

Minutes of the 16th Meeting of the Co-ordination and Monitoring Committee (CMC) on Vanishing Companies held on 05.01.2006 at 11:00 A.M. in the Chamber of Secretary, Ministry of Company Affairs, Shastri Bhawan, New Delhi.

The 16th Meeting of the Co-ordination and Monitoring Committee (CMC) on Vanishing Companies was held on 05.01.2006 at 11.00 A.M. in the Chamber of Secretary, Ministry of Company Affairs, Shastri Bhawan, New Delhi. The list of officers who attended the meeting is given at **Annexure I**. Chairman, SEBI could not attend on account of a delayed flight.

Secretary, MCA welcomed the participants to the meeting of the CMC. Agenda items were taken up for discussion and decisions as follows.

16.1 Confirmation of the minutes of the 15th Meeting held on 05.07.2005

Minutes of the 15th meeting of Co-ordination and Monitoring Committee (CMC) on Vanishing Companies held on 05.07.2005 at 11.00 A.M. were confirmed.

16.2 Review of Action Taken

Follow-up action was reviewed item-wise. The details are given hereunder:

2 As regards action taken report on the decisions taken in the last meeting held on 05.07.2005, regarding launching of prosecution against the merchant bankers of vanishing companies who are not registered with SEBI, Committee was informed by the SEBI representative that action has been noted for compliance.

2.1 Regarding the action taken against Chartered Accountants of 9 Vanishing Companies, which raised amounts of Rs. 10.00 crore or more and whose names were forwarded to Comptroller & Auditor General (C&AG), CL-II Section informed that

sanction for launching prosecution u/s. 233 of the Companies Act had been accorded against the auditors (New and Old) of 3 companies viz, M/s Vini Metaspin Steels Ltd, M/s Western India Industries Ltd and M/s. Kiev Finance Limited out of these 9 companies. In respect of other 6 companies, their cases were still under examination.

2.2 Director (PK), MCA informed the Committee that reply from SEBI in this regard had been received only on 04.01.2006, wherein it was clarified that SEBI does not examine the veracity and authenticity of the audit report and statement of tax benefits included in the offer document, while processing the draft offer document in terms of the provisions of SEBI (DIP) guidelines. As such, no reference has been made by the SEBI to the Institute of Chartered Accountants of India in this regard.

2.3 It was suggested by JS(K) that, in future, SEBI could consider including a declaration from Merchant Banker in the offer document to the effect that all the disclosures made in the offer document are in conformity with the filings made in the ROC office by the company. It was decided to take up this with SEBI.

2.4 Regarding vetting draft Formal Verification Report by the respective Task Forces it was advised that Task Forces may send their comments at the earliest so that the same can be finalized. Further, it was decided after discussions that the Task Forces in each region were competent to recommend any addition or deletion to the list of vanishing companies. The recommendation would be considered by the Sub Group before forwarding the same to the CMC for consideration/ approval. Further, in each region, the Task Force should categorise the vanishing companies in the following manner: -

- I. Vanishing Companies in Phase-I: 229 companies which raised money during 1992-98.
- (a) Category A: 115 companies deleted from the list of vanishing companies, out of which 107 companies had been kept under watch list.
 - (b) Category B : 114 vanishing companies.
- II. Vanishing companies in Phase II:
- (a) These public companies, which raised money by way of IPO during 1998-2001.
 - (b) List of 604 companies (Z category shares) forwarded by Bombay Stock Exchange and referred by Midas Touch in its letter dated 07 October 2003 addressed to MCA.
 - (c) List of 148 companies forwarded by Midas Touch Investors Association.

2.5 Regarding progress of misfeasance application filed by the Official Liquidator in the Court in the case of M/s Western India Industries Ltd, the Committee was informed that as per the direction of the Hon'ble High Court, Calcutta, the gist of misfeasance Summons were published by the Official Liquidator, Calcutta in the newspapers ('The Statesman' in Delhi & Calcutta edition) by way of substituted service to the remaining Respondents on 03.08.2002. Secretary, MCA directed that RDs should closely monitor the progress of misfeasance proceedings and report within a fortnight.

2.6 Regarding filing of FIRs against such companies and their promoters/directors which had been kept on the watch list but not traceable at the time of inspection conducted by the field officers, Joint Secretary (K), MCA

suggested that apart from filing FIRs, action should also be taken against these companies and their directors under relevant provisions of the Companies Act, 1956. A report on action taken should be sent within a month.

2.7 The Committee was informed that SLP had been filed before the Hon'ble Supreme Court of India against the orders of Hon'ble High Court, Chennai wherein complaints filed by RoC, Chennai u/s 62,63,68 & 628 of the Companies Act, 1956 against the directors of the vanishing company - M/s. MA Capital Market Services Ltd had been dismissed. JD(L) was asked to pursue this case and brief Secretary, MCA.

2.8 Regional Director (ER) informed the Committee that all the Nodal Officers in his Region had been appointed by the concerned State Governments and they were being invited as 'special invitees' in the meetings of the Task Force. Further, representative, SEBI informed the Committee that the details of Nodal Officers appointed by the various State Governments were not available with them. Secretary, MCA desired that the list containing details of Nodal Officers appointed by the various State Governments should be provided to the SEBI as well. Secretary, MCA directed that all the Regional Directors should forward the investors' complaints received against the Vanishing Companies to the concerned Nodal Officer(s), so as to help them in the prosecution cases launched against these Vanishing Companies.

2.9 As regards the case of M/s. Sparkle Foods Ltd, Regional Director (WR) informed the Committee that an application had been made inviting attention of the Hon'ble High Court, Mumbai to the non-compliance of the offer made by the erstwhile directors of the company for depositing Rs. 2.00 crore collected from the public issue with the Registrar. However, the direction/clarifications from the

Hon'ble Court could not be obtained since RD (WR) was not a party to the case and, therefore, the application was withdrawn and RoC, Mumbai was advised to make an application in this regard. The Committee desired that RD (WR) should follow up the matter. (Item No.5 of ATR) Secretary, MCA desired that she should be kept informed about the developments of this case.

16.3 Review of the Working of Task Forces

3. Regarding functioning of the respective Task Forces, Director (PK) informed the Committee that as per the records available with the Ministry, since July, 2005, number of meetings conducted by the Task Forces are (3) Eastern Region, (3) Northern Region, (2) Western Region & (3) Southern Region.

3.1 RD (ER) suggested that the names of the companies, which are under liquidation, may not be considered for deletion from the list of Vanishing Companies. Further, RD (WR) suggested that the following 3 tests may be applied by each Task Force before recommending for deletion of the name of a Vanishing Company:

- (i) Filing position of last three years,
- (ii) Inspection report u/s 209A of the Companies Act, 1956 and
- (iii) A confirmation from the practising Chartered Accountants as regards disqualification u/s 274(1) (g) of the Act, 1956.

It was decided that the companies under liquidation will not be deleted from the list of vanishing companies.

3.2 It was clarified that since there is already a criteria for identifying a company as a vanishing company, there is no need to adopt a separate criteria for deleting a company from the list of vanishing companies. It was also clarified that

Task Forces are competent to make a recommendation to Group Committee for both deletion and addition to the list of vanishing companies.

16.4 Review of Action taken under various provisions of the Companies Act, 1956.

4. The action taken by the Regional Directors under the provisions of the Companies Act, 1956 against the vanishing companies and their Promoters/Directors, was reviewed and the Committee expressed their satisfaction in respect of number of prosecutions filed under section 62/63, 68 and 628 of the Companies Act. However, in Southern Region, where out of 34 vanishing companies, only 20 companies had been prosecuted for non-filing of statutory returns, Secretary directed that efforts should be made to file prosecution against remaining companies.

16.5 Review of Action in respect of FIRs filed / registered against the vanishing Companies.

5. The position regarding number of FIRs filed / registered, region-wise, against the vanishing companies was reviewed by the Committee. RD(NR) informed the Committee that as per the information received from ROC, Delhi six more FIRs have been registered by Delhi Police against these vanishing companies. Secretary directed that efforts should be made by RD(SR) so as to register FIRs in case of remaining ten companies. RD (SR) suggested that prosecution cases launched by the ROCs against those companies and their Directors may be clubbed with cases filed by the Economic Offence Wing (E.O.W) of their respective States.

5.1 It was informed by Dir.(PK) that the details of the names of promoters of vanishing companies were published in the news papers as decided earlier. It was also decided that the complaints received from the directly affected investors may

be forwarded to the State Police Authorities in order to strengthen the prosecution cases launched by the Economic Offences Wing. It was informed that so far 15 complaints were received in the Ministry which had been forwarded to the concerned RDs with the advice to forward the same to the concerned police authorities. Further, representatives of the SEBI informed that they had not received any complaint. However, it was informed that the details of the promoters/directors of the Vanishing Companies published in the Various News papers had been forwarded by the SEBI to the investor associations registered with it, for inviting complaints, if any, received against the vanishing companies/promoters, directors.

5.2 In addition, other complaints received from the public against companies other than vanishing companies had also been sent to the concerned RDs for examination as to whether the alleged companies were vanishing or not.

16.6 Issue of Global Finance Corporation

6. As regards the decision of Eastern Region Task Force for inclusion of M/s. Global Finance Corporation Limited, which is presently (under Watch List) in the list of Vanishing Companies as it belong to C.R. Bhansali Group, RD (ER) informed the committee that the issue of inclusion of the names of two more companies in the list of Vanishing Companies was discussed with the RD (WR), Mumbai, who is the Chairman of Group Committee stated that the Group Committee is having the power only for deletion of the names and not for addition of the names in the list of Vanishing Companies. RD (ER) was advised to take up the issue of inclusion of the names of two companies in accordance with decision already taken (in Para 2.4 of the minutes).

16.7 Disgorgement Proceedings

7. Regarding the cases of M/s. Nuline Glassware (India) Ltd. and M/s. AVI Industries Ltd. against which Petitions were filed before the Hon'ble Company Law Board u/s 397 & 398 of the Companies Act, 1956 for disgorgement of properties/monies fraudulently obtained by the promoters/directors of these companies, JS (M) informed the Committee that the Hon'ble CLB had dismissed the Petition of M/s. Nuline Glassware (India) Ltd. vide its order dated 30.09.2005 and after obtaining the opinion/ advice from the D/o Legal Affairs, RD (WR) & ROC, Gujarat had been advised to file an appeal before the Hon'ble High Court, Gujarat against the said order. Regional Director (WR) informed the Committee that the draft appeal had been prepared and would be filed within a week. The CMC was informed that the next date of hearing in the case of M/s. AVI Industries Ltd was fixed for 21. 02. 2006 for final arguments in the CLB. JD(L) was asked to keep Secretary, MCA informed about its outcome.

16.8 Identification of Vanishing Companies in respect of the IPOs during the Period 1998-2001

8. Regarding review of status of 201 companies which had come out with IPOs during the period 1998-2001, it was informed by RD (NR) that all companies falling within the jurisdiction of Northern Region were found to be regular in filing their returns. RD(ER) informed that, in the Eastern Region, out of 16 companies, 13 were not covered within the criteria of vanishing companies, one company's registered office shifted from Orissa to AP, one company had been de-listed from the official list of stock exchange and the registered office of remaining one company had been shifted to Gujarat. RD (SR) informed that out of 53 companies, 7 companies had been identified which would be considered by the Group Committee before recommending to the CMC for inclusion in the list of Vanishing Companies. Western Region is in the process of examining the companies falling under their jurisdiction.

Further, Regional Directors were requested to review the status of the following companies in their Task Force meetings:

- (i) Companies (201) which came out with IPOs during 1998-2001,
- (ii) A list of 604 companies which was received from Bombay Stock Exchange (Z category shares) and referred by Midas Touch in its letter dated 07 October 2003 addressed to MCA, and
- (iii) List of 148 companies received from M/s. Midas Touch Investors Association.

8.1 It was further decided that the Task forces would examine these lists and recommend only the names of those companies, which satisfy the prescribed criteria and could be included in the list of Vanishing Companies to the Group Committee for consideration instead of sending reports of all the companies.

16.9 Companies which came with IPOs since 2001

9. Further, as a proactive measures, in respect of Companies that came out with the IPOs since 2001, it was decided that the SEBI may ask stock exchanges to check the disclosures made by such companies as the companies are required to file such statements with Stock Exchanges (and not with SEBI) on quarterly basis and if any violation/discrepancy came to notice, the matter be referred to the respective RD/RoC for detail examination.

16. 10 Any other Item

10. There being no other item, the Meeting ended with a vote of thanks to the chair.

Annexure I

List of officers who attended the 16th meeting of the Coordination & Monitoring Committee (CMC) on Vanishing Companies held on 05.01.2006 at 11.00 A.M. in the Chamber of Secretary, Ministry of Company Affairs (MCA), New Delhi.

Ministry of Company Affairs

1. Smt. Komal Anand, Secretary
2. Shri J. Khosla, Joint Secretary
3. Shri Y. S. Malik, Joint Secretary
4. Dr. Joseph Abraham, Economic Adviser
5. Shri V.S. Rao, RD, Western Region
6. Shri R. Vasudevan, RD, Southern Region
7. Shri U.C. Nahta, RD, Northern Region
8. Shri L. M. Gupta, RD, Eastern Region
9. Shri Pawan K Kumar, Director
10. Shri B.M. Anand, Joint Director
11. Shri A. K. Chaturvedi, JD (L)
12. Shri S. S. Luthra JD (Tech)
13. Dr. Navrang Saini, ROC, Delhi & Haryana
14. Shri E. Selveraj, JD (L)

SEBI

1. Shri Amarjeet Singh, Regional Manager, NRO, SEBI.
2. Ms. Raj Rani Bhalla, Dy. Legal Adviser
3. Ms. Neelam Bhardwaj, Dy. General Manager