

In the matter of directions under Section 11 read with Section 11B of the SEBI Act, 1992 to Topline Shoes and its directors

WTMN/214/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, Topline Shoes Limited (hereinafter referred to as "TSL") was included in the list of vanishing companies.

2.0 Public issue by TSL

2.1 TSL came out with a public issue of 46,50,000 equity shares of Rs 10/- each for cash through a prospectus dated 11.6.1992. The issue opened on 10.7.1992, the earliest closing date was 14.7.1992 and the latest closing date was 20.7.1992. It has been stated in the prospectus that applications have been made to the Stock Exchanges at Vadodara, Mumbai and Ahmedabad for listing of the shares.

2.2 In the prospectus, the address of the registered office of TSL is mentioned as B-3, Bihari Apartments, R C Dutt Road, Alkapuri Vadodara and the following persons are shown as directors:

- (a) Duleep Singh
- (b) H M G Murthy
- (c) H M B Murthy
- (d) Sunil M Gavaskar
- (e) Vinod B Mistry
- (f) Arun L Kapani

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

3.0 Topline Shoes Limited- a vanishing company.

3.1 After the said public issue, the shares of TSL were listed at Vadodara, Mumbai and Ahmedabad Stock Exchanges. It has been found that TSL 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 Mumbai Stock Exchange w.e.f 17.2.1997.

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 TSL 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. Similar show cause notices dated 5.5.2003 were also issued to the directors.

4.2 The notices sent to the company and HMG Murthy and HMB Murthy were returned undelivered. Shri Duleep Singh vide letter dated 13.5.2003, submitted that he had resigned from the Board of Directors in the year 1995 and that there were no violations while he was on the Board of Directors. Shri Arun Kapani submitted his reply vide letter dated 28.5.2003. In his reply, he stated that: he resigned from the Board of Directors in July, 1994 and also enclosed copies of Form 32 filed with the ROC on 20.10.1994. While he was a member of the Board of Directors, he was not involved in the day-to-day management of the company.

Even after he submitted his resignation in 1994, the company has filed annual report. Shri Sunil Gavaskar submitted his reply vide letter dated 29.5.2003. He submitted that he had resigned from the Board of Directors of the company on 23.12.1994. Shri Vinod Mistry submitted his reply vide letter dated 29.5.2003 wherein he stated that he resigned from the Board of Directors in July, 1994 and also enclosed copies of Form 32 filed with the ROC on 20.10.1994. While he was a member of the Board of Directors, he was not involved in the day-to-day management of the company. Even after he submitted his resignation in 1994, the company has filed annual report.

4.3 TSL and its directors were also offered an opportunity for personal hearing on 30.12.2003 vide letter dated 16.12.03. Shri HMG Murthy appeared for personal hearing and made submissions on behalf of himself and the company.

- (a) The company had availed loan to the extent of Rs.175 lacs towards working capital from Canara Bank and Corporation Bank. The banks disbursed approx. 30% of the sanctioned limits and then stopped all disbursement without assigning any reasons.
- (b) The said problem arose, apparently, because of insistence by RBI of a performance obligation on the part of the banks, whereby RBI required banks to earn a pre determined profit. This requirement went hand in hand with the condition that banks should lend 10% of their total loan portfolio as export loans (at a concessional interest rate). The said two banks had already lent more than 14% as export loans. If more loans were given, the banks would lose as export loans were at concessional rate, whereas non disbursement (of sanctioned limits) would help the banks to meet commitments on profits.
- (c) The company's business was adversely affected due to misdemeanor of two public sector banks viz. Canara Bank and Corporation Bank contractual abuses by the two banks left the company penniless.
- (d) The said banks, artificially and illegally declared the company as an NPA and thereby disabled it from approaching any financial institution in the market.
- (e) The company's manufacturing activities were stopped in July 1996. The shares of the issuer were delisted from BSE in July 1999 due to non payment of listing fees.

4.4 Pursuant to the hearing, vide letter dated 16.1.04 and 21.5.2004, H M G Murthy was advised to submit the following documents to SEBI:

- (a) Minutes of the last Board meeting
- (b) Annual Report for the years 1992-93 and 1993-94/ copies of documents providing evidence of utilization of issue proceeds
- (c) Copies of Annual Report for the past two years
- (d) Names and addresses of the present directors on the Board
- (e) Further action plan for revival of the company
- (f) Name, addresses and other communication details of branches of Canara Bank and Corporation Bank
- (g) Proof of filings made with ROC and Stock Exchanges, if any.

However, Shri Murthy has failed to submit the said details.

5.0 Consideration of issues

5.1 The failure to submit the reports and annual accounts by TSL 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 Duleep Singh, Sunil M Gavaskar, Vinod B Mistry and Arun L Kapani, I note that while they were directors of TSL, 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 I find that Shri HMG Murthy and Shri HMB Murthy are the present directors of the company. I am unable to accept the submissions of the said persons seeking to pass on the blame to the lenders. They have also failed to submit the details called for by SEBI in support of their submissions.
- 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 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 TSL 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 *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 TSL and its directors viz. HMG Murthy and HMB Murthy 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 TSL 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 TSL 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 Topline Shoes Ltd and its directors viz. HMG Murthy and HMB Murthy 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

Whole Time Member

Securities and Exchange Board of India