

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Appeal No.98 of 2008**

**Date of decision:13.7.2009**

Wealth Sea Pte Ltd.  
Manali Properties & Finance Pvt. Ltd. .... Appellants

Versus

Securities and Exchange Board of India ..... Respondent

Mr. Shyam Mehta, Advocate with Mr. Vinay Chauhan, Advocate for Appellants.

Dr. Poornima Advani, Advocate with Ms. Harshada Nagare, Advocate for the Respondent.

CORAM : Justice N.K. Sodhi, Presiding Officer  
Samar Ray, Member

Per : Samar Ray, Member (Oral)

This appeal is directed against the communication dated July 16, 2008 sent by the Securities and Exchange Board of India (for short the Board) to the merchant banker of the appellants' rejecting their request for further valuation of the shares of Dunlop India Ltd (target company) for determination of the offer price in terms of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (the takeover code).

2. The appellants acquired from Jumbo World Holdings Ltd.- a company registered and incorporated under the Companies Act of British Virgin Islands, its 100 percent shares and voting rights in DIL RIM & Wheel Corporation Ltd. - a company registered in Mauritius (for short DIL). DIL was then holding 74.5% shares and voting rights in Dunlop India Ltd. (Dunlop) and 68.98% shares and voting rights in Falcon Tyres Limited (Falcon). Both Dunlop and Falcon are companies registered in India under the Companies Act, 1956. We are only concerned with Dunlop in the present appeal. With the acquisition of 100 percent holding of DIL, the appellants indirectly acquired 74.5

percent shares and voting rights in Dunlop as a result whereof the takeover code got triggered. In pursuance to the directions issued by the Board, the appellants made a public announcement to the shareholders of Dunlop and offered to them a price of Rs.10 for each share. A draft letter of offer was sent to the Board for its comments. After protracted correspondence between the Board and the appellants, the latter through their merchant banker revised the offer price to Rs.17.50 per share of Dunlop. It appears that the Board was not satisfied with the offer price and appointed M/s. Bansi S. Mehta & Co., an independent firm of chartered accountant to independently evaluate the equity shares of Dunlop for the purpose of the open offer under the takeover code. The chartered accountant in its report dated March 28, 2008 determined Rs.43.73 as the offer price for the open offer. The Board accepted the report of the chartered accountant and by its letter dated May 6, 2008 called upon the appellants to revise the offer price from Rs.10 per share to Rs.43.73 per share alongwith interest with effect from 2.6.2006. The appellant through their merchant bankers pointed out to the Board some anomalies in the report of the chartered accountant which, according to the merchant banker, were apparent anomalies and made a request for the appointment of an independent accounting firm of repute to assess the value of Dunlop which at the time of acquisition was a sick company. The Board by its impugned communication turned down the request of the appellants for the appointment of an independent accounting firm to assess the value of Dunlop and advised the appellants to proceed with the open offer on the basis of the offer price determined by M/s. Bansi S. Mehta & Co. Hence this appeal.

3. Learned counsel for the appellants has pointed out some anomalies in the report and has expressed serious reservations on the valuation done by the chartered accountant. We have heard the learned counsel for the parties and observe that the report ex-facie suffers from several infirmities and that it would not be safe to rely upon the valuation done by the chartered accountant. The negotiated price per share of Dunlop has been mentioned as Rs.29 in para 5.1 of the report whereas that price in the table below para 5.3 is mentioned as 31.67. We do not know which of the two figures is correct. Again, the

fair value per share of Dunlop on the valuation date is calculated at Rs.33.99 per share in para 5.2 of the report but the same in the chart below para 5.3 is mentioned as Rs.43.73 which is taken as the fair price. These anomalies and contradictions are apparent and the learned counsel appearing for the respondent Board could not offer any explanation. Even the officers of the Board who were present in court could not explain this contradiction. This apart, the report does not indicate the methodology and the step by step exercise through which the fair value price per share of Dunlop, a sick company, has been arrived at. It appears from the report that the independent valuer appointed by the Board has not exercised due diligence required in determining the value of the sick company. The evaluation of a sick company involves factoring in several risk parameters which are determined by the experts through the process of due diligence. The report does not give any indication whether the risk factors were quantified through the accounting process and taken into account for determining the value of Dunlop. In view of these serious deficiencies it is not safe to rely upon this report. We note that there is a wide difference between the two prices as determined by the merchant banker and the independent chartered accountant. This difference in the price per share results in additional payment of crores of rupees to the existing shareholders and increases the liability of the appellant. In view of the infirmities, contradictions and deficiencies pointed out in the report, we are of the view that the appellants were justified in requesting the Board to appoint another independent accounting firm to assess the value of Dunlop. The learned counsel for the appellant suggested that we should appoint an independent accounting firm for this purpose to which the learned counsel for the respondent had no objection. We, therefore, appoint M/s. Deloitte Touche Tohmatsu India Pvt. Ltd., Mumbai to evaluate Dunlop as on the date of acquisition i.e. November 28, 2005 and submit its report to the Board within one month from the date of receipt of our order. We make it clear that M/s. Deloitte Touche Tohmatsu India Pvt. Ltd., Mumbai shall not be influenced by any previous report or assessment made by any chartered accountant or merchant banker and shall be free to ask for the records/information from either of the parties as it may deem necessary. The Board shall then within one month

from the date of receipt of the report proceed with the matter and offer its comments on the letter of offer in accordance with law. The appellants shall bear the fee charged by the valuers. The learned counsel for the respondent undertakes that the Board shall furnish a copy of this order to M/s. Deloitte Touche Tohmatsu India Pvt. Ltd., Mumbai at the earliest.

The appeal stands disposed of as above with no order as to costs.

Sd/-  
Justice N.K.Sodhi  
Presiding Officer

Sd/-  
Samar Ray  
Member

13.07.2009

Prepared & compared by  
RHN