

SECURITIES AND EXCHANGE BOARD OF INDIA

DIRECTIONS UNDER SECTION 11B READ WITH SECTION 11 OF SECURITIES AND EXCHANGE BOARD OF INDIA, ACT, 1992 AGAINST SHRI BHARAT N. VAISHNAWA IN THE MATTER OF TRIDENT STEELS LTD

BACKGROUND

1. Trident Steels Ltd (hereinafter referred to as company) was having its registered office at H-8/9, New MIDC Industrial Area, Jalgaon 452 003 and its administrative office at 205, Arihant Ahmedabad Street, Carnac Bunder, Mumbai – 9. The company came out with a public issue of 52,00,000 shares of Rs. 10/- each at a premium of Rs. 3.50 per share aggregating to Rs. 7,02,00,000. The lead managers to the issue were Bank of Baroda and Apple Industries Ltd. M/s Online Share Management Services Pvt Ltd, acted as Registrar to the Issue. The issue opened on November 26, 1993 and closed on December 01, 1993.

2. Capital Structure of the Company

Prior to the public issue

Rs. 75,00,000 Divided into 7,50,000 equity shares of Rs. 10/- each held by present and erstwhile directors and their friends / relatives.

Rs. 20,00,000 2,00,000 – 6% redeemable preference shares of Rs. 10/- each, issued on August 20, 1988

Public Issue

Rs. 5,20,00,000 52,00,000 shares of Rs. 20/- each

Out of which 19,000 shares reserved for preferential allotment to employees. 12,48,000 shares reserved for preferential allotment to NRI/OCB on repatriation basis.

Total Post issue capital Rs. 8,05,00,000

3. As per the prospectus, the following persons have been named as directors :

1. Mr Ashok Agarwal - s/o Shri Rameshwar Agarwal
2. Mr Suresh Agarwal - s/o Shri Rameshwar Agarwal
3. Mr Ajay Agarwal - s/o Shri Rameshwar Agarwal
4. Mr Vijay Vishnu Sali - s/o Shri Vishnu Sali
5. Mr Kuldip and Parulekar - s/o Shri Nandkumar Parulekar
6. Dr. A.Y Degani - s/o Shri Yahya Degani
7. Mr Bharat N. Vaishnawa - s/o Shri Niranjana Prasad Vaishnawa
8. Mr Hemant Hemnani - s/o Shri Ramdas Hemnani
9. Mr Anil Sharma - s/o Shri Sharma

4. The directors mentioned at 1, 2 and 3 are sons of Shri Rameshwar Agarwal. The prospectus was signed by Mr. Ajay Agarwal on behalf of all the directors except Mr Hemant Hemnani, as their constituted Attorney. Therefore, Mr Ajay Agarwal appears to be the chief promoter of the company. The equity shares of the company were listed on the BSE with effect from February 15, 1994.

5. The Complaint

SEBI had received a complaint from Mr Radheshyam Khandelwal, a member of the BSE, alleging the following :

• Non payment of Dividend :

The company mentioned in the prospectus about declaration of dividend in the previous year. The same was certified by Bank of Baroda in its due diligence certificate. It is alleged by the complainant that almost 2000 investor complaints regarding non receipt of dividend had been filed either before the Bombay High Court or the Investor Service Cell of the BSE. It is further alleged by the complainant that the company, while replying to the complaints, stated that it had not declared any dividend during the preceding year. Therefore, the company is alleged to have committed a deliberate act of mis-stating of the facts in the prospectus and thereby misguided the investors.

• Non Delivery of Shares

It is alleged by the complainant that the company had deliberately contravened the provisions of Section 113 (1) of the Companies Act, 1956 by not dispatching the share certificates to the applicants even after the lapse of almost 2 ½ years after the closure of the public issue.

• Mis – Statement in the prospectus

It is alleged by the complainant that the directors of the company had pledged their personal holdings of 7,50,000 shares to the Bank of Baroda while availing an increase in the credit limit of the company for the purpose of working capital requirements. It is alleged that the directors Mr A.A Kazi and Dowell Leasing and Financing Ltd had given an undertaking to the Bank of Baroda for non – disposal of their shares which formed part of the above mentioned 7,50,000 share. But the same was not disclosed by the company in its prospectus, while filing it with SEBI for the purpose of coming out with a public issue. Therefore, this fact was not reported by the BSE in its notice issued to the members at the time of granting listing permission to the shares of the company. As a result, the complainant, who was a member of the BSE, had sold the shares of the company which included some shares forming part of the above mentioned 7,50,000 shares bearing distinctive nos. from 1 to 7,50,000. The complainant also stated that he had made payments to his clients who had delivered the above mentioned shares. Subsequently, objections were raised by the company and Bank of Baroda stating that the above mentioned shares formed part of the undertaking for non disposal given by the directors of the company at the time of taking loans from the bank. Therefore, the complainant alleged that the company had violated SEBI's guidelines for disclosure and investor protection by hiding an important aspect of its capital structure and thus misguided the investors.

• **Non - Transfer of Shares :**

The complainant had sold some shares out of the said 7,50,000 shares and delivered them to the exchange. However, the said shares were later returned to the complainant as bad delivery. The company refused to transfer the said shares on the ground that the same were fake / forged shares. However, the distinctive nos. of the shares were between 1 and 7,50,000 and the same were already acknowledged by the company as forming part of its share capital in its prospectus. Therefore, the complainant alleged that the company had some malafide intentions in denying the transfer of shares. On one hand, the company had pledged the same shares for availing loans from Bank of Baroda and gave an undertaking for non disposal and on the other hand, the company claimed the same shares to be fake / forged. Pursuant to the complaint, SEBI conducted an investigation to find out the veracity of the allegations made by the complainant. The investigation concluded that the company had committed the following irregularities such as non disclosure in the prospectus about the fact of pledging 7,50,000 shares with Bank of Baroda by the promoters for the purpose of availing the extended credit facility, non transfer of the shares when they were lodged for transfer by the purchasing parties and misguiding the prospective investors by stating that the company had paid dividend in the previous year before coming out with the public issue in 1993.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. Pursuant to the said investigation, a show cause notice dated 22.12.99 was issued to Shri Bharat N. Vaishnawa, Director of the company to show cause as to why direction under Section 11B of SEBI Act, 1992 restraining the company and its directors from accessing the capital market for a suitable period, should not be passed. It was also mentioned that reply, if any, should reach SEBI within 15 days from the date of receipt of the show cause notice failing which SEBI would be constrained to presume that he has no evidence to adduce and SEBI would pass such direction in terms of Section 11B of the SEBI Act, 1992 or take any other action that is deemed fit in the interest of investors and the securities market. Shri Bharat N. Vaishnawa submitted his replies dated 31.12.99 and 4.1.00. In the interest of natural justice, an opportunity of personal hearing was granted to Shri Bharat N. Vaishnawa on 14.05.2002 and the same was adjourned to 05.07.02. However, Shri Bharat N. Vaishnawa did not avail the opportunity of personal hearing.

FINDINGS

7. I have perused the material available on record. I have also considered the replies dated 31.12.99 and 4.1.00 of Shri Bharat N. Vaishnawa. Vide the said letters, Shri Bharat N. Vaishnawa inter alia, contended that he was a director of the company in his professional capacity as an advocate and was not in charge of or in control or management of day to day affairs of the company or the public issue. He further submitted that he resigned from the directorship of the company on 30.9.94 which was duly intimated to the concerned office of Registrar of Companies and the same has been recorded in Annual Balance Sheet. He further submitted that he had not pledged any shares nor given any undertaking to Bank of Baroda and also submitted that he did not hold any shares in the said company. He also submitted that he had filed a criminal MM no. 4541/98 in the High Court of New Delhi and the Hon'ble High Court vide an order dated 29.4.99 was pleased to quash the complaint filed under Section 138 of Negotiable Instrument Act against Shri Bharat N. Vaishnawa.

8. I do not find merit in the contentions of Shri Bharat N. Vaishnawa in pleading ignorance of the irregularities committed by the company inasmuch as he was one of the signatories to the declaration made in the prospectus. I note that the said declaration as mentioned in the prospectus dated 26.10.1993 reads as follows :-

" All the provisions of the Companies Act, 1956 and the guidelines issued by the Government and SEBI from time to time have been complied with and no statement made in prospectus is contrary to the provisions of Companies Act, 1956 and SEBI Rules thereunder".

9. I find that the fact of pledging of 7,50,000 shares with Bank of Baroda by the promoters for the purpose of availing the extended credit facility was not disclosed in the prospectus at the time of initial public offer. The promoters are required to have a certain fixed holdings in the company for a fixed period of time to ensure commitment to the purpose for which the additional capital is being raised from the market. Therefore, the holdings of the promoters which have already been pledged to a bank for raising credit limits becomes a liability on the company which can be exercised by the bank at any time. I note that Section 56 of Companies Act stipulates the matters to be stated and reports to be set out in the prospectus. The said Section reads as follows :-

"56(1) Every prospectus issued –

- a. By or on behalf of a company, or
- b. By or on behalf of any person who is or has been engaged or interested in a formation of a company

Shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that schedule; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that schedule.

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I also note that clause (6) of Part II of Schedule II requires the company to disclose the principal terms of loan and assets charged as security in the prospectus. I also note that clause 13 of Part II of Schedule II enjoins the company to disclose the restrictions, if any, on transfer and transmission of shares / debentures and on their consolidation / splitting. Hence, non-disclosure of such an important fact is a grave act of omission on the part of the company.

10. I note that the company did not declare any dividend for the previous year before coming out with the public issue in 1993. I also find that prospective investors have been misguided with the statement of the company in the prospectus to the effect that the company had paid dividend in the previous year of the public issue. I also find that the shares which were lodged for transfer by the purchasers were not transferred. I find that it is a fit case for issue of directions under Section 11(B) read with Section 11 of SEBI Act against the company and its directors.

11. I am not convinced with the reply of Shri Bharat N. Vaishnawa and find that Shri Bharat N. Vaishnawa being a director of the company at the relevant point of time is also responsible for the acts, commissions and omissions of the company as mentioned above. In view of the above, I am convinced that continuance of Shri Bharat N. Vaishnawa in the securities market is detrimental to the interest of investors and also endangers the safety and integrity of the securities market.

12. Therefore, in exercise of the powers conferred upon me by virtue of Section 4(3) read with Section 11 and Section 11B of SEBI Act. I hereby direct that Shri Bharat N. Vaishnawa be restrained from associating with any corporate body in accessing the securities market and also be prohibited from buying, selling or dealing in securities for a period of five years.

This direction shall come into force with immediate effect.

G. N BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA

DATE : 31st March, 2004

PLACE :Mumbai