



## FINDINGS AND RECOMMENDATIONS IN THE MATTER OF B-BBEE COMMISSION // FORKLIFT PARTS (PTY) LTD AND OTHERS

**CASE NUMBER: 25/7/2016**

**Summary:** *Allegations - B-BBEE Commission initiated investigation pursuant to anonymous complaint possible violation of the B-BBEE Act – entity claiming 50% black ownership on the basis of Chinese people that are permanent residents in South Africa - on possible misrepresentation of B-BBEE status - Findings – conduct contrary to the objectives of the B-BBEE Act; misrepresentation of B-BBEE status and incorrect issuing of the B-BBEE certificates – Recommendations – remedial recommendations included training, monetary contribution, failing which referrals, including to SAPS and NPA, may be considered.*

### **1. Introduction**

- 1.1 The Broad-Based Black Economic Empowerment Commission (“B-BBEE Commission”) is established in terms of section 13B of the Broad-Based Black Economic Empowerment Act No. 53 of 2003 as amended by Broad-Based Black Economic Empowerment Act No. 46 of 2013 (“the B-BBEE Act”).
- 1.2 The B-BBEE Commission is empowered to conduct investigations on any matter arising from the application of the B-BBEE Act, including any B-BBEE initiative or a category of B-BBEE initiatives, in terms of section 13F (1) (d) and section 13J (1) of B-BBEE Act, read with regulation 15 of the Regulations Regulating the Administration and Implementation of the B-BBEE Act and the Functions of the B-BBEE Commission, 2016 (“B-BBEE Regulations”).

- 1.3 Upon investigations, the B-BBEE Commission may in terms of section 13J (7) (a) of the B-BBEE Act, read with regulation 15 (12) (c) of the B-BBEE Regulations, publish any finding or recommendation it has made in such a manner as it may deem fit.
- 1.4 This publication is therefore issued in line with these provisions of the B-BBEE Act and in the interest of the public.

## **2. *Brief description of the complaint***

- 2.1 The Minister of Trade and Industry issued the B-BBEE Regulations on 06 June 2016 which prescribe the process for complaints in terms of the B-BBEE Act. Regulation 15 specifically outlines the process from submission to resolution of a complaint, and further provides for both instances where the B-BBEE Commission responds to a complaint and where it investigates a complaint on its own initiative.
- 2.2 The B-BBEE Commission received an anonymous complaint against Forklift Parts World (Pty) Ltd, a company registered in terms of company laws of the Republic of South Africa with registration number 2015/392488/07, wherein practices which directly and/or indirectly undermine or frustrate the achievement of the B-BBEE Act were alleged.
- 2.3 For the purposes of this publication, the allegations are summarised as follows:
  - 2.3.1 that Forklift Parts World (Pty) Ltd is currently using and circulating a fraudulent B-BBEE certificate bearing reference number **01/B-BBEE: EME/09/11/2015/001**;
  - 2.3.2 that the said B-BBEE certificate was verified and issued by Ridwaan Jeena, an auditor for AuditEx SA LLC, registered and approved by IRBA;
  - 2.3.3 that Forklift Parts World (Pty) Ltd claims to be 50% black owned and 25% black women owned;
  - 2.3.4 that in all the complainant's encounter with the directors of Forklift Parts World (Pty) Ltd, there was no indication of any black shareholders and directors actively participating in the decision making and operations of the entity;

- 2.3.5 that decisions in the entity are made by white representatives and directors and that certain John and Carol Thomas have consistently expressed their ownership of Forklift Parts World (Pty) Ltd with no mention of any black ownership in the entity;
- 2.3.6 that Forklift Parts World (Pty) Ltd is misrepresenting its B-BBEE status through the presentation of inaccurate or fraudulent B-BBEE certificate; and
- 2.3.7 that Forklift Parts World (Pty) Ltd may have economically benefitted through the alleged fraudulent B-BBEE certificate.
- 2.4 The complainant further alleges possible fronting, an initiative which is defined as any transaction, arrangement or any other act or conduct that directly or indirectly undermines or frustrates the achievement of the B-BBEE Act, or the implementation of any of its provisions. The complainant inter alia requests the B-BBEE Commission to investigate the matter.
- 2.5 The complaint was lodged anonymously and in terms of regulation 13 (1) (b) of the B-BBEE Regulations which states that a person may request that the B-BBEE Commission treat their identity as restricted information, but that person may be a complainant in the relevant matter only if they subsequently waive the request in writing.
- 2.6 Therefore, the B-BBEE Commission initiated an investigation as it believed that there was merit and it was justifiable to do so based on the information that was at the disposal of the B-BBEE Commission during the assessment of this matter. The Notice to Investigate Complaint was issued on the 30<sup>th</sup> of March 2017 with letter setting out the allegations for the response of the respondents, to which they responded.

### **3. Findings of the B-BBEE Commission**

- 3.1 The B-BBEE Commission has acted in accordance with the B-BBEE Act read with B-BBEE Regulations and has conformed to rules relating to fair administrative justice processes applicable to investigations, in its communication with the Respondent(s).
- 3.2 Having investigated the allegations in terms of the mandate under section 13F (1) (d) and section 13J (1) of the B-BBEE Act, considered the Respondent(s) response to the adverse findings, B-BBEE Commission in terms of section 13J (3) read with regulation 15 (4) (g) of the B-BBEE Regulations made the following final findings:

- 3.2.1 the B-BBEE certificate bearing reference number **01/B-BBEE: EME/09/11/2015/001** was issued in a manner that is contrary to the objectives of the B-BBEE Act, based on credentials of Rui Li and Zhou Jiang who are merely permanent residents of the Republic of South Africa, and therefore, do not meet the definition of black people under the B-BBEE Act;
- 3.2.2 AuditEx SA LLC and Ridwaan Jeena knowingly issued the invalid B-BBEE certificate to Forklift Parts World (Pty) Ltd without ascertaining the credentials of Rui Li and Zhou Jiang, as required of a B-BBEE verification professional or agency, in a manner that undermines the objectives of the B-BBEE Act;
- 3.2.3 AuditEx SA LLC and Ridwaan Jeena failed to apply professional scepticism in that a critical assessment, reasonable questioning of the credentials of Rui Li and Zhou Jiang for purposes of B-BBEE and to assess the effect of potential misstatements on the score awarded to the ownership element as required in the Verification Manual;
- 3.2.4 Ridwaan Jeena as an auditor affiliated with IRBA and approved to conduct B-BBEE verifications ought to have known that Forklift Parts World (Pty) Ltd did not qualify for a B-BBEE level three (3) recognition and that the entity does not qualify to obtain 50% on the ownership element as it does not have any black ownership;
- 3.2.5 Ridwaan Jeena and AuditEx SA(Pty) Ltd financially benefitted from misrepresenting the B-BBEE status of Forklift Parts World (Pty) Ltd through the B-BBEE certificate in question and in also issuing B-BBEE certificates to PMD Investment Solutions, Mirrik Consulting, and Eventspect (Pty) Ltd and others, if any, when not accredited to do so by SANAS as required;
- 3.2.6 the conduct of Ridwaan Jeena as a verification professional and director of AuditEx SA LLC is unethical, reckless, and improper thus pointing to him possibly being unfit to perform any verification for B-BBEE purposes;
- 3.2.7 Rui Li, Warren Bradley Fine, Jiang Zhou, Alan Howard Fine and Forklift Parts World (Pty) Ltd claimed to have black ownership based on the credentials of persons who are only permanent residents and not black people under the B-BBEE Act, contrary to the objectives of the B-BBEE Act;

- 3.2.8 any purported black ownership in Forklift Parts World (Pty) Ltd, based on Rui Li and Zhou Jiang's credentials is not recognisable as such under the B-BBEE Act and would amount to misrepresentation of the B-BBEE status of the company;
- 3.2.9 the averment by the Respondent(s) that they relied on advice from Ridwaan Jeena as a B-BBEE verification professional that they can recognise Rui Li and Zhou Jiang as black for B-BBEE purposes is unacceptable as they have a duty as directors to comply with the laws of the Republic of South Africa, and receiving advice from others does not remove this obligation from them as directors of Forklift Parts World (Pty) Ltd;
- 3.2.10 Rui Li, Warren Bradley Fine, Jiang Zhou, and Alan Howard Fine further operated Forklift Parts World (Pty) Ltd in an unregulated and unprincipled manner without having any meetings and/or recorded minutes and/or resolutions, and/or notices of meetings to its shareholders and legal agreements, contrary to principles of corporate governance and the provisions of the Companies Act;
- 3.2.11 the conduct of Rui Li, Warren Bradley Fine, Jiang Zhou, and Alan Howard Fine is unethical and reckless and indicates a total disregard of their fiduciary duties as directors of Forklift Parts World (Pty) Ltd as well as their duties of care, skill and diligence in a manner that indicates a possible contravention of the Companies Act and them possibly being unfit to hold directorship in any entity;
- 3.2.12 Ridwaan Jeena and AuditEx SA LLC's conduct may amount an offence in terms of 13O (2) of the B-BBEE Act, which in summary provides that "a verification professional who becomes aware of the commission of, or any attempt to commit, any offence referred to in sub-section (1) and fails to report it to an appropriate law enforcement agency, is guilty of an offence;
- 3.2.13 further, the conduct of Ridwaan Jeena and AuditEx SA LLC may further point to an offence in terms of section 13O (1) (a) of the B-BBEE Act, in that they may have misrepresented the broad based economic empowerment status of Forklift Parts World (Pty) Ltd;
- 3.2.14 the conduct of Ridwaan Jeena and AuditEx SA LLC, and Forklift Parts World (Pty) Ltd, of failing to provide the requested information and documentation on time during the

investigation, in some instance at all, obstructed and hindered the B-BBEE Commission in the exercise of its mandate in terms of the B-BBEE Act, in a manner that may amount to an offence under section 13N (3) (a) of the B-BBEE Act; and

3.2.15 the conduct of Rui Li, Warren Bradley Fine, Jiang Zhou, Alan Howard Fine and Forklift Parts World (Pty) Ltd may amount to an offence in terms of section 13O (1) (a) of the B-BBEE Act, in that they misrepresented the broad-based economic empowerment status of Forklift Parts World (Pty) Ltd in order to improve the entity's B-BBEE status.

3.3 The respondents in this matter were all notified in writing of the adverse findings for their response in line with regulation 15 (13) of the B-BBEE Regulations before the above final findings were issued by the B-BBEE Commission, to which they responded.

#### **4. Recommendations of the B-BBEE Commission**

4.1 Based on the findings outlined above, having considered the respondent(s) response to adverse findings, discussions emanating from the meeting held on the 30<sup>th</sup> of May 2018, and the respondent(s) willingness to resolve this matter, the B-BBEE Commission made the following remedial recommendations, which are considered appropriate to address this matter in the interest of the public:

4.1.1 that Rui Li, Warren Bradley Fine, Jiang Zhou, Alan Howard Fine and Forklift Parts World (Pty) Ltd must, within **thirty (30) days** of the findings submit a written undertaking under oath that they have not presented the B-BBEE certificate in question to any entity for the purposes of B-BBEE compliance and that they will refrain from any conduct that is contrary to the objectives of the B-BBEE Act, including purporting that the company has black shareholding under the B-BBEE Act, when it clearly does not;

4.1.2 that Rui Li, Warren Bradley Fine, Jiang Zhou, and Alan Howard Fine must, within **sixty (60) days** attend a training session on the B-BBEE Act with any institution accredited to provide such training in terms of the South African laws and provide proof of attendance to the B-BBEE Commission;

4.1.3 that Rui Li, Warren Bradley Fine, Jiang Zhou, and Alan Howard Fine must, within **sixty (60) days** attend a training session on corporate governance and compliance with any

institution accredited to provide such training in terms of the South African laws and provide proof of attendance to the B-BBEE Commission;

4.1.4 that Rui Li, Warren Bradley Fine, Jiang Zhou, Alan Howard Fine and Forklift Parts World (Pty) Ltd, must for a period of **twenty-four (24) months**, seek an advisory opinion from the B-BBEE Commission before implementing any of the B-BBEE initiatives or schemes; and

4.1.5 that Rui Li, Warren Bradley Fine, Jiang Zhou, Alan Howard Fine and Forklift Parts World (Pty) Ltd must, within **sixty (60) days** of the findings, pay once-off amount into the National Student Financial Aid Scheme (NSFAS) in order to advance the skills development part of transformation in the interest of the public, which amount shall not constitute a fine, and must be calculated on the basis of 4% of the annual turnover of Forklift Parts World (Pty) Ltd for the immediately preceding financial year and approved by the B-BBEE Commission.

4.2 In the event that the respondent(s) are not agreeable to comply with the above recommendations that in the view of the B-BBEE Commission would be appropriate to remedy the adverse findings in this matter, the B-BBEE Commission may implement the following actions in accordance with the B-BBEE Act:

4.2.1 pursue criminal proceedings on the basis of misrepresentation of B-BBEE status against Rui Li, Warren Bradley Fine, Jiang Zhou, Alan Howard Fine and Forklift Parts World (Pty) Ltd by referring this matter to the National Prosecuting Authority in terms of 13J (5) of the B-BBEE Act, in their respective capacity as a juristic person and natural persons, for contravening sections 13O (1) (a) and 13O (1) (b) of the B-BBEE Act and any other law;

4.2.2 refer the matter to CIPC for an investigation to be conducted into the affairs of Forklift Parts World (Pty) Ltd and the conduct of Messrs. Rui Li, Warren Bradley Fine, Jiang Zhou, Alan Howard Fine, and the extent to which their conduct could be applicable to any other entity in which they are shareholders, with a view of also obtaining a declaration of them as delinquent or unfit to hold directorship in any entity without prejudice to other remedies under the law; and

- 4.2.3 in terms of section 13J (4) of the B-BBEE Act, consider instituting proceedings in a court to restrain any breach of the B-BBEE Act or to obtain appropriate remedial relief arising from misrepresentation of the B-BBEE status, including an order to declare invalid any contract entered into, between Forklift Parts World (Pty) Ltd and any other parties on the basis of the B-BBEE information so misrepresented.
- 4.3 Based on Mr. Ridwaan Jeena and AuditEx SA (Pty) Ltd's response, it was recommended that the B-BBEE Commission take the following actions which are intended to remedy the issues implicating the parties in this matter and are in the interest of the public:
- 4.3.1 Mr. Ridwaan Jeena and AuditEx SA (Pty) Ltd must, within **ten (10) days** of receipt of this communication submit a written undertaking under oath that they have ceased to issue any B-BBEE certificates and that they will refrain from conducting any B-BBEE verification without accreditation from the South Africa National Accreditation System (SANAS) including issuing any B-BBEE certificates to Exempted Micro Enterprises and 51% black owned Qualifying Small Enterprises under the guise of B-BBEE sworn affidavits;
- 4.3.2 Mr. Ridwaan Jeena and AuditEx SA (Pty) Ltd must, within **ten (10) days** of this communication, issue and place a public notice on their website for a period of 30 (thirty) days stating that Mr. Ridwaan Jeena and AuditEx SA (Pty) Ltd are not accredited by SANAS to conduct any B-BBEE verifications and that they shall, with immediate effect, cease to issue any B-BBEE certificates before they are accredited by SANAS;
- 4.3.3 Mr. Ridwaan Jeena and AuditEx SA (Pty) Ltd must commission an independent audit of all B-BBEE Certificates issued in 2015-2018 to identify any other B-BBEE Certificates that were issued by Mr. Ridwaan Jeena and AuditEx SA (Pty) Ltd using the approach adopted in the verification of Forklift Parts World (Pty) Ltd and the issuance of B-BBEE certificates to Exempted Micro-Enterprises 51% black owned Qualifying Small Enterprises, and submit a report of such independent audit to the B-BBEE Commission within **sixty (60) days** of this communication; and
- 4.3.4 Mr. Ridwaan Jeena and AuditEx SA (Pty) Ltd must thereafter refund all measured entities that the independent audit will identify to have been improperly verified and issued with B-BBEE Certificates in the approach used in verifying Forklift Parts World (Pty) Ltd and the issuance of B-BBEE certificates to Exempted Micro-Enterprises 51%

black owned Qualifying Small Enterprises, and send proof of refund to the B-BBEE Commission within **thirty (30) days** of the independent audit report being submitted to and accepted by the B-BBEE Commission.

- 4.4 The above recommendations were considered appropriate to remedy this matter in respect of the conduct of Mr. Ridwaan Jeena and AuditEx SA (Pty) Ltd. In the event that Mr. Ridwaan Jeena and AuditEx SA (Pty) Ltd were not agreeable to comply with the aforementioned remedial recommendations, the B-BBEE Commission was to initiate a formal investigation against Mr. Ridwaan Jeena and AuditEx SA (Pty) Ltd.
- 4.5 The respondents have since complied with the remedial recommendations in which case the B-BBEE Commission considered the matter closed. The B-BBEE Commission resolved to publish the matter in the public interest, especially in light of concerns around the recognition of Chinese people under the B-BBEE Act, which is often misunderstood.

## **5. *Status of this publication***

- 5.1 This publication is prepared only for the purpose of publishing the findings and recommendations of the B-BBEE Commission on this matter in the interest of the public, but does not constitute an investigation report.

## **6. *Conclusion***

- 6.1 The B-BBEE Commission has taken all due care in preparing this publication, and should there be any errors you wish to highlight or should you require any clarity regarding the contents of this publication, please do not hesitate to contact us immediately.
- 6.2 This publication will also be available on the website of the B-BBEE Commission from the date of its release and it will be circulated to the public through channels that the B-BBEE Commission deems fit.
- 6.3 For any queries or further clarity on this publication, kindly feel free to contact us at the following contact details:

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Issued by the B-BBEE Commission  
**14 October 2021**

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