

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

ORDER UNDER SECTION 11 AND 11 B OF THE SEBI ACT,1992, AGAINST M/S. VIKAS WSP LTD., ITS DIRECTORS AND PROMOTERS

WTMN/218/IVD/9/04

1. BACKGROUND

1. Vikas WSP Ltd. (hereinafter referred to as "the company") having office at B-86/87 Udyog Vihar, RIICO Industrial Area, Sriganganagar 335 001, was incorporated in the year 1988 under the name and style of M/s Vikas Gum Mills Pvt. Ltd. The name of the company was subsequently changed to M/s Vikas WSP Pvt. Ltd. the company came out in December 1993 with a public issue of 44,86,500 equity shares of Rs.10/- each for cash at par aggregating to Rs.448.65 lacs. Dynamic Superways and Exports Ltd. was the Registrar and Transfer Agents to the company for the said public issue.
2. Shri Babulal Jindal, Shri Sushil Jindal, Shri Ramesh Chand Jindal, Ms. Sita Devi Jindal, Ms. Anchi Devi Jindal, Smt. Bimla Devi Jindal, Ms. Lalita Devi Jindal, Shri Narendra Jindal, Ms. Manjoo Jindal, Ms. Sonia Jindal, Krishna Jindal are the promoters of the company and Shri B D Agarwal, Shri J D Agarwal, Shri B M Jindal, Shri B L Jindal and Shri Koshal Patodi are the directors of the company. It is understood that Shri B M Jindal is no more alive now.
3. The shares of the company are listed on the Mumbai, Delhi, Cochin, and Ahmedabad Stock Exchanges and are traded in the permitted category on the National Stock Exchange.
4. The main promoters of the company include Shri J.D. Agarwal and Shri B M Jindal. Following a dispute, Shri J D Agarwal and Shri B. M. Jindal separated from the company and Shri B D Agarwal became the CMD of the company, other promoter of the company, Shri B M Jindal, forwarded complaints to Securities and Exchange Board of India (hereinafter referred to as 'SEBI') alleging several irregularities in buying, selling and dealing in securities of the company including reporting inflated turnover and profit figures, sale of promoters' quota shares during lock-in period, making false declaration of promoters equity holding in the company, non compliance with the provisions of listing requirements of the Exchanges, delay in dematerialization of the shares of the company, non payment of declared dividend etc. SEBI also came across news paper reports regarding the said irregularities.

2.0 INVESTIGATION

1. Based on the above, investigation was ordered to look into buying, selling or dealing in shares of the company. In the course of investigations, it was, prima facie, observed that according to the relevant prospectus that out of the 39,88,200 equity shares to be allotted to the promoters, 24,92,490 equity shares being 25% of the total issued capital after the Public Issue shall have a lock in period of 5 years from the date of allotment in the issue or commencement of commercial production whichever is later and the balance of 14,95,710 shares shall be under lock in for 3 years from the date of allotment or commercial production whichever is later.
2. As per the notice no. 1396/94 dated March 7, 1994 issued by the Stock Exchange, Mumbai (BSE), to its members, the under mentioned shares of the company allotted to the promoters etc. were not transferable upto the date mentioned against them and would not be considered good delivery in the market till then:

Distinctive Numbers	No. of Shares	Date upto which they are not transferable
14,95,261 to 39,87,750	24,92,490	February 6, 1999
39,87,751 to 54,83,460	14,95,710	February 6, 1997
Total	39,88,200	

The Delhi Stock Exchange (DSE), which is the Regional Stock Exchange of the company informed that they received a certificate from M/s Pradeep Aggarwal & Associates, Chartered Accountants, certifying that "As per the books and records of M/s Vikas WSP Ltd., of Siwani, Haryana verified by us, we certify that the company has allotted under mentioned equity shares out of the promoters quota of the Company". The share certificates of these shares are bearing rubber stamp enfacement as '**Not to be sold transferred/hypothecated**' for the period mentioned hereunder:-

Sr. No	No of Shares	Distinctive Nos.	Period upto which non transferable
1	24,92,490	14,95,261 to 39,87,750	7.02.94 to 6.2.99
2	14,95,710	39,87,751 to 54,83,460	7.02.94 to 6.2.97
Total	39,88,200"		

Based on the above mentioned certificate, DSE, vide their letter dated February 9,1994, informed the company that the under mentioned shares allotted to the promoters of the company were not transferable for a period of 3-5 years from the date of their allotment.

Distinctive Nos.	Period up to which non transferable
14,95,261 to 39,87,750	06-02-1999
39,87,751 to 54,83,460	06-02-1997

1. Further, in a statement given to SEBI on December 12, 2002, M/s Dynamic Share Services Private Limited, the Registrars and Share Transfer Agents (hereinafter referred to as "The Registrars") admitted that they had made attempt to get the distinctive number of shares which were under lock in period but in vain. However, since there was tremendous pressure from the individual promoters to get their shares immediately, in good faith, they handed over the certificates of the company to the company representative Shri Rajesh Singhal on March 5, 1994 without carrying the inscription **"not transferable"** on the shares of the company. The registrar further admitted that since they were not having the details of the distinctive numbers of shares subject to lock-in for 3 years and 5 years, they could not print the corresponding lock-in clause before handing over the promoter's quota shares to the company. From the above, it appears that the shares allotted under promoters quota and which were subject to the lock-in period were not stamped with the remark **"Not to be sold, transferred/hypothecated"**.
2. As per the statement given by the Registrar and the information furnished by him, following shares were transferred from the account of the promoters before the expiry of the 5 year Lock-in period:

Sr. No.	Name of the Promoter	Distinctive Nos		No of Shares	Sale of Promoters Quota Shares before 5 Yr lock-in period ending on 8/2/1999			
		From	To		Date of transfer	Distinctive nos From	to	No of Shares
1	Rameshchand Jindal	1958261	2233260	275000	15/9/98	1995261	2095262	100002
					1/1/99	2097161	2202160	105000
2	Babulal Jindal	2233261	2465260	232000	15/9/98	2345061	2407160	62100
3	Anchi Devi Jindal	2465261	2701260	236000	15/9/98	2465261	2499860	34600
4	Sita Devi Jindal	2701261	2919260	218000	15/9/98	2803961	2843960	40000
					15/9/98	2844561	2904560	60000
					10/10/98	2704261	2803960	99700
					1/1/99	2701261	2704260	3000
					1/1/99	2904561	2919260	14700
5	Bimla Devi Jindal	2919261	3168260	249000	15/9/98	3110861	3150860	40000
					1/1/99	2919261	2930960	11700
					1/1/99	2995261	3110860	115600
6	Lalita Devi Jindal	3168261	3353260	185000	15/9/98	3168261	3209360	41100
					1/1/99	3212961	3353260	140300
7	Narender Jindal	3353261	3505760	152500	1/1/99	3353261	3495260	142000
8	Manjoo Jindal	3543761	3661260	117500	1/1/99	3610361	3661260	50900
9	Krishna Jindal	3661261	3802260	141000	15/9/98	3712461	3752460	40000
					1/1/99	3661261	3712460	51200
10	Sonia Jindal	3802261	3860160	57900	15/9/98	3802261	3860160	57900
11	Sushil Jindal	3860161	4072160	212000	10/10/98	3860161	3914960	54800
					1/1/99	3914961	3987750	72790

	Total							1337392
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The shares of the following promoters which were under lock-in period were found to have been transferred during the said period -

SI No	Name of the Promoter	No of Shares sold
1	Rameshchand Jindal	205002
2	Babulal Jindal	62100
3	Anchi Devi Jindal	34600
4	Sita Devi Jindal	217400
5	Bimla Devi Jindal	167300
6	Lalita Devi Jindal	181400
7	Narender Jindal	142000
8	Manjoo Jindal	50900
9	Krishna Jindal	91200
10	Sonia Jindal	57900
11	Sushil Jindal	127590

By not affixing the rubber stamp enlacement '**Not to be sold transferred/hypothecated**' on the promoters quota shares under lock-in period and also by transferring shares which were under lock-in period, the company and its promoter-directors seemed to have violated SEBI Guideline for Disclosure and Investor Protection No GL/IP.NO./SEBI/PMD/92-93 dated June 11, 1992.

3. During the course of investigation, the Registrar informed that they periodically submitted the shareholding status to the company including the shareholding status as on March 31, 2001. As per the information submitted by the registrar to the issue, the promoters' shareholding on the various dates was as below:

Date	No of Shares	Percentage
21/9/1998 (AGM)	4312760	43.25
01/01/1999	2550960	25.58
08/02/1999	2550960	25.58
31/03/1999	2542760	25.50
15/09/1999(AGM)	1992060	20.00
24/08/2001*	12615966	12.65

*** face value of Rs 1/-**

4. It is seen from the above table that as on August 24, 2001 the promoter's holding fell to 12.65% from 43.25% as on September 21, 1998. However, as per the Distribution Schedule, for the period ending June 30, 2001, submitted by the company vide its letter dated September 24, 2001 to BSE, the promoter's holding was 54.30%. In the same letter the company has further informed BSE that the promoters holding in company as on June 30, 2001 is 36.53% and the promoters who left the company hold 17.77%. Further, the company, vide letter dated May 29, 2001, also informed DSE that promoters' holding in company as on March 30, 2001 is 54.32%. In the same letter the company submitted the distribution schedule as on Annual General Meetings for the three years i.e. 1997-98 to 1999-2000, which also shows the promoters' holdings as 54.32% for all the three years.
5. The company has made false disclosures to BSE and DSE in respect of the holdings of the promoters or person(s) having control over the company as on 31st March.
6. It is noted that the Company vide its letter dated 8.3.2002 informed the Registrars that 1,00,00,000 Equity shares of Rs 1/- each on July 2, 2001 to the Promoters, Directors and their relatives as approved in the EGM January 2, 2001. The list of persons to whom shares were allotted were as under :-

Name	No of Shares
1. B D Agarwal	4100000

2. Ashish Jindal	520000
3. Jitender Jindal	550000
5. Manju Devi Jindal	500000
6. Narender Jindal	220000
7. Ramesh Chand Jindal	1200000
8. Sanjay Jindal	1480000
9. Lalita Devi Jindal	140000
10. Bimla Devi Jindal	1290000
TOTAL	10000000

7. However, investigation carried out by BSE revealed that the shareholders of the company had passed resolution for issue of 18800400 equity shares each of Rs 1/- at Rs 81.50/- premium per share in EGM held on January 4, 2001 and so as per the preferential issue guidelines issued by SEBI on August 4, 1994, the allotment of shares should have been completed on/or before April 4, 2001 i.e. with 3 months from date of passing the resolution. Admittedly, the company has made allotment of the above shares in two tranches but after the validity of the shareholder resolution. By not making allotment of the preferential shares within 3 months of passing the resolution the company has violated SEBI Guidelines for preferential allotments of shares.

3. SHOW CAUSE NOTICE AND HEARING

3.1 In light of the findings of investigation, show cause notice dated 06.05.03 was issued to the company directing it to show cause as to why appropriate directions should not be issued against it, its directors and promoters.

2. The company, its directors and promoters replied to the said show cause notice through S D Israni & Co., Company Secretaries vide their letter dated 15.07.2003, the details of which are as under:

- Difference arose among the brother directors of the company after commencement of operations, resulting in serious acrimony between Shri J D Agarwal and Shri B M Jindal on the one hand and Shri B D Agarwal (present CMD of the company) and the remaining brothers on the other.
- Shri J D Agarwal and Shri B M Jindal resigned from the board w.e.f. 5.09.2000.
- The allegations made by Shri B M Jindal were false and baseless and made with malafide intentions.
- No shares from the promoters' quota which were under lock-in were sold. The company came out with a public issue of 4486500 equity shares of Rs. 10/- each for cash at par aggregating to Rs. 448.65 lakhs. Out of the 3988200 equity shares allotted to the promoters, 2492490 equity shares being 25% of the total issued capital after the public issue were subject to lock-in for a period of 5 years from the date of allotment and the balance 1495710 equity shares were locked-in for a period of 3 years from the date of allotment. The details of the shares allotted to promoters, their relatives and friend, the lock-in period etc. were already provided by the company to the Stock Exchanges. Besides, the share certificates were bearing a rubber stamp enfacement as "Not to be Sold/ Transferred/ Hypothecated" for the period mentioned therein.
- The shares sold by some of the promoters, relatives, friends etc. were either part of the free shares or were those shares whose lock-in period was over.
- The certificates in respect of shares that were subject to lock-in were actually stamped with the remarks "Not to be sold/ transferred / hypothecated."
- The certificates were duly stamped by Registrar and Transfer Agents. The transfer was effected neither by way of sale nor in the normal course. The said transfers arose directly as a consequence of the partition in the family giving rise to the said situation.
- The transfer of the said 13,37,392 shares was not in the ordinary course; it was not due to any action of the promoters but was the inevitable result of the family partition and therefore an act not on the volition of the promoters but due to the operation of law.
- Registrar and Transfer Agents committed serious mistakes while computing the shareholding of the promoter group. The entire shareholding of the promoters group was held totally in 71 folios, thereafter, there were several transfers, from time to time, within the family and within the relatives and friends of the promoter group and as a result, the shareholding in the original 71 folios kept on reducing, though the overall shareholding of the promoters' group as such continued to be quite substantial.
- Registrar and Transfer Agents took cognizance of the transfers from the first 71 folios only. The share certificates were very much enfaced at the relevant time itself with the rubber stamp indicating the non-transferability of those shares and as such they acted in accordance with the provisions of law and have not violated any of the said regulations.

- They have duly complied with the requirements of Regulation 8 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. They have not given any false or misleading declaration to BSE and DSE. The information was supplied on the basis of the records maintained by the Registrars and Transfer Agents. Consequently, they have not violated any of the said regulations.
- The company made a preferential allotment of 1,00,00,000 Equity shares as approved by the members at the EGM held on 02.01.01. the then prevailing market price of the equity shares to be allotted by way of preferential allotment was about Rs. 66/- per equity share, while the issue price by the company was Rs. 82.50/- per equity share. Thus the equity shares were issued at a substantial premium to the then ruling market price. Further, the date on which the actual allotment was made by the Board, the market price of the company's equity share collapsed to around Rs. 23/24 per equity share. Notwithstanding the fact that the allottees who belonged to the promoters' group would have to bear a huge loss, they still went ahead and made the investment so that the company's project would not suffer. It would have been easier for them to have avoided making the allotment and thereby they would have saved crores of rupees, but they did not want the company to suffer and they went ahead with the allotment. This sacrifice made by the promoters needs to be appreciated.
- The promoters have suffered huge loss at the time of the issue/allotment itself and that too for helping the company.
- A lenient view should be taken in the matter.

HEARING

An opportunity of hearing was granted. The hearing was held on 29.06.04 when Dr. S D Israni and Shri Satyan S Israni of S D Israni & Co., Company Secretaries and Shri B D Agarwal appeared on behalf of the company and its directors and promoters. Apart from reiterating the earlier written submissions, they made the following oral submissions:

- The transfer of shares took place between 15.09.98 and 01.09.99, pursuant to partition deed dated 15.05.98.
- Lock-in period was due to expire on 06.02.99.
- The discrepancy in disclosure of information regarding promoters' shareholding was due to breakdown in the management of the company following family disputes.
- Variation in promoters' shareholding occurred as a result of inter se transfer within the promoter group.
- The shares were duly encased vide letter dated 08.02.94 issued by the Registrar and Transfer Agents.
- Preferential allotment was made to bail out the company.
- The market price on the date of allotment was much lower than the issue price.
- Shri B D Agarwal, the current CMD was there as Joint Managing Director and he was not conversant with the day to day dealings of the company.

4.0 CONSIDERATION OF ISSUES

I have considered the facts of the matter, the investigation report, the oral and written submissions of the company and its directors and other matters on record. The following issues arise for consideration:

1. *Whether the company, its directors and promoters have violated Regulation 3, 4(b), 5(a) & (b) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Markets) Regulations, 1995.*

4.1.1 I note that there is nothing to corroborate that the certificates in respect of shares subjected to lock-in were not stamped with the remarks "Not to be sold/ Transferred/ Hypothecated". These shares were found to have been transferred within the promoter group as a consequence of the partition in the family and the transfer of the said 13,37,392 shares was not in the ordinary course and was inevitable result of the operation of law.

4.1.2 I further note that apart from holding shares in the company that were subject to three/ five years lock-in period, the promoters were also holding certain shares which were free and not subject to any lock-in period. The promoters were thus holding a substantial number of shares which were free of any such encumbrance and that the shares which were sold by some of the promoters, relatives, friends etc. were either part of the free shares or were those shares whose lock-in period was over.

4.1.3 Moreover, I note that the said transfer of shares took place around the time when the lock-in period of the said shares was about to get over.

4.1.4 In view of the foregoing, I do not find any substantiating evidence to show that the company, its directors and promoters have indulged in any sale or transfer of shares in violation of Regulation 3, 4(b) & 5 (1) (a & b) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities market) Regulations, 1995

2. *Whether the company, its directors and promoters violated Regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.*

4.2.1 I observe from the information furnished by the Registrar to SEBI and the information submitted by the company to the Stock Exchanges that the company provided the misleading information about the promoter's share holding in the company to the Exchange.

4.2.2 The company by providing false information regarding promoters' holding in the company have disseminated the information which could have had a bearing on the price of the share of the company by selling their shareholding in the company by keeping the investors in dark about the promoter's holding.

3. I note that as on August 24, 2001 the promoter's holding was 12.65% as compared to 43.25% as on September 21, 1998. However, as per the Distribution Schedule, for the period ending June 30, 2001, submitted by the company vide its letter dated September 24, 2001 to BSE, the promoter's holding is shown as 54.30%. In the same letter the company has further informed BSE that the promoters holding in company as on June 30, 2001 is 36.53% and the promoters who left the company hold 17.77%. Further, the company, vide letter dated May 29, 2001, also informed DSE that promoters' holding in company as on March 30, 2001 is 54.32%. In the same letter the company submitted the distribution schedule as on Annual General Meetings for the three years i.e. 1997-98 to 1999-2000, which also shows the promoters' holdings as 54.32% for all the three years.

4. I note that Regulation 8 (3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 provides that :

"Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending on March 31, as well as on the record date of the company for the purpose of declaration of dividend, make yearly disclosures to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub-regulation (1) as also holdings of promoters or persons(s) having control over the company as on 31st March".

4.2.5 The company, I observe, made some incorrect disclosures to BSE & Delhi Stock Exchange in respect of the holdings of the promoters or persons(s) having control over the company as on 31st March, which is in violation of the Regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. I further note that such incorrect disclosure was due to mistakes committed by the Registrar and Transfer Agents. I note that separate Enquiry proceeding are in progress against the said Registrar and Transfer Agents in this regard.

4.2.6 I observe that the disclosure made by the company to the DSE and BSE was on the basis of records maintained by the Registrar and Transfer Agents. I note that the company was not in receipt of any period statement giving the status of the shareholders' of the company and thus cannot be held responsible for providing incorrect information to the said stock exchanges and cannot be held to have violated Regulation 8 of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997.

4.2.7 In the light of the facts and circumstances of the case, I am of the view that it would be sufficient to meet the interest of justice if a warning is issued to the company and its promoters.

5.0 ORDER

5.1 Therefore, in exercise of powers conferred on me under Section 11(4)(b) and 11B read with Section 19 of SEBI Act, I hereby direct M/s Vikas WSP Ltd. its directors i.e. Shri B D Agarwal, Shri J D Agarwal , Shri B L Jindal and Shri Koshal Patodi and promoters i.e. Shri Babulal Jindal, Shri Sushil Jindal, Shri Ramesh Chand Jindal, Ms. Sita Devi Jindal, Ms. Anchi Devi Jindal, Smt. Bimla Devi Jindal, Ms. Lalita Devi Jindal, Shri Narendra Jindal, Ms. Manjoo Jindal, Ms. Sonia Jindal, Krishna Jindal, to be more cautious and diligent in filing/furnishing information as required by the various statutory and other authorities.

The order shall come into effect immediately.

T. M. NAGARAJAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Place : Mumbai

Date : 09.09.04