

SECURITIES AND EXCHANGE BOARD OF INDIA**ORDER****UNDER SECTION 11, 11(4) and 11B OF SEBI ACT, 1992 AGAINST M/S.CAUVERY SOFTWARE ENGG. SYSTEMS LTD. AND ITS DIRECTORS****1.0 BACKGROUND :**

1.1 M/s. Cauvery Software Engg. Systems Ltd (hereinafter referred to as 'Cauvery') had come out with a public issue of 45,00,000 equity shares of Rs.10/- each for cash at par, aggregating to Rs.4.50 crores in November 1991, to finance the setting up of a Software Development Centre at Bangalore in the government sponsored STP. Cauvery had entered into an MoU with Golden Age Software Technologies Pvt Ltd. (GASTECH) for using each other's premises and alliance in trading, hardware solutions, imaging and systems integration software programming. GASTECH which is located inside the SEEPZ zone has exported software to Switzerland and France.

1.2 The shareholding pattern of Cauvery as obtained from BSE and NSE is as follows :

Sr No	Category	BSE(as on Dec 3, 1999)		NSE (as on Dec 4, 2000)	
		No. of shares	% holding	No. of Shares	% holding
1.	Unit Trust of India	7,01,900	2.16	49,900	0.15
2.	Nationalised Banks	3,00,000	0.92	800	0.01
3.	Other Corporate Bodies	1,33,43,130	40.89	23,35,530	7.15
4.	Promoters, Directors & Relatives	-	0.00	30	0.00
5.	Public	1,82,79,970	56.03	3,02,38,740	92.69
	Grand Total	3,26,25,000	100.00	3,26,25,000	100.00

1.3 As per the above shareholding pattern, the promoters and directors of Cauvery had nil / negligible shareholding. The number of shares held by other corporate bodies had declined substantially from 1,33,43,130 shares to 23,35,530. Cauvery had made two preferential allotments during May 1998 and April 1999 to various corporate bodies. Cumulatively 2,00,00,000 shares were allotted to 17 corporate bodies during the two

preferential allotments. Cauvery had informed that while the allotment in May 1998 was made on cash basis, the allotment in April 1999 was made against unsecured loans i.e. conversion of loan to equity. It appeared that the allottees had disposed off a substantial portion of their holding during the period from December 1999 to December 2000.

2.0 INVESTIGATION BY SEBI

- 2.1 Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigation. In the light of the findings of the investigations conducted by NSE, into the trading in the scrip of Cauvery on NSE for the period October 1, 1999 to January 11, 2000 (hereinafter referred to as the 'relevant period').
- 2.2 The investigation conducted by SEBI inter alia revealed that Cauvery did not furnish the details sought for by SEBI within the stipulated time. It was noted that Cauvery was attempting to delay the investigation process by making repeated requests seeking additional time for production of documents.
- 2.3 Cauvery's representatives made false statements under oath with regard to their share transfer agents and suspension of the scrip by the stock exchanges.
- 2.4 Cauvery also failed to issue shares to the preferential allottees within 3 months of allotment as required under Section 113 of the Companies' Act.
- 2.5 Cauvery had allotted 10,00,000 shares to Amazing Investments & Finance Pvt Ltd , a company connected to Cauvery [hereinafter referred to as 'Amazing'] in its preferential Issue in 1998. It was found that Amazing had sold these shares on NSE and appeared to have delivered the sale proceeds to Cauvery. It was further found that Elite Investments & Holding Pvt Ltd [hereinafter referred to as 'Elite'] another entity connected to Cauvery also sold shares of Cauvery and apparently transferred the sale proceeds to Cauvery. In this manner Cauvery had received substantial funds from these two selling clients during December 1999 to April 2000. As a matter of fact both the trading clients i.e. Elite and Amazing are not available at their respective registered office addresses. The letterheads of Elite and Amazing indicate the address of Cauvery at Mumbai as their

address. An analysis of the bank account for the funds received by Cauvery from Elite and Amazing during the period from December 1999 to April 2000 revealed that Cauvery has received about Rs.25.62 lakhs from Elite and Amazing and thus it has been found that both these entities were related to Cauvery.

- 2.6 It is also observed that Cauvery has not been complying with the provisions of listing agreement with NSE. The scrip was suspended by NSE on November 19, 2001 and the scrip continues to be under suspension. It appears that Cauvery has not been complying with the provisions of their listing agreement with DSE and has not complied with the formalities for delisting the scrip from DSE.
- 2.7 The above mentioned acts and omissions of Cauvery have been found to be detrimental to the interest of the investors in securities market apart from being in violation of the provisions of Section 11, read with Section 11C of the SEBI Act for which all or any of the actions under the provisions of SEBI Act including actions under Sec. 11(4), 11C(6), 11B, 15A and 24 of the SEBI Act can be initiated.

3.0 SHOW CAUSE NOTICE :

- 3.1 On the basis of the aforesaid findings of the investigation , a detailed show cause notice dated May 20, 2003 was issued to Cauvery and its directors viz. Shri R K Kapur, Shri D B Negandhi and Shri Anup Saxena calling upon them to show cause as to why all or any of the actions under Sec. 11(4), 11C(6), 11B, 15A and 24 of the SEBI Act, 1992 including directions prohibiting them from accessing the securities market and from associating with the securities market to buy, sell or deal in securities for a particular duration should not be passed against them.

4.0 REPLY TO THE SHOW CAUSE NOTICE AND PERSONAL HEARING :

- 4.1 Pursuant to the said show cause notice, Cauvery vide its letter dated 16.6.2003 sought 30 days time to file its reply. Subsequently, vide its letter dated 3.7.2003, Cauvery forwarded its reply to the show cause

notice. No separate reply was received from any of the directors of the company. However, the reply forwarded on behalf of Cauvery was signed by Shri R K Kapur, one of the directors of Cauvery. In view of the letter dated 16.6.2003 whereby Cauvery had sought time for filing the reply to the show cause notice on behalf of the directors also, it is presumed that a common reply dated 3.7.2003 has been filed by Cauvery as well as its directors (hereinafter referred to as 'noticees').

- 4.2 In the reply to the show cause notice it was submitted that there was no price rigging by the company or its directors or persons acting in concert as alleged. The price of the scrip at the exchange moved due to the market demand and supply as there was a market boom in IT/Entertainment industry shares during the relevant period.
- 4.3 Further it was submitted that on the basis of stray cases of purchase or sale alone, it cannot be concluded that it is a case of manipulation involving the buying or selling of a security for the purpose of creating a false or misleading appearance of active trading or to raise or depress the price to induce the purchase or sale by others.
- 4.4 The noticees also submitted that there was no indication or even a suggestion at all on the rigging / manipulation of the market price in any way. They submitted that in the referred settlements the investor had short sold and as such he was not a genuine investor by itself was not sufficient proof to establish that the company was manipulating the market at that point of time. Further, it was submitted that in the absence of any evidence to show that the company was in any way concerned with the manipulation of the market the impugned order rejecting his claim was not tenable. If the gain made by the appellant was out of a legitimate transaction, it could not be termed as ill-gotten gain. Deprivation of property without adequate justification and without the force of law cannot

be allowed to go unobstructed. Sustainability of the impugned order depended on the finding of the role of the appellant in the market, backed up with adequate proof at the relevant point of time. If there was enough proof to show that the appellant was involved in manipulating the prices, he was to be penalised. But if he was not a manipulator but a genuine investor, by no standard he deserved to be punished. So it was for the respondent to decide as to whether the appellant was guilty of market manipulation so as to take advantage of the higher prices at the auction and only if it was found that the appellant was a party to the market rigging or manipulation, order as such, to believe that the company was involved in manipulating the market. An observation without adequate supporting evidence that the appellant was involved in market rigging was not sufficient to deny the legitimate claim. It was for the respondent to establish that the appellant was involved in rigging. This requirement appeared to have been not seriously looked into. It was, therefore, felt that the matter need be further examined by the respondent. Since the matter required to be remanded for the reasons stated above, the impugned order required to be set aside.

- 4.5 It was submitted by the notices that the information pertaining to handling of the physical transfer was not wrong as the Board of Cauvery has taken the decision for the transfer of the physical transfer to M/s.Bigshare Services Pvt Ltd.
- 4.6 NSE had suspended the scrip due to non attending of one investor complaint lodged by one broker. The same was attended by Cauvery within the stipulated period. At the time of investigation, it was not confirmed to Cauvery by NSE in writing the suspension of the scrip. And the said facts were not available for comments during the course of the meeting by their Director with SEBI. Cauvery is attending all the compliance as per the listing agreement / SEBI Guidelines / Companies

Act, 1956 and any other law of the land applicable. The reasons for suspension are best known to the NSE.

- 4.7 It was submitted by the noticees that the allegation made by SEBI that Cauvery had not turned up for submission of information as required by SEBI was incorrect and Cauvery had filed the said information on 15.1.2003.
- 4.8 The shares were sold by the investor in the market as per the norms of the capital market. There was no suspension of the scrip during the course of such settlement by any stock exchange. The noticees submitted that the investigation report of SEBI revealed that the price rise of the scrip from Rs.5.30 (low price on 1.11.1999) to Rs.25.75 (high price on 4.1.2000) was unusual and abnormal and manipulation was there. The period taken by SEBI for investigation is 1/10/99 to 11/1/00. All the purchasers were given credit for their purchases. There was no short position in the market during the course of settlements. There was no person/investor who filed any claim of loss or any other persons who were affected during the course of settlements.
- 4.9 The notices have submitted that in this case, the securities were taken from the market without any short fall / auction by the investors. The investors should not be able to take away undue and ill gotten profits arising out of such trade. The investigations carried out have concluded that there was price rigging and market manipulation in the trading of the scrip during the course of these settlements. However, there is no event that Cauvery was involved anywhere.
- 4.10 It was further submitted that Cauvery has taken the approval of shareholders for the delisting of shares from Delhi Stock Exchange in 1997 as per the guidelines of SEBI / stock exchange under intimation to

Delhi Stock Exchange because NSE was there to fulfill the requirements of the investors for trading at Delhi.

- 4.11 Regarding allegation of violation of the provision of Section 113 of the Companies Act, it was stated that Cauvery had allotted the shares to the shareholders and the proof of dispatch was submitted to the stock exchange with the listing application.
- 4.12 It had allotted 1,00,00,000 shares to Amazing on cash basis in 1997 @ Rs.10/- each on preferential basis after taking the shareholders approval in their EGM and they have sold the shares between 1999 to 2000 as investor / shareholder. The payment received by Cauvery from Elite / Amazing was against the rental charges and as well as for providing the software / programmes / installing of the computer LAN network for them.
- 4.13 M/s.Amazing has invested Rs.10,00,00,000 divided into 1,00,00,000 shares of Rs.10/- each and handover a sum of Rs.25.62 lakhs to cauvery as per the investigation report. This does not amount to insider trading or manipulation or any link with Cauvery with Amazing. Cauvery has more than 45,000 shareholders and Elite and Amazing are two shareholders out of the said base of shareholders.
- 4.14 It was stated by the noticees that the details pertaining to Elite and Amazing were not available with Cauvery because they are occupying the same premises on rental basis and left the same after the death of their director Shri K K Ravindran.

5.0 HEARING :

- 5.1 In adherence to the rules of principles of Natural Justice, the company and its directors were granted personal hearing on August 6, 2003 and the

same was conveyed to them vide letter dated July 21, 2003. A letter dated 04.08.2003 was received on 05.08.2003 from Cauvery, seeking one months time to appear for the hearing on the ground that one of the director Shri D.B. Negandhi is under operation, the second director Shri Anup Saxena is out of India and Shri. R.K.Kapur is on business tour. I find that adequate advance notice was given to Cauvery about the scheduled date of hearing. At least one of them or their representative could have appeared for the hearing. Therefore, the grounds stated by Cauvery for the adjournment of the hearing are not substantive and convincing. Since reasonable opportunity has been given to them, I proceed with the matter on the basis of the record available including their reply to the show cause notice.

6.0 CONSIDERATION OF SUBMISSIONS AND FINDINGS :

- 6.1 I have carefully considered the findings of the investigation, show cause notice issued to Cauvery and its three directors viz. Shri R K Kapur, Shri D B Negandhi and Shri Anup Saxena, and the replies furnished by them.
- 6.2 At the outset, I find that the reply to the show cause notice dated 3.7.2003 contains irrelevant submissions and the noticees have failed to address the allegation / issues raised in the show cause notice. As a matter of fact, the first sentence of the show cause notice refers 'investigation report' of SEBI which in fact was never forwarded to the noticees.
- 6.3 While making submissions about the term 'rigging' it appears that the noticees have quoted verbatim some judgements of some court / tribunal without making the relevant modifications in the submission and in the process have lost focus and failed to set out clearly the submissions they wished to make. Time and again, the noticees have mentioned about "appellant","impugned order"; "investor" with no relevance to the present case as no order yet has been passed and therefore there is no question of any "impugned order" and "appellant" in the present case at this stage.

6.4 I have perused the price volume data of the scrip on National Stock Exchange (NSE) for the period from October 1, 1999 to January 11, 2000, which is as follows :

Date	Open	High	Low	Close	Volume
01-Oct-99	8.00	8.00	7.25	7.55	268400
04-Oct-99	7.35	7.50	7.10	7.20	238400
05-Oct-99	7.45	7.45	6.80	7.10	483300
06-Oct-99	7.40	8.50	7.25	7.80	1139900
07-Oct-99	8.40	8.85	8.05	8.45	957400
08-Oct-99	8.80	11.30	8.20	10.70	2686500
11-Oct-99	11.40	12.75	10.60	11.20	2271700
12-Oct-99	11.05	12.80	10.60	12.55	1828300
13-Oct-99	11.60	12.95	11.10	12.55	1587200
14-Oct-99	12.60	13.40	11.00	11.15	980300
15-Oct-99	10.60	11.40	9.60	9.75	637400
18-Oct-99	10.00	11.10	9.20	10.05	1256500
20-Oct-99	11.05	11.50	10.05	10.70	875900
21-Oct-99	11.00	11.00	9.65	9.80	462900
22-Oct-99	9.55	9.95	9.00	9.10	376500
23-Oct-99	9.05	9.40	9.00	9.15	84800
25-Oct-99	8.60	9.20	7.25	7.50	517000
26-Oct-99	7.25	8.25	7.25	7.90	658700
27-Oct-99	8.75	8.75	7.50	7.90	598400
28-Oct-99	8.00	8.00	7.05	7.10	341700
29-Oct-99	7.15	7.25	6.50	6.90	448600
01-Nov-99	6.90	7.05	5.30	5.65	769100
02-Nov-99	6.25	7.25	5.50	6.90	1705400
03-Nov-99	10.35	10.35	9.50	10.15	1638300
04-Nov-99	9.90	10.00	8.95	9.25	909500
05-Nov-99	9.45	9.90	9.05	9.70	956400
07-Nov-99	10.35	10.35	9.60	9.65	169800
09-Nov-99	9.50	9.70	9.10	9.65	340600
10-Nov-99	9.90	9.90	8.55	9.55	567700
11-Nov-99	9.30	9.65	9.25	9.30	189900
12-Nov-99	9.20	9.40	9.15	9.25	165900
15-Nov-99	9.45	9.45	8.60	8.75	337100
16-Nov-99	8.70	8.90	8.50	8.55	286700
17-Nov-99	8.80	8.85	8.25	8.30	234600
18-Nov-99	8.15	8.35	8.00	8.10	333700

19-Nov-99	8.95	8.95	7.90	8.00	285000
22-Nov-99	8.15	8.75	7.50	8.60	1049100
24-Nov-99	8.70	9.00	8.45	8.55	401500
26-Nov-99	8.35	8.75	8.25	8.65	166400
29-Nov-99	8.45	8.70	8.40	8.45	199100
30-Nov-99	8.70	9.40	8.40	9.10	752400
01-Dec-99	11.00	12.00	8.05	10.55	2962600
02-Dec-99	10.70	10.80	9.80	10.00	793000
03-Dec-99	10.00	10.70	9.85	10.40	593500
06-Dec-99	10.50	11.25	10.40	10.95	1000500
07-Dec-99	11.20	13.70	11.00	13.70	1966300
08-Dec-99	15.50	17.15	14.20	14.90	2540200
09-Dec-99	15.50	17.70	14.50	17.25	2504400
10-Dec-99	17.90	21.60	17.25	20.80	4071900
13-Dec-99	22.50	22.50	20.00	22.15	2231200
14-Dec-99	23.00	24.00	21.15	23.50	2160600
15-Dec-99	24.45	24.85	21.65	21.65	578700
16-Dec-99	19.95	19.95	19.95	19.95	75900
17-Dec-99	17.05	23.90	17.05	20.70	1505500
20-Dec-99	21.10	21.90	19.30	19.90	825500
21-Dec-99	19.20	19.90	17.95	18.35	916300
22-Dec-99	19.60	21.25	19.00	19.85	1054400
23-Dec-99	19.00	19.65	18.30	18.80	285800
24-Dec-99	18.50	18.65	16.60	17.35	418900
27-Dec-99	17.10	17.15	14.75	15.20	366500
28-Dec-99	14.00	17.50	14.00	16.75	642300
29-Dec-99	17.85	20.20	17.00	19.90	978200
30-Dec-99	20.00	24.00	18.25	22.55	1495700
03-Jan-00	23.80	24.35	23.55	24.35	388200
04-Jan-00	24.35	25.75	22.40	22.40	122400
05-Jan-00	20.65	20.65	20.65	20.65	42000
06-Jan-00	19.00	19.00	19.00	19.00	16700
07-Jan-00	15.00	18.20	14.25	16.45	730600
10-Jan-00	15.60	16.90	12.35	12.85	654600
11-Jan-00	12.40	12.75	10.00	11.25	569400

6.5 I find from the above that during the relevant period from October 1, 1999 to January 11, 2000, the price of the scrip on NSE varied between Rs.5.30 and Rs.25.75. The average daily traded volume during the above period works out to about 8,95,000 shares. However, it was observed that there

was wide variation in the number of shares traded on various days. For instance, on January 6, 2000, only 16,700 shares were traded, whereas on December 10, 1999, 40,71,900 shares were traded on NSE.

- 6.6 I find that there were no major corporate announcements during the relevant period. When asked to explain about the price movement during November-December 1999, the company's representative, in his statement recorded during investigation, on December 16, 2002 informed SEBI that during this period, the news relating to company's suit filed against Wockhardt, Standard Chartered Bank, Floorcee Mills and one other company for causing collapse of the Poonam Building (where Cauvery's office was situated) were published in dailies.
- 6.7 It is observed that the price of the scrip on NSE increased from Rs.9.90 on November 10, 1999 to Rs.25.75 on January 04, 2000 and thereafter declined to Rs.11.25 on January 11, 2000. Thus the price of the scrip increased by 160% and thereafter fell by 56% during the relevant period. On the basis of total traded quantity, trades of top 12 trading members were scrutinized.
- 6.8 I find that during the relevant period, M/s Keynote Capitals Ltd. (hereinafter referred to as "Keynote") has dealt in the scrip on behalf of Amway Finance, Elite Investments & Holdings P Ltd., Shri.Jitendra Rawal, Shri.Narendra Dogra, Shri.Ramesh Arora, Smt.Sudha Kapadia and Shri.Vinod Petkar. Out of the above trades, Keynote has purchased 2,94,300 shares and sold 18,06,700 shares on behalf of Elite. The trades on behalf of Elite constitute 93% of the gross trades of Keynote during the period under scrutiny.
- 6.9 Further, during the relevant period M/s. V G Capital Market P Ltd., has dealt in the scrip on behalf of Amazing , Shri.Yogendra Kuamr Goyal,

Carter Commercial Co. P Ltd., B K Loyalka & Co, Shri.Kamal Kumar Goyal, Shri.Bhagwandas Rathi, Shri.Rameshwar Lal Kalani, Smt.Saroni Mukherjee, Cento Credit Commercial P Ltd., RKA, Shri.Rama Kishan Kasat, Shri.Ganga Das Mohta, Jatan Lal Bardia (HUF), SM, Shri. Shiv Kumar Rathi, Shri.Rakesh Kumar Modi, Shri.Pankaj Kumar Goyal, Shri.Yashwant Kumar Goyal, Shri.Gopi Mohan Bagaria, Shrii.Naresh Kumar Gupta, Shri.Narottam Das, Shri.Vijay Kumar Mahansaria, Shri.Yogendra Kumar Singh, Shri.Krishna Kumar Agarwal, Smt.Nirmala Kasat, Sawika Stock & Investment P Ltd., Shreeji Investments, JHA and Ladha & Co. Out of the above trades, it was noted that V G Capital has purchased 17,500 shares and sold 1,85,500 shares on behalf of Amazing. Thus the trades on behalf of Amazing constitute about 72% of the gross trades of V G Capital during the relevant period.

6.10 In its investigation , NSE identified two trading clients namely Elite and Amazing as being suspected to be related to Cauvery. The address of Elite, as furnished by respective trading members to NSE is 111, Marwah Industrial Estate which is the same as that of corporate office of Cauvery. It is also observed that the authorized signatory of Amazing is Shri.K K Ravindran who is also the director of European Software Alliances Ltd., a company belonging to the Lan Esada group, the group to which Cauvery belongs.

6.11 I find that neither Cauvery nor the two trading clients Elite and Amazing co-operated with the investigations and as a result, data required for investigation, could not be obtained from Elite and Amazing. Cauvery, Elite and Amazing attempted to delay the investigations by seeking additional time to furnish the data sought and finally not furnished complete data. Hence, on the basis of the available data, SEBI concluded the investigation.

- 6.12 NSE informed that it has suspended the scrip on November 19, 2001, on account of non-compliance with various provisions of the listing agreement and the scrip continues to be under suspension.
- 6.13 I find that Summons dated July 4, 2002, were issued to Cauvery at its corporate office located at 111, Marwah Industrial Estate, Saki Vihar Road, Saki Naka, Andheri (E), Mumbai 400072 whereby it was inter-alia advised to furnish the details of its listing on Stock Exchanges, names and addresses of all its directors, names and addresses of all its associate concerns and details of statement of bank account(s) etc. As per the said summons, the above details were required to be furnished by July 17, 2002. These summons were also sent simultaneously to its registered office address at Ramana Shree Arcade, 2nd Floor, 18, Mahatma Gandhi Road, Bangalore 560 001.
- 6.14 Cauvery vide its letter dated July 16, 2002, replied to the summons addressed to the Mumbai address seeking 10 days time to furnish the required information. However, it did not furnish the details sought by SEBI. The letter addressed to the registered office was returned undelivered with the remark 'shifted'. A scrutiny of the letter received from the corporate office address at Mumbai, revealed that the company was having new registered office address at 24, Shrungar Shopping Center, 80 M G Road, Bangalore 560001.
- 6.15 In view of the above, summons were issued again on August 13, 2002 to Cauvery seeking the details, which were sought earlier. Cauvery furnished its reply vide letter dated August 21, 2002.
- 6.16 A scrutiny of the reply furnished by Cauvery revealed that it is listed on Bangalore Stock Exchange (BgSE), which is the regional Stock Exchange,

NSE and BSE. Cauvery did not mention DSE as one of the exchanges on which the scrip is listed.

6.17 As per the data furnished by Cauvery , as on March 31, 2001, Shri.Anup Saxena, Shri.R K Kapur and Shri.D B Negandhi were the directors of Cauvery . These three persons continue to be directors of Cauvery till date. Cauvery furnished the following names as their associate concerns:

1. Paramati Investments P Ltd.
2. Bhamat Investments P Ltd.
3. June Investments P Ltd.
4. True Investments P Ltd.
5. Lan Investments P Ltd.
6. Sky High Investments P Ltd.
7. Lan Eseda Investments Industries Ltd.

6.18 The names of Amazing and Elite do not appear in the list of associates furnished by Cauvery.

6.19 A scrutiny of the statement of bank account furnished by Cauvery revealed that the account of the company was maintained with Thadani Marg Branch of the erstwhile Timesbank (account no.2120 654416 001). Since July 16, 2000, the account of the company was maintained with the Sakivihar Road branch of HDFC Bank (account no.0802050000919). Against a number of credit entries in the account the notings 'A' and 'E' were mentioned.

6.20 Shri.R K Kapur the professional director of Cauvery in his statement recorded on December 16, 2002 admitted that these entries may reflect monies received from Amazing and Elite. In the narration to the credit entries on various dates, the names of Amazing and Elite are mentioned in the bank account. An analysis of the bank account for the funds received by Cauvery from Elite and Amazing during the period from December 1999 to April 2000 revealed that Cauvery has received about Rs.25.62 lakhs from Elite and Amazing.

6.21 I find that summons dated December 5, 2002 were issued by the investigating officer to Cauvery asking its authorized person to appear before the investigating officer. Shri.R K Kapur, Professional Director of Cauvery appeared before the investigating authority on

December 16, 2002 and his statement was recorded under oath. He stated that Cauvery belongs to the Lan Eseda group of companies promoted by Dr. K M Pai. He denied that there was any association between Cauvery and Elite / Amazing. He admitted that Elite and Amazing share the same premises with Cauvery. He denied that Cauvery had any relationship with European Software Alliances Ltd.(ESAL).

6.22 However, from the bank account statement of Cauvery, I find that there were movement of funds between Cauvery and ESAL. It maybe noted that Shri K K Ravindran, the director who was in-charge of Elite and Amazing was an authorized signatory of ESAL.

6.23 As regards listing on DSE, Shri.R K Kapur admitted that Cauvery was listed on DSE at the time of public issue. He admitted that they have not filed any documents or paid any listing fees to DSE. When questioned about whether the necessary formalities for delisting of securities were complied with, he stated that he will check up and get back. However, no reply has been received from Cauvery till date. From the information furnished by DSE, I find that the company has not complied with the formalities for delisting of securities.

6.24 I find that to a query by the investigating officer about suspension of trading in the scrip by Stock exchanges, Shri. R K Kapur stated that during 2000, BSE suspended the scrip for non-compliance of listing agreement and on compliance, the suspension was revoked. He further stated that after the scrip came in compulsory demat mode during May-June 2000, the scrip was never suspended by any stock exchange. However, NSE vide their letter dated January 13, 2003 has intimated SEBI that they have suspended the scrip since November 19, 2001 for non-compliance of listing agreement and continues to be under suspension till date. Thus, it is seen that Shri. R K Kapur has made false statement under oath.

6.25 When queried about the registrar and transfer agents of the company, Shri. R K Kapur stated that Bigshare Services P Ltd. are the Registrar & Share Transfer agent for both physical and demat shares. However, Big Share informed SEBI that they are providing only depository connectivity and at no point of time they have acted as physical share transfer agents for Cauvery . Thus, Shri. R K Kapur has made false statement under oath.

6.26 When queried about the preferential allotment made by Cauvery, Shri R K Kapur stated that he would furnish the information by December 27, 2002. However, the said data was

furnished vide company's letter dated January 15, 2003. A scrutiny of the data furnished by Cauvery revealed that it made three preferential allotments since 1997. The details are as below:

- ? On May 8, 1998, Cauvery has made first Preferential allotment to certain corporate bodies on cash basis. It is seen that Amazing Investment & Finance P Ltd. appears as an allottee, which was allotted 10 lakhs shares. Since the allotment has been done on preferential basis, the possibility of their close nexus can be inferred.
- ? Cauvery had made second Preferential allotment to certain corporate bodies on April 28, 1999 against unsecured loans and creditors.
- ? On April 3, 2001, Cauvery made third preferential allotment on swap basis to 11 corporate entities for an aggregate of 1,73,75,000 shares. It has informed that Bangalore Stock Exchange (Bg.SE) has given 'in-principle' approval for the listing of these shares. However, its application to BSE and NSE for listing of these shares is still pending.

6.27 From the above details submitted by Cauvery, the total number of paid up shares of Cauvery works out to 5,00,00,000 shares. Based on the information furnished by Cauvery, it has issued only 3,26,25,000 shares of which 1,80,27,000 shares are held in demat form and the balance in physical form. Thus, even after the passage of about two years, Cauvery is yet to issue the shares allotted on preferential basis, which is in violation of the provisions of Section 113 of the Companies Act 1956.

6.28 With a view to examine the relationship of Cauvery with the two trading clients, namely, Elite and Amazing, summons dated April 22, 2002 and April 26, 2002, respectively, were sent to Elite and Amazing by SEBI advising them to furnish certain information including their holding in Cauvery. I find that Elite and Amazing did not cooperate with SEBI in the investigations, despite repeated summons issued to them.

6.29 In the light of the aforesaid discussion, I find that Cauvery sought to delay investigations, given evading replies to the queries of the Investigation Officer and made false statements under oath. I further find that Cauvery made preferential allotments to various entities including its associate company i.e Amazing, which was operating from

the same premises as that of Cauvery. Further, Elite was also operating from the same premises. Though Amazing and Elite are not traceable at their registered offices, the shares held by them in Cauvery were off loaded and the sale proceeds remitted to Cauvery. I find that the share certificates in respect of 1,73,75,000 shares allotted on preferential basis were not issued in violation of section 113 of the Companies Act. I have further noted that Cauvery has continuously failed to comply with the conditions of listing and as such the scrip has been suspended by NSE. Further the summons and letters sent by SEBI to the registered office of Cauvery had returned undelivered. It is therefore apparent that Cauvery is not available at its registered office. From the aforesaid I find that Cauvery did not co-operate with SEBI because it was afraid that further investigation by SEBI may reveal manipulation of the scrip by Cauvery and its associate entities.

6.30 I find that the directors of the company are responsible for the commissions and omissions of the company as they are the persons who are conducting the affairs of the company. A corporate entity acts through its directors who are natural persons. It is therefore, necessary to lift the corporate veil and find that the natural persons who acts as directors of the company are guilty of the commissions and omissions of the company. The concept of corporate entity was evolved to encourage and evolve trade and commerce but not to commit illegalities and therefore I am convinced that this is a fit case to pass an order against the directors of Cauvery also.

6.31 The conduct of Cauvery and its directors is detrimental to the interest of the investors and the safety and orderly development of the securities market. Unless these are checked, it would pose serious challenge to the Regulatory Authority. It is to be noted that persons who operate in the market are required to maintain high standards of integrity, promptitude and fairness in the conduct of the business dealings. A listed company which indulges in misconduct such as narrated above and shakes the confidence of the investors is not fit and proper to operate in the securities market. I am therefore, of the view that a preventive action needs to be taken against Cauvery. Such an action would be necessary for proper regulation of the persons operating in the capital market and the development thereof as well as for the protection of investors.

7.0 ORDER

- 7.1 Having regard to the above I, in exercise of the powers conferred upon me under Section 19 of the SEBI Act, 1992 read with Section 11, 11(4)(b) and 11B of SEBI Act, 1992, hereby prohibit M/s. Cauvery Software Engineering Systems Ltd. and its directors Shri R K Kapur, Shri D B Negandhi and Shri Anup Saxena from accessing the capital market and from dealing in securities, in any manner, directly or indirectly, for a period of five years.
- 7.2 This is without prejudice to any other action taken or to be taken by SEBI against the company and its directors in accordance with the provisions of SEBI Act, 1992, the Regulations made thereunder or any other law as may be applicable.
- 7.3 This order shall come into force with immediate effect.

A. K. BATRA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date : 9th January, 2004

Place : Mumbai