately and fraudulently encashed the stock invests and that the amount under the stock invests were refunded only after repeated follow up are not acceptable since the stock invests were encashed only in May and June 1996 whereas the applications were withdrawn in February 1996 soon after closure of the issue. Moreover, I note that although the 12 applicants who obtained stock invests from State Bank of Indore, allegedly withdrew the applications and informed KSIL of the same, neither they nor KSIL instructed the respective banks to stop payment in respect of the stock invests

2.1.8 In view of the above, I find that KSIL had provided funds to the 12 applicants who were their employees and so within their control, to make applications to the extent of 60 lakh shares in order to circumvent the requirement of minimum subscription and that after closure of the issue, received back the money from PCL.

2.1.9 In this regard, Regulation 6 (a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 1995 provides that:

"Prohibition on Unfair Trade Practice relating to securities

6. No person shall –

(a) in the course of business, knowingly engage in any act or practice which would operate as a fraud upon any person in connection with the purchase or sale of or any other dealings in, any securities..."

I find that KSIL has acted in such a manner as to create an impression of full subscription to the public issue of PCL and in a fraudulent manner in contravention of the said regulation and thereby in a manner detrimental to the interest of investors and the securities market.

3.0 I note Shri Ram Pratap Tayal, in his reply dated 20.8.2002 stated that he was not a director of KSIL during the relevant period and that he is not a director now and is not associated with KSIL in any manner; M/s. Pravin K. Tayal, Shri Navin K Tayal and Shri Sanjay K Tayal have vide their letter dated 20.8.2002 submitted that they reiterate confirm and adopt the reply given by KSIL. In their reply, KSIL stated that Shri Ram Pratap Tayal was not a director of KSIL at the relevant time i.e. 1995-96 nor at any time and that he was not in any way concerned with the affairs of KSIL much less the applications for subscription of PCL. In view of the above I find that no directions need to be issued to Shri Ram Pratap Tayal in the matter.

4.0 I note that Show Cause Notice dated 15.1.2003 (hereinafter referred to as "second notice") has been issued in continuation of the show cause notice dated 5.8.2002 (hereinafter referred to as "the earlier notice"). In the course of hearing before me held on 16.9.2002, counsel for KSIL besides reiterating contentions in the written submissions also raised the following contentions on question of law:

(a) SEBI cannot invoke Section 11B of SEBI Act for imposing penalties.

(b) Direction not to access the capital market is a penalty and hence cannot be passed in view of the orders of Securities Appellate Tribunal in appeals filed by BPL and Sterlite.

(c) It was strongly contended that SEBI cannot ignore the Appellate Authorities order which amount to denial of justice and is further more destructive of the basic principles in the administration of justice based on a hierarchy of courts.

(d) He also pointed out that there was no mention of any provision of law that was violated by the noticees in the show cause notices.

Section 11B of the SEBI Act confers powers to issue directions upon SEBI. The directions may be issued by the board:

a) in the interest of investors or orderly development of Securities Market or;

b) to prevent to affairs of an intermediary or other person referred to in Section 12 being conducted in a manner detrimental to the interest of investors or securities market or;

c) to secure the proper management of any such intermediary or person.

KSIL had raised the contention that SEBI cannot invoke Section 11B for imposing penalties and a direction not to access the capital market is in the nature of a penalty and therefore, the same cannot be issued under section 11B. They also contended that the Securities Appellate Tribunal (SAT) in its order in BPL and Sterlite had held as much and therefore, SEBI cannot act in a manner derogatory to the order of the Tribunal.

4.1 By falsely suggesting that there was an oversubscription of an issue when in fact there was a shortfall in subscription, KSIL was acting in a manner that was harmful to the interest of the investors and which tended to lower the credibility of the securities market and adversely effect the confidence of the investors. It was therefore necessary to prohibit KSIL from further dealing in securities or otherwise being associated with the securities market in order to restore the confidence of the investors in the securities market. In view of the above, it was necessary to clarify that the directions sought to be issued were in the nature of measures proposed to be taken by SEBI for investors protection and in order to maintain the integrity and credibility of the securities market. Therefore, the second show cause notice was issued. It was also specifically stated in the second notice that the same is a further show cause notice. Further, KSIL, in their reply dated 3.2.2003 have stated that they reiterate and confirm their contention/statements raised in their reply dated 20.8.2002 and that the same may be treated as a part of this reply also. Having stated that their reply to the earlier notice may be treated as part of their reply to the second notice and thus accepted that the second notice is a continuation of the earlier one, it is not open for KSIL to contend that the second notice constitute separate proceedings for which separate orders shall be passed.

4.2 In their reply dated 3.2.2003, M/s.KSIL have referred to the following decisions in order to contend that no action can be taken against them or their directors under Section 11 & 11B of the SEBI Act:

- a. Union of India vs Kamalakshmi Finance Corporation Ltd. AIR1992SC711
- b. Bhopal Sugar Industries Ltd. vs Income Tax Officer, Bhopal AIR1961SC182
- c. m/S. East India Commercial Co. Ltd., Calcutta v/s.Collector of Customs, Calcutta AIR1962SC1893
- d. Punalur Paper Mills Ltd. v/s. Assistant Collector of Central Excise 1989 (39) ELT 11(Kerala)
- e. Appeal 20/2001 – Steeline Industries (India) Ltd. v/s.SEBI
- f. Appeal 14/2001 to 19/2001 – BPL Ltd. v/s. SEBI.

In their submissions dated 3.4.2003, subsequent to the hearing on 25.3.2003, M/s.KSIL have referred to the judgements of the Securities Appellate Tribunal in Sterlite Industries India Ltd. vs SEBI and BPL Ltd. vs SEBI. I note that in the judgements of the Securities Appellate Tribunal, it has been held that a penalty cannot be imposed in exercise of powers under Section 11B of the SEBI Act. However, the directions sought to be issued in the instant case are in the nature of measures for protecting the interest of investors and in order to ensure the integrity of the securities market. M/s.KSIL has indulged in activities that were planned and executed for the purpose of creating an illusion of over subscription merely for the purpose of getting the shares of PCL listed on the stock exchange. By falsely suggesting an over subscription when in fact there was a shortfall in subscription, KSIL has deceived the general public and stock exchanges. Further, the actions of KSIL have tended to lower the integrity of the securities market and sought to adversely affect the confidence of investors and the credibility of the securities market.

5.0 KSIL has also raised a contention that no punitive action can be taken against company and the persons against whom the show cause notice has been issued under section 11 and 11B of the SEBI Act, 1992 in view of the judgements of the Securities Appellate Tribunal (SAT) in Sterlite Industries India Limited Vs SEBI and BPL Ltd Vs SEBI. In this regard, I note that the SAT in Sterlite Industries (India) Ltd Vs SEBI has held that section 11B does not empower SEBI to impose penalties and that preventing the appellant (in that case) from accessing the capital markets amounted to a penalty. However, in the said decision, SAT has also held that appropriate directions can be issued by SEBI under Section 11B of the SEBI Act for the purpose of protecting the interest of investors etc. I find that in the facts and circumstances of the present case, it is necessary in the interest of investors and the safety and integrity of the securities market, to prohibit KSIL and its promoters from being associated with the securities market. Therefore, by issuing directions under Section 11 and 11B of the SEBI Act, SEBI would not be acting in derogation of the orders of the SAT in the matter of Sterlite Industries Ltd. v/s SEBI or other decisions of like nature.

6.0 Therefore, in exercise of powers conferred on me under Section 4(3) read with Section 11 and 11B of SEBI Act and Regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, I, hereby, direct that KSL and industries Limited and its promoter directors namely – Shri Pravin K Tayal, Shri Navin K Tayal and Shri Sanjay K Tayal , shall dissociate themselves from the capital market for a period of 2 years and that the aforesaid persons are also prohibited from dealing in securities for a period of 2 years.

This order shall come into effect immediately.

G. N. BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA

Date: June 18, 2003.

Place: Mumbai