

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

DIRECTIONS UNDER SECTIONS 11, 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, AGAINST SEAGULL LEAFIN LIMITED AND ITS DIRECTORS, MR. S. R. PUJARI, MR. PHILIPS AMOLIK, MR. RAJKUMAR SHARMA AND MR. VINODBHAI D PATEL

1. Seagull Leafin Limited (hereinafter referred to as the company) is a company incorporated under the provisions of the Companies Act, 1956. The company was originally incorporated as Study Financiers Private Limited and subsequently converted into a public limited company on January 31, 1995. The name was changed to Seagull Leafin Limited (the present name) during May 1997. The company came out with an initial public offering for an issue of 25,00,000 equity shares of Rs.10/- each at par on February 28, 1996. These shares along with the originally allotted 25,17,800 shares, totalling 50,17,800 shares were permitted to be listed on the Bombay Stock Exchange Limited (hereinafter referred to as BSE) from May 17, 1996. The shares of the company were also listed on the erstwhile Hyderabad Stock Exchange Limited. During June 2002, the shares of the company underwent a share split and the face value of the shares were reduced to Re.1/- from Rs.10/-. Accordingly, the total number of shares of the company increased from 50,17,800 to 5,01,78,000. Later, pursuant to an amalgamation scheme approved by the Hon'ble High Court of Andhra Pradesh, Bhamti Finance Limited merged with the company. The shareholders (4 individuals and 11 corporate bodies) of Bhamti Finance Limited were allotted a total of 12,50,00,000 shares. However, the said shares have not been listed as the listing application in respect of the said shares, is still pending with the stock exchange. Thus, the total equity capital issued by the company was to the tune of Rs.17,51,78,000/- (17,51,78,000 shares x

Re.1/-) only of which 5,01,78,000 was the listed equity capital of the capital. The company was engaged in the business of investment and financial services related activities and had been operating in the capital market.

2. During November 1996, the Narcotics Control Bureau, Mumbai, had *inter alia* seized 32 lakh share certificates of face value of Rs.10/- each from the premises of one Gopal Auliya. After investigations, the Narcotics Control Bureau, Mumbai, handed over the said certificates to the Income Tax Department on January 23, 2002 for taking necessary action. The Assistant Commissioner of Income Tax, Mumbai, vide letter dated January 25, 2005 had informed BSE of the said seizure and requested the stock exchange not to allow any transactions in those shares. The details of the share certificates including their numbers and distinctive numbers were also furnished to BSE by the Income Tax Department. BSE, thereafter called upon the company to show cause as to why it did not disclose the material information regarding the seizure of such a huge quantity of its share capital by the Income Tax Department as the same was contrary to the listing agreement. The company was also called upon to provide the break up of the total issued and paid up equity capital in demat and physical form. After making an enquiry, BSE found that the total listed equity share capital of the company is 5,01,78,000 shares. As the shares in the custody of the Income Tax Department were 3,20,00,000, the equity shares in the dematerialised form could not be more than 1,81,78,000 shares $[5,01,78,000 - 3,20,00,000 = 1,81,78,000]$. On a confirmation received from both the depositories [the National Securities Depository Limited (NSDL) and the Central Depository Services (India) Limited (CDSL)], it was found by BSE that the total shares held in the depositories were 2,63,87,260 shares. This indicated that the shares that have been dematerialized were in excess of the quantity that was eligible to be in the dematerialised mode. To avoid market complications, BSE (vide Notice dated February 02, 2005) suspended the trading in the equity shares of the company with effect from

February 07, 2005. Aggrieved by this decision of BSE, the company filed an appeal before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as the Hon'ble Tribunal) in Appeal No. 32 of 2005. As the company had contended that the shares seized by the Income Tax Department through the Narcotics Control Bureau, were not genuine, the Hon'ble Tribunal appointed a Court Commissioner to assist it and to submit a report as to whether the said shares were genuine or not. The Court Commissioner submitted a detailed report, with a finding that the share certificates in possession of the Income Tax Department were genuine. After hearing the parties, the Hon'ble Tribunal while dismissing the appeal filed by the company vide Order dated February 08, 2006 had observed as follows:

“From the aforesaid information it is clear that out of the total of 5,01,78,000 shares, 2,63,87,260 shares had been dematerialized and the remaining shares were still in the physical form held by the shareholders in the form of share certificates. As per the report of the Court Commissioner the remaining shares were also in the process of being dematerialized through the Company when the BSE stopped trading in the scrip of the Company. **It is thus obvious that out of the listed capital of 5,01,78,000 shares, 3.2 crore shares had been seized by the NCB and Income Tax Department in physical form because that department had share certificates in it. That being so only 1,81,78,000 shares could be in the dematerialized form in the accounts with the two depositories but a total of 2,63,87,260 shares as per the information received from the two depositories had already been dematerialized. This obviously means that a large number of the seized shares had also been dematerialized and this could happen only through the company after it had issued duplicate share certificates to the shareholders.** The Court Commissioner after inspecting the records of the Company has found in his report that **the Company had issued duplicate sets of share certificates in regard to the 32 lac shares which had been seized by the Income Tax Department. The Court Commissioner also found that out of the 32 lac**

seized shares 15,60,300 shares were held in physical mode and about 15,34,800 shares were held in demat mode. It is therefore clear that about 50% of the seized shares have already been put in the demat mode and were being traded in the market.....In this view of the matter with almost 50% seized shares being traded in the demat mode which cannot be traced, the BSE had no option but to stop the trading of all the share scrips of the Company lest the seized shares are also traded. No fault can thus be found with the impugned action of BSE in suspending the trading in the equity shares of the Company." [Emphasis supplied]

3. Thereafter, BSE submitted a report dated July 14, 2006 to SEBI in respect of the dealings in the shares of the company for the period between October 25, 2004 and February 06, 2005. On receipt of the above report, SEBI also conducted an investigation into the buying, selling or dealing otherwise in the shares of the company for the same period, to find out possible violations of the securities laws. During the investigation, letters sent to the company were not delivered as it was not available at its last known address at 404, Manjula Apartment, HIG 123 & 4, Dharmareddy – 1, KPHB Colony, Hyderabad, Andhra Pradesh, Pin Code – 500 072. Letters were also sent to the other addresses of the company but the same also returned undelivered. Mr. Philips Amolik, Mr. S. R. Pujari, Mr. Rajkumar Sharma and Mr. Vinodbhai D Patel were found to be the directors of the company as per the Annual Report of the company for the financial year 2004 -2005). Letters sent to them at their company address also returned undelivered. The investigation noticed that the shareholding pattern in the company (as on the quarter ended September 2004, December 2004 and March 2005) as filed by the company is as under:

S. No.	Category	30th September' 04		31st December' 04		31st March' 05	
		No. of Shares	%	No. of shares	%	No. of Shares	%
I	Promoters Holding	700	0	700	0	700	0
1.	Indian Promoters	13259300	7.57	13259300	7.57	13259300	7.57
2.	Persons acting in Concert						
	Sub Total	13260000	7.57	13260000	7.57	13260000	7.57

II	Non-Promoters Holding Private Corporate Bodies	160179459	91.44	145374577	82.99	144429615	82.45
2	Indian Public:	1738541	0.99	16543423	9.94	17488385	9.98
	Sub Total	161918000	92.43	161918000	92.43	161918000	92.43
	Grand total	175178000	100	175178000	100	175178000	100

BSE, in its examination report had informed that majority of the entities appearing in the category “*Private Corporate Bodies*” were allottees of shares, having received shares in the physical form pursuant to the amalgamation with Bhamati Finance Limited. It was also noted that the holding of the promoters and their persons acting in concert (PACs) have remained unchanged during the investigation period. As to the performance of the company, it was found that the company was not earning any income from its core operations and that the income shown for the quarters ending December 2004 till June 2005 was on account of interest earned. The financial results for 2005-06 & 2006-07 were not available in the website of BSE.

4. As already mentioned above, the total listed equity capital was Rs.5,01,78,000/- (5,01,78,000 shares of face value of Re.1/-). The quantity of share certificates seized by the Income Tax Department was 32,00,000 (32,00,000 certificates of face value of Re.10/- = 3,20,00,000/-). Therefore, the quantity eligible for dematerialisation would be 1,81,78,000 shares (50178000 – 3,20,00,000=1,81,78,000). However, the information from the depositories indicated that 2,67,15,000 shares were in the dematerialised mode. The details are as below:

Particulars	as on 1 st February 2005		as on 7 th February 2005	
	No. of shares	%	No. of shares	%
With NSDL	2,31,48,720	13.21	2,32,11,275	13.25
With CDSL	35,66,280	2.04	35,03,725	2.00
In Physical (balance figure)	14,84,63,000	84.75	14,84,63,000	84.75
Total Capital	17,51,78,000	100.00	17,51,78,000	100.00

It needs to be noted that 12,50,00,000 shares issued to the shareholders of Bhamati Finance Limited (pursuant to the scheme of amalgamation) were

allotted in physical form and were not allowed listing in any of the stock exchanges. As aforesaid, the total holding in the dematerialised mode as on February 7, 2005 was 2,67,15,000 shares instead of 1,81,78,000 shares. This *prima facie* indicates that excess shares have been issued by the company, over and above the issued capital. *Prima facie*, the excess dematerialisation could have happened only on the basis of fake/duplicate share certificates issued by the company. The issues arising from the case could not be clarified from the company or its directors, as they were not traceable, despite repeated attempts. I also note that the Court Commissioner appointed by the Hon'ble Tribunal in Appeal No. 32 of 2005 (mentioned supra), had observed that the company had issued duplicate of share certificates in regard to the 32,00,000 shares which had been seized. The Court Commissioner had also found that out of the 32,00,000 seized shares, 15,60,300 shares were held in physical mode and about 15,34,800 shares were held in demat mode. Thus, nearly 50% of the shares contained in the seized share certificates have already been dematerialised and were being traded in the market. But, for the timely action of BSE in suspending trading in the shares of the company, the unlisted shares coming into the market, would have resulted in market chaos. I note that the depositories had submitted that it was the issuer or its registrar and transfer agent who verifies the genuineness and validity of share certificates and dematerializes them. The information from Sharepro Services (India) Private Limited (received during the course of investigation) was not of any use, as it had submitted that its association with the company was only in the capacity of a '*Connectivity Agent*' and not as its '*registrar and transfer agent*' as the share transfer and registry work was done 'in-house' by the company. It further submitted that it was not aware of the whereabouts of the company and that all letters/communication sent to the company's address were not being responded to.

5. I note that SEBI had advised BSE to find out whether the company falls under the category of 'Vanishing Companies'. BSE had intimated that the company had last filed its report on April 05, 2007. From the investigation report, I note that the letters issued to the company and others had returned undelivered. I further note that BSE and the Court Commissioner appointed by the Hon'ble Tribunal were of the view that the company had issued second set of share certificates and the same have been acted upon by the company in its books. It appears that such duplicate/unlisted shares have come into the securities market through the company and related entities. It appears that the company has so far not approached BSE for sorting out the issue as to how the seized shares could be taken out from the market. *Prima facie*, the company and its directors who were in charge of the affairs of the company and responsible for the business of the company have played a fraud on the shareholders and the investing public by issuing duplicate share certificates, thereby enabling excess dematerialization. Thus, the company and its directors, Mr. Philips Amolik, Mr. S. R. Pujari, Mr. Rajkumar Sharma and Mr. Vinodbhai D Patel, have *prima facie* violated the provisions of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, the Depositories Act, 1996 and the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996. Further, in the absence of replies and information from the company, its directors and others, definite inferences in the matter could not be made by SEBI. Needless to say, non production of documents/records/information for investigation is a serious wrong as it hampers the investigation that is carried on by SEBI. In a serious case, like the present one, it is important and necessary to restrain such entities/persons from dealing in the securities market in the interests of investors in particular and the securities market in general. Such a direction would be preventive in its nature. *Prima facie*, the act of issuing such duplicate share certificates by the company and its directors would tantamount to fraud or deceit on the shareholders of the

company in particular and the investors in general, which is in contravention of Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. Further, since the company and its directors are *prima facie* found to have issued counterfeit security in physical form, they have contravened Regulation 4(2)(h) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. In this regard, I note the following observations of the Hon'ble Tribunal made in Appeal No. 67 of 2008 – Bellary Steels & Alloys Limited and others vs. Securities and Exchange Board of India and another, decided on November 18, 2008:

“In view of this conduct of the parties, we have no hesitation in holding that the Company and the pledgors had connived in the issuance of the duplicate shares which were subsequently transferred in the name of the Hotel. The Hotel, in turn, got the shares dematerialized in November 2005 and this act clearly indicates its intention to trade those shares in the market. The directors of the Hotel are also the directors of the Company. They were all party to the fraud. Had the Board not passed the ex parte order on 1.2.2006, the shares would have been traded in the market. In this background, we are clearly of the view that the Company is not entitled to any relief.....**The action of the Company in fraudulently issuing the duplicate shares only to enable the subsequent transferees from trading them in the market is an act squarely covered by the provisions of Regulations 3 and 4 of the Regulations. We have already held that the act was fraudulent.**

.....

10. Learned counsel for the appellant then contended that the punishment imposed on the appellant was very harsh and disproportionate to the gravity of the charge established against him. This argument is being noticed only to be rejected. We have already found that the company and the pledgors whose

director the appellant was, had connived with each other in fraudulently obtaining duplicate share certificates of the Company which were subsequently transferred in the name of the Hotel. This being the conduct of the pledgors, it cannot be said that the punishment is harsh.” [Emphasis supplied]

6. In view of the *prima facie* violations committed by the company and its directors, their continuance in the securities market without any restrictions, would be prejudicial to the interests of the investors and the safety and integrity of the securities market. Further, as the Securities and Exchange Board of India Act, 1992 casts upon the Board a duty to curb such malpractices that are detrimental to the growth and development of the securities market and also to prevent the ways by which such entities adversely affect the investors' confidence. As stated earlier, letters written to the company and its directors returned undelivered, despite repeated attempts by SEBI. The Hon'ble Tribunal in its order dated February 08, 2006 (cited supra) had *inter alia* observed “**6. Before concluding, we may mention that the learned counsel appearing for the BSE very fairly submitted that if the appellant were to approach BSE, the latter would afford all help and assistance to it in finding a way out as to how the seized shares could be taken out of the stock market. The appellant may if so advised approach the BSE in this regard and sort out its affairs.**” However, it appears that the company had not approached BSE as to how the seized shares could be taken out from the market. BSE had also intimated that the company had last filed its report on April 05, 2007. Thus, the company had failed to file reports/returns as required under the listing agreement. The act of the company and its directors was detriment to the genuine investors and adversely affecting the integrity of securities market. SEBI should intervene in such circumstances to restore the confidence of the investors and to stop further harm, from the aforesaid persons who *prima facie* have indulged in such activities. From the foregoing, it is apparent that the company and its directors are evading the process of law, inspite of their

knowledge about the duplicate shares circulating in the market. Thus, it becomes imperative that Seagull Leafin Limited and its directors, viz., Mr. Philips Amolik, Mr. S. R. Pujari, Mr. Rajkumar Sharma and Mr. Vinodbhai D Patel are issued suitable directions in the interests of investors and for the orderly development of the securities market.

7. In view of the foregoing, in exercise of powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11, 11(4) and 11B thereof, hereby restrain Seagull Leafin Limited (Permanent Account No. AAFCS3157A) and its directors namely, viz., Mr. Philips Amolik, Mr. S. R. Pujari, Mr. Rajkumar Sharma and Mr. Vinodbhai D. Patel from accessing the securities market and are also prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly and in any capacity whatsoever, till further orders.

8. This order shall come into force with immediate effect.

9. If aggrieved, Seagull Leafin Limited and its directors, namely Mr. Philips Amolik, Mr. S. R. Pujari, Mr. Rajkumar Sharma and Mr. Vinodbhai D Patel may file their objections to this Order, so as to reach Securities and Exchange Board of India by October 31, 2009.

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

PLACE: MUMBAI
DATE: OCTOBER 15, 2009