

Minutes of the 15th Meeting of the Co-ordination and Monitoring Committee (CMC) on Vanishing Companies held on 05.07.2005 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.

1. Secretary, MCA welcomed the participants of Coordination and Monitoring Committee meeting. Agenda items were taken up for discussion. The minutes of the 14th meeting of Co-ordination and Monitoring Committee (CMC) on Vanishing Companies held on 18.3.2005 at 3.00 P.M. were confirmed.
2. As regards action taken report on the decisions taken in the last meeting held on 18.03.05, Whole Time Member, SEBI briefed the Committee that in view of the following reasons they are unable to take action against most of the Merchant Bankers:
 - (a) As per SEBI (DIP) guidelines, Merchant Bankers are responsible only up to listing and 1st trading of shares offered through IPOs.
 - (b) Securities and Exchange Board of India (Merchant Bankers) Rules, 1992 requires every merchant banker to preserve books of accounts, other records and documents for a period of five years only.
 - (c) Most of the Merchant Bankers are not even registered with SEBI as on date though the rules do not permit any person to carry on the activity of merchant banker without the Certificate of SEBI.

Secretary, however, desired that prosecution should be launched against those merchant bankers of Vanishing Companies who are not registered with SEBI.

Regarding the functioning of Task Forces and progress made in taking action against Vanishing Companies by them, DII(R) informed the Committee that most of the companies, which were earlier deleted from the list of Vanishing Companies and were subsequently kept under Watch list, after being deleted, are not traceable during the course of inspection proceedings conducted by the field officers. Secretary, MCA and Whole Time Member, SEBI desired that FIRs should be filed against such companies and their promoters/directors, if they have not been filed earlier. (Item No.2 of ATR)

With regard to action taken against Chartered Accountants, Joint Secretary(M) informed the Committee that as a result of decision taken in the previous CMC meeting, Comptroller & Auditor General (C&AG) was provided with list of names of Chartered Accountants of such companies which raised amounts of Rs.10 crore or more and placed before the Committee names of following three Chartered Accountants firms who had applied to C&AG for allotment of audit in Public Sector Undertakings.

- (i) M/s N.N. Das & Co.
- (ii) M/s Krishnan & Co.
- (iii) M/s S.V. Rao Associates.

M/s N.N. Das & Co. is auditor of M/s Western India Industries Ltd (Vanishing Company), M/s Krishnan & Co. auditor of M/s Denmur Fax Rolls Ltd. (Vanishing Company) and M/s S.V. Rao Associates auditor of M/s Vini Metaspin Steels Ltd. (Vanishing Company).

As C&AG required further information regarding the role played by these three CA firms in the audit of Vanishing Companies, Secretary, MCA and Whole Time Member, SEBI desired that report of SEBI/ICAI should be collected regarding involvement of these Chartered Accounts in the audit of Vanishing Companies, which led to misappropriation of public money. However, as regards report of ROC under Section 233 for non-compliance by auditor of provisions in exercising his powers and performing his duties as prescribed in section 227, it is informed by CL.II Section that reports received from ROC are being examined for further course of action. It was finally decided to collect reports from SEBI, ROC & ICAI for providing information to C&AG. (Item No.5 of ATR)

Regarding absence of investors' complaints against Vanishing Companies, Secretary, MCA and Whole Time Member, SEBI stated that NGOs/ VOs should forward investors' complaints to respective Task Forces for necessary action on the part of RoCs. (Item No.6 of ATR)

The scrutiny of listed companies who had made IPOs for the period 1998-2001, Smt. Neelam Bhardwaj, Deputy General Manager, SEBI, placed a draft Formal Verification Report on the basis of which a company could be identified as Vanishing Company. Secretary, MCA desired that the format needs to be vetted by respective Task Forces. (Item No.7 of ATR)

With regard to the transfer of case of M/s Western India Industries Ltd., to Serious Fraud Investigation Office (SFIO), Regional Director (ER) stated that the Task Force has recommended the case for transfer to SFIO for investigation. Joint Secretary (M) asked for a copy of minutes in which the decision was taken and also details of progress of misfeasance application filed by the Official Liquidator in the Court. While Secretary and Joint Secretary (K), MCA desired that names of promoters and directors of Vanishing Companies should also be published in Newspapers, Joint Secretary (M) explained the problems in

ascertaining the names of promoters/directors who are at fault. (Item No.8 of ATR)

3. As regards functioning of the respective Task Forces and progress made in taking action against Vanishing Companies, Secretary, MCA desired that meeting of Task Forces should be held at regular intervals and minutes should be forwarded to the Ministry immediately so as to know the progress of action taken by the Task Forces. As regards 107 companies which had been deleted from the list of Vanishing Companies and against which inspections had been ordered, it was informed that 73 companies were not traceable at the time of inspection. Secretary, MCA and Whole Time Member, SEBI desired that FIRs should be filed immediately against such companies and their promoters/directors.(Agenda Item No.3)

4. Regarding review of action taken against Vanishing Companies under various provisions of the Companies Act,1956 and its final outcome, Regional Director (NR) informed the Committee that a request has been made to the Magistrate concerned pleading for early disposal of all the cases filed against Vanishing Companies and their promoters/directors. Shri H. Banerjee, on behalf of Southern Region, briefed the Committee about the dismissal of the complaint filed by ROC, Chennai against one of the Directors Shri Rama Krishna Raja of M/s. MA Capital Market Services Ltd. by the Hon'ble High Court of Chennai on the ground that it had been filed too late, nearly after the expiry of six years from the date of event. He further stated that Coimbatore Court would dismiss all the cases against Vanishing Companies filed u/s 62, 63, 68 and 628 of the Companies Act, 1956 in case no appeal is filed before Hon'ble Supreme Court by ROC, Chennai against the order of Hon'ble High Court, Chennai. Secretary, MCA desired that immediate action be taken in this matter and an SLP be filed contesting the Orders of Hon'ble High Court as the limitation applies from the date of knowledge of offence. (Agenda Item No.4)

5. As regards review of FIRS filed/registered under Indian Penal Code (IPC), the Regional Directors briefed the Committee about the progress of investigations by the police against FIRs filed and registered against Vanishing Companies and its promoters directors. Regional Director (NR) placed the particulars of Nodal Officer appointed for Delhi, Punjab and Uttar Pradesh and Regional Director (SR) placed the particulars of Nodal Officer appointed for Chennai (TN). Regional Director (ER) informed that no Nodal Officer had been appointed for the States that come under his jurisdiction. Secretary, MCA desired that Joint Secretary (M) may write to the concerned Chief Secretary/ Home Secretary requesting him to appoint Nodal Officer in respect of the remaining States in the Eastern Region where Nodal Officer has not appointed so far. Further, Secretary, MCA desired that a D.O. reference for Police Commissioner, Delhi be put up in the matter with a copy to the Home Ministry regarding FIRs filed by ROC, Delhi against six companies namely, M/s Star Electronics Ltd., M/s Zed Investments Ltd., M/s Simplex Holdings Ltd., M/s Hoffland Investments Ltd., M/s Vermani Steel and Strips Ltd (in liquidation), M/s Star Exims Ltd (in liquidation), which have not been registered by the police in spite of all efforts made by ROC, Delhi, and the issue having been discussed in detail by the Monitoring Committee. (Agenda Item No.5)

6. As regards deletion/addition of name of companies from the list of Vanishing Companies, the Committee was informed about the retirement of Shri C.D. Paik who was holding the post of Chairman of Group Committee. Shri V.S. Rao, Regional Director(WR) was nominated as Chairman of Group Committee in place of Shri C.D. Paik. (Agenda Item No.6)

7. As regards the Case of M/s. Sparkle Foods Limited, a Vanishing Company, Joint Secretary (M) brought to the notice of the Committee about the order of the Hon'ble High Court Bombay against this company. He further stated that in this case, FIR was filed by ROC, Mumbai against the company and its Directors before the Economic Offences Wing, Crime Branch, CID, Mumbai, which was

duly registered by the police and the investigation was in progress. In the meanwhile, one of the directors of the company against whom FIR was registered filed an application before Bombay High Court and gave an assurance to the Hon'ble Court that he would deposit a sum of Rs.2 crores in four equal instalments in the month of June, 2005. A copy of the order of Hon'ble High Court was placed before the Committee. However, Regional Director (WR) informed the Committee about the non-receipt of amount from the company and further stated that the Hon'ble High Court passed the said order without issuing a notice to ROC or Regional Director and, therefore, the court could not be informed about the inability of the office to accept the amount. In this regard, Joint Secretary (M) stated that the Court had directed the director of the vanishing company to deposit the amount with Company Registrar, Mumbai. Regional Director (WR) was advised that he may make an application to the Hon'ble High Court bringing the non-compliance to the notice of Hon'ble Court and also seek clarification if the Court directions were for the ROC or the Registrar of the Hon'ble court.(Agenda Item No.7)

8. Joint Secretary (M) informed the Committee that the cases of M/s Nuline Glassware (India) Ltd. and M/s AVI Industries Ltd, against which Petitions had been filed before the Hon'ble Company Law Board u/s 397 and 398 of the Companies Act, 1956, invoking the provisions of section 406 (u/s 542) for disgorgement of the properties/monies fraudulently obtained by promoters/directors of these companies, are posted for hearing on 26.7.2005 and 5.8.2005 respectively. Secretary, MCA desired that these cases should be strongly represented by the Ministry and the judgment of M/s Sparkle Foods Limited should also be mentioned before Hon'ble Company Law Board at the time of arguments.(Agenda Item No.8)

9. As regards status of companies, which raised public money during the period 1998-2001, SEBI officials placed before the Committee a list of companies, which had issued IPOs during the period 1998-2001. Committee

was also informed that the list had been circulated to all Regional Directors to take up the matter before Task Forces and Group Committee.

The meeting ended with a vote of thanks.

Annexure I

List of officers who attended the 15th meeting of the Coordination & Monitoring Committee (CMC) on Vanishing Companies held on 05.07.2005 at 11.00 A.M. in the Chamber of Secretary, Ministry of Company Affairs (MCA), New Delhi.

MCA

1. Smt. Komal Anand, Secretary
2. Shri Y. S. Malik, Joint Secretary
3. Shri J. Khosla, Joint Secretary
4. Shri Paul Joseph, Economic Adviser
5. Shri V.S. Rao, DII
6. Shri R. Vasudevan, DII
7. Shri U.C. Nahta, RD, Northern Region
8. Shri L. M. Gupta, RD, Eastern Region
9. Shri H. Banerjee, OL & RD(In-charge), Southern Region
10. Shri S. S. Luthra JD(Tech)
11. Dr. Navrang Saini, ROC, Delhi & Haryana
12. Shri B. Mohanty, Registrar of Companies, Orissa
13. Shri J. N. Tikku, Dy. Director, Westrn Region
14. Smt. P. Sheela, Asstt. Director.

SEBI

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