

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY REGULATIONS), 2002.**AGAINST M/S.DYNAMIC SUPERWAYS & EXPORTS LTD., REGISTRAR TO THE ISSUE, IN THE CASE OF VIKAS WSP LTD.**

1. M/s. Dynamic Superways & Exports Ltd.(hereinafter referred to as 'DSEL'), registered with SEBI as a Registrar to the Issue and Share Transfer Agent (RTI), had acted as the registrar in the public issue of M/s Vikas WSP Ltd. (hereinafter referred to as 'VWL').
2. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into the dealing in the shares of (VWL) and into the possible violation of inter-alia the provisions of Securities and Exchange Board of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating to the Securities Market) Regulation, 1995, SEBI (Registrar to an Issue and Share -Transfer Agent) Rules and Regulation, 1993 etc.
3. The investigation prima facie revealed that DSEL had not inscribed 'not transferable' on the promoters' quota shares, which were to be under lock-in for a period of 3/5 years, as per the terms of the prospectus, thereby facilitating the promoters to sell the shares under lock-in period prior to expiry of the lock-in period. It was alleged that DSEL had therefore contravened the provisions of SEBI (Registrar to an issue and Share Transfer Agent) Rules and Regulation, 1993 and SEBI guidelines for Disclosure and Investor Protection.
4. In view of the above, an enquiry officer was appointed by the Chairman, SEBI, vide order dated 24.07.2003 read with order dated 20th March, 2003 to conduct an enquiry into the alleged violation by DSEL.
5. The Enquiry Officer, after conducting the enquiry as per the provisions of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 and submitted his report on 05.02.2004, with the recommendation that a minor penalty of WARNING be issued to the registrar.
6. On receipt of the Enquiry report, a show cause notice was issued to DSEL on 12.02.04. DSEL replied to the said show cause notice vide their letter dated 24.02.2004 and stated that they would respect the findings and actions recommended by the enquiry officer and assured that henceforth they would be vigilant in discharging their duties as Registrar and Share Transfer Agent .
7. I have examined the, enquiry report, the show cause notice, the reply of the RTI and the material available on record and my findings with respect to the allegations against DSEL are as under.
8. VWL had come out with a public issue of 44,86,500 equity shares at par, which closed for subscription on 17.12.1993. As per the prospectus, out of the 39,88,200 shares to be allotted to the promoters, 24,92,490 shares, being 25% of the total post issue capital were to be locked-in for 5 years and the balance 14,95,710 shares were to be locked-in for a period of 3 years from the date of allotment or commencement of commercial production, whichever was later.
9. It was alleged that DSEL had failed to inscribe the non transferability clause on the share certificates pertaining to the locked-in shares issued under the promoters' quota, an act which facilitated the promoters in selling the shares under lock-in, prior to expiry of the lock-in period. SEBI investigations revealed that a total of 13,37,392 shares were transferred/sold before the expiry of the lock-in period.
10. Hence, by not inscribing 'not transferable' on promoters quota shares under lock-in and thereby facilitating transfer of shares before the expiry of lock-in period, DSEL had allegedly violated the provisions of the SEBI (Disclosure and Investor Protection) Guidelines and SEBI (Registrar to an Issue and Share Transfer Agent) Regulations, 2002.
11. I have noted the submission of DSEL that they were appointed as Registrar to the issue of VWL after the allotment of shares to the promoters. DSEL stated that the company had directly received the promoter quota applications and made allotments and that the company gave them the list of allottees under the promoter's quota, without segregating the allottees under the category of three years lock in period and five years lock in period. DSEL further stated that the company's registered office is in Rajasthan and they did not have any representative in Mumbai and hence the certificates had to be taken to Rajasthan for signatures. DSEL stated that in view of the above, they printed the share certificates at the instruction of the company and handed over the share certificates to the representative of the company, with specific instructions for imposing the relevant inscription, vide letter dated March 4, 1994, which was duly acknowledged by the company official. DSEL further stated that they made 'watch and transfer' instruction in their computer system against the shares allotted to the promoters, pending receipt of the information regarding the specific distinctive numbers attracting lock-in up to five years and three years, so as to ensure the desired promoter lock-in, as stated in the prospectus.
12. I have also noted the submission of DSEL that they had not received any shares allotted to the promoters, for transfer, during the first three years and when some of the said shares came up for transfer in the fifth year, they admittedly transferred the shares, while still keeping 25% of the shares issued to the promoters as locked-in.
13. I find that DSEL was aware that 25% of the shares issued to the promoters were under lock-in for a period of five years and another 15% of the shares for a period of three years and they had made 'watch and transfer' instruction in their computer system against the shares allotted to the promoters. DSEL seems to have not have not received the specific distinctive numbers of the shares under lock-in for five years and three years respectively and does not seem to have followed up with

the company in this regard. The enquiry officer held that DSEL had not obtained the specific distinctive numbers of the shares under lock-in for five years and three years respectively and had therefore, failed in exercising due care and diligence in discharging its responsibilities as registrar to the VWL. Hence, the RTI has violated Clause 1 and 2 of Code of Conduct given in Schedule III as specified in Regulation 13 of SEBI (Registrar to an Issue and Share Transfer Agent) Regulations, 1993. Clause 1 provides that: *"A registrar to issue and share transfer agent shall maintain high standards of integrity and fairness in all their dealings with their clients and other registrars to issue and share transfer agents in the conduct of their business."* Clause 2 provides that, *"A registrar to issue and share transfer agent shall act with due skill, diligence and care in the conduct of all their activities."*

14. However, I have also noted the finding of the Enquiry Officer that the first lot of promoter quota share were received only after 4 ½ years and also that stipulated 25% level of lock-in was maintained for 5 years and hence no harm was caused to the interest of the investors or the market. Hence, I do not find any reason to differ with the findings of the Enquiry Officer or the recommendation made.
15. Therefore, in exercise of the powers conferred upon me by Section 19 of SEBI Act, 1992, read with Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby warn M/s. Dynamic Superways & Exports Ltd to be careful in future. I also direct them to note that any instances of violations or non-compliance of the Securities and Exchange Board of India Act and the Rules and Regulations, in future, shall be dealt with stringently.

Place: Mumbai

Date: October 29th, 2004

A K Batra

Whole Time Member

Securities and Exchange Board of India