

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER UNDER SECTION 11 AND 11B OF THE SEBI ACT, 1992 AGAINST SHRI DINESH KUMAR SINGHANIA IN RESPECT OF ACQUISITION OF SHARES OF BOMBAY DYEING AND MANUFACTURING CO. LTD.

1.0 Background

- 1.1 Investigations were conducted by Securities and Exchange Board of India (hereinafter referred to as 'SEBI') into the acquisition of shares of Bombay Dyeing and Manufacturing Co. Ltd. (BDMCL) allegedly in violation of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 by Shri Arun Kumar Bajoria and others.
- 1.2 Shri A. K. Bajoria vide his reply dated 29th August 2000 to SEBI stated that he along with persons acting in concert with him had acquired 49,64,014 shares of BDMCL on 19th June 2000. This holding increased to 50,39,014 shares on 26th June 2000 which further increased to 51,95,133 on 27th June 2000 and 52,53,826 on 29th August 2000. It was stated by Shri A K Bajoria that Shri D K Singhania was the person who acted in concert with him.

2.0 Show Cause Notice

- 2.1 A show cause notice dated 18th December 2000 was issued to D K Singhania. It was stated in the show cause notice why SEBI should not take action as deem fit under SEBI Act, 1992 and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. Shri Singhania vide his letter dated 26th December 2000 sought to inspect the documents referred to in the said show cause notice. SEBI vide its letter dated 17th October 2001 supplied the copies of documents referred to in the show cause notice.

3.0 Reply to the Show Cause Notice

- 3.1 The advocate for Mr. Dinesh Kumar Singhania, M/s IC Sancheti & Co., Advocates and Solicitors vide its letter dated 05.11.2001 submitted reply to the show cause notice. The reply in brief are as under:
 - i) Our client at no point of time intended to acquire substantial shares of BDMCL. The shares purchased by him between 19.06.2000 to 29.08.2000 were all purchased by our said client, in his capacity as a stock broker of Calcutta Stock Exchange and solely for the purpose of and on account of his clients, details whereof were duly submitted by our client on 02.11.2000.
 - ii) Our client not having purchased the concerned shares for his own purpose or for himself, the question of our client complying with Regulation 7(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 cannot and does not apply to our client. As a share broker our client had purchased the said shares from the Stock Exchange and delivered the same to the purchasers namely Bluechip Capital Markets (P) Ltd. and to Mega Stocks Ltd. Thus any violation on the part of Bluechip, Mega and / or Arun Bajoria to comply with any provision of Regulation 7(1) of the said Regulation cannot be imputed on our said client.

- iii) It is denied that our client, in any manner, acted in concert with Arun Bajoria in acquiring 49,64,014 shares of BDMCL on 19th June 2000. Certain shares were deposited with our client, by M/s Mega Stock Ltd. and Mega Resources Ltd. and our client was not even beneficial owner of the said shares. As such, the question of our client being the person acting in concert with Arun Bajoria and having violated any provision of the said Regulations cannot and does not arise. It would be clear from the statement made by Arun Bajoria that our client was merely a stock broker for Mr. Bajoria and had nothing to do with any alleged or purported substantial acquisition of shares nor was our client an 'acquirer' of shares as envisaged in the concerned SEBI Regulation.
- iv) Our client was only involved in the transaction as a stock broker of Mega Stocks Ltd. As the said 49,64,014 shares of BDMCL were acquired solely by the said Mega Stocks Limited from our client and our client was involved merely as a stock broker of Mega Stocks Ltd. under the said Regulation our Client was not prima facie liable to disclose anything to the target company or to any other person or authority acting in his capacity as stock broker.

4.0 Hearing

- 4.1 An opportunity of hearing was given to Shri Singhania on 08.01.2002. However, an adjournment was sought by Shri Singhania. Hearing was fixed for 12th February 2002 which was adjourned. Subsequently, hearing was fixed for 3rd September 2002 which was clubbed with the hearing in respect of hearing fixed for show cause for off market deals on 25th September 2002. However, Shri Singhania did not appear for hearing nor did he respond.

5.0 Findings

- 5.1 I have taken into consideration the show cause notice dated 18th December 2000 documents supplied by letter dated 17th October 2001 also reply of the advocate of Shri D K Singhania dated 5th November 2001 to the show cause notice. The findings are as under:
 - i) As per Regulation 7, any acquirer who acquires shares or voting rights in a target company which (taken together with shares or voting right, if any, held by him) would entitle him to more than 5% shares or voting rights in a company, in any manner whatsoever, shall disclose the aggregate of his shareholding or voting rights in that company, to the company within 4 days of acquisition of such shares .
 - ii) I find the total issued and paid-up capital of the BDMCL was consisting of 4,10,01,829 shares of Rs.10 each amounting to Rs.41,00,18,290. Thus, the threshold for acquisition of shareholding of 5% for the purpose of disclosure to the BDMCL was 20,50,091 shares.
 - iii) I find that Shri Arun Bajoria vide his reply dated August 29, 2000 (received on September 06, 2000) stated that he along with persons acting in concert with him had acquired 49,64,014 shares of BDMCL on 19th June 2000. This holding increased to 50,39,014 on 20.06.2000, 51,95,133 on 27.06.2000 and 52,53,826 on 29.08.2000. The findings of investigation states that Shri Arun Bajoria acting in concert with others including Shri Singhania acquired 20,69,732 shares on March 15, 2000.
 - iv) Mr. Arun Kumar Bajoria and others have not disputed acquisition of shares of BDMCL exceeding 5% of the paid up capital of BDMCL. I find that Shri D K Singhania has stated that shares purchased by him between 19th June 2000 and 29.08.2000, were all purchased by him in the capacity of stock broker of CSE and solely for the purpose of and on account of his clients. It is also stated that D K Singhania had not purchased the said shares of BDMCL for his own purpose or for himself and stated that Regulation 7 is not applicable in such cases. D K Singhania also stated

that he did not act in concert with Arun Kumar Bajoria in acquiring 49,64,014 shares of BDMCL on 19th June 2000. He has also stated that certain shares were deposited with him by Mega Stock Ltd. and Mega Resources Ltd. as margin and contended that he was not the beneficial owner of the said shares.

- v) I find that 9,00,000 shares of BDMCL were transferred to D K Singhania on 8th June 2000 by Shri A K Bajoria through his firms Mega Resources Ltd. and Mega Stocks Ltd.. These shares were also shown by Shri Bajoria as part of his shareholdings along with persons acting in concert in the shares of BDMCL in various letters dated 04.08.2000 and 19.10.2000 sent to SEBI. The transfer of these shares of BDMCL to D K Singhania has not been disputed by A K Bajoria or D K Singhania. I find that these 9,00,000 shares of BDMCL were transferred to the beneficiary demat account of D K Singhania on 8th June 2000 and not to the Pool Account of D K Singhania as a broker of CSE. I find that these shares were held by D K Singhania in his demat account for over five months and from this beneficial demat account of D K Singhania, these shares were pledged with various banks including ABN Amro Bank Ltd., Global Trust Bank, HDFC Bank Ltd. etc. for obtaining a loan / over draft facility.
- vi) I find that the overdraft facilities of Rs.1.95 crores by pledging 3,04,600 shares of BDMCL were obtained by D K Singhania from ABN Amro Bank Ltd. on 13th November, 2000. Thus the said shares of BDMCL could be pledged with various Banks only by a beneficial owner of such shares.
- vii) In terms of Section 41(3) of the Companies Act, 1956 every person holding equity share capital of a company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company. In terms of Section 2 of the Depositories Act, 1996, 'beneficial owner' means a person whose name is recorded as such with a depository. In this case, 9,00,000 shares of BDMCL were transferred to the beneficiary demat account of Shri D K Singhania and as such he was a beneficial owner of the said shares as per the Depositories Act, 1996.
- viii) I find that out of total shareholding of BDMCL acquired by Arun Kumar Bajoria and person(s) acting in concert with him, 9,00,000 shares were transferred to D K Singhania. Further, these shares were not kept with D K Singhania as margin in the Pool account of D K Singhania. In fact, I find that these shares were transferred from the account of Mega Resources Ltd. to the beneficiary account of D K Singhania and further were pledged by him with various banks for which an Overdraft facility was obtained by D K Singhania from the banks. Therefore, the contention of D K Singhania that these shares deposited with him against margin does not hold good. I reject the contention that these shares were purchased by Shri Singhania as a broker and not as an acquirer.
- ix) As per Regulation 7 an acquirer who acquires shares or voting rights which taken together with the shares or voting rights, if any, been held by him would entitle him to 5% or more of the voting rights shall disclose the aggregate of his shareholding or voting rights of the company. In this case, Mr. A K Bajoria and others and Mr. Singhania have acquired shares of BDMCL exceeding 5% on 15th March 2000 and therefore, required to make disclosure to the company in terms of Regulation 7(1). I find that no such disclosure was made by Mr. Singhania to the target company as per the said Regulations. Therefore, I hold Shri Singhania guilty of violation of Regulation 7 of the Takeover Regulations.

6.0 ORDER

- 6.1 Taking into consideration above facts and contentions in exercise of powers under Section 11, 11B and 4(3) of the SEBI Act, 1992 and Regulation 44 of the Takeover Regulations, 1997, I pass the following directions:
 - i) Shri Singhania shall dissociate himself from the capital market and that he shall not deal in securities in any manner whatsoever for a period of One year.

- ii) Adjudication proceedings be initiated against Shri Singhanian under Section 15A read with Section 15-1 of the SEBI Act, 1992 for violation of Regulation 7 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. The adjudicating officer shall adjudicate the same uninfluenced by any findings / observations made in this order.

This order has come into effect on expiry of 21 days from the date of the order.

Place : Mumbai

Date: 18th Feb, 05

G. N. BAJPAI

CHAIRMAN

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