

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 54665 / October 30, 2006**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 2500 / October 30, 2006**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12463**

**In the Matter of**

**B.N. BAHADUR,**

Respondent.

**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934**

**I.**

The Securities and Exchange Commission (the “Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (the “Exchange Act”), against B.N. Bahadur (“Bahadur” or the “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.<sup>1</sup>

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<sup>1</sup> In a separate civil action filed simultaneously with this proceeding, Bahadur has separately consented to the entry of a judgment by the U.S. District Court for the Eastern District of Michigan pursuant to Section 21(d) of the Exchange Act ordering him to disgorge \$350,000, pay prejudgment interest of \$139,257 on the disgorgement amount and pay a civil penalty of \$80,000. *SEC v. Delphi Corporation, et al.*, Civil Action No. 2:06-cv-14891 (AC) (E.D. Mich. Oct. 30, 2006).

### III.

On the basis of this Order and Respondent's Offer, the Commission finds that:<sup>2</sup>

#### A. Respondent and Delphi Corporation

##### 1. Respondent

Bahadur, 61, is a resident of West Bloomfield, Michigan. At all relevant times, he was the sole owner and principal of a private management consulting company based in Southfield, Michigan (the "Consulting Company").

##### 2. Delphi Corporation

Delphi Corporation ("Delphi") is an auto parts supplier headquartered in Troy, Michigan. At all relevant times, Delphi's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was listed on the New York Stock Exchange ("NYSE") under the symbol "DPH." On October 8, 2005, Delphi filed for bankruptcy in the Southern District of New York. On November 11, 2005, Delphi was delisted from the NYSE. Delphi's common stock is now registered with the Commission pursuant to Section 12(g) of the Exchange Act and trades in the over the counter market and is quoted in the pink sheets under the symbol "DPHIQ."

#### B. Facts

##### 1. Introduction

In December 2000, Delphi entered into two separate inventory schemes involving transactions with third parties. In one of those transactions, Delphi purported to sell \$70 million worth of inventory to the Consulting Company at the end of December 2000, while simultaneously promising Bahadur that Delphi would repurchase the inventory from the Consulting Company in early 2001. In return for Bahadur's participation, he negotiated for the Consulting Company to receive a \$350,000 fee. Delphi accounted for the transaction as a sale of inventory, but should have accounted for it as a financing.

##### 2. Bahadur assists Delphi by entering into oral repurchase agreement.

In December 2000, a Delphi executive ("Executive X") asked Bahadur if, as an accommodation, his Consulting Company would buy automotive battery and generator core inventory from Delphi for \$70 million and resell it back to Delphi within 90 days, again, for \$70 million. Executive X agreed that the Consulting Company would earn a 0.5% fee in connection with the transaction. When Bahadur was unable to secure financing for the

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<sup>2</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

transaction, Executive X suggested the parties close the transaction before the end of 2000, but seek to finalize the financing early in January.

Although the Consulting Company had been engaged by Delphi on multiple occasions to provide consulting services, it had never purchased inventory from an automotive manufacturer or supply company and had no need or use for automotive batteries or generator cores. Nevertheless, after consulting outside counsel and participating in telephone conference calls with counsel and Executive X, Bahadur agreed to enter into the transaction with Delphi. Bahadur's counsel, who drafted the contract, proposed to Executive X and recommended to Bahadur that Delphi's repurchase obligation be put in writing. Executive X rejected that proposal, however, and Bahadur agreed to go forward with the transaction without a written repurchase agreement.

The final agreement was executed in December 2000 and, pursuant to Delphi's specific request, made no mention of Delphi's agreement to repurchase of the inventory or of any fee the Consulting Company would earn in connection with the transaction. However, Executive X had repeatedly assured Bahadur and his counsel that Delphi would repurchase the inventory and that the Consulting Company would earn a fee.

**3. Delphi self-finances Bahadur's inventory purchase by making improper use of supplier financing program.**

In January 2001, while Bahadur was working on securing financing, Executive X suggested that Delphi finance the transaction through a third party entity's supplier financing program. In the normal course, Delphi enrolled its suppliers in the third party supplier financing program so that suppliers could receive early, but reduced, payment on invoices issued for material purchased by Delphi. Under the program, as soon as the supplier's invoice was received and approved by Delphi, the third party supplier financier would pay the supplier at a discount. Delphi would then pay the third party supplier financier the full amount of the invoice on its actual due date.

In connection with the batteries and cores transaction, however, Delphi used the third party supplier finance program for a different and improper purpose. Delphi first arranged with Bahadur for the Consulting Company to be enrolled in the supplier financier program. Delphi then arranged with Bahadur to have the Consulting Company issue an invoice to Delphi for \$70,840,214.28. This amount was calculated by Delphi so that, after the third party supplier financier took its fee, the Consulting Company would receive the net proceeds of \$70,350,000. Upon receipt of the invoice, Delphi approved it and submitted it to the third party supplier financier. The Consulting Company received the \$70,350,000 on or about January 12, 2001 and immediately paid \$70 million to Delphi as payment for its purchase of the inventory. The Consulting Company retained \$350,000 as its fee. A month later, Delphi paid \$70,840,214.28 to the third party supplier financier.

When the transaction was complete, Delphi had paid the Consulting Company \$350,000 and had paid the third party supplier financier \$538,385.63 to move inventory off of Delphi's books for approximately two weeks. No inventory ever left Delphi's premises.

#### 4. **Bahadur's knowledge**

Bahadur knew that by representing the transaction as a "purchase," without any mention of the repurchase agreement or the Consulting Company's fee, the inventory purchase agreement he signed in December 2000 did not accurately represent all of the terms of the transaction, including the oral agreement by Executive X. He further knew that under the actual terms of his arrangement with Delphi, the Consulting Company was not in fact purchasing inventory from Delphi, but instead was agreeing to provide Delphi with short-term financing. Moreover, by January 2001, he knew that as a result of Delphi's self-financing program, the only cash Delphi received in connection with the transaction came not from the Consulting Company, but from Delphi itself, via the third party supplier financier.

#### 5. **Delphi's fraudulent accounting**

Delphi fraudulently accounted for the December 2000 transaction with the Consulting Company as a sale. As the result of its fraudulent accounting, on its Form 10-K for the period ended December 31, 2000, Delphi improperly overstated its earnings per share by approximately 3 cents or 9% for the fourth quarter of 2000.

#### C. **Conclusion**

As a result of the conduct described above, Bahadur was a cause of Delphi's violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

Also as a result of the conduct described above, Bahadur was a cause of Delphi's violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 promulgated thereunder, which require reporting companies to file accurate annual reports with the Commission.

Lastly, as a result of the conduct described above, Bahadur was a cause of Delphi's violations of Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

#### IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Bahadur's Offer.

Accordingly, it is hereby ORDERED that Respondent Bahadur cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder and cease and desist from causing any violations and any future violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20 and 13a-1 promulgated thereunder.

By the Commission.

Nancy M. Morris  
Secretary