

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

IN THE MATTER OF DIRECTIONS UNDER SECTION 11(4) (b) READ WITH SECTION 11B OF THE SEBI ACT AND THE SEBI (FRAUDULENT & UNFAIR TRADE PRACTICES RELATING TO THE SECURITIES MARKET) REGULATIONS, 1992 IN THE MATTER OF PUBLIC ISSUE OF M/S NATURAL EXPO AGRO INDUSTRIES LIMITED

1.0 Natural Expo Agro Industries Ltd. (hereinafter referred to as NEAL) is a public limited company with its registered and corporate office at 9th Floor, Galav Chambers, Near Sardar Patel Statue, Sayaji Gunj, Vadodara, Gujarat 390005. NEAL came out with a public issue of Rs. 275 lacs in February-March, 1996, in order to part-finance the project for manufacturing Jaquard Woven Furnishing and Curtain Fabrics. The issue for 77 lakh equity shares of Rs.10/- each for cash aggregating to Rs.770 lakhs opened on 3.5.95 and closed on 6.5.95. Several complaints were received regarding delay in transfer of shares and manipulation of price of the shares. A preliminary investigation by the Securities and Exchange Board of India (hereinafter referred to as SEBI) showed that there was a delay in transfer of shares as well as in the dispatch of shares after transfer. It was also noted that trading in the share was suspended by The Stock Exchange, Mumbai (BSE) on some days on account of abnormal increase in the price. In view of the above, investigation was ordered into the affairs relating to dealing in shares in respect of public issue by NEAL, its lead manager, Registrar and other persons/intermediaries associated with the public issue, vide order dated 30.1.97.

2.0 The report on investigation was submitted to SEBI on 18.4.2002. Investigations revealed that:

- a. NEAL did not receive the minimum required subscription to the public issue and the same was subscribed only to the extent of 14%..
- b. In order to circumvent the requirement of minimum subscription, NEAL had entered into an arrangement through Galav Finance and Investments Pvt. Ltd. ('GFIL') whereby they financed applications for the issue in order to ensure minimum subscription and NEAL purchased back the shares allotted. It was seen that NEAL transferred funds to GFIL which in turn transferred the funds to the applicants who later issued cheques to NEAL. Thus, NEAL did not receive any real consideration and also utilized the proceeds of the public issue for arranging subscription and for circumventing the requirement of minimum subscription.
- c. NEAL and its directors made allotments without receiving the minimum subscription in the Issue.
- d. The share certificates allotted to the applicants were not dispatched to them by NEAL, rather these shares were retained by the company. 6 Lakh shares which had arrears of call money were traded in the market through various brokers including GFIL. The prices of the scrip went up abnormally due to the cornering of shares coupled with artificial scarcity of stock through intentional delay in transfer of shares.

2.1 Show cause notice was issued to NEAL and the promoter directors on 28.9.02. The company did not submit any reply to the same, however, vide their letter dated 21.10.02 and 10.11.02 they have sought time to submit their replies on the ground that Shri Jayesh Thakker, one of the promoter directors was not in India since 7.10.2000. An opportunity of being heard in person was also given to NEAL on 27.2.2003. NEAL was represented by Ms Aarti Thakker who stated that her husband, Shri Jayesh Thakker was not in India and they would submit a reply upon his return. I have granted a further time of 10 days from 27.2.2003 for NEAL to submit its reply, but it has failed to do so. Adequate opportunity has been given to NEAL and its directors to make their submissions in compliance of principles of natural justice and therefore, I am of the view that no further opportunity is necessary and it would be in the interest of justice, if I proceed further in the matter.

3.1.1 It was noted that 435 valid applications were received for 69,76,800 shares i.e. the

issue was subscribed to the extent of 90.61%. From the list of applicants and allottees, it was noted that the following six applicants had applied for and had been allotted 60 lakh shares i.e. approx. 86% of the total allotments.

Applicant	Stockinvest No.	Issued By	Shares	
Ketan Doshi Toophanmal Bhandari	12068	Global Trust Bank	100000	100000
Piyush Avlani Toophanmal Bhandari	12065	Global Trust Bank	100000	100000
Bhavna K. Doshi Toophanmal Bhandari	12064	Global Trust Bank	100000	100000
Kamlesh Doshi Toophanmal Bhandari	12066	Global Trust Bank	100000	100000
Muktaben H. Doshi Toophanmal Bhandari	12063	Global Trust Bank	100000	100000
Paulomi Doshi Toophanmal Bhandari	12067	Global Trust Bank	100000	100000

All the applicants mentioned above had shown their address as Nirmal, 3rd Floor, Nariman Point, Mumbai – 21. Investigations revealed that the above address was that of DCW Finance Ltd.(DCW) and Shri Toophanmal Bhandari, the second applicant in all of the above applications was the Vice President of DCW.

3.1.2 The said Toophanmal Bhandari in his statement before the investigating officer on 24.3.98 stated that DCW is in the business of financing public issues and that Piyush Avlani and Ketan Doshi the applicants as above alongwith their family

members were regular clients of DCW. Shri Toophanmal Bhandari also stated that Shri. Avlani and Shri Doshi approached DCW for finance to the extent of Rs.300 lakhs to make 6 applications of Rs.50 lakhs each in the public issue of NEAL. Joint accounts were opened by DCW with the 6 applicants with Global Trust Bank (GTB) and 6 cheques for Rs.50 lakhs each were issued in favour of the said persons. Against these six cheques, GTB issued 6 stockinvests for Rs.50 lakhs each and 6 applications for 1 lakh shares each were made by the said persons with Shri Toophanmal Bhandari as the second applicant.

3.1.3 Summons was issued to the six applicants. Mr. Ketan Doshi and Mr. Piyush Avlani appeared on behalf of all the applicants. In his statement on oath recorded at SEBI on 24.2.98, Shri Ketan Doshi stated that one Kalpesh Chawalla approached him to apply for shares in the public issue of NEAL under Finance arrangement with M/s. Gallav Finance & Investments Pvt. Ltd. (GFIL). Corroborating the statement of Toophanmal Bhandari, he stated further that he then approached DCW to finance the application on his behalf and that joint applications were made by him alongwith Shri Toophanmal Bhandari. He also confirmed that he gave Power of Attorney to DCW Ltd. to operate the joint account opened with them at GTB for acquiring stockinvests. He also stated that interest was paid to him upfront either by GFIL or Mr. Kalpesh Chawalla, a stock broker of Ahmedabad Stock Exchange. Shri Doshi in his statement also submitted that he did not receive delivery of shares, rather DCW received a letter from NEAL informing that the stockinvests submitted by him were lost and suggesting that the payments be made good by issuing cheques to NEAL for which payments were to be made by GFIL. These payments were made by the applicants on separate dates as and when they received funds from GFIL and all these payments were handled by Shri Kalpesh Chawalla.

3.1.4 Shri Kalpesh Chawalla in his statement dated 27.11.96, 10.4.97, 1.3.98 submitted that he was approached by GFIL to arrange for subscription in the public issue of NEAL. He then approached Shri Doshi and Shri Avlani. Shri Kalpesh Chawalla also stated that GFIL also asked him to extend a loan of Rs.6.75 by way of 6 cheques for Rs.1,12,500 each to the aforementioned applicants towards interest on the finance extended by them. Shri Chawalla stated that he was paid interest @ 2.5% p.m. for 4 months by GFIL and that he received his money back in October 1995.

3.1.5 Further, it was observed from the extract of the current account statement of NEAL and GFIL maintained with Union Bank of India, Nariman Point Branch, that the flow of funds was as under:

Date	Particulars	Amounts credited/debited in the accounts of		
		NEAL	GFIL	NEAL
3.6.95	From NEAL to GFIL	3005000		
3.6.95	From GFILto Ketan Doshi		3005000	
5.6.95	From NEAL to GFIL	1400000		
6.6.95	From GFILto Ketan Doshi		1400000	
8.6.95	From Ketan Doshi to NEAL			5000000
9.6.95	From NEAL to GFIL	5000000		
13.6.95	From GFILTo Piyus Avlani		5000000	
15.6.95	From Piyush Avlani to NEAL			5000000
16.6.95	From NEAL to GFIL	5000000		
16.6.95	From GFILto Paulomi Doshi		5000000	
20.6.95	From Paulomi Doshi to NEAL			5000000
21.6.95	From NEAL to GFIL	5000000		
21.6.95	From GFILto Bhavna Doshi		5000000	
22.6.95	From Bhavna Doshi to NEAL			5000000
23.6.95	From NEAL to GFIL	5000000		
23.6.95	From GFILto Muktaben Doshi		5000000	
27.6.95	From Muktaben Doshi to NEAL			5000000
28.6.95	From NEAL to GFIL	2500000		
28.6.95	From GFILto Kamlesh Doshi		2500000	
29.6.95	From Kamlesh Doshi to NEAL			2500000
4.7.95	From NEAL to GFIL	2500000		
4.7.95	From GFILto Kamlesh Doshi		2500000	
5.7.95	From Kamlesh Doshi to NEAL			2500000
		29405000	29405000	30000000

From the above, I note that NEAL had credited amounts to GFIL on various dates and these amounts were then credited by GFIL to the respective applicants on the same day. Thereafter, the same amounts were credited to NEAL by the applicants. I also note that the amounts were transferred from NEAL to the applicants through GFIL after finalization of allotment on 27.5.95 i.e. after NEAL informed DCW that the stock invests were lost and advised them to submit cheques for the amounts. Further, as per details provided by NEAL only a sum of Rs.38,15,500/- has been collected on account of Call Money. This implies that only 7,63,100 shares out of 69,76,800 shares were fully paid up and the remaining were partly paid up. Thus, no consideration was actually received by NEAL for the shares allotted to the six applicants and that the amounts were circulated to and from the applicants to give an impression that the loss of stock invests of value Rs.300 lakhs had been fully made up and the issue had been subscribed. If the said applications are not taken into account, the issue would have been subscribed only to the extent of 14%.

3.1.6 I also note that the certificate of registration as a Stock Broker granted to the said Kalpesh Chawalla was suspended for a period of 6 months vide order dated 19.2.2002 on the grounds that – he had connived with the promoters and GFIL to create an illusion that the issue was oversubscribed, that he was instrumental in tying up the financing arrangement with DCW and the applicants and handing over the transfer deeds to NEL after allotment of shares.

3.1.7 In view of the above, I find that NEAL had provided funds to the 6 applicants in order to ensure that minimum subscription is received for the issue and the issue does not devolve and NEAL allotted shares to the said 6 applicants without receiving minimum subscription.

3.2 It is noted from the Annual account statement of NEAL for 1995-96 that an amount of Rs.535.26 Lakhs has been received as proceeds of issue in 1994-95 out of which an amount of Rs.512.92 has been deployed as Loans and Advances. Of this, an amount of Rs.326.06 Lakhs has been advanced to GFIL during 1995-96. Taking into consideration the flow of funds as outlined in para 3.1.5 above and also the fact that NEAL is yet to complete implementation of the project and commence commercial production, I find that NEAL siphoned the proceeds of the issue into

the scheme of ensuring minimum subscription in the issue.

3.3 I note that none of the 6 applicants received delivery of shares. Shri Ketan Doshi, in his statement dated 24.2.98 stated that these applicants had given letters of authority in favour of GFIL to Kalpesh Chawalla to take delivery of the shares after making payment to NEAL and that the applicants and Shri Bhandari had signed transfer deeds which were then handed over to Shri Chawalla. Shri Chawalla in his statement stated that the shares were with GFIL who in turn gave these to NEAL. This was corroborated by delivery memos raised by Shri Chawalla in favour of GFIL. Details of the memos are as under:

Date of Delivery Memo	No. of shares	Delivered by	Name of Holder
5.7.95	70000	GFIL	Ketan Doshi
13.7.95	60000	GFIL	Ketan Doshi
28.9.95	5000	GFIL	Ketan Doshi
2.11.95	13000	GFIL	Ketan Doshi
25.1.96	42800	GFIL	Ketan Doshi
Total	190800		

M/s R & D Consultants Pvt. Limited (hereinafter referred to as “the RTA”), Registrars to an Issue stated that certificates for the 60,00,000 shares allotted to the 6 applicants were delivered to Mr. Jayesh Thakkar of NEAL. Registrar to an Issue submitted photocopies of delivery challans for the shares delivered to Mr. Deepak, authorized person of NEAL on 22.6.95 and 23.6.95. From these challans, it is seen that 11,238 certificates were delivered to NEAL on 23.6.95 i.e. an aggregate of 60,000 share certificates for the 60,00,000 shares allotted to the 6 applicants were handed over to NEAL. Thus, it is clear that the share certificates were not delivered to the shareholders and were retained by NEAL.

3.4 In this regard, I also note that the RTA was found to have committed the following irregularities namely - a) handed over Stockinvests directly to the company rather than depositing the same with the collecting bank, b) did not ensure that allotment was made only after consideration was received and c) handed over share certificates

to the directors of NEAL instead of dispatching the same to shareholders. Consequently, vide order dated 19.2.2002, certificate of registration granted to the RTA was suspended for a period of 3 months w.e.f 15.3.2002. In view of the above, I find that the allotment was made by NEAL without receiving consideration and share certificates were not delivered to the shareholders and were taken delivery of by directors of NEAL.

4.1 I find that NEAL did not receive the minimum subscription of 90% in the public issue for 77 lakh shares and that NEAL extended monies to the six applicants mentioned hereinbefore, in order to issue cheques to themselves in lieu of the stockinvests said to have been lost and to purchase 6 lakh shares.

4.1.1 I note that Regulation 5(1) of the SEBI(Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995(hereinafter referred to as “the said regulations”) provides that :

“5(1) No person shall make any statement, or disseminate any information which-

(a) is misleading in a material particular; and

(b) is likely to induce the sale or purchase of securities by any other person or is likely to have the effect of increasing or depressing the market price of securities, if he makes the statement or disseminates the information-

(i)

(ii) he knows, or ought reasonably to have known that the statement or information is misleading in any material particular.”

and

4.1.2 I also note that Regulation 6 of the said regulations provides that:

“6. No person shall –

- (a) in the course of his business, knowingly engage in any act, or practice which would operate as a fraud upon any person in connection with the purchase or sale of, or any other dealing in, any securities
- (b) on his own behalf or on behalf of any person, knowingly buy, sell or otherwise deal in securities, pending the execution of any order of his client relating to the same security for purchase, sale or other dealings in respect of securities.

Nothing contained in this clause shall apply where according to the clients instruction, the transaction for the client is to be effected only under specified conditions or in specified circumstances;

- (c) intentionally and in contravention of any law for the time being in force delays the transfer of securities in the name of the transferee or the dispatch of securities or connected documents to any transferee.

4.1.3 In view of the above, I find that NEAL has acted in violation of Regulations 5(1) and 6 of the SEBI(Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995.

4.2 I note that Section 69 of the Companies Act, 1956 provides that:

(1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the amount stated in the prospectus as the minimum amount which, in the opinion of the Board of Directors, must be raised by the issue of share capital in order to provide for the matters specified in clause 5 of Schedule II has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company, whether in cash or by a cheque or other instrument which has been paid...”

4.2.1 Further, the SEBI in its guidelines on disclosure and investor protection dated. 18.6.92. has directed that a clause be inserted in the prospectus stating inter alia that if the company does not receive the minimum subscription of 90% on the net offer

to public including devolvement of underwriters within 60 days from date of closure of issue, the company shall forthwith refund the entire subscription amount received. If there is a delay beyond 8 days after the company becomes liable to pay the amount, the company shall pay interest prescribed under Section 73 of the Companies Act, 1956.

4.2.2 In view of the above, I find that NEAL and its directors made allotments without receiving the minimum subscription to the said Public issue and thereby violated Section 69 of the Companies Act, 1956 and the guidelines of SEBI on Disclosure and Investor Protection dated. 18.6.92.

4.3 I find that after allotment was made, instead of making delivery of the share certificates to the applicants, NEAL has taken delivery of the same. This action of NEAL created an artificial scarcity in the shares available for trade and hence adversely affected the price of the share. In view of the above, I find that NEAL has acted in violation of Regulation 6 of the said regulations.

4.4 Section 73 (3A) of the Companies Act provides that

“Moneys standing to the credit of the separate bank account referred to in sub-section(3) shall not be utilized for any purpose other than the following purposes, namely : -

(a) adjustment against allotment of shares, where the shares have been permitted to be dealt in on the stock exchange or each stock exchange specified in the prospectus; or...”

NEAL has credited amounts to GFIL from the proceeds of the issue. Therefore, the proceeds of the issue have been utilized for a purpose other than what has been permitted under Section 73 (3A) of the Companies Act.

In this regard, I note that, Section 55A of the Companies Act provides that :

“The provisions contained in sections 55 to 58, 59 to 84, 108, 109, 110, 112, 113,

116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of securities and non-payment of dividend shall, -

- (a) in case of listed public companies;
- (b) in case of those public companies which intend to get their securities listed on any recognized stock exchange in India, be administered by the Securities and Exchange Board of India; and
- (c) in any other case, be administered by the Central Government.”

In view of the above, I find that NEAL has violated Section 73 (3A) of the Companies Act., 1956.

4.5 I find that several complaints were made regarding delay in the transfer and delivery of shares, but NEAL has not attended to those complaints.

5.0 In view of the above, it is necessary that appropriate directions be issued by SEBI in the interest of investors and the safety and security of the capital market. Therefore, in exercise of the powers conferred on me under Section 4(3) read with Section 11 and 11(b) of the SEBI Act and Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, I , hereby direct that M/s. Natural Expo Agro Industries Ltd. and its promoter directors viz. Shri Jayesh R. Thakkar, Shri Sujay A. Amin and Shri Sharad N. Raval shall dissociate themselves from the capital market for a period of 5 years and that the aforesaid persons shall not deal in securities in any manner whatsoever for a period of 5 years.

This order shall come into effect immediately.

G. N. BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA

Date: 17th June, 2003

Place: Mumbai