

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: DR. K. M. ABRAHAM, WHOLE TIME MEMBER**

ORDER

**DIRECTIONS UNDER SECTION 11B OF THE SECURITIES AND
EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH SECTION 19 OF THE
DEPOSITORIES ACT, 1996, AGAINST STERLING HOLIDAY RESORTS
(INDIA) LIMITED**

Date of final hearing: July 29, 2009

Appearance:

For Sterling Holiday Resorts (India) Limited:	Mr. Ravindran K, Legal Counsel Mr. M. Balasubramaniam, Company Secretary
For the Securities and Exchange Board of India:	Mr. Suresh B. Menon, Chief General Manager Mr. K. Saravanan, Deputy General Manager Mr. Vijayakrishnan G, Deputy Legal Adviser Ms. Manaswini Mahapatra, Assistant General Manager Mr. T. Vinay Rajneesh, Legal Officer

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI) had received a letter dated February 10, 2005, from Gujarat Industrial Investment Corporation Limited (hereinafter referred to as GIIC) alleging that Sterling Holiday Resorts (India) Limited (hereinafter referred to as the company) had failed to dematerialise 2,99,800 shares of the company held by it. GIIC in its aforesaid complaint *inter alia* stated that:

- a. It had rendered financial assistance to the tune of Rupees Five Crores to the company during October 1996. To *inter alia* secure the said loan, the company had arranged for pledge of its 25,92,800 shares held by its promoters/associates as collateral security for repayment of the said loan.

- b. As the company had defaulted in making payment as per the schedule of the payment, the aforesaid security was enforced and out of 25,92,800 shares pledged, 2,99,800 shares in physical form were duly transferred by the company in the name of GIIC in 2001.
 - c. GIIC, lodged 2,99,800 shares of the company with UTI Securities Limited for the purpose of dematerialising them, on July 27, 2001. However, the company had neglected to convert the aforesaid shares in the dematerialised form even after considerable delay.
2. Pursuant to the receipt of the aforesaid complaint from GIIC, SEBI made preliminary enquiries with the company and GIIC. In its letter dated July 19, 2005, GIIC requested SEBI to give suitable directions to the company to complete the request for dematerialisation of shares in respect of the 2,99,800 shares transferred. On being *prima facie* satisfied, SEBI, vide letter dated August 30, 2005 had advised the company that the transfer of shares and dematerialization request received from the investors should not be kept pending as it is detrimental to their interest. The company was further advised to take steps to redress the grievance of GIIC at the earliest. In response, the company vide letter dated September 19, 2005 informed that, the promoters of the company had pledged their personal holding of 25,92,800 equity shares of the company as a collateral security to GIIC in the year 1996 for a loan amount raised by the company and that it was unable to repay the loan as it was facing severe 'cash crunch'. The company further submitted that the matter was pending before various judicial fora and therefore its board of directors were unable to proceed with the 'transfer/demat' of the impugned shares till the matter was resolved. Thereafter, GIIC through its legal counsel intimated (vide letter dated March 9, 2006) SEBI that it had given 2,99,800 shares of the company for dematerialisation on July 31, 2001 and alleged that even after a lapse of nearly six years, the company had not complied with its request for

dematerialisation. It was also informed that the said 2,99,800 shares which were sought to be dematerialised were not the subject matter of various legal proceedings referred to in the company's letter dated September 19, 2005 (mentioned supra). The aforesaid letter received from GIIC was forwarded to the company, vide SEBI letter dated March 20, 2006 and it was requested to confirm whether there was a specific direction given by the Hon'ble Courts not to transfer/demat the 25,92,800 shares of the company. On not receiving any reply from the company, SEBI, vide letter dated May 11, 2006 advised the company to take immediate steps to dematerialise the 2,99,800 shares submitted by GIIC for dematerialisation and to submit a compliance report within fifteen days of receipt of the said letter. The company was also put on notice that, if SEBI does not receive a reply within the stipulated time, it would be constrained to initiate appropriate action under the Depositories Act, 1996 and the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 (hereinafter referred to as the DP Regulations). The company, vide letter dated May 18, 2006 (in reply to SEBI letter dated March 20, 2006) informed SEBI, that its share transfer committee in a meeting held on April 27, 2006 had transferred 22,93,000 equity shares in favour of GIIC, subject to and without prejudice to the transferors' right in C.S. No. 296 of 2006 (for redemption) pending in the Hon'ble Madras High Court and also subject to O.S. Nos. 3740, 3741 & 3742 of 2003 for injunction, pending in the XVI Assistant City Civil Court, Chennai. The company, vide another letter dated May 18, 2006 (reply to SEBI letter dated May 11, 2006) had informed that 2,99,800 shares were a part of the 25,92,800 shares (total pledged shares) and that the pledgors/promoters have filed suits before the Hon'ble Madras High Court and the Assistant City Civil Court, Chennai for redemption and injunction. It was also submitted that the pledgors had moved the Hon'ble City Civil Court, Ahmedabad in C. S. No. 577 of 1999 (the said suit filed by GIIC for recovery of the dues from the company) on May 4, 2006, for an injunction against GIIC from making any further transfer and that the said application was pending. The

company, vide letter dated May 30, 2006 had also sent a detailed reply in addition to its reply dated May 18, 2006. Thereafter, SEBI, vide letter dated December 11, 2006 requested the company to depute an official for the purposes of discussing the issues with respect to the grievance of GIIC on December 15, 2006. On January 5, 2007, Mr. K. Chandrasekaran (Director, Corporate Affairs of the company) represented the company and made submissions. He had also assured that the company would make detailed written submissions to SEBI by January 8, 2007. Accordingly, the company, vide letter dated January 5, 2007, made its submissions in the matter and also enclosed a copy of the loan agreement entered into between the company and GIIC. It reiterated that it was not able to dematerialise the shares because of the disputes pending before various courts.

3. SEBI, on being *prima facie* satisfied that the company had failed to dematerialise the 2,99,800 physical shares lodged by GIIC, had issued a notice dated April 05, 2007, calling upon the company to show cause within fifteen days as to why suitable action under Section 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the SEBI Act) and Section 19 of the Depositories Act, 1996, should not be initiated against it and its directors for their conduct in violating the provisions of Regulation 54 of the DP Regulations and the SEBI Circular dated May 20, 1999. The company replied to the said notice, vide letter dated April 28, 2007. Pursuant to its reply, the company was advised to appear for a personal hearing scheduled before my predecessor on August 1, 2007. The company availed of the opportunity. Thereafter, another opportunity of hearing was granted to the company on March 3, 2009. The company, vide letter dated March 17, 2009 requested SEBI to keep the proceedings in abeyance because of the pending litigations between itself and GIIC. The request of the company was not agreed to, as there was no stay of the present proceedings or on the dematerialisation request of GIIC, by any court of law. However, as the company failed to appear

on March 3, 2009 another opportunity was granted to it on May 26, 2009, which was rescheduled to July 8, 2009. On the said date, the authorised representatives of the company submitted that their '*proposal for settlement*' was under consideration by GIIC and that the same was yet to be placed before the board of GIIC. In view of the said submissions, the company was granted with another opportunity of hearing. On the said date, the representative of the company submitted that its settlement proposal has been rejected by GIIC and therefore, further requested that the hearing be adjourned by a month as they intend to submit a fresh proposal to GIIC. I note that GIIC, vide letter dated July 28, 2009 informed the company that its proposal was rejected as the same was not exactly as per the discussions that took place between GIIC and the company. In view of the fact that the settlement proposal submitted by the company had been rejected by GIIC, I am of the considered view that the matter need not be kept in abeyance but needs to be proceeded on merits. Besides, as stated earlier, the company was given sufficient opportunities.

4. I have considered the show cause notice dated April 5, 2007, reply of the company dated April 28, 2007, submissions made by the company on various hearing dates and other relevant material on record. The issue to be decided is whether the company failed in its duty to dematerialise the 2,99,800 shares lodged by GIIC.

5. The fact that the company had borrowed Rs.5 crore from GIIC pursuant to an agreement dated November 6, 1996 is not in dispute. It is also not in dispute that the promoters of the company namely, Dove Investments Private Limited, Maxworth Investments Private Limited and Mr. P. N. Mohan had pledged 25,92,800 physical shares of the company in favour of GIIC towards the security for the above mentioned loan. Further, it is an admitted position that the company had defaulted in its repayment obligation to GIIC, due to which GIIC was forced to invoke the pledge in respect of those shares which had

been pledged for securing the said loan. On the request from GIIC for the transfer of 25,92,800 shares in its name, I note that, the company vide its letter dated July 23, 2001 had advised GIIC to send the transfer letter through its depository participant (UTI Securities Limited) for dematerialising 2,99,800 shares, which had been already transferred in the name of GIIC. In the said letter, it was also informed that the company was in the process of transferring and converting the balance shares (22,93,000 shares) into "*marketable lots*". Therefore, it is an admitted position that out of the 25,92,800 shares, 2,99,800 shares had been already transferred by the company to GIIC. Thus, GIIC is legally entitled to get the 2,99,800 shares dematerialised by the company.

6. I note that, for the purpose of getting the remaining 22,93,000 shares transferred in its name, GIIC had to file a petition [in C.P. No. 13/111a/SRB/2003] under Section 111A of the Companies Act, 1956 seeking directions from the Company Law Board (CLB) to register the transfer of the said shares pledged by the promoters in its favour. CLB disposed of the said petition, vide order dated August 23, 2004, directing the company to register the transfer of 22,93,000 shares in the name of GIIC. Thereafter, aggrieved by the order of CLB, the promoters challenged the same before the Hon'ble High Court of Judicature at Madras (in Civil Miscellaneous Appeal No. 3188 of 2004). The company also challenged the order in Civil Miscellaneous Appeal No. 3223 of 2004. The Hon'ble High Court, vide order dated December 30, 2004, agreed with the conclusions arrived at by CLB in the matter and dismissed both the appeals as devoid of merits. Thereafter, the company and its promoters challenged the order of the Hon'ble Madras High Court before the Hon'ble Supreme Court of India, in Civil Appeals 942 & 943 of 2006. The Hon'ble Supreme Court, vide order dated February 02, 2006, observed "*.....we are of the opinion that with a view to do complete justice to the parties, no interference with the High Court's judgment is called for*", and dismissed the said civil appeals filed by the parties. Thereafter, GIIC filed an application (in C. A. No. 15

of 2005) before CLB for the enforcement of the its order dated August 23, 2004. CLB vide order dated March 27, 2006 had *inter alia* directed the company to register the transfer of 22, 93, 000 shares in the name of the applicant (GIIC) within ten days of receipt of the order. The appeal (in C.M.A. No. 1285 of 2006) preferred by the company against the said order was not admitted by the Hon'ble Madras High Court. In the meanwhile, the promoters had filed civil suits (in O.S. Nos. 3740 to 3742 of 2003) before the Hon'ble City Civil Court, Chennai for an order of injunction against the transfer. The said suits are pending. The promoters had also filed a civil suit (in C. S. No. 296 of 2006) before the Hon'ble High Court of Madras for redemption of the pledged shares. The said suit was subsequently transferred to the Hon'ble City Civil Court, Ahmedabad, and renumbered as Civil Suit No. 204 of 2007. Pursuant to the directions of CLB (dated March 27, 2006), the company effected the registration of transfer of 22,93,000 shares in the name of GIIC with the endorsement "*This transfer is subject to final decision in C.S. No. 296 of 2006 for redemption, pending in the Hon'ble High Court of Madras and also subject to O.S. Nos. 3740, 3741 & 3742 of 2003 for injunction pending in the XVI Asst. City Civil Court, Chennai.*". GIIC aggrieved by the endorsement contained in the share certificates, had filed an application (in C. A. No. 42 of 2006) before the CLB seeking directions to cancel the endorsement so made by the company in the share certificates. CLB, vide order dated July 17, 2006 had directed the Bench Officer (Company Law Board, Southern Region Bench, Chennai) to cancel the aforesaid endorsement contained on the reverse of the share certificates in respect of the 22,93,000 shares of the company transferred in the name of GIIC. Pursuant to the said direction, the title of GIIC in respect of 22,93,000 shares seems to be clear and is not encumbered. Thus, it can be seen that for getting 22,93,000 shares transferred in its name, GIIC had to undergo series of litigations.

7. As on date, the entire lot of shares (25,92,800) which were earlier pledged by the promoters in favour of GIIC, stands transferred and registered in the name of GIIC. The present proceeding is only in respect of the 2,99,800 shares (out of the total 25,92,800 shares) which were reportedly not dematerialised by the company, despite several requests made in that regard by GIIC. Therefore, GIIC is entitled to get 2,99,800 shares dematerialised. As per Section 6 of the Depositories Act, 1996, an issuer (in this case, it is the company), on receipt of a certificate of security shall cancel the certificate of security and substitute in its records the name of the depository as a registered owner in respect of that security and inform the depository accordingly. The depository, on receipt of the information from the issuer shall enter the name of the person (shareholder) as the beneficial owner. In terms of Regulation 54 (1) of the DP Regulations, any beneficial owner, who has entered into an agreement with a participant, shall inform the participant of the details of the certificate of security which is to be dematerialised, and shall surrender such certificate to the participant. Further, as per sub-regulation (5), the issuer shall, within 15 days of receipt of the certificate of security from the participant, confirm to the depository that the securities comprised in the said certificate have been listed on the stock exchange or exchanges where the earlier issued securities are listed and shall also after due verification immediately cancel the certificate of security and substitute in its record the name of the depository as the registered owner and shall send a certificate to this effect to the depository and to every stock exchange where the security is listed. I also note that SEBI, vide Circular dated May 20, 1999 had mandated that the request for dematerialisation be processed within 15 days from the date of the such request. It was also informed that such request should not be rejected on flimsy grounds or without specifying reason for rejection or without proper documents supporting your reason for rejection and that a violation of the said directive would invite suitable action. I find that GIIC had submitted its dematerialisation request, vide Demat Request Form No. 36091 dated July 27, 2001 in respect of

2,99,800 shares through its depository participant. The said request was not processed by the company within the specified period. This is not disputed by the company. The main contention of the company in this regard was that the impugned shares were a subject matter in a number of litigations and that the rights and liabilities of the parties are yet to be decided by the courts. I find that the said submission has little merit for the following reasons:

- a. the company vide letter dated July 23, 2001 had already indicated to GIIC that it can dematerialise 2,99,800 shares and that the balance 22,93,000 shares were in the process of being transferred and converted into marketable lots. The company had already intimated its willingness to transfer the impugned shares;
- b. the company had already transferred 2,99,800 shares in the name of GIIC and same has also been registered in the records of the company;
- c. there appears to be no order/injunction from any court restraining dematerialisation in respect of 2,99,800 shares;
- d. CLB had directed that the 22,93,000 shares be transferred and registered in the name of GIIC;
- e. As on date, the entire lot of shares so pledged by the promoters stand in the name of GIIC; and
- f. No stay of the present proceedings or on the dematerialisation request of GIIC.

8. I also note the following observation made by the Hon'ble Madras High Court while disposing of the appeals filed by the pledgors and the company against the order of CLB dated August 23, 2004, directing them to transfer the shares in the name of GIIC:

“24. The conduct of the Company is also not appreciable. They borrowed a sum of Rs.5 Crores and repaid only Rs.2.5 lakhs. It is the stand of the company that the loan would never have been given, but for the pledge of the shares. It is not dispute that the petitioner is a State Government undertaking and the amounts advanced are public fund. As rightly pointed out by Mr. Arvind Datar, the Company has raised frivolous technical objection only to prevent the petitioner from realising its dues.”

9. In view of the foregoing, the conduct of the company and its office bearers in not dematerialising the 2,99,000 shares of the company standing in the name of GIIC, militates against the provisions of Regulation 54 of the DP Regulations and the SEBI Circular dated May 20, 1999. If only the company had dematerialized the said shares, GIIC could have liquidated the same and appropriated the proceeds against the loan, which is outstanding. This becomes more serious given the fact that GIIC is a state financial institution which had advanced money to the company. The loan remains unsettled till date, though the same was availed as early as 1996.

10. I note that SEBI has already initiated adjudication against the company for its failure to dematerialise the 2,99,800 shares. The said proceeding is under consideration by the Adjudication Officer, SEBI.

11. For the reasons aforesaid, the present proceeding against the company is disposed of as ordered herein below.

12. In exercise of powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Section 11B thereof and Section 19 of the Depositories Act, 1996, hereby issue the following directions:

- a. Sterling Holiday Resorts (India) Limited is directed to dematerialize the 2,99,800 shares of the company standing in the name of Gujarat Industrial Investment Corporation Limited, immediately, but not later than fifteen days from the date of receipt of this Order. The company is further directed to file a compliance report within a period of fifteen days thereafter.
- b. In case, Sterling Holiday Resorts (India) Limited fails to comply with the present directions, the Securities and Exchange Board of India would initiate appropriate action including adjudication under Section 15 HB of the Securities and Exchange Board of India Act, 1992 read with Section 19F of the Depositories Act, 1996 and prosecution proceedings against the company and its directors.

A copy of this Order shall be forwarded to the Gujarat Industrial Investment Corporation Limited, for their information.

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

Place: Mumbai

Date: November 10, 2009