

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 13(2) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY REGULATIONS), 2002.**AGAINST UNION BANK OF INDIA, MERCHANT BANKER, IN THE CASE OF VIKAS WSP LTD.**

1. Union Bank of India (hereinafter referred to as 'UBI'), is registered as a merchant banker with SEBI. UBI acted as a Lead Manager in the public issue of 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 and SEBI (Merchant Bankers) regulations, 1992 etc.
3. The investigations prima facie revealed that M/s Dynamic Superways and Exports Ltd. (DSEL), the registrar to the issue, 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 UBI, Lead Manager to the said public issue, by not having maintained close coordination with the registrars to the issue till the finalization of the basis of allotment, dispatch of security certificates, refund orders and listing of security and by not bringing to the notice of the board the said act of omission by the registrar, had contravened the provisions of:
 - SEBI guidelines for disclosure and investor protection, and
 - SEBI (Merchant Bankers) Regulations, 1992.
4. An enquiry officer was therefore appointed by Chairman, SEBI, vide order dated 24.07.2003, read with order dated 20.03.2003, to conduct an enquiry into the alleged violation by UBI, lead manager to the public issue of M/s. Vikas WSP Ltd.
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, submitted his report on 05.02.2004, with the finding that UBI had violated provisions of SEBI (Disclosure & Investor Protection Guidelines) and Schedule III SEBI (Merchant Bankers) Regulations, 1992. The enquiry officer recommended imposition of minor penalty of WARNING on the Lead Manager, under regulation 13(a)(i) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.
6. Subsequently, a show cause notice was issued vide letter dated 12.02.2004, advising UBI to show cause as to why the action, as recommended by the Enquiry officer, should not be imposed on them. SEBI received a reply from UBI vide letter dated 4th March, 2004, wherein the bank requested SEBI to reconsider the matter on the following grounds :
 - *The bank stated that the company furnished a certificate from M/s. Pradeep Aggarwal & Associates, Chartered Accountants, certifying the company has allotted equity shares out of the promoter's quota of the company and that the share certificates of these shares were bearing rubberstamp enfacement as "not to be sold transferred/hypothecated" for the period mentioned. The said certificate was accepted by the Delhi Stock Exchange and hence, the bank's action in relying on the CA's certificate was in order.*
 - *The bank asserted that as per the SEBI (Disclosure and Investor Protection) Guidelines, there was no specific duty cast upon the bank to verify the share certificates issued by the registrar and it can be presumed that bank's role is only to the extent of verifying whether the inscription "non-transferable" is effected by the registrar or not. It is the duty of the registrar to the issue to issue the share certificates meant for promoters' quota under lock in period with the inscription "non-transferable". The bank signed the 90 days final report based on the certification by the registrar that the shares to be locked-in were duly inscribed with the words "share cannot be hypothecated, transferred, sold". The bank further stated that physical verification of the shares to find out this aspect was neither practical nor stipulated in the guidelines and that the Bank acted diligently in the circumstances of the case and there was no negligence or lapse on Bank's part in complying with the duties as required by the guidelines. The bank also stated that lapse, if any, is attributed to the Bank, the same was not intentional or malafide.*
 - *The bank further stated that the Registrar to the Issue, during the enquiry conducted against them, admitted that the share certificates were handed over to the company representative on 5th March 1994, without carrying out the*

inscription "non-transferable". The bank stated that this further proves that the Bank had no role in handing over the share certificates of the promoters without the inscription "non-transferable".

- Finally, the bank stated that the considerable delay of 10 years in issuing show cause notice and conducting enquiry, deprived the Bank from relying on the related documents / papers as they were neither available nor traceable. It also stated that the non-availability of the concerned officer who either retired or took VRS by this time also deprived the bank of having a proper opportunity and hearing. The bank asserted that on this count alone, the Bank should be discharged from the allegations made in the show cause notice.*
- The bank, in its earlier replies, cited the judgments delivered by Courts in a) Akbar Badrudin Giwant vs Collector of Customs, Bombay (1990 2 SCC 203) and b) M/s. Cabot International Capital Corporation vs Adjudicating Officer, SEBI (2001 clc 549) wherein it was held that a person can be held liable for punishment only if he is found to be responsible for some act or omission with reference to the law and the goods in question. Hence, it would not be in the interest of justice to impose the punishment of "Warning" as mentioned in the letter, especially when it is evident from the available records that the Bank was in no way responsible for the alleged discrepancies.*

7. I have examined the, enquiry report, the show cause notice, the reply of UBI and the material available on record and my findings with respect to the allegations against UBI 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. As stated above, the Registrar to the issue had failed to inscribe '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.
10. I find that the primary responsibility of handling of share certificates and ensuring inscription of non-transferability clause on the share certificates lies with the Registrar to the issue, in this case with DSEL. Appropriate action for failure of the Registrar to fulfill the obligations cast on them, is being taken separately. As regards the role of the Merchant Banker, I find that
 - a. UBI had obtained a Chartered Accountant's certificate from company regarding inscription of the "non-transferability" clause on the share certificates, which was accepted by the Delhi Stock Exchange as valid.
 - b. The post issue report was signed by them on the basis of the certification by the registrar to the effect that the shares under lock-in were inscribed with the words "share cannot be hypothecated, transferred, sold".
 - c. The Registrar neither brought the fact of having handed over the share certificates to the company, to their notice, nor did it inform them regarding non-receipt of details of locked-in shares from the company.
11. In view of the above, I feel that the facts and circumstances of the case do not merit imposition of any penalty. Therefore, the matter is disposed off accordingly.

Place: Mumbai
Date: November 1st, 2004

A K Batra
Whole Time Member
Securities and Exchange Board of India