

DIRECTIONS UNDER SECTION 11 READ WITH SECTION 11B OF THE SEBI ACT, 1992 - IN THE MATTER OF M/s HINDUSTAN TOOLS AND FORGINGS LTD. AND ITS DIRECTORS

WTMN/73/CFD/ 8 /04

1.0 Background

- 1.1 In terms of order dated 26.3.99 of the Hon'ble Allahabad High Court, Lucknow Bench, in W.P. No. 659/98, Midas Touch Investors Association vs Union of India & ors., 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 subsequently found to be 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.

2.0 Public issue by Hindustan Tools and Forgings Ltd (HTFL)

- 2.1 HTFL came out with a public issue of 36,00,000 equity shares of Rs 10/- each for cash at a premium of Rs. 6 per share through a prospectus. The issue opened on 06.04.1993, the earliest closing date was 10.04.1993 and the latest closing date 19.04.1993. It was stated in the prospectus that applications have been made to the Stock Exchanges at Mumbai, Delhi, Ahmedabad and Ludhiana seeking permission for listing.
- 2.2 In the prospectus, the address of the registered office of HTFL is given as Dhakansy Road, Rajpura 140 401. The directors of HTFL included:
- 1. Shri Resh Goyal
Chairman-cum-Managing Director
703 – Sector 8,
Panchkula, Haryana
 - 2. Smt Abha Goyal
WholeTime Director
703 – Sector 8,
Panchkula, Haryana
 - 3. Shri Vijay Gupta
Director
D-14, Calibre Market,
Rajpura,
Patiala.
 - 4. Shri S R Sodhani
Director
No. 17, JLN METRO DUTA
Pondok Indah,
Jakarta Sclatan – 12310
Indonesia
 - 5. Shri Arvind Jain
Director
23472 – Moon Shadows Drive,
Malibu – CA 90265,
Los Angeles,
USA.

3.0 Hindustan Tools and Forgings Limited – a vanishing company.

- 3.1 After the said public issue, the shares of HTFL were listed at the Stock Exchange of Mumbai, Delhi, Ahmedabad and Ludhiana, its Regional Stock Exchange. Ludhiana Stock Exchange (LSE) had informed SEBI vide its letter dated 13.03.2003

that the trading of the company was suspended on account of non-redressal of Investor complaints and that there had been no trading on the exchange since the date of listing, i.e. 11.02.1993.

- 3.2 LSE vide its letter dated 01/07/1999 stated that they had conducted a physical verification of HTFL. It was found that though the board containing the name of the company was displayed on the main gate of the company, the unit was found locked and sealed. The chowkidar at the site had informed that the company was locked for the past three years. The plant was constructed in 2 acres area and no activity had taken place in the unit for the past 3 years.
- 3.3 LSE conducted another physical verification on 16.03.2002 and met members of trade union at the premises. The President of the union informed that MD of the company had left the country and that the company was closed for the last 5-6 years. It was also informed that the bankers to the company had auctioned the company, and its machinery was also shifted from the premises on 16.2.2002.
- 3.4 It has thus been found that HTFL has not been complying with various clauses of the Listing Agreement viz., not submitting statutory reports, director's 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).
- 3.5 Department of Company Affairs (DCA) also vide its letter dated 20.05.2003 informed that earlier order for liquidation of HTFL was subsequently revoked by Hon'ble Punjab and Haryana High Court vide its orders dated 20.11.98. DCA further informed that the company had last filed its balance sheet as at 31.3.96 and Annual Return upto 30.9.98. Prosecutions have been filed against the company and its directors in the court for non-filing of statutory documents. DCA has further informed that the registered office of the company is at Industrial Area, Rajpura Distt., Patiala (Punjab) and the following are the present directors:
1. Shri Manpreet Singh, VPO Nadal, Distt. Kapurthala
 2. Shri Pawan Kumar Sharma, Gali No.6, Aerry Mill Road, Mandi Gobindgarh
 3. Shri Avtar Singh, VPO Nadala, Teh. Bholath, Distt. Kapurthala
 4. Dr Mehar Singh Ahluwalia, VPO Nadala, Teh. Bholath, Distt. Kapurthala

DCA also stated that the company is a vanishing company as per records.

4.0 Show cause notice

- 4.1 In the meeting of the Co-ordination and Monitoring Committee held on 25.2.2003, M/s Hindustan Tools & Forgings Ltd. (HTFL) was identified as one of the vanishing companies in the Northern Region.
- 4.2 In view of this and the violations referred to hereinabove, a show cause notice dated 27.5.2003 was issued by SEBI to HTFL calling upon the company and its aforesaid directors to explain why various actions, including specific directions under section 11B of the SEBI Act interalia prohibiting them from associating, dealing, accessing and being associated with any intermediary in the capital market for a period of five years should not be issued against them under the SEBI Act and the Securities Contracts (Regulation) Act, 1956.
- 4.3 Pursuant to the said show cause notice, reply was received from one of the directors Shri Vijay Gupta stating that he had resigned from HTFL on March 8, 1994. While enclosing a copy of Form 32 filed with the Registrar of Companies at Jalandhar in support of his claim, Shri Gupta requested for dropping the proposed action against him.
- 4.4 HTFL and its directors (other than Shri Vijay Gupta) were also given an opportunity of a personal hearing before me on 30.12.2003. HTFL and its directors namely, Shri Resh Goyal, Smt Abha Goyal, Shri Arvind Jain, Shri Manpreet Singh, Shri Pawan Kumar Sharma, Shri Avtar Singh, and Dr Mehar Singh Ahluwalia failed to respond to the show cause notice and also did not appear for personal hearing. However, Shri S R Sodhani, one of the directors of the company, attended the hearing along with his representative Shri Sunil Jhunjhunwala of M/s S S Jhunjhunwala & Co., Chartered Accountants.
- 4.5 Shri S R Sodhani stated that he became a director of HTFL on request of a friend. He also stated that he had agreed to become a director of the company before it came out with a public issue. He further stated that he did not attend any board meeting of the company and had resigned in a year's time after his joining. He further stated that his resignation had been accepted by the company. However, he could not produce a copy of his resignation letter. He also stated that he had been residing in Indonesia for last 27 years. Shri Sodhani was directed to file his written submissions with SEBI by January 4, 2004.
- 4.6 Shri S R Sodhani vide his written submission dated 02.01.2004 reiterated the above submissions and submitted that he was neither holding any shares of the company nor had any financial transaction with the company. No documentary evidence

was however produced to support the contentions.

5.0 Consideration of issues

- 5.1 In view of the fact that HTFL and its directors namely, Shri Resh Goyal, Smt Abha Goyal, Shri Arvind Jain, Shri Manpreet Singh, Shri Pawan Kumar Sharma, Shri Avtar Singh, and Dr Mehar Singh Ahluwalia have failed to respond to the said notice and also appear for a personal 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 a company 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 Vijay Gupta, I find that he had resigned from the company on 08.03.1994 and had filed Form 32 in this regard. Thus, no action needs to be taken against him.
- 5.3 In respect of Shri S R Sodhani, I find that he did not submit requisite proof in support of his claim of resignation before the company had defaulted.
- 5.4 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 HTFL 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.

- 5.5 I also note that the Supreme Court in Radheyshyam Khemka v. State of Bihar^[I], 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...."

- 5.6 I further note the Securities Appellate Tribunal (SAT), in Integrated Amusements Ltd. v. SEBI^[II], 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 HTFL and its directors are restrained from accessing the capital market, there is every possibility that they may again raise money from the investors and defraud investors. It is possible that the directors of HTFL 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 HTFL 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 M/s Hindustan Tools and Forgings Ltd. and its directors Shri Resh Goyal, Smt Abha Goyal, Shri S R Sodhani, Shri Arvind Jain, Shri Manpreet Singh, Shri Pawan Kumar Sharma, Shri Avtar Singh, and Dr Mehar Singh Ahluwalia 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.

Place : Mumbai

Date :06.08.2004

T. M. NAGARAJAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

[[I]] [1993] 77 Com Cas 356.

[[II]] [2000] 27 SCL 458.