

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

IN THE MATTER OF DIRECTIONS UNDER SECTION 11 READ WITH SECTION 11B OF THE SEBI ACT, 1992 TO BODH GAYA CERAMICS LIMITED AND ITS DIRECTORS

WTMO/6/CFD/09/03

1.0 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 were not traceable. These companies were identified as vanishing companies. A Task Force for each region was also set up consisting of Officers of DCA, SEBI and the concerned Stock Exchange 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 and companies that met the following criteria were to be considered as vanishing companies:

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 registered office address at the time of Stock Exchange inspection.

1.3 The Magadh Stock Exchange (MSE) vide letter dated 16.10.02 stated that Bodh Gaya Ceramics Ltd (hereinafter referred to as "BGCL") could not be traced at its Registered Office address during the physical verification conducted by MSE. In the meeting of the co-ordination and Monitoring Committee held on 25.2.2003, BGCL was identified as one of the vanishing companies in the Eastern Region. Further, in the meeting of the Calcutta Task Force held on 18.6.2003 it was decided to initiate prosecution and lodge First Information Report (FIR) against BGCL.

2.0 Public issue by BGCL

2.1 BGCL came out with a public issue of 4,94,900 equity shares of Rs 10/- each for cash at par through a prospectus dated 6.8.1990. The issue opened on 19.9.1990, the earliest closing date was 22.9.1990 and the latest closing date 1.10.1990. It has been stated in the prospectus that applications have been made to the Stock Exchanges at Patna and Mumbai for listing of the shares.

2.2 In the prospectus, the address of the registered office of BGCL is given as D/69, Srikrishnapuri, Patna – 800 001. The directors of BGCL included :

1. Shri Brajesh Kumar Sinha

Chairman

M/s. Bodh Gaya Ceramics Ltd.

84/40, Officers Flat

Bailey Road,

Patna

2. Dr. Gyan Dhar Singh

Director

M/s. Bodh Gaya Ceramics Ltd.

B/173, Gandhi Vihar

Police Colony, Anisabad

Patna – 800 002

3. Shri Harinandan Prasad Sinha

Director

M/s. Bodh Gaya Ceramics Ltd.

B/N Lane, Mithapur,

Patna – 800 001

4. Shri Harshad Nandlal Bhutta

Director

M/s. Bodh Gaya Ceramics Ltd.

Samudri – 17, Ashok Nagar Society,

Mumbai 400 044

5 Shri Mumtaz Alam

6 Dr. Mera Gharpure

7 Shri Ashok Ganphule

8 Late Achyut Ganphule

3.0 Bodh Gaya Ceramics Limited – a vanishing company.

3.1 After the said public issue, the shares of BGCL were listed at the Stock Exchange of Mumbai and Magadh Stock Exchange, its Regional Stock Exchange. It has been found that BGCL has not been complying with various clauses of the Listing Agreement entered into by it with the Stock Exchange 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. 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). BGCL was delisted from the Magadh Stock Exchange w.e.f. 18.12.2001. This was communicated to SEBI by the Magadh Stock Exchange vide its letter dated 22.8.2003.

4.0 Show cause notice

4.1 In the meeting of the co-ordination and monitoring committee held on 25.2.2003, the name of BGCL was added as one of the vanishing companies in the Eastern Region. In view of the above, a show cause notice dated 12.5.2003 was issued by SEBI to BGCL calling upon them to explain why action, including specific directions under section 11B of the SEBI Act prohibiting BGCL 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,. Similar show cause notice dated 12.5.2003 were also issued to the directors. No reply was received from the promoters or the directors.

4.2 BGCL and its directors were also given an opportunity of a personal hearing before me on 14.8.2003. BGCL and its directors namely, Shri Brajesh Kumar Sinha, Dr. Gyan Dhar Singh, Shri Harinandan Prasad Sinha and Shri Harshad Nandlal Bhutta failed to respond and appear for personal hearing. However, 3 of the directors mentioned in the prospectus – Mumtaz Alam, Dr. Meera Kharpure and Ashok Ganphule appeared in person.

4.2.1 Shri Mumtaz Alam, who was the nominee of Bihar State Credit & Investment Corporation (BSCIC), appeared before me and submitted that BSCIC which had granted a term loan of Rs.60.00 Lakhs to BGCL, had nominated him on the Board as its nominee director. He had no shareholding in the company and that he was withdrawn from the Board and in his place one C. Singh had been nominated. He also submitted that the project for which the loan was granted was incomplete and that the main promoters had fled. He further submitted that Bank of Baroda had obtained a decree against the company from the Debt Recovery Tribunal and that BSCIC had advertised for sale of assets of the company in March 2002. He also submitted a compilation of documents in respect of the company.

4.2.2 Dr. Meera Gharpure and Ashok Ghanpule also appeared before me and was represented by their counsel, Shri K K Sardal. Counsel submitted that Dr. Meera Gahrpure had resigned from the Board as director in 1994 and that Shri Ashok Ganphule also ceased to be director from 1994. They further submitted that Balance sheets had been filed till 1993 and that thereafter, due to the maladministration by the promoters and non-intervention by BSPCDC which was the public sector undertaking that held 26%, they had relinquished office as directors.

5.0 Consideration of issues

5.1 In view of the fact that BGCL and its directors namely Shri Brajesh Kumar Sinha, Dr. Gyan Dhar Singh, Shri Harinandan Prasad Sinha and Shri Harshad Nandlal Bhutta have failed to submit any explanation to the said notice (despite service of the same) and appear for a hearing, 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 In respect of Shri Mumtaz Alam, I find that since he was only a nominee director and since he has been replaced by another officer of BSCIC, no action needs to be taken against him.

5.3 In respect of Dr. Meera Gharpure and Shri Ashok Ganphule, I find that while they were directors of BGCL, the company had filed balance sheets and otherwise complied with requirements of the listing agreement. Since they are no longer directors of the company, I find that no action needs to be taken against them.

5.4 In respect of Shri Achyut Ganphule, I note that SEBI has received a letter dated 31.7.2003 from his daughter, Ms S Ganphule informing that he has expired.

5.5 I further note that 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 it erodes the confidence of the investors and the credibility of the capital market, which calls for suitable preventive action. Therefore, it is necessary in the interest of investors and for healthy development of the securities market, that

companies such as BGCL 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.

5.6 I also note that the Supreme Court in RadhGeyshyam Khemka v. State of Bihar[1], 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...."

5.7 I further note the Securities Appellate Tribunal (SAT), in Integrated Amusements Ltd. v. SEBI[2], 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, in Status Management Services Ltd. v. SEBI, [2000] 26 SCL 491. the SAT 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. I also note that clause 17.1(b) of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 also empower SEBI to issue such directions.

6.0 Direction

6.1 In view of the above, I find that unless BGCL and its directors who neither responded nor appeared for personal hearing before the member, are restrained 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 defraud investors. It is possible that the directors of BGCL 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 restraining companies in which directors of BGCL have controlling or substantial interests from directly or indirectly raising moneys from the capital market.

6.2 Therefore, in exercise of the powers conferred upon me under section 11(1) & (4) and 11B read with Section 19 of the SEBI Act, I, hereby direct Bodh Gaya Ceramics Limited and its directors, Shri Brajeshkumar Sinha, Dr. Gyan Dhar Singh, Shri Harinandan Prasad Sinha and Shri Harshad Nandlal Bhutta, 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.

Date : 25.09.2003

T M Nagarajan

Place: Mumbai

Whole Time Member

Securities and Exchange Board of India