

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER
UNDER SECTIONS 11 AND 11B OF SEBI ACT, 1992
IN THE MATTER OF GAMMON INDIA LIMITED, SHRI ABHIJIT RAJAN,
NIKHITA ESTATE DEVELOPERS PVT LTD., DEVYANI ESTATE &
PROPERTIES PVT LTD AND RELIANCE SILICONES (I) PVT LTD.

WTM/GA/113/ISD/ 12 / 2006

1. SEBI received a complaint from Reliance Silicones India P Ltd., (hereinafter referred to as RSPL) alleging irregularities in the rights issue of Gammon India Ltd. (hereinafter referred to as Gammon) which took place in the year 2001 and also alleging that funds of Gammon were used for subscription to the rights issue. The complaint also alleged non disclosure of a financial agreement between RSPL and Gammon in the annual accounts of Gammon which resulted in understatement of loss, unauthorised use of banking account, overstatement of assets with respect to its subsidiary M/s Nouveau Exports Pvt. Ltd. (hereinafter referred to as Nouveau) - a 100% subsidiary of Gammon. Thereafter, SEBI commenced an investigation in the matter.
2. It was observed that Gammon had come out with a Rs. 18.96 crores rights issue in the year 2001. The issue was for 63,20,572 shares of Rs.10 each at a premium of Rs. 20 per share in the ratio 1:1. The issue opened on 15/10/2001 and closed on 15/11/2001. The rights issue was completed and thereafter the requisite number of shares was allotted by the company.

3. During the course of investigation it was brought out that RSPL and Nouveau had entered into a hire purchase agreement dated August 09, 2001 for use of a plant of RSPL and certain facilities thereof and there was another agreement dated November 12, 2001 between RSPL, Nikhita Estate Developers Pvt Ltd (hereinafter referred to as Nikhita), Devyani Estate and Properties Pvt Ltd (hereinafter referred to as Devyani) and Pacific Energy Pvt Ltd (company controlled by Shri Abhijit Rajan), interalia with respect to procurement, installation and commissioning of a power plant for RSPL. It was further brought out that a bank account no 102921 was opened by RSPL in the Allahabad Bank, Juhu Branch, Mumbai on November 09, 2001. Investigation revealed that this bank account was used for routing of funds of the company – Gammon for subscription in the rights issue. In effect the promoters did not use their own monies to subscribe to the issue but the company's funds were used. Funds were routed through RSPL and promoter (Shri Rajan) controlled entities namely Devyani and Nikhita. This is discussed subsequently.
4. Examination of the relevant bank account details showing the flow of funds from Gammon in account no 102921 for the period November 09, 2001 upto November 13, 2001 brought out as under :

Deposits

Date	Amount (Rs.)	Particulars
09.11.01	5000	By Cash
13.11.01	5000000	By Gammon India Ltd.

Withdrawals

Date	Amount (Rs.)	Particulars
13.11.01	2500000	To Nikhita Estate Developer Pvt Ltd
13.11.01	2500000	To Devyani Estate & Properties Pvt. Ltd.

It is seen from the above that the account was opened by cash deposit of Rs. 5000 on 9-11-2001. Thereafter on 13-11-01, a sum of Rs. 50 lakhs

was deposited by Gammon India Ltd vide cheque no. 168060. The amount was thus paid by Gammon into the bank account of RSPL on 13/11/2001. It was also seen that the bank account was opened only 4 days previously (on 9/11/2001). The account was to be operated severally by Mr Y Sachdeva (Chairman of RSPL) and Mr O P Gandhi (admitted by RSPL to be a Gammon representative). It is pertinent to note that the amount was paid by Gammon in the Juhu bank branch of Allahabad Bank while the company – RSPL is located at New Mumbai and also had an account with UTI bank located in New Mumbai at that point of time

5. Examination of the withdrawals from this account brought out that on 13-11-2001, 2 cheques were issued to group companies of Gammon as under

No	Date	Cheque no.	Particulars	Amt. (Rs. in lakhs)	Name of Payee
1.	13/11/01	519404	To Transfer	25.00	Nikhita Estate Developers Pvt. Ltd.
2.	13/11/01	519405	To Transfer	25.00	Devyani Estate Developers Pvt. Ltd.
			TOTAL	50.00	

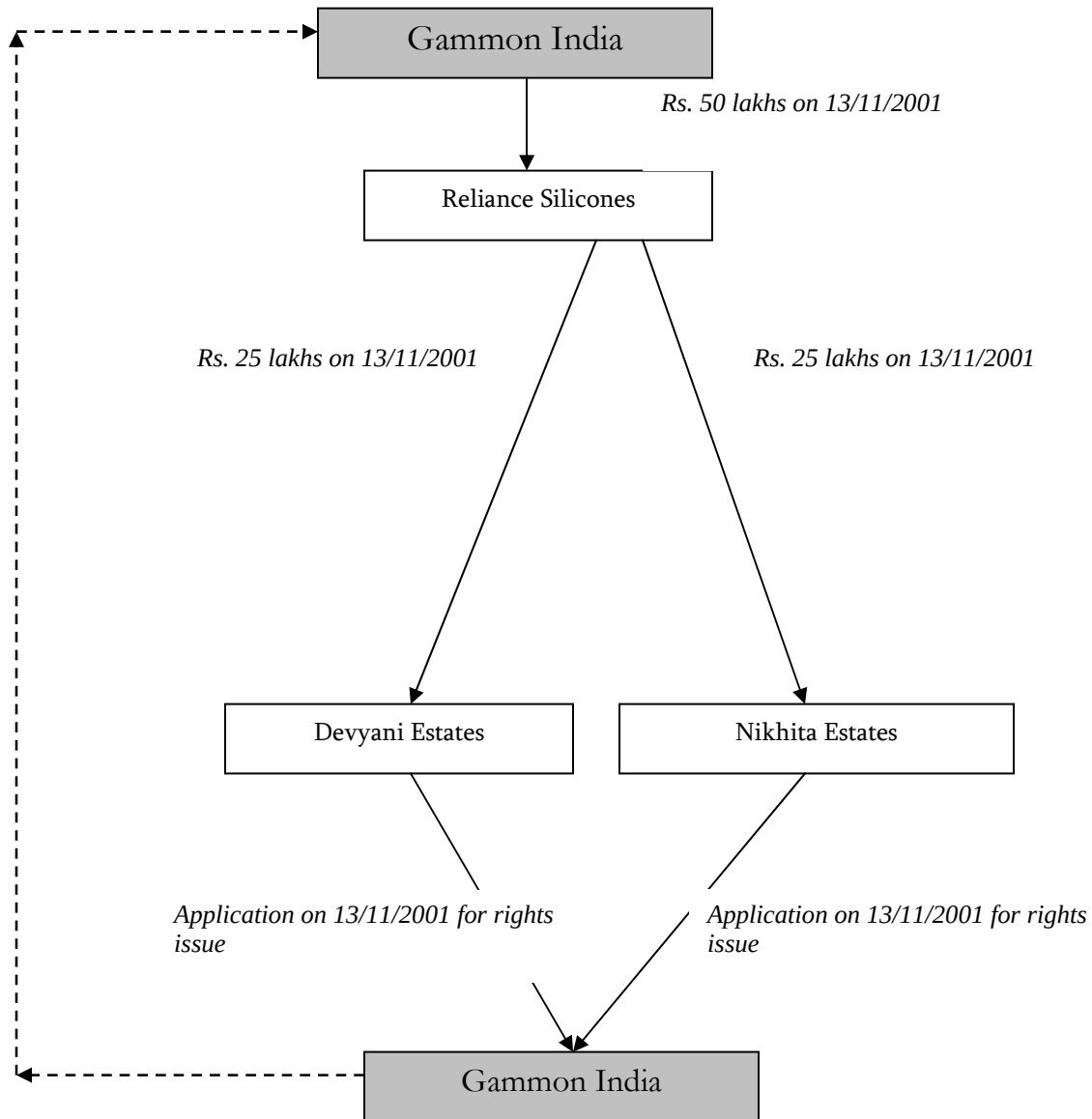
It was thus revealed that funds given by the company – Gammon were routed through RSPL to Gammon-promoter controlled entities namely Nikhita and Devyani. Cheques were seen to be serially numbered. These 2 entities then used the funds for subscription for the rights issue of Gammon (which had taken place around this time). Transactions details are tabulated as under:

Sr. no.	Name of the entity	No. of shares applied	No. of shares allotted	Date of Application	Date of allotment	Name of bank	A/c No.	Chk no.	Chk. Date
1	Devyani Ltd	300000	300000	13/11/01	24/12/01	Allahabad Bank	101870	507804	13/11/01
		200000	200000				101870	507805	
2	Nikhita Ltd	125000	120976	13/11/01	24/12/01	Allahabad Bank	101869	244458	13/11/01
		300000	300000				101869	244459	

It is seen that Devyani issued cheque nos. 507804 and 507805 dated 13-11-2001 from its account no. 108870 maintained with the Juhu Vile Parle Branch of Allahabad Bank for a total amount of Rs. 1.5 crores in respect of 5 lakh shares totally allotted to it. Similarly, Nikhita issued cheque nos. 244458 and 244459 dated 13-11-2001 from its account no. 101869 maintained with the Juhu Vile Parle Branch of Allahabad Bank for a total amount of Rs. 1.275 crores in respect of 4,25,000 shares totally allotted to it.

6. During the course of investigation, RSPL has claimed that it advanced Rs. 25 lakhs each to these 2 companies as advances. It is however seen that, immediately after receiving amount from RSPL, these 2 companies had used the monies to make subscription to rights issue of Gammon. Further, RSPL in its deposition before SEBI stated that it was not aware as to what Nikhita and Devyani did with the funds so given and they could have either used the fund for the project or any short term requirement of their own. It was brought out that the two companies used the funds for subscribing to the rights issue of Gammon.
7. Thus, funds were given by Gammon to RSPL on 13/11/01 and on the same date, RSPL credited the amount to the bank accounts of Devyani and Nikhita vide 2 serially numbered cheques. These accounts were maintained in the same branch (Juhu Branch) of the Bank of Allahabad. Thereafter, on the same date, these 2 entities used these funds to subscribe to the rights issue of Gammon. As per information given by the Bank, Shri Rajan was one of the signatories to each of the accounts of Devyani and Nikhita. Further, the authorised signatory / person who signed both the cheques in favour of Nikhita /Devyani on behalf of RSPL was Shri O P Gandhi (admitted by RSPL to be representative of Gammon). The bank voucher no is B-62 for Nikhita and the voucher no is B-63 for Devyani; thus the vouchers are also serially numbered showing that the funds were credited at a single point of time. The vouchers regarding payment by Nikhita/Devyani to the rights issue are also

numbered in close proximity i.e. 119/121/122/124. This again shows that the funds were credited at almost a single point of time. The flow of funds is shown as follows



8. It is also observed that both Nikhita and Devyani were allotted more shares than they were entitled for. Details in this regard are tabulated below

Particulars	Nikhita	Devyani
Shares held at the time of the rights issue (from Rights	381108	444650

Letter of offer dated 30/9/01) - A		
Shares applied for	425000	500000
Right shares allotted by Gammon - B	420976	500000
Additional Shares allotted (A-B)	39868	55350

It is thus noticed these 2 entities had applied for more than they were entitled to. Further, a total of 95218 shares (39868 + 55350) were additionally allotted to the above mentioned 2 promoter entities of Gammon.

9. During the course of investigation, queries were raised with Shri Abhijit Rajan, Chairman, Gammon. He provided reply on behalf of Gammon as well as Nikhita and Devyani. He also stated that he controlled these companies. It is also observed from the information given by Shri Abhijit Rajan that these companies are stated to have business activities of installing power plants, investment in shares etc. Nikhita made a net profit of Rs 6.36 lakhs in 2000-2001 and Rs 14.78 lakhs in 2001-2002. Devyani made a net profit of Rs 7.73 lakhs in 2000 – 2001 and Rs 17.66 lakhs in 2001-2002. It is further noticed that both these companies do not have substantial capital and they have diverse business activities such as installation and commencing of power plants and investments in shares. Their profits are also on a small scale while they have invested relatively larger amounts in purchasing shares of Gammon in the rights issue.

10. From the foregoing, it seems that investment in shares of Gammon was only a one time activity probably at the behest of Shri Abhijit Rajan who admitted to be controlling the two companies. As brought out earlier these companies were used by Shri Rajan and Gammon to subscribe to the rights issue of Gammon using funds of Gammon. Shri Rajan also stated that he himself was the driving force behind these companies. In this regard deposition of Shri Ajitabh Bachchan was recorded on July 08, 2005. Shri Bachchan stated that when RSPL advanced monies to them, RSPL was not aware of what these two companies did with the funds so received and they could have used it for the project or for any short term requirements of their own. It is therefore

apparent that these 2 companies are only front entities of Shri Rajan without any substantial business activity, expertise, competencies regarding the proposal/project which was to be implemented in connection with RSPL.

11. During the course of investigation, inquiries were made with RSPL. With respect to Rs 50 lakhs received by the company from Gammon, RSPL stated that the amount was received as ICD and had since been returned. It was also stated that the payment of Rs 25 lakhs to Devyani and other Rs 25 lakhs to Nikhita were in the nature of initial advances. RSPL further stated that it had asked for the monies which it had given to Nikhita and Devyani and these advances were eventually refunded. RSPL also stated that the current Account no 102921 in the name of RSPL maintained with Allahabad Bank, Juhu, Mumbai was to be operated by Mr Yogendra Sachdeva and Mr O P Gandhi severally, in terms of the certified true copy of the Board Resolution of RSPL furnished to the said Bank. RSPL also stated that it received Rs. 50,00,000/- from Gammon as Inter-Corporate Deposit in November 2001 carrying interest at 12% per annum and the same was refunded by RSPL on 30th March 2002 out of the advance received against the proposed sale of unused surplus land.

12. During the course of investigation RSPL was asked to explain if it did any due diligence before giving monies to Devyani and Nikhita. In response it was stated that they have had extensive meetings with these companies from January 2001 and that they had seen that these companies had their tie-up for equipment, and power and capabilities. RSPL was also asked if it had taken any steps to ensure that the monies which they paid to Devyani and Nikhita would be used for the intended purpose. However, no substantive documentary evidence or any agreement was provided in this regard.

13. As stated earlier, RSPL had stated that it had received Rs. 50,00,000/- from Gammon as Inter-Corporate Deposit (ICD) in November 2001 carrying

interest at 12% per annum and the same was refunded by RSPL on 30th March 2002 out of the advance received against the proposed sale of unused surplus land. However, no documents were furnished in this regard. The ICD purpose has not been brought out on a substantiated basis. Further it is claimed that the ICD was refunded by RSPL out of advance received by it against proposed sale of unused surplus land. Evidence to substantiate this has also not been brought out as to who advanced these funds, who are the counter party to purported land transaction, related terms and conditions, status of the transactions etc.

14. The nature of the transactions, manner and timing and other material circumstances as adumbrated supra clearly brings out that funds of Gammon were routed by Shri Rajan to subscribe to the rights issue of Gammon itself through RSPL and promoter entities – Nikhita & Devyani. These entities thereafter used these funds to subscribe to the rights issue of Gammon. These 2 entities applied for additional shares and were allotted additional shares.

15. The nature of the transactions, manner and timing and other circumstances as brought out above, are a pointer to the fact that funds of Gammon were routed by Shri Rajan to subscribe to the rights issue of Gammon itself through RSPL and promoter entities – Nikhita & Gammon. If the funds were given by RSPL to Devyani/Nikhita for being used as advances towards project implementation, there was no reason why on the same date they should be used for the rights issue. Further, RSPL had funds to the extent of Rs. 5 cr in its account. These funds could have been used for making advance payment. There was no reason to avail of ICD from Gammon for the purpose. It is pertinent to note that RSPL has stated that the ICD was returned out of funds accrued from advance of sale of surplus land of RSPL. The whole sequence in the arrangement smacks of make believe to disguise part funding of the rights issue as a business transaction.

16. The findings of investigation as above were communicated to the concerned entities – Shri Abhijit Rajan, Gammon, Devyani, Nikhita as well as to RSPL through a show cause notice issued under section 11(4)(b) and 11B of SEBI Act 1992 read with Regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995. Pursuant to the issuance of show cause notice, an opportunity of personal hearing was also granted to and availed of by these entities. Further, with respect to allegations of non disclosures in the annual reports of Gammon and Nouveau, the matter has been referred to the Ministry of Company Affairs as well as to the Institute of Chartered Accountants of India.
17. During the course of the hearing, the Gammon group of entities (comprising Gammon India Limited, Shri Abhijit Rajan, Nikhita and Devyani) submitted reply to the show cause notice. They have generally denied the allegations made in the show cause notice. It is pertinent to note that the fund flow was not disputed by the Gammon group of entities. It is further pertinent to note that the moneys (Rs 50 lakhs) were claimed to be given as ICDs by RSPL to Nikhita and Devyani in line with the obligations enunciated in the agreement; however, none of these 2 entities have the requisite experience in respect of the business. They have not undertaken such activities in the past or even subsequent to the signing of the agreement with RSPL. The nature and scheme of the transactions, the manner in which such transactions were undertaken in close proximity of time and control exercised by Mr Abhijit Rajan over Nikhita and Devyani lend credence to the fact that the entire chain of events was devised to circumvent detection in respect of routing of funds for financing the rights issue of Gammon and to create a make-believe that it was part of normal commercial transaction. But the hard fact remains, in the concatenation of events of the case on November 13, 2001 coupled with the opening of the bank account by RSPL (account no 102921) in Allahabad

Bank, Juhu Branch on November 09, 2001 wherein the other two entities – Devyani and Nikhita already had bank accounts, together with the additional agreement with RSPL entered into on November 12, 2001 definitely demonstrates that there is something more to the putative claim of commercial transactions urged with a delusive air of finality than what meets the eye and that the very same funds of Rs 50 lakhs provided by Gammon on November 13, 2001 to RSPL and thereafter by RSPL to the two entities namely Nikhita and Devyani have come back on the same day i.e November 13, 2001 through a web of transfers as rights issue money. Therefore the funding of rights issue by Gammon stands established. However there are certain mitigating factors as well. The rights issue was for an amount of around Rs 18 cr and the subject transactions constitute a fraction being Rs 50 lakhs Further, the rights issue subscribed to by Devyani was in the aggregate of Rs 1.5 crs out of which only Rs 25 lakhs was financed this way with the funds from Gammon. Similarly the rights issue subscribed to by Nikhita was in the aggregate of Rs 1.275 crs out of which only Rs 25 lakhs was financed this way with the funds from Gammon. Furthermore, the Gammon group of entities have also submitted a Chartered Accountant's certificate stating that the moneys given by Gammon to RSPL have been refunded by RSPL to Gammon on March 30, 2002. Also, the 2 entities – Nikhita and Devyani have not sold the shares allotted to them in the rights issue of the company. As regards RSPL, in its reply, it has also largely corroborated the written submissions made by Gammon Group of entities. However, subsequently vide reply dated August 26, 2006 in response to Show Cause Notice issued by SEBI, Shri Ajitabh Bachchan, Chairman of RSPL had retracted by stating that there was no record of the agreement dated November 12, 2001 and has also stated that he was misinformed by Gammon Personnel regarding what transpired during November 12, 2001. However, subsequently at the time of the hearing an affidavit was submitted to SEBI wherein it was indicated that he was unconditionally withdrawing the earlier response dated August 21, 2006 sent in reply to SEBI show cause notice. He also now confirmed his

earlier deposition before SEBI besides stating that he was misled by an ex-employee in this connection. The explanations of Shri Ajitabh Bachchan on different occasions in relation to the Agreements bristles with inconsistencies and contradictions and therefore his testimony is unworthy of credence, based, as it were, on shifting sands. Notwithstanding the same, the findings of investigation show that RSPL was conduit for funds with respect to the transactions.

18. Notwithstanding the mitigating factors as brought out above, it cannot be denied that the whole scheme of transactions was crafted to enable the promoter associated entities of Gammon to subscribe to its rights issue using company funds and to hike their shareholding in the company without using personal funds. The findings of investigation suggests violation of SEBI (Prohibition of Fraudulent and Unfair Trade practices relating to securities market) Regulations. These entities thus seem to have violated Regulation 2 (c), 3 and 6(a) of the SEBI (Prohibition of Fraudulent and Unfair Trade practices relating to securities market) Regulations, 1995 read with section 77 of the companies Act, 1956.

19. Meanwhile, Gammon Infrastructure Projects Ltd (whose promoter is Gammon) has filed a draft Red Herring Prospectus with SEBI in respect of its public issue. Shri Abhijit Rajan is promoter, Chairman and Managing Director of Gammon as well as that of Gammon Infrastructure Projects Ltd (hereinafter referred to as GIPL). The conduct of Shri Rajan and Gammon as brought out above in the course of investigations conducted in the rights issue of Gammon presents regulatory concerns in view of fitness and propriety to access capital markets. The circumstances surrounding the matter, as brought out above, necessitate appropriate actions in respect of the same as well.

20. Order

Having regard to the above, in view of the facts and circumstances of the case, I hereby, in accordance with powers delegated to me under section 19 of the SEBI Act, read with Section 11 and 11 B of the SEBI Act direct the following

- A. Gammon India Limited, Shri Abhijit Rajan, Nikhita Estate Developers Pvt Ltd., Devyani Estate & Properties Pvt Ltd, shall not divest, transfer, sell or alienate in any way their shareholding in Gammon Infrastructure Projects Ltd for a period of 3 years from the date of the allotment in the public issue of GIPL.
- B. Gammon India Limited, Shri Abhijit Rajan, Nikhita Estate Developers P Ltd., Devyani Estate & Properties P Ltd shall not access the capital market directly or indirectly for a period of one year from the date of this order.
- C. Reliance Silicones (I) Pvt Ltd shall not access the capital market directly or indirectly for a period of one year from the date of this order.

21. The above directions shall come into force with immediate effect.

Dated at Mumbai, this 21st day of December 2006

G. ANANTHARAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA