

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

ORDERS AGAINST HINDUJA FINANCE CORPORATION LTD. (NOW CALLED HINDUJA TMT) IN THE CASE OF SUBHASH PROJECTS & MARKETING LTD.

C/459/2003/IES/FUTP

1.1 Subhash Projects & Marketing Ltd. hereinafter called (SPML) had made two simultaneous (but not linked) rights issue of 36,52,612 equity shares of Rs.10/- each at a premium of Rs.190/- per share, aggregating Rs.73,05,22,400/- (Rs.50/- payable on application, the aggregate amount payable on application being Rs.18,26,30,600) and 24,35,074 17% secured non-convertible redeemable debentures of Rs.150/- each for cash at par with a detachable warrant aggregating Rs.36,52,61,100/- (Rs.20/- payable on application, aggregate amount payable on application being Rs.4,87,01,480). The issue opened for subscription on October 6, 1995 and closed on November 6, 1995.

1.2 Hinduja Finance Corporation Ltd. now renamed as 'Hinduja TMT' hereinafter called HFCL were the Lead Manager to the rights issue with pre-issue responsibility which included capital structuring, drafting of the offer document, marketing of the issue, etc. HFCL had also given a standby underwriting commitment to SPML to the extent of 8,00,000 equity shares.

1.3 There were a number of complaints regarding irregular subscription, funding of subscription to the rights issue, price manipulation before the rights issue, non-disclosure and misstatements in the letter of offer, violations of debenture trustee regulations, non-listing of shares etc. There were allegations about the submission of applications by HFCL after the closure date and withdrawing them thereafter. It was alleged that HFCL charged underwriting commission of Rs.224 lacs for procurement of 8,00,000 shares which is higher than the permissible limit etc. There was also a reference from Income Tax Authority (ITA) in respect of the applications submitted by HFCL. Pursuant to these complaints and reference from ITA, SEBI initiated investigations in the scrip of SPML.

2. The said investigations revealed that –

2.1. HFCL had not ensured timely issuance of advertisement by SPML giving additional disclosures, as directed by SEBI;

2.2. HFCL had given applications to the tune of Rs.4 crores to the company which were deposited with the bankers to the issue only after the closure of issue. The same was done to meet the shortfall in subscription and to allow SPML time to procure subscription from other sources;

2.3. Once SPML had managed to fill the shortfall in subscription by bringing in applications after closure date from their associates and family members, HFCL had withdrawn their applications ;

2.4. HFCL had submitted applications accompanied by outstation cheques, which was not in accordance with the terms of letter of offer;

2.5. HFCL had failed to intimate the post issue merchant banker/ bankers to the issue/ the stock exchanges about the directions of SEBI about giving option to investors to withdraw their application up to 21.11.1995, with the result that the bankers to the issue had allowed SPML to withdraw funds from the issue account before the said date;

2.6. The rights issue of SPML did not genuinely receive minimum subscription of 90% of the issue and an illusion was created with active connivance on the part of HFCL regarding subscription to the rights issue;

2.7. A major part of the subscription to the rights issue had been brought in after the closure of the issue by way of applications from associates of SPML in order to show 90% subscription;

2.8. SPML had directly or indirectly funded the subscription to the issue by Sethi family, Zoom Industrial Services Ltd., SPML India Ltd. etc.;

2.9. SPML had advanced certain sums of monies through various entities to Ms/ Raj Investments for the purpose of creating illusory volume and trading in the scrip with a view to ensuring successful subscription to the rights issue.

3. A show cause notice was therefore issued to HFCL (presently 'Hinduja TMT') vide letter no.IES/ID3/UN/AJS/170271 dated 29.8.02 charging with the following violations –

3.1 HFCL failed to ensure proper disclosure in the first place leading to requiring additional disclosures by way of advertisement/intimation to shareholders.

3.2 HFCL failed to monitor release of advertisement before November 6, 1995 and despatch of intimation giving additional disclosures to shareholders.

3.3. HFCL had given applications accompanied by outstation cheques to SPML with a view to enabling the company to bring in subscription after closure of the issue;

3.4. HFCL knowingly permitted SPML to bring in applications after the date of closure of issue in order to avoid devolvement liability on them.

3.5. HFCL withdraw their applications on questionable grounds, apparently misusing the option given to investors;

3.6. HFCL failed to ensure that the rights issue of SPML genuinely received minimum subscription of 90%.

3.7. HFCL failed to intimate the regional stock exchange/ the post issue merchant banker/ the bankers to the issue about the directions of SEBI which enabled SPML to surreptitiously withdraw funds from the bank.

3.8. HFCL failed to bring to the notice of SEBI/ the stock exchanges the various developments which had a serious implication.

3.9. HFCL apparently used coercive tactics in order to force the company to allow withdrawal of their applications, which was unbecoming of a merchant banker who is expected to observe high standards of integrity and fairness in his dealings with clients.

4. HFCL vide their letter dated 08-10-02 replied to the Show Cause Notice as under :

4.1. It was submitted that Hinduja TMT Ltd (formerly named Hinduja Finance Corporation Ltd. (the "Company") is not, and of the date of the notice, acting as Merchant Bankers or as a Financial Intermediary or otherwise in any manner or in any capacity in the securities market.

4.2. It was submitted that Section 11(B) of the SEBI Act empowers SEBI to issue directions to any person or class of persons referred to Section 12, or associated with the securities market; or to any company in respect of matters specified in Section 11A in the interests of investors in securities and securities market. Since, as of the date the company does not fall in any of the categories enumerated in Section 12 of SEBI Act nor is it engaged in the business or associated in the business or any activities relating to the securities market, SEBI is not entitled to issue any directions under Section 11B or notice to show cause. It was submitted that SEBI ought to withdraw the above said show cause notice, in view of lack of any authority of SEBI to issue any show cause notice to issue any directions under Section 11A to a person who is not a financial intermediary.

4.3. It was submitted that the alleged activities or alleged breaches, took place in the year 1995, whereas, SEBI issued the show cause notice only on August 29, 2002 and that considerable period has elapsed after the alleged breaches had taken place and the right of SEBI to issue any show cause notice or to take any action pursuant thereto is time barred and / or suffers on account of great laches or delay and therefore, also the notice may please be withdrawn. It was stated that the present employees are not conversant with the case and that the company has changed its business to information technology after its merger with an IT company with 1st July 1999 as appointed date. Further, in view of the long lapse of time, most of the relevant records are not available. It was therefore stated that, it is not possible for the company to give effective reply to the show cause notice. It was further submitted that solely due to long lapse of time, the show cause notice deserves to be withdrawn because SEBI's taking any action, on the basis of a reply which may be furnished by them in the absence of concerned persons and in the absence of the availability of the records, would result in severe injustice and would cause irreparable and grave harm to them. It is submitted that the show cause notice deserves to be withdrawn.

4.4. HFCL further replied to the following changes in detail (A) Delay /Lapse in releasing advertisement as directed by SEBI, (B) Applications by HFCL, (C) Withdrawal of applications, and (D) Failure to notify Bankers to the Issue / Post Issue Lead Manager / Regional Stock Exchange of SEBI's directions, (E) Withdrawal of funds before November 21, 1995 of HFCL show cause notice dated August 29, 2002. The details of replies have been considered in the following paragraphs and hence not mentioned here for the sake of brevity.

5. An opportunity of personal hearing was given to the HFCL on 20-11-02 in which HFCL (now known as Hinduja TMT) appeared, represented by his counsel Sri Sham Divanana, Shri Girish Dave of M/s Dave & Girish & Co. Shri Solomon Raj, Vice Chairman of Hinduja TMT, Shri Pradeep Pasari, Company Secretary and Shri K. C. Samdani, V.P. Legal, HGI Ltd. also appeared for the hearing. The Counsel reiterated the contents of the written reply already submitted. With regard to the delay in proceedings, the Counsel has submitted the following cases.

5.1 State of Vs The Citedel Fine Pharmaceuticals, Madras and others etc., (AIR 1989 SC 1771)

5.2 State of Gujarat, Appellant Vs. Patel Raghavanatha and other (AIR 1969 Sc 1297)

6. I have gone through the records, the reply to the show cause notice and considered the oral submissions made by the Counsel during the personal hearing. Following issues would arise for consideration.

6.1. Whether the proceedings are bad in law in view of the efflux of time.

6.1.1. It has been sated by the counsel that the proceedings should be dropped because of the delay in the conducting the proceedings. As observed from the records, the matter relates to October and November 1995. The contention of the HFCL was that they were put to very disadvantageous position as no records were available and no persons who were dealing with the matter were available. It was represented that none of the team members who were there at the time are available at present to lead evidence and to reply the show cause notice properly. It was stated that though there was no specific period of limitation prescribed in the statute, a reasonable time limit should be there to proceed against. In this context the Counsel cited the following judgments of the Supreme Court.

6.1.2. State of Gujarat V Patel Raghavnatha and others, Respondents, (AIR 1969 SC 1297). This was a case the Hon'ble Supreme Court had the occasion to examine sections 65 and 211 of the Bombay Land Revenue Code. Section 211 of the Code refers to power of the State Government to revision. As per section 211 of the said code, the State Government and any revenue officer, not inferior in rank to an Assistant or Deputy Collector or a Superintendent of Survey, in their respective Departments, may call for and examine the record of any subordinate revenue officer, for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer. In the captioned case, it seems that there were proceedings under section 65 and permission was granted for conversion of agricultural land into non agricultural purposes. As evident from the judgment the said permission was later revised under section 211 at the request of the Municipal Committee.

It was held in this case that since section 65 it self indicates the length of the reasonable time within which the commissioner must Act under section 211, the commissioner must act within reasonable time , that in few months, to exercise the revisional powers.

The facts of the present case are completely different and the ratio is not applicable here. Since the present proceedings are not revisional proceedings, the above case is not applicable to the present case. In any case there is no provision corresponding to

6.1.3 Another case cited by the Counsel was The Government of India, Appellant V. The Citedal Fine Pharmaceuticals, madras (AIR 1989 SC 1771). It is observed that it is basically a revenue matter and in that context it was held that there must be a reasonable time for issuance of notice of demand. In any case it was held in this case that the reasonableness would depend on the facts of each case. It is therefore observed that this case is also distinguished from the facts of the present case.

6.1.4 It is observed that the violations with which the HFCL was charged were very serious in nature and if proved they are liable for cancellation of the registration and also liable for other remedial directions under section 11B of SEBI Act, 1992. Since the violations charged are of such a nature that would create an atmosphere not conducive to the development of the securities market in India, I am of the view that the period of time of 7 years will in no way affect the proceedings of this nature under section 11B of SEBI Act, 1992.

6.1.5. The argument of HFCL that the relevant documents were not available is not tenable. Under Merchant Banking Regulations the Merchant Banker is supposed to keep the records for a period of 5 years and the investigation was undertaken in the year which is within 5 years. The HFCL is supposed to keep the records from the date of investigation since they were under investigation. Destroying the documents when the investigation was going on is a serious violation. In view of this, I therefore hold that the proceedings are justified and passage of time can not be a ground for discharging the show cause notice.

6.2. Whether HFCL did not comply with the direction of SEBI to release advertisement for further disclosures in the public issue of SPML.

6.2.1 SEBI sought explanation from HFCL regarding certain non disclosures in this issue about Bharat Hydro Power Corporation Ltd. (Bharat Hydro), a group company of SPML. In response, HFCL vide letter dated 01.11.1995 agreed that –

- SPML would advertise in two newspapers on or before November 6, 1995 the text of the matter giving additional disclosures as approved.
- SPML would send a letter to all of its shareholders giving additional disclosures.
- The shareholders would be given the right to withdraw their applications on or before November 21, 1995.

HFCL had also agreed that they would monitor the above. HFCL forwarded to SPML on November 3, 1995 the final draft of the announcement that was required to be advertised in two widely circulated newspapers in India and informing SPML that they were also required to provide the additional disclosures to all shareholders by post.

6.2.2. When SEBI sought information on compliance in this matter, HFCL had informed vide letter dated June 11, 1996 that :

- "The company did not release any advertisement on or around November 6, 1995. SPML finally advertised in two low circulation newspapers in Delhi on Sunday, November 12, 1995.
- SPML claimed vide its letter dated November 4, 1995 that the required notice has already been dispatched on November 1, 1995".

6.2.3. The final draft of the disclosures to be circulated had been admittedly forwarded by HFCL to SPML only on November 3, 1995. Hence it could not have been possible for SPML to have dispatched the same on November 1, 1995. An undespached draft letter was found in the files of HFCL, during the course of investigation. Following is a paragraph extract from the said draft letter dated December 14, 1995 addressed to the Delhi Stock Exchange and copy marked to SEBI and other exchanges.

"Despite our repeated requests to SPML, we have not received to date a copy of the printed letter that SEBI had directed SPML to send to all of its shareholders. The company apparently claims that it has sent these letters under UPC to its shareholders on November 1, 1995. We are a little surprised by this explanation because the final draft of the advertisement/notice to shareholders was approved by SEBI on Friday, November 3, at 5.00 p.m. and our letter dated November 1, 1995 was finally given to SEBI on Monday, November 6, 1995 at 2.45 p.m. in the afternoon. Hence SPML's explanation that it got the letter dated November 1, 1995 printed and posted to SPML shareholders on November 1, 1995 when SEBI only cleared the final draft on November 3, 1995 does not appear to be very convincing".

6.2.4. HFCL admitted that the advertisement was released only in two low circulation newspapers viz. 'Dainik Jagran' and 'The Pioneer' in Delhi whereas the majority of shareholders of SPML were in and around Calcutta. It is obvious that the said share holder did not have the benefit of the said additional disclosures. It is therefore charged that HFCL has violated SEBI (FUTP) Regulations.

6.2.5. It was replied by HFCL denying that their company had failed to monitor instructions given by SEBI and failed to ensure disclosure of vital information to investors and bring to SEBI's notice their apprehensions in the matter. It was submitted that the above allegation did not fall in any of the categories of "unfair trade practices" enumerated in Regulation 6 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 and as such does not constitute violation of Regulation 6 ibid. Since, none of the facts alleged establish any unfair trade practice no action can be instituted by SEBI and the show cause notice is thus invalid.

6.2.6. The counsel during the course of personal hearing sated that an unsigned letter can not be relied on by the Board. However it is noted that it is not the fact of the letter that was under question but the contents of the letter admittedly found in the records of the HFCL. The contents of the letter were not disputed by the HFCL. The contents clearly reveal that there were undisclosed facts to the detriment of the investors.

6.2.7. The above facts clearly point that HFCL failed to monitor instructions given by SEBI, failed to ensure disclosure of vital information to investors and have failed to bring to SEBI's notice HFCL complaints against SPML. On account of such action, HFCL

can be held guilty of active concealment of the said facts which were well within their knowledge. However, I agree with the of the noticee and a violation of regulation 6 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, is not established.

6.2.8. HFCL is however guilty of not following the high standards of professional integrity expected of a Merchant Banker. A Merchant Banker have been invested with a lot of responsibility vis-a-vis the investors and the thereby the capital market. If the professional Merchant Bankers are allowed to behave in this way, the development of capital market would be at its stake. I therefore hold that the Merchant Banker is guilty of not adhering to the highest standards of professional integrity, as stipulated in the SEBI (Merchant Bankers) Regulations.

6.3. Whether application made by HFCL for subscription of shares is in any way wrong?

6.3.1. It was alleged that HFCL made applications for subscription for 4,00,000 shares, irregularly and illegally. In the letter of offer it is provided that payment for applications should be made by cheques drawn on a bank at the centre where the applications are submitted and that outstation cheques will not be accepted. Despite this, HFCL's own applications accompanied by cheques drawn on IndusInd Bank, Mumbai, were deposited at Vysya Bank Ltd., H B Sarani Branch, Calcutta. Though HFCL were based in Mumbai, HFCL applications were not deposited at one of the bankers to the issue in Mumbai itself. Investigations revealed that applications from BSN No 391 onwards have apparently been deposited with Vysya Bank Ltd., H B Sarani Branch, Calcutta after 06.11.1995 i.e. after the date of closure of the issue. The bank admitted the lapses on their part in this regard.

6.3.2. The issue admittedly was not a devolved issue. Under these circumstances, when HFCL was asked to explain the reasons for subscribing to the issue they could not offer any explanation for the same. It is therefore clear that HFCL's applications were submitted to meet the shortfall in subscription and to allow SPML time to procure subscription from other sources. HFCL had not followed the instructions in the offer document about submission of applications after closure date, applications with outstation cheques, sending applications to the company, etc. HFCL, being the Merchant Banker themselves, ought to have followed the said instructions scrupulously. This lapse is a very serious one.

Thus, it is found that HFCL assisted, abetted and connived with SPML in circumventing the minimum subscription clause, terms of offer document and provisions of Disclosure and Investor Protection Guidelines and the Section 13 of Companies Act, 1956 and knowingly permitted SPML to bring in applications after the date of closure of issue, in order to avoid devolvement and resultant liability on HFCL.

6.3.3. HFCL vide their above reply denied the allegations. It was submitted that none of the facts imputed to the Company under this heading support the conclusions drawn therein. It was further submitted that the charges made are vague for uncertainty in as much as the notice does not mention as to which fact tantamounts to the company assisting, abetting and / or conniving with SPML in circumventing the minimum subscription clause, in terms of offer document and provisions of disclosure and investors protection guidelines 2000 and / or the Companies Act, 1956.

6.3.4. It was submitted that since the show cause notice has failed to disclose as to which provision of the any such Guidelines were breached, and as the allegations contained in the notice are too general and sweeping no charge on the basis of general allegation can be leveled against the company, the charges leveled against the company cannot and do not therefore survive, and the notice needs to be withdrawn.

6.3.5. It was further submitted by HFCL that Chapter 6 VI(A) (of SEBI Act) which contains the provisions relating to imposition of penalties and adjudication does not authorize SEBI to impose any penalty and/or proceed with adjudication with respect to any failure and/or contravention made by any persons under any guidelines. It authorizes SEBI to proceed against any person who is guilty of contravening the Act, Rules or Regulations made there under and not under any guidelines. Hence, no penalty can be imposed under Regulation 6 (a).

6.3.6. HFCL contended that in 1995, SEBI had no authority whatsoever to take any action against any alleged violation of any of the provisions of the Companies Act, 1956 and therefore the action proposed to be taken against our company is without any authority in law.

6.3.7. It was submitted that Section 15A provides for the imposition of a penalty for a failure mentioned therein. The act or the failure on the part of the Company of assisting, abetting, conniving with and/or circumventing with any matters referred to in HFCL show cause notice does not fall under any of the clauses of Section 15A and therefore the question of imposing any penalty under that Section cannot and does not arise.

6.3.8. It was contended by HFCL that a mere reading of Section 15B will demonstrate that it provides for penalty only for the failure by any person to enter into any agreement with the client. In the facts and circumstances alleged against the company, no case is made out for any action under this Section. It was further contended that Sections 15C, 15D, 15E, 15F, 15G and 15H do not relate to any activity of a merchant banker and therefore none of them is attracted in the case of our company. HFCL submitted that there is no reason or ground for SEBI to impose any penalty or to proceed with any adjudication.

6.3.9. I have gone through the charge and the reply. The charge was that HFCL helped illegally the issuer company, SPML to create an illusion of full subscription by making applications after the closure of the issue. Without addressing this charge, HFCL had been evasive in their reply and taken resort to complicating the issue by quoting irrelevant provisions of law. Chapter VI A of SEBI Act, 1992 is with regard to imposing of penalties by a process of adjudication and the present proceedings are not adjudication proceedings. The powers of SEBI under section 11B are sufficient enough to take care of the situation that had arisen in this case. A Merchant Banker, who with his active connivance saw to it that an illusion of full subscription of the issue was created which was otherwise under-subscribed. This was a fraud committed on the small investors who invested in the issue under a wrong impression that the issue was fully subscribed. This is in violation of Regulation 4 & 6 of SEBI (FUTP) Regulations, 1995. This has to be taken a very serious note of and it is from this kind of actions of the unscrupulous market players the small investors need protection. SEBI's regulatory role comes in to play in this situation and the purpose of 11B is well served if certain remedial measures are taken in a case like this.

6.4. Whether HFCL illegally withdrew the applications made for subscription of shares in the issue of SPML.

6.4.1. HFCL had made applications to the tune of 4,00,000 shares which were later withdrawn. HFCL had put in applications even when there was no notice of devolvment and later withdrawn. The reason given by HFCL for the withdrawal was non disclosure of certain information by SPML. HFCL was responsible for ensuring proper and complete disclosures as Lead Manager and it cannot naturally be a ground for withdrawal.

6.4.2. When the matter relating to non-disclosure of information about Bharat Hydro was taken up with HFCL, HFCL initially maintained that the disclosures were adequate. But later on, HFCL agreed to ensure that an advertisement would be released giving additional disclosures before closure of issue on 6.11.1995. As such HFCL were throughout fully aware of the additional disclosures.

6.4.3. It was unbecoming of a Lead Manager who in the first place defended the non disclosures but subsequently exercised the option to withdraw on the basis of the same. When HFCL were called upon to explain HFCL conduct, HFCL had, vide HFCL letter dated June 11, 1996, stated that they were not comfortable with the management of the company and that the company received 90% of subscription even after their withdrawal. The above reasons given by HFCL have a serious bearing and apparently were not known to other investors. The above also shows that HFCL apparently misused the option given to investors for withdrawal.

6.4.4. HFCL replied that regulation 6 of the FUTP Regulation does not include within any of its sub-clauses, the allegations: (i) that withdrawal of the application by the Company is questionable; (ii) that the Company did not act in the best interest of all the investors and/or (iii) that the Company kept vital facts away from the Investors/Regulators.

6.4.5. It was submitted that none of the aforesaid alleged acts tantamount to violation of any of the Codes of Conduct enumerated under Regulation 13, whether read with Schedule III of the MB Regulation or otherwise howsoever.

6.4.6. As has been brought out earlier HFCL had made the applications after the closure of the issue. Therefore, HFCL subsequent act of withdrawing the applications made by HFCL, citing non-disclosures, is totally untenable and illegal. It amount to making use of unpublished price sensitive information for dealing in securities which is expressly prohibited under Regulation 26 of Merchant Bankers Regulations. HFCL knew very well the information as above which is not known to the other applicants who too would have withdrawn their application basing on this undisclosed information. I therefore find that HFCL is guilty of illegally withdrawing the application. This is a fraud committed on the hapless investors as a façade of false subscription was created by this application and later withdrawing it only to facilitate the SPML to gather full subscription in the interregnum.

6.5. Whether HFCL failed to notify Bankers to the issue, Post Issue Lead Manager / Regional Stock Exchange of SEBI's directions.

6.5.1. An option was given to the investors to withdraw their applications in view of certain non-disclosures. This was agreed upon by HFCL. Therefore SPML had no access to issue proceeds lying with banker till such time confirmation as to minimum 90% subscription after such withdrawal is given. HFCL did not intimate any of the Bankers to the Issue or Post-Issue Merchant Bankers about directions of SEBI. This resulted in surreptitious withdrawal of funds before November 21, 1995 by SPML. HFCL failed to observe high standards of integrity and fairness in its dealings and failed to render high standards of service and exercise due diligence and ensure proper care and exercise professional judgement and discharge in a diligent manner obligations of a merchant banker and has thus violated Regulation 23 of the code of conduct.

6.5.2. Canara Bank had issued a certificate on November 9, 1995 to Delhi Stock Exchange (DSE) certifying receipt of minimum 90% subscription and stating that the company may be allowed to utilise the rights application money as per SEBI guidelines. As on that date, even the public advertisement which was directed to be released on or before November 6, 1995 was not issued. In the absence of any intimation or knowledge about the said SEBI directions, DSE had, on the basis of Canara Bank's certificate, conveyed its no objection for accessing the funds by SPML vide its letter dated November 11, 1995 and immediately thereafter SPML had requested Canara Bank, Bangalore to release the funds collected in the issue account. SPML was thus able to surreptitiously withdraw the funds before November 21, 1995.

6.5.3. The bankers to the issue, the merchant banker responsible for post issue activities and the regional stock exchange were not informed about the directions of SEBI to HFCL which HFCL had agreed to comply. Therefore, they were not aware that they should not permit SPML to access funds till November 21, 1995 and released the funds. The failure on HFCL part had contributed to withdrawal of funds by SPML. Code of Conduct as specified in Regulation 13 read with Schedule III of MB Regulations prescribes that "a Merchant Banker shall render at all times high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgement". HFCL failure to act in a diligent manner, endangering the interest of investors in the rights issue, is thus in violation of Regulation 23 and 13 of MB Regulations.

6.5.4. HFCL in reply submitted that the due diligence certificate in Form "C" has been submitted by it as per the procedure and the question therefore of its committing any contravention of Regulation 23 does not and cannot arise. It was submitted that in any event, the facts do not state or lead to the conclusion that they contravened any of the provisions of Regulation 6 and the charge therefore of the Company having contravened Regulation 6 deserves to be withdrawn.

6.5.5. It was further submitted that the alleged facts do not substantiate that the Company apparently failed to observe high standards of integrity or fairness in its dealings and / or failed to render high standards of service or observe due diligence or exercise proper care and independent professional Judgement. It was contended that Regulation 23 merely provides for submission of a certificate and accordingly an offence or contravention of Regulation 23 would arise only if the certificate in Form "C" is not submitted. Which is not the fact in the present case as aforesaid.

6.5.6. It was further submitted that the facts do not support the allegation that the Company is guilty of violating any of the provisions of Regulation 13 of the Code of Conduct and the charge of failure to notify Bankers to the Issue post issue Lead Manager or Regional Stock Exchange, or the violations of SEBI directions alleged against us cannot and does not survive even on the alleged facts.

6.5.7. It is admitted fact that HFCL failed to notify the post issue intermediaries of the adverse developments. Instead of accepting the responsibility, HFCL was relying on compliance of Regulation 23. It is not the spirit of regulation just to file a Certificate of due diligence without actually being diligent. The objective is to see that the issue proceeds are not prematurely released so that the applicants in the public issue would get back their application monies in case the issue is under subscribed. Therefore premature

withdrawal was detrimental to the interest of the investors. On this count, I hold HFCL guilty of not adhering to the highest standards of professionalism expected of a Merchant Banker.

7. HFCL contended that SEBI is not empowered to issue any directions in the interest of investors and securities market if an intermediary does not renew its registration after expiry for the infractions committed by it during the currency of registration. That the Company is no longer a Merchant Banker or Financial Intermediary and hence SEBI has no power or authority to call upon the Company to show cause as to why proper directions should not be issued against it under section 11B of SEBI Act, 1992 read with Regulations 11 and 12 of the SEBI FUTP Regulations or MB Regulations or otherwise howsoever.

This is a misplaced argument. If this argument of HFCL is accepted, the intermediaries who committed serious irregularities at the end of the currency of the registration allow it to lapse without renewing the same and go scot free from the regulatory enforcement actions.

7.1. Whoever may the intermediary be, the entity has to take the responsibility for the infractions committed as an intermediary even after the lapse of registration. Taking into account all the above issues into consideration, I am of the opinion that it is in the interest of justice to direct Hinduja TMT, which is present name of erstwhile HPCL not to deal in securities as an intermediary in any way whatsoever for a period of 2 years as a measure of investor protection and orderly development of securities market.

7.2.1. I, therefore in exercise of powers under Section 4(3) of SEBI Act read with Section 11 and 11B of SEBI Act and SEBI (Merchant Bankers) Regulations do hereby direct that Hinduja TMT formerly known as HFCL should not deal in securities as an intermediary in any manner whatsoever for a period of 2 years.

Place : Mumbai

Date : 11th January, 03

Sd/-
G. N. Bajpai
Chairman
Securities and Exchange Board of India