



Australian Government

Takeovers Panel

MEDIA RELEASE

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Wednesday, 30 September 2009

Bowen Energy Limited 02R - Declaration of Unacceptable Circumstances and Orders

The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) in response to a review application dated 3 September 2009 by Macrae Holdings (WA) Pty Ltd in relation to the affairs of Bowen Energy Limited (see MR [TP09/61](#)).

On 10 July 2009, Bhushan Steel (Australia) Pty Ltd announced an on-market takeover bid for Bowen at 14 cents per share. That bid closed on 26 August 2009. Bhushan had voting power in 58.81% of Bowen at the end of the bid.

On 24 July 2009, Bowen issued a target's statement attaching an independent expert's report by Horwath. The report included a "Revised Independent Valuation of the Coal Tenements held by Bowen" dated 23 July 2009 from Minnelex Pty Ltd. The report valued Bowen's shares at 3.53 to 5.51 cents per share.

The Panel considered that the circumstances were unacceptable because, among other things, there were material deficiencies in the Minnelex's 23 July 2009 report, regarding some of the values found, some of the logic involved and compliance with ASIC Regulatory Guide 111 and the VALMIN Code.

As a result of the deficiencies in Minnelex's 23 July 2009 report (and hence the expert's report) and information deficiencies, the acquisition of control over Bowen shares has not taken place in an efficient, competitive and informed market and shareholders in Bowen were not given enough information to enable them to assess the merits of the Bhushan bid.

The Panel made a declaration of unacceptable circumstances.

The Panel is still making inquiries in relation to association between Savni Holding Limited and Bhushan. The Panel agreed with the initial Panel in respect of the issue of the independent directors of Bowen (see MR [TP09/60](#)).

The Panel has made orders to the effect that the independent directors of Bowen procure a report by a new independent expert (satisfactory to ASIC) to provide a

valuation of Bowen as at 23 July 2009. Further, the Panel has ordered that Bhushan must divest the shares it received under its takeover offer to accepting offerees who want them back. However, the Panel will not require divestment if the new independent expert concludes that the Bhushan takeover offer is fair and reasonable.

The sitting Panel was Catherine Brenner, Rodd Levy (sitting President) and Andrew Sisson.

The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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Annexure A

CORPORATIONS ACT SECTION 657EA DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

BOWEN ENERGY LIMITED 02R

CIRCUMSTANCES

1. On 25 February 2008, Bowen Energy Limited (**Bowen**) announced that it had signed two joint ventures with Bhushan Steel Limited (**Bhushan**).
2. In exchange for funding exploration costs and feasibility and commissioning costs in relation to the following of Bowen's coal tenements, the joint ventures gave Bhushan an interest of:
 - (a) 85% of EPC 1045 and 1206 and
 - (b) 90% of EPC 1001 and 1002.
3. On 12 September 2008, Bowen announced that it had signed a subscription agreement at 32 cents per share with Bhushan Steel (Australia) Pty Limited (**Bhushan Aust**) subject to shareholder approval. The notice of meeting attached an independent expert's report from WHK Horwath Corporate Finance (**Horwath**) dated 6 November 2008, which included an "Independent Valuation of the Coal Tenements held by Bowen Energy Limited" dated 10 October 2008 from Minnelex Pty Ltd (**Minnelex**). Horwath valued Bowen's shares at between 22.46 and 27.55 cents per share.
4. The subscription agreement was cancelled after consideration of it was deferred at Bowen's annual general meeting. Bhushan agreed to provide the required funding under the two joint venture agreements and a loan facility for working capital and exploration on non-joint venture tenements.
5. On or about 24 March 2009, Minnelex advised Horwath that it had made errors in the valuation of Bowen's coal projects for the 2008 report. Horwath advised Bowen.
6. On 31 March 2009, Bowen announced the events in paragraph 4 and that "*certain calculations made in the expert's report sent to shareholders were incorrect*". The announcement attached a letter from Horwath dated 31 March 2009, which disclosed a revised conclusion on the value of Bowen's shares at 8.13 to 11.37 cents per share. It also stated: "*A full supplementary statement has been provided to the Directors of the Company for their records to be made available to Bowen Energy shareholders, ASIC or ASX as so required.*" The supplementary statement was not disclosed.

7. On 10 July 2009, Bhushan Aust announced a market offer for all Bowen shares it did not own at 14 cents per share. It had a relevant interest in 22.23% of Bowen shares.
8. On 24 July 2009, Bowen issued a target's statement attaching an independent expert's report by Horwath. The report included a "Revised Independent Valuation of the Coal Tenements held by Bowen" dated 23 July 2009 from Minnelex. The report valued Bowen's shares at 3.53 to 5.51 cents per share.
9. The Bhushan Aust bid ended on 26 August 2009. Bhushan Aust disclosed in a substantial holder notice dated 17 August 2009 that it had voting power in 58.81% of Bowen.
10. There are material deficiencies in Minnelex's 23 July 2009 report regarding some of the values found, some of the logic involved and compliance with ASIC Regulatory Guide 111 and the VALMIN Code.
11. As a result of the deficiencies in Minnelex's 23 July 2009 report (and hence the expert's report) and information deficiencies, the acquisition of control over Bowen shares has not taken place in an efficient, competitive and informed market and shareholders in Bowen were not given enough information to enable them to assess the merits of the Bhushan Aust bid.
12. It appears to the review Panel that the circumstances are unacceptable having regard to:
 - (a) the effect that the review Panel is satisfied the circumstances have had on:
 - (i) the control, or potential control, of Bowen or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Bowen and
 - (b) the purposes of Chapter 6 set out in section 602.
13. The review Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3).

DECLARATION

The review Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Bowen.

Alan Shaw
Counsel
with authority of Rodd Levy
President of the review Panel
Dated 30 September 2009



Australian Government

Takeovers Panel

Annexure B

CORPORATIONS ACT SECTION 657D ORDERS

BOWEN ENERGY LIMITED 02R

The Panel made a declaration of unacceptable circumstances on 30 September 2009.

THE PANEL ORDERS

Independent expert's report

1. Bowen Energy Limited (**Bowen**) must procure a new independent expert's report and valuation on Bowen as at 23 July 2009 on the following terms:
 - (a) a new independent expert is to be chosen by the independent directors of Bowen
 - (b) unless the new independent expert has the expertise required to value Bowen's assets, it must choose and engage a new independent technical expert
 - (c) the new independent expert and any independent technical expert must be satisfactory to ASIC
 - (d) the new independent expert and any independent technical expert is not to be associated with Bowen, Bhushan Steel (Australia) Pty Ltd (**Bhushan**), Bhushan Steel Limited, WHK Horwath Corporate Finance Limited or Minnelex Pty Ltd
 - (e) the new expert's report and any independent technical expert's report must comply with the ASIC regulatory guides on expert's reports and the code for the technical assessment and valuation of mineral and petroleum assets and securities for independent expert reports (VALMIN code)
 - (f) Bowen must make available all information reasonably requested by the new independent expert and any independent technical expert
 - (g) the new independent expert and any independent technical expert must consider, and provide detailed analysis on, the effect on the value of Bowen shares of the agreements between Bowen and Bhushan which reduced Bowen's interest in tenements EPC 1045 and EPCA 1206 from 100% to 15% and in tenements EPC 1001 and 1002 from 100% to 10%. If the independent expert or the independent technical expert decides not to take the agreements into account they must explain the reasoning in their reports
 - (h) the independent expert and any independent technical expert must consider the information in the full supplementary statement referred to in the letter of WHK Horwath to the Bowen board of directors dated 31 March 2009 and

- (i) the new independent expert and any independent technical expert must certify to the Panel that they were given access to all information reasonably requested.
2. The new independent expert's report (containing any independent technical expert's report) must be released to the market within 30 business days of the date of these orders.
3. The costs of the reports, and dispatch of the expert's report (containing any independent technical expert's report) under order 8, are to be borne by Bowen.
4. Bowen must submit a draft of the expert's report (containing any independent technical expert's report) to ASIC for review.
5. ASIC must advise the Panel whether in its opinion the independent expert's report and any independent technical expert's report comply with ASIC's regulatory guides on expert's reports.

Offer to sell back shares accepted

6. If orders 8 to 11 apply, Bhushan must divest the shares it received under its takeover offer in accordance with these orders.
7. Orders 8 to 11 apply unless the new independent expert concludes that the Bhushan takeover offer is fair and reasonable.
8. At the same time the new independent expert's report (and any independent technical expert's report) is released to the market, Bowen must:
 - (a) send the independent expert's report (including any independent technical expert's report) to former Bowen shareholders who accepted the Bhushan takeover offer announced on 10 July 2009 (**eligible shareholders**) and
 - (b) release to the market a notice setting out:
 - (i) that Bhushan is offering the shares without disclosure to the eligible shareholders under Part 6D.2
 - (ii) that the notice is being given in accordance with these orders
 - (iii) that Bowen has complied with:
 - (A) the provisions of Chapter 2M as they apply to Bowen and
 - (B) section 674 and
 - (iv) any information that is excluded information as at the date of the notice (in accordance with the requirements of subsections 708A(7) and(8) as if the notice were a notice under paragraph 708A(5)(e)).
9. Within 5 business days of the dispatch of the expert's report to eligible shareholders, Bhushan must write to eligible shareholders (in a form the Panel does not object to):
 - (a) explaining the decision of the Panel and effect of these orders
 - (b) offering them the right to buy back the same number of shares they accepted under the Bhushan bid, or part thereof, on the following terms:
 - (i) the price is the takeover offer price of 14 cents per share
 - (ii) the offer is open for 15 business days from the date the last of the offers is dispatched

- (c) enclosing an acceptance form:
 - (i) requiring details of how many shares are to be bought back by the eligible shareholder
 - (ii) specifying the payment methods acceptable to Bhushan (which must include at least cheque) and
 - (iii) specifying that the money (in cheque or other form acceptable to Bhushan) for the shares to be bought back is to be sent to Bhushan (at an address in Australia) with the acceptance. The money is to be banked in a special purpose trust account no later than the end of the day of receipt and only released to Bhushan following transfer.
- 10. If for any reason Bhushan does not accept an application:
 - (a) within 1 business day it must provide the application and its reasons for non-acceptance to ASIC
 - (b) ASIC must, within 2 business days of receipt, make a decision on whether or not the application should be accepted and
 - (c) if ASIC is unable to make a determination as to whether the application should be accepted, ASIC must refer the matter to the Panel within 3 business days of receipt of the application from Bhushan.
- 11. By the later of:
 - (a) 5 business days of the receipt of a properly completed application (subject to ASIC or Panel review) and
 - (b) 1 business day of cleared fundsBhushan must process an off market transfer into the eligible shareholder's name.

Alan Shaw
Counsel
with authority of Rodd Levy
President of the sitting Panel
Dated 30 September 2009