



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

**IN THE MATTER OF
BLUE GOLD HOLDINGS LTD., DEREK BLACKBURN,
RAJ KURICHH AND NIGEL GREENING**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission ("Staff") make the following allegations:

I. OVERVIEW

1. This proceeding involves the conduct of the three founders and directing minds of Blue Gold Holdings Ltd. ("BGH"), Derek Blackburn ("Blackburn"), Nigel Greening ("Greening"), and Raj Kurichh ("Kurichh") (collectively the "Founders" or with BGH the "Respondents"), in connection with the unregistered sale and illegal distribution of the securities of BGH contrary to subsections 25(1) and 53(1) of the *Securities Act*, R.S.O. 1990, as amended (the "Act"); and in connection with statements made relating to the securities of BGH that were prohibited by subsection 38(3) of the Act; and who deceived investors by engaging in acts, practices or courses of conduct that they knew or reasonably ought to have known perpetrated a fraud contrary to subsection 126.1(b) of the Act and contrary to the public interest.

2. Between July 2010 and April 2013 (the “Material Time”), Blackburn, Greening and Kurichh raised approximately \$1.5 million from approximately 100 investors in Ontario through the unregistered sale and illegal distribution of the securities of BGH.

3. In promoting BGH shares to potential investors, Blackburn and Kurichh made representations prohibited under the Act that BGH would soon be listed on a public stock exchange.

4. In addition to making statements specifically prohibited by subsection 38(3) of the Act, Blackburn and Kurichh deceived investors by making numerous other misleading or untrue statements while promoting the securities of BGH, including the price at which the shares would be listed and the future value of the shares; and Blackburn engaged in fraudulent conduct directly or indirectly by his use of investor funds for personal expenditures; and the individual Respondents further defrauded investors by participating in a scheme which provided them with a larger interest in the business and diluted the interest of minority shareholders in the business, and ultimately in the public company.

II. THE RESPONDENTS

5. BGH is a privately held Ontario company incorporated on March 18, 2010 whose head office was in Mississauga, Ontario.

6. Blackburn was during the Material Time a director and the President and Chief Executive Officer of BGH. Blackburn is a resident of Ontario.

7. Greening was during the Material Time a director and the Executive Vice-President, Field Operations and Installations of BGH. Greening is a resident of England.

8. Kurichh was during the Material Time an officer of BGH, and from December 14, 2012, Kurichh became Director of BGH. Kurichh is a resident of Ontario.

III. BACKGROUND TO ALLEGATIONS

A. Unregistered Trading in Securities and Illegal Distributions

9. In March 2010, Blackburn, Greening and Kurichh founded BGH and each obtained 3,278,165 shares in BGH for nominal consideration.

10. During the Material Time, Blackburn & Kurichh solicited potential investors, primarily in Ontario, to buy the securities of BGH by doing the following:
 - (a) arranging and/or attending information sessions and one-on-one meetings with potential investors as well as calls and/or emails with such investors to discuss BGH, its business and the nature of the investment;
 - (b) preparing, approving and/or providing promotional materials to investors;
 - (c) providing potential investors with subscription agreements; and
 - (d) receiving and depositing subscription funds.

11. Throughout the Material Time, Blackburn and Kurichh deceived investors by making the following misleading statements either orally or in the written marketing materials:
 - (a) January 2011: BGH marketing materials state that BGH has received formal or informal approval for BGH projects from Ontario government organizations. In reality, BGH had only engaged in preliminary communications with the Ontario Clean Water Agency ("OCWA") and the Ontario Ministry of the Environment ("MOE"), and had received no MOE approvals, and was asked by the OCWA to remove public statements posted online regarding such approvals;
 - (b) April 2012: BGH marketing materials claim that there is a "projects pipeline" with potential revenue of \$50 million in 2012. In fact any discussions on potential projects were at a preliminary or exploratory stage and the revenue projections could not be supported based on those discussions;
 - (c) August 2012: By August of the same year, BGH marketing materials claim that there are, *"30 contracts in the sales pipeline in Canada, Mexico and South Africa, worth approx. \$100 million in annual revenue, with 60% gross margins;"* In fact by August 2012 there were no contracts in the pipelines for BGH, and Blackburn and/or Kurichh had begun to divert business opportunities away from BGH;

- (d) Certain investors were told that BGH securities were being offered to select investors at a discounted rate but that this opportunity was only available for a limited time. In fact Blackburn and/or Kurichh were actively seeking new investors throughout the Material Time; and
- (e) Certain investors were told by Blackburn and/or Kurichh that BGH securities were a safe investment and/or that it was not risky, and the money would stay in a trust account. The foregoing statements were misleading at the time, and remain untrue.

12. As a result of this activity, the Respondents raised approximately 1.5 million from approximately 100 investors, primarily in Ontario during the Material Time.

13. None of the Respondents are registered with the Commission, or were during the Material Time, and no exemptions from registration were available to them under the Act.

14. The sales of the BGH securities were trades in securities not previously issued and were therefore distributions. BGH has never filed a preliminary prospectus with the Commission and no prospectus receipt has ever been issued to qualify the distribution of BGH securities in circumstances where no exemptions were available.

15. By engaging in the conduct set out above, the Respondents engaged in the business of trading in securities in circumstances where they were not registered to do so, and where no exemptions were available; and distributed securities without filing a preliminary prospectus and a prospectus, in circumstances where no exemptions were available to the Respondents pursuant to the Act, contrary to subsections 25(1) and 53(1) of the Act.

B. Prohibited Representations

16. In promoting the securities, Blackburn and Kurichh made representations on behalf of BGH to investors that BGH would be going public and its securities would be soon be listed on a stock exchange.

17. The representations regarding listing BGH on an exchange were made with the intention of effecting a trade in securities of BGH, without the permission of the Director, and without an application having been made to list or quote the securities, nor had the exchange granted approval to the listing, consented to or otherwise indicated that it did not object to the representation. By making those statements in those circumstances, Blackburn and Kurichh made prohibited representations contrary to subsection 38(3) of the Act.

C. Fraudulent Conduct

18. Throughout the Material Time funds raised from investors were being deposited in BGH's bank accounts and then subsequently transferred to, and comingled with, personal funds of Blackburn. Blackburn used in excess of \$500,000 of BGH investor funds for his personal use. By the end of 2012 BGH had almost no funds in its bank accounts.

19. BGH required significant additional funds to continue operations and development, and in January 2012 Blackburn began negotiations with Golden Cross Resources Inc., an existing public company (the "GOX") to fund operations and a listing transaction. A letter of intent was entered into whereby the GOX would provide funds in exchange for acquiring the assets of BGH through a reverse take-over ("RTO") and amalgamation with the GOX. The amalgamated entity then changed its name and is currently publically listed as NanoStruck Technologies Inc.

20. At this time books and records of BGH were either non-existent or in such a state that audited financial statements could not be produced, nor could reasonable due diligence be performed, and a new company with a clean history was required with which to amalgamate.

21. In April 2012, Blackburn incorporated a new company by the name of Blue Gold Tailings Technologies Ltd. ("BGTT"). BGTT was incorporated for the specific purpose of commercializing the technologies, and capitalizing on business opportunities that had been developed and funded by BGH and its investors.

22. To determine the value of the assets that would be acquired in the amalgamation, two independent Valuers were retained. The first Valuator was retained by Blackburn and deemed the assets to be worth \$32 million. The second Valuator was retained by the GOX and deemed the assets to be worth approximately \$8-\$9 million. However, prior to the amalgamation, the assets of BGH had to be sold or transferred to BGTT. Neither of the valuations, their content or substance, was disclosed to the shareholders of BGH.

23. To effect the sale or transfer of the assets of BGH to BGTT, the Board of BGH sent a Notice of Special Meeting of Shareholders (the "First Notice") dated December 3, 2012, advising that shareholders would be asked to vote to approve the sale of substantially all of the assets of BGH to BGTT in exchange for 30,518,075 shares or approximately \$1.5 million. In the First Notice the Board advised in bold that, *"Your board of directors has determined that the transaction is in the best interest of the Corporation and recommends you vote FOR the Asset Sale Resolution"*.

24. To retain their ownership interest, and in advance of the First Notice, the Founders had already caused to be issued to themselves approximately 14,000,000 additional shares in BGTT, for little or no consideration, and further diluted shareholders by "gifting" approximately 28,000,000 additional shares to individuals or entities who were deemed by the Founders to have provided services to BGH. The majority of individuals to whom shares had been gifted were friends, family or business associates of the Founders.

25. The number of shares "gifted" was the approximate equivalent of the entire number of BGTT shares received by the retail shareholders who had provided the initial capital and assumed the risk. The issuance of these approximately 42 million additional shares resulted in a significant dilution of the ownership interest of retail shareholders and deprived retail shareholders of the full potential value of their investment.

26. On April 26, 2013 a second special meeting of shareholders of BGH was held. In a Notice of Special Meeting of Shareholders dated April 11, 2013 (the "Second Notice")

shareholders of BGH were asked to approve a special resolution diverting business opportunities developed and funded by shareholders of BGH to BGTT for no consideration. In fact, the Founders had already caused the contracts to be signed directly with BGTT, in most cases approximately one year prior to the Second Notice. In the Second Notice, shareholders were asked to vote on actions already taken by the Founders in the absence of shareholder disclosure and approval.

27. As a result of the acts, practices and course of conduct described in paragraph 11 and paragraphs 19-26 above, the retail shareholders of BGH were deceived by the Founders in respect of the nature and substance of the investment; the use of investor funds; the scheme in which the individual Respondents participated, which they knew or reasonably ought to have known perpetrated a fraud, contrary to subsection 126.1(b) of the Act; and/or acted contrary to the public interest.

D. Breaches of Ontario Securities Law and Conduct Contrary to the Public Interest

28. The specific allegations advanced by Staff are:

(a) During the Material Time, the Respondents engaged in the business of trading, in circumstances where they were not registered to do so and without an available exemption from registration, contrary to section 25(1) of the Act;

(b) During the Material Time, the Respondents distributed securities when a preliminary prospectus and a prospectus had not been filed and receipts for them had not been issued by the Director and no exemption from those requirements was available, contrary to section 53 of the Act;

(c) During the Material Time, Blackburn and Kurichh made representations without the written permission of the Director with the intention of effecting a trade in securities of BGH that such security would be listed on a stock exchange or quoted on any quotation and trade reporting system, contrary to section 38(3) of the Act;

(d) During the Material Time, Blackburn, Greening and Kurichh engaged in or participated in acts, practices or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies contrary to section 126.1(b) of the Act; and

(e) Blackburn, Greening and Kurichh as directors and officers of BGH authorised, permitted or acquiesced in BGH's breaches of the Act referred to above in (a) and (b) and are responsible for same pursuant to section 129.2 of the Act.

29. By reason of the foregoing, the respondents violated the requirements of Ontario securities law and/or engaged in conduct contrary to the public interest.

30. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto, March 11, 2015