

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR. K. M. ABRAHAM, WHOLE TIME MEMBER

ORDER

UNDER REGULATION 28(2) OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 IN THE MATTER OF PUNJAB NATIONAL BANK

Date of hearing: June 24, 2009

Appearance:

For Punjab National Bank: Mr. N.C. Jain, Field General Manager
Mr. A.K. Ahuja, Deputy General Manager
Mr. R.K. Joshi, Chief Manager

For Securities Exchange Board of India: Mr. Amarjeet Singh, Chief General Manager
Mr. Vijayakrishnan G., Deputy Legal Adviser
Mr. Rakesh Bhanot, Assistant General Manager
Ms. Chhavi Sinha, Legal Officer

1. It was brought to the notice of Securities and Exchange Board of India (hereinafter referred to as SEBI) that number of high value applications had been submitted by the promoter directors of Majestic Industries Limited (hereinafter referred to as the company) in its rights issue which came out in the year 1996. In view of the above, SEBI *inter alia* conducted an investigation into the possibility of rotation of funds for subscribing to the issue. The investigation conducted by SEBI *inter alia* observed that the company came out with a Rights-cum-Public issue during February-March 1996. The Rights issue consisted of 62,00,000 equity shares of Rs. 10/- each for cash at a premium of Rs. 10/- per share aggregating to Rs. 12,40,00,000/-. The rights issue opened on February 21, 1996 and closed on April 10, 1996. Punjab National Bank (hereinafter referred to as the Bank) was one of the bankers to the issue. Keynote Corporate Services Limited (hereinafter referred to as the Lead

Manager) and M/s Beetal Financial & Computer Services (P) Ltd. (hereinafter referred to as Beetal) were the Lead Manager and the Registrar to the issue, respectively to the said issue. The investigation conducted by SEBI revealed that on April 11, 1996, Beetal issued a certificate to the company stating *“based upon the information received from major collection centers the above issue which opened for public subscription on February 29, 1996 and closed on April 10 , 1996 has been subscribed to the extent of 94.35% of the issued amount. This information is based upon the information supplied by banks.”* Besides, the Lead Manager informed (vide letter dated April 11, 1996) Ludhiana Stock Exchange Limited (hereinafter referred to as LSE) that *“Based on collection figures available with Registrars to the said issue, we hereby certify that the company has received subscription to the extent of 94.35% of the issue amount.”*

2. Besides, it was alleged that the company had shown subscription in the rights issue through fraudulent means and that a number of high value applications had been deposited by the promoter directors and their associates after the closure of the issue (i.e. after April 10, 1996). The investigation conducted by SEBI further revealed that the promoter directors of the company and their associates had made applications for 53,10,580 shares which constituted 85.65% of the total Rights Issue. Six of the said applications accounted for 37,13,600 shares. It was also noted that large number of applications were received by the Bank. The investigation further revealed that the subscription to the rights issue was mainly on account of applications submitted on the last date at the Bank (Sector 17 B, branch, Chandigarh). It was observed that the cheques submitted along with the applications were not sent for clearing as the account on which those cheques were issued, were not having sufficient funds (as on the date of the issue of the cheques) to honour the said cheques. Besides, it was observed that, as the company and its directors were aware of the fact that the issue was undersubscribed, they had

arranged transfer of funds by the company to two of the entities namely, M/s Goyal Finance & Investment Co. and M/s. Bhatia Financiers who in turn financed the applications made by the directors and their associates. The investigation conducted by SEBI revealed that the bank accounts of the aforesaid entities were opened at Sector 9 branch Chandigarh (of Bank)) on the introduction of the director of the company on April 10, 1996 (last date of the closure of the rights issue). It was *prima facie* observed that the Bank facilitated the process of fraudulent achievement of minimum subscription of the rights issue of the company and therefore, was alleged to have contravened the provisions of Clauses 1,2,4,6(b) and 7 of the Code of Conduct specified under Schedule II of Securities and Exchange Board of India (Bankers to an Issue) Regulations, 1994 (hereinafter referred to as the said Regulations). Thereafter, SEBI, vide order dated December 26, 2003 appointed an Enquiry Officer under the then existing provisions of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 to enquire the alleged violations committed by the Bank.

3. The Enquiry Officer, after considering the materials available on record and the submissions of the Bank, vide Enquiry Report dated November 29, 2004, recommended the suspension of Sector 17-B, Chandigarh branch of the Bank from undertaking transactions as Bankers to the issue for a period of one month. Subsequently, a notice dated December 15, 2004 was issued by SEBI to the Bank requiring it to show cause as to why appropriate penalty including penalty as recommended by the Enquiry Officer should not be imposed against it. A copy of the Enquiry Report was also forwarded to it along with the said show cause notice. The Bank, vide letter dated December 31, 2004, *inter alia*, stated that, it had no role in issue of certificate by Beetal on the basis of which LSE permitted the company to withdraw the issue proceeds. The Bank further submitted that the rights issue of the company was handled by its branch office i.e. Sector 17-B, Chandigarh. According to the Bank, the said branch sent

cheques for clearing and collected credit 10-12 days after closure of the issue. The reason for such delay, according to the Bank was mainly on account of the rush of closing work at the said branch and the intermittent holidays which extended the total delay to 10 to 12 days. The Bank further stated that it had taken disciplinary action against the officials on whose part the said delay had occurred. The Bank further contended that it had prescribed a systematic set of guidelines to be followed by the branches in the nature of circulars, training programmes and seminars for strict compliance of its duties as a banker to an issue. The Bank claimed that no irregularity has been observed in respect of issues handled by it in the last more than 5 years. Thereafter, an opportunity of hearing was granted to the Bank on June 24, 2009, when Mr. N.C. Jain (Field General Manager), Mr. A.K. Ahuja (Deputy General Manager) and Mr. R.K. Joshi (Chief Manager) represented the Bank and made submissions before me on the lines of the reply of the Bank dated December 31, 2004.

4. I have considered the Enquiry Report, the oral as well as written submissions made on behalf of the Bank and other material available on record. In the facts and circumstances of the case, the only issue to be considered here is whether the Bank had exercised due diligence, care and skill as observed by the Enquiry Officer while acting as a banker to the rights issue of the company. The facts in brief which led to the initiation of the present proceedings are not in dispute before me and the same are mentioned below:

- i) The rights issue of the company was closed on April 10, 1996.
- ii) Large number of applications was received on the last date.
- iii) The promoter directors of the company and their associates made large number of applications which constituted for 85.65% of the total rights issue.

- iv) Majority of such applications (involving an aggregate amount of Rs. 7,42,72,000/-) were deposited in the Sector 17 B, Chandigarh Branch of the Bank.
- v) Subscription to the rights issue was mainly on account of applications submitted on the last date.
- vi) The company and its directors arranged for the transfer of funds from the company to the entities namely, M/s Goyal Finance & Investment Co. and M/s. Bhatia Financiers who in turn financed the applications made by the directors and their associates. The bank accounts of the aforesaid entities were opened in Sector 9 branch, Chandigarh of the Bank on April 10, 1996 on the introduction of one of the directors of the company

5. The details of the application made by the promoters and their associates in the rights issue of the company are as follows:

Applicant Name	Cheque No.		Number of shares applied for	Amt (Rs.)	Bank where application deposited	Cheque credited on
	No.	Drawn on				
VS Gupta	276336	BoI*	16,75,000	3,35,00,000	PNB**	22.4.96
NK Gupta	491683	PNB	6,55,000	1,31,00,000	PNB	24.4.96
Vinod Gupta	487203	PNB	6,55,000	1,31,00,000	PNB	24.4.96
Gopal Krishan Gupta	488915	PNB	6,55,000	1,31,00,000	PNB	24.4.96
Kamlesh Gupta	473055	PNB	53,000	10,60,000	PNB	24.4.96
Seema Gupta	472974	PNB	20,600	4,12,000	PNB	24.4.96
Subhash Gupta	489324	PNB	10,50,000	2,10,00,000	SBOP***	15.4.96
Indu Gupta	472995	PNB	73,000	14,60,000	SBOP	11.4.96
Majestic Metaliks Private Limited	732207	PNB	4,50,000	90,00,000	SBOP	15.4.96
Amit Gupta	530009	PNB	23,980	4,79,600	SBOP	NA
			53,10,580	7,42,72,000		

*Bank of India

** Punjab National Bank, Sector 9, Chandigarh

*** State Bank of Patiala, Industrial Finance Branch, Sector 17A, Chandigarh

The aforesaid applications amounted to 85.65% of the total rights issue. Out of this, 6 applications amounting to 37,13,600 shares were deposited in the Sector 17B branch of the Bank.

6. The rights issue of the company was under subscribed till the last date of the closure of the issue and therefore, the company and its directors organized transfer of funds by the company to entities namely M/s. Goyal Finance and Investment Company and M/s Bhatia Financiers who had in turn financed the applications made by the directors and their associates. It is pertinent to note that the accounts of the above mentioned entities (M/s. Goyal Finance and Investment Company and M/s Bhatia Financiers) were opened on the last date of the closure of the rights issue of the company. Besides, the same were opened at one of the branches of the Bank at Chandigarh (as mentioned above). The introduction of which was made none other than the director of the company.

7. The allegation leveled against the Bank is that it had facilitated the company, promoters and associates in their process of arranging money for the applications made (by directors and associates) on the last date of the closure of the issue. The cheques submitted along with the applications received on the last date of the closure of the issue were not presented immediately for clearing by the Bank as is expected of a Banker to an issue. The delay in presenting the cheques facilitated the aforesaid entities/persons to arrange funds from the company through various channels. The investigation conducted by SEBI observed that the company had transferred Rs.2,49,00,000/- (from the Simla branch of the Bank) and Rs.65,00,000/- (from the Ambala branch of the Bank) to its bank account at Sector 9, Chandigarh branch on April 11, 1996 and April 13, 1996. Needless to say, the said transfers happened after the closure of the rights issue. The company then transferred the said money to M/s. Goyal

Finance and Investment Company and M/s Bhatia Financiers, who in turn used the same to finance the applications made by the directors and their associates. The fund transfers which took place amongst the company, the aforesaid entities and the applicants (to the rights issue) had been explained in detail in the Enquiry Report as stage I to IV of the Enquiry Report. The said fund transfers clearly indicate the fraudulent manner in which company's funds were used for subscribing to the rights issue. Though, the copy of the Enquiry report was provided to the Bank, no effort was taken by it to controvert the said findings of the Enquiry Officer. In view of the admitted background of the factual situation, I do not consider it necessary to reproduce the fund transfers which took place amongst various entities including the company, which had been explained in detail in the Enquiry Report.

8. According to the Bank, the delay in sending the cheques for clearing, was due to the closing work at the branch and the intermittent holidays post April 10, 1996. I cannot accept the said contention. The Bankers to an Issue has a prominent role in the process of an Issue. It should not have forgotten the mandatory duties prescribed under the said Regulations while functioning as a banker to an issue. It is all the more relevant to take note of the fact that the Bank is a public sector bank and as such it should have been all the more careful and diligent in its duties. The said duty has to be exercised keeping in view the interests of the investors. Therefore, the plea that the delay on account of extra work and intermittent holidays, cannot by any stretch of imagination be accepted in the facts of the case. The investigation conducted by SEBI revealed that all the cheques accompanied with the applications were local cheques. I also note the observation made by the Enquiry Officer that *"It has also been admitted by PNB during the hearing that the cheques received for collection are supposed to be sent next day or day after for clearing."* Thus, the Bank was aware of the fact that it was mandated to sent the cheques for clearance within a day or two. However, the Bank took 15 days for the clearance of the said

cheques. Further, it can be seen from the Table mentioned at Para 5 above in this order that in respect of the applications received at State Bank of Patiala (one of the bankers the issue of the company), the cheques were credited between April 11, 1996 to April 15, 1996 i.e immediately after the closure of the issue on April 10, 1996. However, in the case of the Bank, the cheques were credited only on April 24, 1996. In the facts and circumstances of the case, the plea of the Bank that the delay was due to the closing work does not hold good.

9. Besides, act of the Bank is not delay simpliciter. By its very act (delay in presenting the cheques), the Bank had facilitated (colluded with) the company, promoters and directors to arrange the funds before the presentation of the cheques. The manner in which the funds were transferred from the account of the company to the ultimate applicants have been explained in detail in the Enquiry Report. SEBI had taken stringent action (vide order dated February 18, 2005) against the company, its directors and their associates in respect of the issue. They were *inter alia* prohibited from buying, selling or dealing in securities for a period of 5 years. In the aforesaid order, it was observed "*It is also possible that these applications may have been deposited by the last closing date (10.4.96) and the company and the directors connived with the Bank to get them to delay sending the cheques for clearing.*" In the facts and circumstances of the case, the fact that the delay in presenting the cheques had facilitated the company, its promoters and associates to fulfil their manipulative scheme in respect of the issue, has to be viewed seriously.

10. Besides, I also note the copy of the circular of the Bank Ref: MBD/Subsi/Misc-II dated July 19, 2004, submitted by the Bank pursuant to the hearing held on July 09, 2009. In the said circular, it is *inter alia* mentioned:

"Of late instances have come to our notice that some branches in cases of Bankers to Issue assignments have committed lapses/certain irregularities in

acceptance and collection of share applications/money. The irregularities include :-

1. The applications were accepted by the branches after closure of the issue.

2. In one such case although the applications were received on the last day of closure, but the cheques submitted with the application were sent for collection in clearing after 10-12 days of the receipt. As on date of submission, there were no funds in the accounts of the applications (mostly Directors and Management Personnel of the company). During this delayed period funds were arranged by the applicants and the cheques were cleared and helped the company to achieve minimum subscription required for the issue.

This indicates that our branches were not vigilant to comply with the SEBI guidelines which SEBI has viewed seriously.”(Underline supplied)

11. Further, the Bank submitted that they had initiated disciplinary proceedings against its officials on whose part the delay had occurred. This would also prove the fact that the Bank was aware of the seriousness of the irregularities which had taken place while acting as a banker to an issue in respect of the rights issue of the company. In view of the above, I am convinced that the Bank had failed to exercise due diligence, ensure proper care while dealing in the rights issue of the company. The Bank was supposed to observe high standards of integrity and fairness in all its dealings with its clients and investors. A banker to an issue shall always endeavour to ensure that all its professional dealings are done in a prompt, efficient manner. In view of the above, it is established that the Bank had contravened the provisions of Clauses 1, 2, 4 and 7 of the Code of Conduct prescribed for bankers to an issue in Schedule III of the said Regulations. With regard to the charge of violating clause 7 of the Code of Conduct, I find that there is no finding in respect of the

same in the Enquiry Report. In the absence of any specific finding, the said charge against the Bank is not established. The violations committed by the Bank in its role as a banker to an issue in the rights issue of the company calls for a penalty.

12. I note that the present case has been initiated under the provisions of the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002. Subsequently, in 2008, the aforesaid Regulations were repealed by the Securities and Exchange Board of India (Intermediaries) Regulations, 2008. Accordingly, the present proceedings is disposed of in terms of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, as ordered hereinunder.

13. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby, debar the Sector 17-B, Chandigarh Branch of the Punjab National Bank, from carrying out any activities as a Banker to an Issue, for a period of fifteen days.

14. This order shall come into force immediately on expiry of twenty one days from the date of this order.

DR. K. M. ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: August 03, 2009.