

In the matter of directions under Section 11 read with Section 11B of the SEBI Act, 1992 to Nuline Glassware Limited (now known as Pur Opale Creation Limited) and its directors

WTMN/215/CFD/9/04

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. Seven Task Forces for each region were 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 In the meeting of the CMC held on 25.2.2003, Nuline Glassware Ltd (now known as Pur Opale Creation Limited and hereinafter referred to as "NGL") were identified as vanishing companies.

2.0 Public issue by NGL

2.1 NGL came out with a public issue of 67,79,930 equity shares of Rs 10/- each for cash through a prospectus dated 29.12.1992. The issue opened on 4.2.1993, the earliest closing date was 8.2.1993 and the latest closing date was 15.2.1993. It has been stated in the prospectus that applications have been made to the Stock Exchanges at Vadodara, Mumbai, Hyderabad, Delhi and Ahmedabad for listing of the shares.

2.2 In the prospectus, the address of the registered office of NGL is mentioned as 505-508, Sriram Chambers, R C Dutt Road, Alkapuri, Baroda and the following persons are shown as directors:

- (a) Mohanlal Sanghvi
- (b) Avinash Sanghvi
- (c) Suresh Sanghvi
- (d) Dinesh Sanghvi
- (e) N C Chauhan
- (f) KK Puri
- (g) P M Jaisingh

The qualifications and experience of the said persons are also shown therein.

3.0 Nuline Glassware Limited- a vanishing company.

3.1 After the said public issue, the shares of NGL were listed at Ahmedabad and Vadodara Stock Exchanges. It has been found that NGL 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 Stock Exchanges. 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). The scrip has been de-listed from the Vadodara Stock Exchange.

4.0 Show cause notice and personal hearing.

4.1 In view of the above, a show cause notice dated 5.5.2003 was issued by SEBI to NGL calling upon them to explain why action, including prohibiting them 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, specifically directions under section 11B of the SEBI Act. Similar show cause notices dated 5.5.2003 were also issued to the directors. The notices sent to the company and the following directors were returned undelivered:

- (a) Mohanlal Sanghvi
- (b) Avinash Sanghvi
- (c) Dinesh Sanghvi
- (d) KK Puri

Shri Suresh Sanghvi submitted his reply vide letter dated 24.11.2003. In his reply, he stated that:

- (i) Pursuant to a memorandum of understanding dated 20.4.1996 between Avinash Sanghvi and Jayesh Dave the company was taken over by the latter along with all assets and liabilities. The entire shareholding of the original promoters too has been transferred to Jayesh Dave and his associates.
- (ii) Mohanlal Sanghvi, Dinesh Sanghvi, K K Puri and H J Mistry resigned from the Board of Directors on 20.4.1996 and Avinash Sanghvi and Suresh Sanghvi resigned from the Board on 16.3.1998.
- (iii) The Board of Directors consisting of Jayesh Dave and his associates have signed the Balance Sheet and Annual Report for the year 1997-98 onwards
- (iv) Avinash Sanghvi expired on 3.12.2001.

N.C. Chauhan submitted his reply vide letter dated 31.7.2003. In the same, he submitted that he had withdrawn his consent to join the Board of Directors and in this regard also submitted a letter from M.V. Singhvi stating that he had formally resigned from the Board of Directors.

4.2 NGL and its directors were also given a personal hearing on 29.11.2003. Only Suresh Sanghvi appeared and made submissions on behalf of himself and on behalf of Mohanlal Sanghvi, Dinesh Sanghvi and K K Puri.

4.3 Further, show cause notices were issued to the following persons based on information received from Ahmedabad Stock Exchange after verification with Ahmedabad ROC, about the current directors of NGL on 17.7.2004:

- (a) Jayesh Dave
- (b) Anjali Dave
- (c) Jagdish Chandra Dave
- (d) Madhuben Dave
- (e) Rohit Vyas
- (f) Himanshu Desai
- (g) Kamlesh Mankodi
- (h) Umesh Soni

The aforementioned persons were found to be the present directors of NGL. The notices to Jayesh Dave, Anjali Dave, Jagdish Chandra Dave and Madhuben Dave were returned undelivered. Himanshu Desai and Kamlesh Makodi made submissions stating that they were not directors of the company at present. Rohit Vyas failed to make any submissions.

5.0 Consideration of issues

5.1 In view of the fact that NGL has failed to submit any explanation to the said notice despite service of the same and appear before me, 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 Suresh Sanghvi, Mohanlal Sanghvi, Dinesh Sanghvi, N C Chauhan and K K Puri, I find that while they were directors of NGL, the company had filed balance sheets and otherwise complied with requirements of the listing agreement and that they are no longer directors of the company.
- 5.3 In respect of Avinash Sanghvi, I note that he has expired. Therefore no action will lie against him.
- 5.4 I find that the following persons are the present directors of the company:

- (i) Jayesh Dave
- (j) Anjali Dave
- (k) Jagdish Chandra Dave
- (l) Madhuben Dave
- (m) Rohit Vyas
- (n) Himanshu Desai
- (o) Kamlesh Mankodi
- (p) Umesh Soni

I note that the notices to Jayesh Dave, Anjali Dave, Jagdish Chandra Dave and Madhuben Dave were returned undelivered. Rohit Vyas has failed to submit any reply at all. In view of the above, I find that the said persons have no submissions to make and therefore I proceed further in the matter.

Himanshu Desai submitted that he ceased to be a director of the company w.e.f 7.11.2001 and that being a non-executive director, he was not responsible for the day-to-day management of the company. Umesh Soni submitted that he ceased to be a director of the company w.e.f 24.5.1999 and that being a non-executive director he was not responsible for the day-to-day management of the company. Kamlesh Mankodi submitted that he ceased to be a director of the company w.e.f 7.11.2001 and that being a non-executive director, he was not responsible for the day-to-day management of the company. I am unable to accept the submissions of the said persons. They have also not submitted any proof to the effect that they have ceased to be directors of the company.

- 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 they have also eroded 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 NGL 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...."

- 5.6 I further note the Securities Appellate Tribunal (SAT), in Integrated Amusements Ltd. v. SEBI[2], the Securities Appellate Tribunal 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,[3] 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.

- 5.7 In view of the above, unless NGL and its directors 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. However

notwithstanding such restraint, the directors of NGL 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 NGL have controlling or substantial interests from directly or indirectly raising moneys from the capital market.

6.0 Order

Therefore I, in exercise of the powers conferred upon me under section 11(1) and 11B read with Section 19 of the SEBI Act, hereby direct Nuline Glassware Ltd now known as Pur Opale Creation Limited and its directors viz. Jayesh Dave, Anjali Dave, Jagdish Chandra Dave, Madhuben Dave, Rohit Vyas, Himanshu Desai, Kamlesh Mankodi and Umesh Soni 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: 08.09.04

T M Nagarajan

Member

Securities and Exchange Board of India