

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

AGAINST M/S SUBHASH PROJECTS & MARKETING LIMITED AND ITS DIRECTORS UNDER REGULATIONS 11 OF THE (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 READ WITH SECTION 11B OF THE SEBI ACT, 1992

1. M/s Subhash Projects & Marketing Limited (hereinafter referred to as SPML) is a listed company which was incorporated as a private limited company on August 27, 1981 and later became a public limited company on August 27, 1983.
2. The shares of 'SPML' are listed for trading on the Stock Exchange, Mumbai, the Calcutta Stock Exchange, the Delhi Stock Exchange, the Bangalore Stock Exchange, the Guwahati Stock Exchange and the Uttar Pradesh Stock Exchange (for brevity's sake, hereinafter referred to as 'BSE', 'CSE', 'DSE', 'BgSE', 'GSE' and the 'UPSE' respectively).
3. SPML came out with 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 rights issue opened for

subscription on October 6, 1995 and closed on November 6, 1995. The issue was lead managed by M/s Hinduja Finance Corporation Ltd. and Canara Bank, Merchant Banking Division (for brevity's sake referred to as HFCL and Canbank respectively),. As per the three day post issue monitoring reports dated November 9, 1995, submitted to SEBI by HFCL and certified by Canbank, the rights issue of equity shares was stated to be subscribed to the extent of 90.07% and debentures to the extent of 110.23%.

4. The Securities and Exchange Board of India (hereinafter referred to as 'SEBI') received a reference from the Income Tax Office, Calcutta in May 1996 as also a number of complaints regarding the said issue, alluding irregular subscription and price manipulation before the rights issue i.e. the possibility of applications being brought in after the closure of issue to cover up shortfall in collection and rigging of the price just before the rights issue, non-disclosure and misstatements in the letter of offer, violations of Debenture Trustee regulations, non-listing of shares etc. In view of the same, SEBI called for the price volume data of SPML from the BSE. On examining the same, it was observed that the daily volumes of SPML were quite high around the rights issue time. Further analysis of trade details from 'CSE', 'DSE', 'BgSE', 'GSE' and the 'UPSE' between the period April, 01, 1995 and March 31, 1996 revealed that during the relevant point of time, very thin trading was reported in the scrip of SPML, at all the exchanges except BSE & CSE, and out of these two, major volumes and trading was noted at CSE.
5. In view of the above, SEBI carried out preliminary investigations and based on the preliminary investigation reports, SEBI, vide

order dated June 8, 1999, ordered the case for formal investigation.

6. Upon the completion of the same, the investigations inter-alia revealed that –

1. SPML had willfully delayed the issuance of advertisement giving additional disclosures;
2. The rights issue did not actually receive genuine minimum subscription of 90% of the issue
3. There was an active involvement of SPML and its directors/ associates in creating an illusion that the rights issue of SPML had genuinely received mandatory minimum subscription of 90%.
4. A major part of the subscription to the rights had been brought in after the closure of the issue by way of applications from the associates of SPML in order to show 90% subscription;
5. SPML accepted applications directly and later lodged them with the bankers to the issue;
6. SPML accepted applications accompanied by outstation cheques, which was not in accordance with the terms of the letter of offer;
7. SPML had directly or indirectly funded the subscription to the issue by Sethi family, Zoom Industrial Services Ltd., SPML India Ltd. etc.;
8. SPML had advanced certain sums of monies through various entities to Ms/ Raj Investments for the purpose of creating illusory volumes and trading in the scrip of SPML with a view to ensuring successful subscription to the rights issue.

7. In view of the findings of the investigation, SEBI issued a notice dated August 30, 2002 to SPML and its directors viz. Sh P C Sethi, Chairman, Emertius, Sh Anil Kumar Sethi, Chairman, Mr Subhash Chand Sethi, Vice Chairman & Managing Director and Mr Sushil Kumar Sethi, Managing Director asking them to show cause as to why appropriate directions should not be issued against them under section 11B of SEBI Act, 1992 (for brevity's sake referred to as the Act) read with Regulations 11 & 12 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Markets) Regulations, 1995 (for brevity's sake hereinafter referred to as the Regulations). SPML and the said entities were directed to reply to the said notice within 21 days of the receipt thereof and it was also indicated that if they failed to furnish their reply within the stipulated time, it would be presumed that they had nothing to say in the matter and SEBI would be free to take such action as deemed fit.
8. In reply, on behalf of SPML, Shri Subhash Sethi, Vice Chairman & Managing Director, SPML, vide his letter dated January 07, 2003 denied all the allegations as regards any irregularity in the rights issue subscription made through various complaints and submitted that although SEBI had relied on the said complaints, it had not provided SPML with copies of the said complaints to refute the allegations made therein. As regards the allegation of SPML not mentioning in the letter of offer, the fact of M/s Bharat Hydro Power Corporation Limited being one of their group companies and then being directed by SEBI to make the additional disclosures and advertise the same in two newspapers on or before 6th of November, 1995, it was clarified that the matter to be

published, as approved by SEBI, was received by their Lead Manager on 3 November, 1995 and on the very same day, was sent to two newspapers of Delhi i.e. Dainik Jagran and Pioneer for immediate publication. He submitted that since SPML's registered office was situated at Delhi and both the said newspapers were able to accommodate their advertisement at the last stage so as to bring them out on or before 6th November, 1995 the said papers selected for publication but despite their best efforts, the advertisement came out only on 12th November, 1995. It was stated that they had sent letters immediately to all their shareholders giving the additional disclosures and intimating them that they were entitled to withdraw their applications on or before 21 November, 1995. It was further submitted that there were no grievances from any shareholder as regards not receiving the letter and the information and thus no shareholder was denied of the benefit of the additional disclosure. SPML stated that they had in their possession, postal acknowledgement slips in respect of dispatch of the letters to each of its shareholders. But as there was no request or instruction for submission of the copy of the letters from SEBI, the same had not been submitted earlier. On the said basis it was submitted that they had never acted in any manner which would defeat the very purpose of SEBI's direction and the additional disclosures had not been circulated amongst the shareholders to enable them to reconsider their investment decision.

9. SPML denied the allegation that it had deliberately withheld vital disclosures from the shareholders and contravened the provisions of Regulation 6 of the Regulations as well as the fact that the rights issue did not actually receive minimum subscription of 90% of the

issue as on the date of closure of the issue or that a major part of the subscription to the said issue had been brought in after the closure of the issue so as to show 90% subscription. It was stated that the subscription received to their rights issue was above 90% as on the date of the closure of the issue i.e. on 6th November, 1995 even without taking into consideration, the application made by HFCL, their Lead Manager, to the tune of Rs.2 Crores in the equity issue, since the cheques given by HFCL were all outstation cheques and were not and could not be considered for the purpose of calculating the subscription to the issue.

10. SPML submitted that the withdrawal by HFCL of their application for subscribing to the issue did not make any difference to the announcement made in their post issue monitoring report dated 9th November, 1995 (to the effect that the issue was subscribed to the extent of 90.07%) which was incidentally certified by Canbank, a top class public sector bank. SPML further denied the allegations that certain purported verifications of subscriptions were made with certain bankers, and that such verification at the Vysya Bank Limited, H.B. Sarani Kolkota revealed that applications were made, inter alia, by M/s.Zoom Industrial Services Limited and that some people like Gangwals/Jain/Bakliwals etc. showed that the cheque books from which they had issued the cheques for subscribing to the issue were issued only on 8th November, 1995 as per the records of the bank and hence these cheques could not have been deposited for subscription to the equity issue on or before 6th November, 1995 (which was the last date for receiving such application) SPML also denied that these cheques were received with back date, after the date of closure of the issue to make up the deficit in meeting 90% minimum subscription and stated that

all the cheques for the subscription towards the security issue were issued by the respective applicants and received by their Lead Manager before the date of closure of the issue on 6th November, 1995 which was checked by Canbank who monitored the post issue. Notwithstanding the same, SPML expressed ignorance as to how, in the banker's records, if at all, these cheque books were shown to have been issued after 6th November, 1995 and questioned the authenticity of the document, on the basis of which such allegations were made on the ground that the photocopies annexed to the notice were not certified under the Bankers Books Evidence Act and the fact that the concerned persons who maintained the bank books had not prepared any affidavit as well as the fact that the person who had allegedly collected these cheque books had not been identified. SPML stated that the books maintained and entries made contemporaneously, had not been ascertained and a perusal of the cheque issue register of the Vysya Bank Limited, clearly indicated that the alleged issuance of the cheque books were not done chronologically. SPML stated that they could not be held responsible or bound by the writing in the manner in which the bank records were maintained. SPML stated that the fact that all the cheques were deposited in the respective banks before 6th November, 1995 could appear from the receipts, stamps of the respective banks. SPML questioned the act of Vysya Bank Limited, who had received the cheques as per their stamp on 6th November, 1995, showing them to be issued from the Cheque Books issued by them, as per their records on 8th November, 1995.

11. With reference to the allegation that SPML had accepted applications together with cheques directly and had lodged them with the

bankers and that some of those cheques accompanying these applications were outstation cheques, SPML stated that they did not accept any cheque far less, any outstation cheques, which were received by Vysya Bank Limited directly without any instruction from them. SPML denied that they funded applicants for subscribing to the issue and stated that their bank accounts were submitted and perused by the authorities and no such information was forthcoming from the said accounts. It was stated that the statement of Mr. Subhash Chand Sethi did not conclusively establish that SPML had funded the issue with a view to reach minimum 90% subscription to the issue since he had emphatically denied all the allegations in this regard and with regard to certain specific queries pertaining to records, he had naturally replied that he had to check the records but was never summoned subsequently to give his answer and hence the authorities were not entitled to proceed on mere a presumption.

12. SPML denied the funding of the applications by members of the Sethi family vide stock invests and contended that although it was alleged that SPML had lent a sum of Rs 2 Crores to Arunachal, which in turn, out of the said amount, paid Rs.50 Lacs each to Poonam Chand Sethi and Sushil Kumar Sethi, and the balance to Kitply Industries Limited who in turn returned the loan amount which was disbursed to various Sethi family members, the details of loans shown to have been made to those family members, totaled Rs. 1 Crore, 5 Lacs as against the loan of 1 crore said to have been made. It was stated that besides the said fact, the Sethi family members in law were entitled to take loans from Arunachal or for that matter from any juristic entity for subscribing to the issue and the loans received by the members of Sethi family from

Arunachal Wood Based & Chemical Industries Private Limited could well have been utilized by them to purchase stock-invests for applying in the rights issue and it made no difference if the Sethi family members borrowed money from Subhash Chand Sethi for applying for the rights issue, who was also entitled to apply in the rights issue.

13. While denying the allegations relating to members of the Sethi family taking loans from various banks and repaying them out of the issue funds, and obtaining stock invests which were used in the rights issue, SPML stated that even then there was no violation of the Rules or contravention of the provisions of the Regulations. SPML denied that they had routed funds through an associate to camouflage any transaction as also the allegation that they had directly or indirectly funded the subscription by the Sethi family, Zoom, SPML India Limited or that such funding was, in many cases done out of issue proceeds. SPML denied that there was any active involvement of any of the recipients of the notice to create an alleged illusion that the rights issue of SPML had genuinely received mandatory minimum subscription of 90%. It was also denied that applications were made after the closing date, and that there was acceptance of applications accompanied by outstation cheques, or acceptance of applications which were later on lodged with the bankers to the issue to represent cheques which were returned unpaid or arrangements for temporary overdrafts with banks for subscribing to the issue which were repaid out of the issue proceeds or used for funding applicants who had subscribed to the issue.

14. SPML denied that Raj Investments (Raj Inv) was informed by Subhash Sethi that the amount could not be remitted directly and therefore an indirect means was obtained, whereby Raj Kumar Jain, alias, Patni of Raj Investments was funded through any finance company for the purpose of manipulating the price of the shares of SPML scrip during its rights issue. It was stated that the amounts in question were paid by SPML to four companies for the purchase of certain properties in Kolkata. It was contended that SPML was not bound by the purported statement of Raj Kumar and or the circumstances under which it was made, if at all and denied that there was any oral understanding or agreement between Subhash Sethi and Raj Kumar as alleged or that as per the said purported, alleged understanding/ agreement, SPML agreed to or did provide any fund from time to time to the four finance Companies of Raj Group or that any pleading of Vardhaman in Civil Suit No.354 of 1998 would show the existence of any such agreement. It was further denied that pursuant to any agreement, Rajin bought and sold shares of SPML out of funds provided by SPML.

15. While denying that the shares which were purchased by Raj Inv were ultimately sold to its associates, SPML further denied that Raj Inv had dealt in the scrip of SPML at the behest of Subhash Sethi with a view to increasing and maintaining the price of SPML's shares in order to ensure the successful subscription of their rights issue or that it had undertaken an exercise for increasing the price of SPML's shares from Rs. 125/- to Rs.275/- and maintaining the same till the rights issue was complete. SPML denied that Raj Inv was taken in as a accomplice by them to artificially create a market in the shares of SPML with a view to increasing the price of the

scrip and maintaining it, in order to induce the investors to subscribe to the rights issue and further denied that the amounts which were advanced to the four companies by SPML in October/November, 1995 for acquisition of certain property were immediately paid out through Raj Inv to various brokers who had dealt in the scrip of SPML. While stating that there was discrepancy in the allegations made by SEBI as regards the amounts actually paid by SPML to Blue Chip, it was denied that the funds flow established that SPML itself had provided funds in March, 1996 through a circuitous route to the four finance companies to enable them to return the amount advanced and that just because they were coming out of the rights issue at the relevant time, there was a good motive in good volume and at prices above the issue price so that the shareholders could be induced to invest to the rights issue.

16. On the basis of the above, while seeking the inspection of the originals of all the documents on the basis of which the show cause notice was issued, SPML requested that the proceedings against them be dropped in view of the submissions made above and further requested for a personal hearing.
17. Subsequently, Mr. Poonam Chand Sethi, Chairman Emeritus, SPML, also made submissions vide his letter dated January 17, 2003 inter alia to the effect that although the show cause notice was issued to him since he was the Chairman Emeritus of SPML, at the relevant time he was not in charge of and responsible for the affairs of SPML nor was he in control of its day to day affairs. Mr. Chand submitted that he was the member of the Board but not an Executive Director looking after the affairs of the Company and was virtually a sleeping

director, occasionally involved in framing the policies especially the steps that the company was to take, and the manner in which the business should run and for the aforesaid purpose, assigned to various officers and employees engaged by the company, specific responsibilities to pursue the policies framed by the Board, of which he was the member. Shri Chand submitted that the various allegations made in the show cause notice pertaining to the movement of funds of one company to another were matters of details not under his guidance, instruction or supervision and was unaware of it. He submitted that he was not required to take part in the business of the company and the violation if any, took place without his knowledge and/ or consent. Mr. Chand further submitted that no case was made out against him and no material was disclosed from the show cause notice, from which it could be averred that he took any part in the running of the business of the company. It was submitted that the show cause notice did not contain even a bald notice to the effect that he had personally acted in the manner which amounted to a violation of any of the provisions of the SEBI Act, 1992 or Regulations 11 & 12 of the said Regulations.

18. Mr. Chand further submitted that the condition precedent for the exercise of powers under Rule 11B had not been fulfilled and hence, SEBI was not entitled to issue any directions against him. Furthermore, since the direction under Rule 11B could be issued only against any person or class of persons referred to in Section 12 i.e. stock brokers, sub brokers, share transfer agents and against the company, as he did not come under either category, the threat issued under the notice was wrongful and without jurisdiction. Shri P. Chanda further requested that he should be

provided with all the materials, papers and records on the basis of which the notice had been issued to him to enable him to file an effective representation.

19. In view of the request for a personal hearing, SPML and its directors were advised to appear before the Chairman, SEBI for a personal hearing on January 18, 2003. However vide letter dated January 01, 2003, postponement of the personal hearing was sought and accordingly the hearing was fixed for February 12, 2003. However vide letter dated February 07, 2003, SPML and its directors requested for a copy of the order passed by SEBI against HFCL. On the date of the hearing i.e. February 12, 2003, their request for inspection of the documents was granted by the Chairman, SEBI. Subsequently vide their letter dated February 25, 2003, SPML once again requested for the copies of the complaints referred to in the show cause notice and the written instructions issued by SEBI to HFCL regarding the issue. Accordingly SEBI forwarded the said documents vide letter dated May 19, 2003 and also advised SPML to inspect the documents on June 04, 2003. However, SPML failed to appear on the said date and instead sought for an adjournment to a subsequent date which was fixed for July 15, 2003. Once again on their request, another date was granted and finally SPML inspected the documents on August 01, 2003.

20. Thereafter upon their request SPML was granted a personal hearing on September 15, 2003. However SPML once again sought for an adjournment after Diwali, on the ground that their Counsel was busy. Accordingly, the hearing was once again adjourned to December 02, 2003. On the said date, the said entities were represented by Shri P.C. Sen, Barrister and Senior Counsel,

Calcutta High Court, Shri Rajiev Ginodia, Advocate, Calcutta High Court and Shri B.N. Choudhary, Company Secretary, SPML, who reiterated that both SPML and its directors were not guilty of any default and no action should be taken against them as the allegations contained in the show cause notice were incorrect. It was further stated that except on two occasions when the money was brought in late, on all the other occasions, the money came in within the stipulated period and hence the question of jacking up the prices would not arise.

21. SPML further submitted that all the complaints alleging irregularities in the right issues were motivated and made at the behest of one individual i.e. M/s Raj Investments, albeit in different names and that as they were denied the opportunity to cross examine the complainants, the charges could not be sustained against them. While reiterating that all the applications had come in before the closing date in the rights issue, it was submitted that in one case a cheque amounting to Rs.38.03 lacs was dishonoured and subsequently honoured on representation after the closing date, while the remaining cheques were presented before the closing date. SPML also submitted certain documents in support of their contention i.e. certificate issued by Canbank with reference to the three day monitoring report which indicated that there were no irregularity in the rights issue and the letter of HFCL dated November 03, 1995 enclosing the two page advertisement to the equity shareholders of SPML to be inserted in two newspapers circulating from Delhi i.e. Pioneer and Dainik Jagran. Subsequently vide their submissions dated December 16, 2003, SPML inter alia further submitted that it was a reputed company which was handling several large projects of several State Governments and Public Undertakings and it was in a financially

sound position and had been making profits. In this connection, copies of Annual Reports for the years 2001-2002 and 2002-2003 were enclosed. On the basis of the above, it was contended that it was not one of the “Vanishing Companies” which had cheated the public by collecting money and thereafter vanished from the scene, but due the share market, the price of the shares of SPML had gone down after the issue, but even then, the shares of SPML with a face value of Rs.10/- were traded at about Rs.60/- on the Stock Exchanges.

22. With reference to the complaints made by some investors, it was contended that SPML had dealt with those complaints and resolved the matter and SEBI on being satisfied with the steps taken by it had issued a no objection certificate allowing it to withdraw the deposit regarding the rights Issue from the DSE. Copies of letter dated July 1, 1996 from SPML to SEBI, letter dated August 29, 1997 from SEBI to SPML and the no objection certificate dated April 29, 1997 from SEBI to the DSE were submitted for reference. SPML further contended that although the show cause notice had been issued on the basis of complaint letters numbering about 24 relating to the simultaneous issues and received by SEBI on or after June-July 1998 i.e. after nearly 3 years of the closure of the issue i.e. November 6, 1995, the same ought not to be taken into consideration as they contained false allegations and had been issued malafide, as was apparent from the fact that the letters alleged details which could not have been available to any lay investor; all the letters were on plain paper and not on letter pads; the signatures on the letters were either initials or were illegible scribbles or were missing or signed by somebody else on behalf of the purported shareholders without enclosing the authority, if any; several letters although issued from different

cities either contained the same or similar language or information and / or copies of the same had been endorsed / forwarded to the same persons using the same language which clearly indicated that the letters had been written by the same person but issued in the names of different persons from different cities; several letters had either common addresses or common surnames; the folio numbers had not been mentioned in most of the letters indicating that the letters had not been issued by the alleged shareholders but by third parties who were not aware of the folio number. It was contended that some person had deliberately written those 20 letters misusing the names of different shareholders and hence no reliance was to be placed on those letters more so since neither the alleged signatures nor the shareholdings of the alleged signatories had been identified or verified, nor any statement on oath had been made by any such person. It was stated that no loss or prejudice was caused to any shareholder because of some inadvertent delay in publication of advertisement since there was sufficient opportunity to still withdraw the application and contemporaneously no grievance from any shareholder was received regarding delayed publication or non-receipt of the letter sent to them under certificate of posting. It was further stated that no disclosures were withheld from the shareholders and there was no deliberate concealment of any fact by them or their directors as alleged in the notice. All the steps were taken on the basis of the advice received from the Lead Managers.

23. While stating that neither the cheque books were listed serially nor were they issued chronologically, attention was drawn to the page of an annexure numbered as '40' wherefrom it appeared that cheque books listed before and bearing no. 665501 to 665600 had been delivered on 21st November, 1995 while cheque books listed

subsequently and bearing no. 665601 to 665650 had been delivered on 9th November, 1995. Attention was also drawn, by way of sample, to the page marked as '42' which showed that Cheque Book bearing Sl. No. 668151 to 668200 had been issued after the Cheque Book bearing Sl. No. 668701 to 668750. On the said basis, it was stated that no reliance should be placed on the document claimed to have been received from Vysya Bank. It was stated that significantly, the same bank i.e. Vysya Bank had accepted the applications for the rights issue with cheques issued from these cheque books by putting its stamp on such applications with dates on or before November 6, 1995 while on the other hand they claimed that these cheque books had been issued by the same Bank after November 06, 1995. It was stated that it was for the Bank to explain as to how on the one hand, its records showed the issue of a cheque book on November 8, 1995 while its own records showed the receipt of these cheques by the Bank with application forms on or before November 6, 1995 and any discrepancy in the records of the Bank could not be attributed to SPML since they had no role to play either in the issue of the cheque books by the Bank to its account holders or the acceptance of the applications with cheques by the Bank. In view of the above, SPML urged that SEBI should not draw a conclusion that the applications were apparently made after the closure of the issue or that the valid applications amounted to less than 90 per cent. It was stated that the Income Tax Department had conducted search and seizure operation of SPML but had ultimately found no concealment of income by it or its directors and issued Demand Notices for NIL amount. In this connection copies of relevant orders and Demand Notices of the Income Tax Authorities were enclosed. The Company had applied to the Tax Authorities for release of all the seized documents but the same have not been

received back as yet. Copies of the letter of the Company dated August 14, 2001 and the list of seized documents (including the share application forms) were annexed.

24. SPML denied price manipulation as regards the Rights Issue, by either the company or its directors and stated that the period from 1.4.95 to 31.3.96 has been erroneously taken for consideration of price manipulation just as the transactions which allegedly took place 3 to 9 months after the closure of the Issue also were taken into consideration for the increase in price for the purpose of the Issue. It was stated that the post closure trading in the scrip was wholly irrelevant and neither SPML nor its directors could have had any connection with such trading or derived any benefit from this.

25. As regards the allegation of money being paid to four companies called Blue Chip, Jain Enclave, Vardhman and Saraogi, SPML pointed out that these payments were made for buying immovable property, but as the transaction ultimately did not go through, three of such companies returned the money but the fourth company i.e. Vardhman did not return the entire amount, SPML filed a suit against Vardhman in the Hon'ble High Court at Calcutta in 1998, i.e. much prior to the receipt of show cause notice in 2002. A copy of the Complaint filed by the Company against Vardhman in the Hon'ble Court at Calcutta was enclosed for perusal. It was further stated that as the suit was pending and sub-judice before the High Court, it would not be appropriate for SEBI to act and decide the issues in the suit in these proceedings by relying on the false statements of Raj Kumar Jain alias Patni on the basis of which the notice was issued. SPML submitted that

opportunity ought to have been given to it to cross-examine Raj Kumar Jain alias Patni and in the absence of the same, any action by SEBI on the basis of the story/statement of Raj Kumar Patni would amount to pre-judging the issue and interfering with the jurisdiction of the Hon'ble High Court at Calcutta and result in a conflict of decisions. It was stated that in response to an interim application filed by SPML, Vardhman had filed an affidavit containing false statements and hence the court did not pass any order in favour of Vardhman on the basis of such false statements. Despite the same, SEBI had relied on the interim affidavit of Vardhman which was not relevant as the principal matter pending was the suit filed by SPML against Vardhman. It was stated that for defending the main suit, although Vardhman was required to file a written statement stating its defence to SPML's claim for refund of the amount paid to Vardhman for purchase of immovable property no written statement had been filed till date clearly showing that it had no defence to the claim of the Company. It was stated that the copy of the plaint filed by SPML against Vardhman was deliberately not furnished by Vardhman to SEBI because if SEBI had been made aware of it, SEBI would not placed any reliance on the false statements of Raj Kumar Jain. In view of the same, SPML stated that no credence should be given to the false statements made by Raj Kumar Patni and no decision should be taken regarding the alleged funding of about Rs. 5 crores especially since the matter was sub-judice before the Hon'ble High Court at Calcutta. It was stated that in any case, the funding of about Rs. 5 Crores prior to the Issue could not result in a turnover of Rs. 45 Crores mentioned in the Show Cause Notice and since the pre-issue payments were made between October 12, 1995 and November 4, 1995, the sum of about Rs. 5 Crores could have been available for a short period of only 15 - 20 days. It was

stated that in view of the same, the exposure of about Rs. 5 Crores for a period of about 20 days, that also, in installments, could not have been responsible for the manipulation of the shares of SPML in the entire capital market.

26.SPML further stated that the relevant Regulations of SEBI provide for the investigating authority to file a Report to SEBI followed by SEBI considering the Report and thereafter deciding to and issuing the show cause notice. However, in the instant case, the notice issued by the Investigating Officer was not stated to have been issued on behalf of SEBI and did not refer to any report being filed by the Investigating Officer to SEBI or SEBI having considered any Report or any decision being taken by SEBI to issue the Show Cause Notice and hence the same was not in accordance with law and no action ought to have been initiated on that basis.

27.It was stated that Mr. P. C. Sethi was the Chairman Emeritus of the Company at the time of the Rights Issue, and was enjoying an Honorary position without any involvement in the day to day business or affairs of the Company and was in particular, not directly involved with the Rights Issue and in fact no specific allegations had been made against him in the Show Cause Notice. Yet, merely by virtue of his being the Chairman Emeritus, the show cause notice was issued in his name and reply had been filed by him. It was stated that Mr. P.C. Sethi had no designation/position in the company and was a retired man of about 75 years and hence it was just and fair that he should not be involved any further in these proceedings.

28. On the basis of the above submissions, SPML stated that in spite of their best efforts, there was always the possibility of some technical discrepancy and/or lack of strict adherence to the rules and regulations, which if any, had been only unintentional and hence any action thought to be not in strict compliance of the rules and regulations, may be condoned.

29. I have taken into consideration the facts and circumstances of the case and the material available on record which includes the facts leading to the investigation, submissions made on behalf of SPML, the findings of the investigation, the show cause notice dated August 30, 2002 and the replies of SPML to the same.

30. From the findings of the investigation, I have noted that certain allegations have been leveled against SPML and its directors which I shall proceed to deal with as below :-

Delay in issuance of advertisement:

31. I have noted that pursuant to certain allegations leveled against SPML and its directors, regarding certain non disclosures about M/s. Bharat Hydro Power Corporation Ltd. (Bharat Hydro), one of its group companies, SEBI sought an explanation from the lead managers to the rights issue, HFCL whereafter, SPML was directed to advertise in two newspapers on or before November 6, 1995, the text of the matter giving additional disclosures, as approved and send a letter to all its shareholders giving additional disclosures so

as to enable them to withdraw their applications on or before November 21, 1995.

32. I have noted that HFCL forwarded to SPML on 3rd November, 1995 only, the final draft of the announcement that was required to be advertised in two widely circulated newspapers in India, informing them that they also need to send the additional disclosures to all shareholders by post. However, SPML chose to release the advertisement only by November 6, 1995 which was published in two low circulation newspapers viz. 'Dainik Jagran' and 'The Pioneer' in Delhi on Sunday, November 12, 1995 although the majority of shareholders of SPML were in and around Calcutta. The result was that the shareholders could not get the benefit of the said additional disclosures.. Further I have noted the submission of SPML that as there were no grievances from any shareholder as regards not receiving the letter and the information, no shareholder was denied of the benefit of the additional disclosure. SPML claimed to have in their possession, postal acknowledgement slips in respect of dispatch of the letters to each of our shareholders and stated that as there was no request or instruction for submission of the copy of the letters from SEBI, the same had not been submitted earlier. Be that as it may, I find from the records that the address for all communication to SPML is that of Calcutta. Besides, the idea of wide dissemination of the said disclosures was considered essential to enable all the shareholders of SPML and not only those based in Delhi to reconsider their investment decision in the light of additional disclosures. Even though as claimed by SPML no shareholder was deprived of any information, the very action of SPML in giving the disclosures in low circulation newspapers, that too based in Delhi, defeats the very purpose of SEBI's direction that the advertisement should be made in widely circulated dailies before

closure of issue. I have noted that contention of SPML in their various representations, that despite their best efforts, the advertisement could not be brought out in time. However, the facts abovementioned when viewed in their totality clearly indicate that SPML acted in such a way that vital disclosures got deliberately withheld from the shareholders. That being so, I hold SPML and its directors as guilty of active concealment of the said facts which were well within their knowledge and guilty of contravening the provisions of Regulation 6 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995, as applicable at the time when act was committed (hereinafter referred to as FUTP Regulations).

Subscription to the rights issue of SPML:

33. I have noted the three day post issue monitoring report dated November 9, 1995, in terms of which the rights issue of equity shares was stated to be subscribed to the extent of 90.07% and debentures to the extent of 110.23%. However, as mentioned above, due to certain non-disclosures, when SPML was directed to issue an advertisement giving an option to the investors to withdraw their applications up to November, 21, 1995, the withdrawal of applications made by HFCL amounting to 10% of the issue size and worth about Rs.2 crores, should have brought down the subscription to the rights issue of equity still further. I have noted that as per the final report, the equity issue was continued to be shown to be subscribed to the extent of 90% even after the said withdrawal. Although SPML has contended that without the benefit of HFCL's application, the issue was anyway subscribed to the extent of 90.07%, I agree with the finding that applications were

brought in after the date of closure of the issue, to make up for the deficit in meeting 90% minimum subscription. The said inference stands substantiated from the fact that when SEBI verified the subscription details to the rights issue, it was revealed that out of the three bankers to the issue, maximum collection was made at Vysya Bank Ltd., H B Sarani branch, Calcutta. A test check of applications submitted at Vysya Bank revealed that:

- ✍ Applications from bank serial no. (BSN) 391 onwards to 482 were of Zoom Industrial Services Ltd. (hereinafter referred to as Zoom), one of the associates of SPML.
- ✍ Applications at Bank Serial No. (BSN) 391 to 395, 436 to 440, 476 to 480 etc. were accompanied by cheque leaves from cheque book series No.665401 - 665500, 666451 - 666550 etc. of Vysya Bank which were issued to and collected from the bank by Zoom (the applicant) only on 8th and 9th November, 1995 i.e. after the closure of the issue (issue closed on 6th November, 1995).
- ✍ Similarly applications at BSN No.555, 556, 560, 562 etc. by Gangwals/ Jain/ Bakliwals etc, were accompanied by cheque leaf nos. 576481, 576392 etc. of Federal Bank. These cheque books were also issued to the relative account holder only on 8.11.1995 & 12.11.1995 i.e. after the closure of the issue.
- ✍ As per normal banking procedure, the applications are to be serially numbered and the serial number would flow according to the date of acceptance, which meant that applications against BSN No.476, 477 etc. were accepted on a date which is subsequent to applications bearing BSN No.370, 371 etc.
- ✍ Based on the above and going by the fact that the cheques used against applications of Zoom at BSN No.391 onwards were issued to them only on 8/9.11.1995 and cheques used against applications at BSN Nos.555 to 562 were issued only on 8/12.11.1995, it can be

concluded that at least all applications from BSN No.391 onwards till BSN No.573 were lodged only after the date of issuance of relative cheque books i.e. on or after 8.11.1995 which is after the date of closure of issue.

✍ The subscription against applications from BSN No.391 onwards amounted to Rs.3.5 crores which is nearly 19%. If these applications which were apparently submitted after closure were excluded, the equity issue would have been subscribed to the extent of 82.4% only, as shown hereunder :

No. of shares on offer as per letter of offer	3652612	
No. of equity shares applied for as per allotment summary	3709073	101% to issue size
Less : Applications rejected by the company for technical reasons	2171	
Late applications from BSN 391 to 573 (includes applications for 400150 shares withdrawn by HFCL)	697152	
<i>Valid applications</i>	3009750	82.4% to issue size

34. I find that the figures given above have been arrived at on a test check of applications at one bank branch only from which it was gathered that in the case of debenture issue also, there were a number of applications by Zoom which were accompanied by cheque leaves from cheque books issued to the applicant after the closure of the issue. However the fact remains that the collection

received at Vysya Bank Ltd., H B Sarani branch, Calcutta formed a substantial portion of the total collections received in the said issue and hence cannot be discounted. Hence since the equity issue had failed to receive minimum subscription as shown earlier, the entire composite issue of equity and debenture had also failed. Thus I hold that a major part of the subscription to the issue has been brought in after the date of closure of the issue in order to create an illusion of minimum 90% subscription having been received even though the issue did not receive the minimum mandatory subscription of 90% and the issue had failed. As regards the oft repeated contention of SPML and its directors that as the lead manager issued the three day post issue monitoring report dated November 9, 1995, in terms of which the rights issue of equity shares was stated to be subscribed to the extent of 90.07% and debentures to the extent of 110.23% as certified by Canbank, a highly reputed public institution, they cannot be held guilty for any act of omission or commission, if any by their lead manager, I have noted that the said certificate on minimum subscription was apparently issued by Canbank without any independent verification as was required of them as a reputed public institution, but merely on the basis of a certificate issued by the registrar to the issue and the company. Accordingly, it is to be noted that Canbank was appropriately issued a warning by SEBI to be more cautious in future and ensure strict compliance with the provisions of SEBI Rules and Regulations, Guidelines and circulars issued by it from time to time. In this regard it would be relevant to draw attention to SEBI Guidelines on Disclosure and Investor Protection, issued vide circular dated June 11, 1992 and the circulars/clarifications, from time to time wherein it has been mentioned that the post issue lead manager shall maintain close coordination with the registrar to the issue and arrange to depute its officers to the offices of various

intermediaries at regular intervals after the closure of the issue to monitor the flow of applications from collecting bank branches, processing of applications including those accompanied by stock invests and other matters till the basis of allotment is finalized, dispatch completed and listing done.

35. As regards the reliance to be placed upon the collections at the Vysya Bank Ltd., H B Sarani branch and the role enacted by them in the issue process, I have noted that the Vysya Bank had admittedly accepted applications after the closure of the issue, as an individual act of omission and commission of an officer of the bank, who had concealed the information from the corporate office. I have noted that the delinquent official was dismissed from service for his acts of breach of trust, misdemeanor and misconduct and acting illegally and without authority from the management and in violation of the bank's manual of instructions and also RBI Rules.

Acceptance of applications directly/ acceptance of applications with outstation cheques

36. In terms of the offer document, the payment for applications were supposed to be made by cheques drawn on a bank at the centre where the applications were submitted and it was clearly made out that outstation cheques would not be accepted and further that the applications would not be accepted by the company at any of its offices except in the case of postal applications. Despite the same, I find that HFCL in their letter dated December 20, 1999, confirmed that application numbers 1, 30, 10791, 10793, 10795, 3708, 3709, 3714, 3715, made by it and accompanied by cheque numbers 056551 to 056559 drawn on IndusInd Bank, Opera House branch,

Mumbai, were given to SPML and that they deposited the same with Vysya Bank Ltd., H B Sarani Branch, Calcutta. I have further noted the confirmation of HFCL that Mr. Deepak Nanda who had flown to Calcutta had given the applications to SPML. These acts are contrary to the terms of issue and disclosures made in the offer document and from the above, it can be inferred that SPML had violated the terms of letter of offer, the minimum subscription clause and provisions of Disclosure and Investor Protection Guidelines and the Companies Act, 1956 and knowingly brought in subscription after the date of closure of issue, in order to show receipt of minimum 90% subscription to the issue and has thus not acted in a fit and proper manner.

Funding of Applications

37. As regards the issue of funding of applications by SPML and its directors, I find that both SPML and its directors were not very forthcoming during the investigation process, as regards their role in funding applicants for subscribing to the issue. Consequently I will proceed on the issue based on the available information on record and the submissions made by them thereafter.

A) Funding of Applications by Sethi Family Members

38. I have noted that Shri Subhash Chand Sethi and his family members (the Sethi family) made many applications using stock invests issued by Canbank and Vysya Bank. I have also noted that upon tracing the source of funds for issuance of stock invests, it was revealed that they were either funded by monies received from SPML through circuitous route or by temporary personal loans availed from Canbank/ Vysya Bank, which were later repaid out of funds

received from the company only via associates. The said facts were upon analyzing the bank accounts of the entities and the details of stock invests issued by the relevant banks which have been brought out below.

Stock invests issued by Canbank

39. I have noted from the investigation report that the Canbank, Chowringhee branch, Calcutta issued to the Sethi family, stock invests worth two crores bearing numbers 00337668, 00337670, 00337674, 00337676, 00337677, 00337679, 00337682, 00337683, 00337684, 00337686 which were used for subscribing to the issue. Upon verification of the bank accounts of Poonam Chand Sethi (Chairman of SPML), Sandhya Rani Sethi, Harshvardhan Sethi and Abhinandan Sethi, I have noted that the said stock invests have been issued against funds received from SPML through Arunachal Wood Based & Chemical Industries Pvt. Ltd/ Kitply Industries Ltd which in turn issued, out of the said funds, one crore each to Canara Bank and State Bank of Bikaner and Jaipur who in turn repaid the said funds to Arunachal Wood Based & Chemical Industries Pvt. Ltd/ Kitply Industries Ltd on November 6, 1995 which were transferred to the Canara Bank, Chowringhee Branch and utilized for the purchase of stock invests which were then used for applying in the rights issue. It is apparent from a circuitous route was adopted by SPML. The reason for the same, is apparently to route the funds so as to avoid detection.

40. Source of funds for some of the stock invests issued by Vysya Bank
Furthermore I have noted that the Sethi family took personal loans from various banks like Vysya Bank, Canbank and Federal Bank and after extensive investigation as regards the manner and time of the repayment of the said loans, the funds were shown to have

flowed from SPML for the said purpose. Upon a correlation of a few bank accounts of the Sethi family and the flow of funds for repayment of the loans taken by the Sethi family from Vysya Bank, H B Sarani Branch, Calcutta, the following facts emerge.

- ? 10 members of the Sethi family were given secured overdraft limits of Rs.5 lacs each during the first week of November 1995 for creating flexi deposits.
- ? Against these deposits stock invests bearing numbers 00285353, 00285356 to 00285361, 00285366 to 00285368 were obtained for subscribing to the issue.
- ? The overdraft limits were satisfied by credits received on 12th and 16th December, 1995, by cheques issued from savings accounts of Sethi Family with Canara Bank, Chowringhee branch, Calcutta.
- ? Scrutiny of 2/3 savings account statements of Sethi family showed that just before the debit against these cheques, there was a funds flow into the account from the current account SPM Engineers Ltd., one of SPML's associates.
- ? Scrutiny of bank account of SPM Engineers Ltd. showed that their payments to Sethi family were funded by credit received from SPML.

41. On the basis of the above, it can be construed that the personal loans were taken by the Sethi family for subscribing to the issue and that these loans were then repaid out of funds received from SPML via SPM Engineers Ltd and that the applications of the Sethi family were funded by SPML and that in this matter, SPML routed funds through an associate to camouflage the transaction.

B) Funding of Applications by Zoom and SPML India Ltd

42. I have noted that M/s Zoom Industrial Services Ltd, a listed company is stated to be an associate of SPML and that Shri Subhash Chand Sethi, one of promoter directors of SPML was also a director of Zoom at the relevant time, as per the letter dated 4th November, 1995 of Vysya Bank, HB Sarani branch, Calcutta regarding overdraft facilities. I have noted that Zoom had made a number of applications for both equity and debenture issues approximately totaling 288332 shares (8% of issue size) and 227380 debentures (9% of issue size).
43. I have also noted that as per the Letter of Offer for the rights issue dated 19th September, 1995, Zoom, shown to be holding 4,68,506 shares of SPML; was entitled for nearly 2,81,104 shares and 1,87,403 debentures of SPML. Although Zoom initially renounced its own entitlement in favour of others, subsequently it applied for shares and debentures in excess of its entitlement and did so without having any of its own funds to support such applications. The act of renouncing its entitlement initially and putting in applications far in excess of its entitlement ultimately and that too after the closure of the issue, leads one to infer that Zoom originally had no intention to subscribe, but later since the issue received very poor response, Zoom put in applications after the closure of the issue, to bail out the issue. I have noted that on November 9, 1995 (after the closure of the issue), Zoom availed an overdraft of two crore rupees. Upon correlating the bank accounts with the funds flow therein, it can be stated that the overdraft availed by Zoom was used to subscribe to the rights issue which was repaid immediately after the closure of the rights issue of SPML, out of funds

transferred from SPML and thus the funds for their subscription flew from SPML only.

44. Similarly SPML India Ltd. stated to be one of the associates of SPML made an application for 1,91,200 debentures (8% of the issue size). I have noted as per the Letter of Offer for the rights issue dated 19th September, 1995, SPML India Ltd. was shown to be holding only 7500 shares of SPML; and on this holding, were entitled for only 3000 debentures of SPML. However, SPML India Ltd. applied for 1,91,200 debentures, which was much in excess of their entitlement and they had done so without having any funds to support such application. I have noted that the same was verified from the fact that the cheque No. 093817 drawn on Canbank, Chowringhee Branch, Calcutta, accompanying the application returned unpaid and the application was shifted to cheque return schedule by Vysya Bank, H B Sarani Branch, Calcutta. Apparently at SPML's instance, deviating from the normal practice of the bank, the said cheque was represented on 27th November, 1995, after necessary funds had been arranged in the account of SPML's associate Subhash Capital City Ltd. from whose account, the cheque accompanied the application of SPML India Ltd. Funds for the purpose of honouring this cheque upon representation was provided by SPML with a view to bail out the issue.

45. Although subsequent to the recording of statement of Shri Subhash Chand Sethi, VC & MD SPML, it was vehemently denied that no application had been made by SPML India Ltd vide application no. 26, during the course of the personal hearing held before me on December 2, 2003, SPML admitted that in one case, a cheque amounting to Rs.38.03 lacs was dishonoured and subsequently honoured on representation after the closing date, while the

remaining cheques were presented before the closing date. Moreover, I have noted that the bank schedule had listed this application against BSN 282. Thus there is a clear contradiction in their stand indicating non transparency as regards their actions in the issue process which is clearly suspect from the facts above stated.

46. I have noted from the records certain other instances of selective representation of cheques returned in respect of applications by Sethi family / SPML's associates which indicate that SPML had directly or indirectly funded the subscription by the Sethi family, Zoom, SPML India Ltd., etc. and that too, in many cases, out of issue proceeds.

47. I have noted the objects of the rights issue from the offer document dated September, 19, 1995 which inter alia are as follows:-

- i) To set up a wind farm project of 27 MW capacity at Kayathar, Tamil Nadu and
- ii) To meet the expenses of the present issue.

In the said prospectus, SPML also gave the estimated cost of project as Rs 12,952 lacs and in the proposed means of finance, the amount to be received from the rights issue was mentioned as Rs 10,958 lacs. However, the fact that applications were accepted after the closure date, applications accompanied by outstation cheques were accepted after the closure date, applications by SPML which were later on lodged with the bankers to the issue were accepted after the closure date, the fact that cheques which were returned unpaid were represented by the registrar, especially applications by the Sethi family/ company's associates as brought out earlier, the fact that temporary overdrafts were arranged by the banks for subscribing to

the issue, which were later on repaid out of issue proceeds and the fact that applicants who had subscribed to the issue were funded by SPML., leads one to infer that SPML and its directors/ associates were actively involved in creating an illusion that the rights issue of SPML had genuinely received mandatory minimum subscription of 90%.

48. Moreover the act of SPML in routing the money collected in their rights issue for repaying the overdraft taken for subscribing to the rights issue by their group companies and making good the dishonored cheque, goes against the terms of offer document besides being detrimental to the interest of the capital market, in that but for the various measures taken by SPML and its directors, the issue would have failed. In having put up a front of making the issue process a success, SPML and its directors by its actions, not only perpetuated fraud in the capital market but in the process, adversely affected the rights of the innocent investors who subscribed to the issue.

49. Thus the action of SPML and its directors which is in contravention of the terms of the letter of offer, SEBI Guidelines on Disclosure and Investor Protection and the provisions of Companies Act, is fraudulent in nature and not in the interest of genuine investors in the issue as well as orderly development of the capital market.

Price Manipulation

50. I have noted that the scrip of SPML is listed at BSE, CSE, DSE, BgSE, UPSE and GSE. From an analysis of the trade details of these exchanges from 1.4.1995 to 31.3.1996, during this period, very thin

trading was reported at all the exchanges except at BSE & CSE and out of these two, major volume and trading was at CSE only.

51. From the Price Volume data provided by the BSE, I have also noted that the daily volumes around the rights issue time was quite high. I have further noted that Brokerwise analysis of 2 brokers who had extensively dealt in the said scrip viz. Purnanmal Bansidhar and Nanglia Holdings P. Ltd. revealed that both the brokers had acted on behalf of Raj Inv, a Calcutta based client who had also dealt through many brokers at the CSE. From the same, following facts emerged.

- ? Raj Inv was the largest client of D K Singhania (DKS), a Calcutta based broker.
- ? Apart from trading on the exchange, DKS also entered into many off market transactions.
- ? Volume of trades through off market transactions (>10,00,000 shares) was higher than his trading on the exchange.
- ? DKS had bought and sold 3,85,000 shares of SPML on his own account also and had entered into off market transactions for large quantities most of which had been subsequently reversed within a few months, which suggested that these were not apparently genuine transactions.
- ? DKS had passed adjustment entries and issued credit advice from Rajin's account in favour of other brokers who had also dealt in the SPML scrip. These details are brought out as under:

DATE	AMOUNT	PAID TO
01/11/1995	85,00,000	Mathran Securities Ltd.
15/11/1995	1,00,00,000	--- do ---
29/11/1995	20,00,000	--- do ---
17/11/1995	35,80,030	Niraj Kumar Balasaria

24/11/1995	20,95,390	--- do ---
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52. I have noted that Raj Inv, whose trading in the scrip of SPML was > 50% of D K Singhania's total transactions, was trading in the scrip through other brokers also. Funds flow were traced from SPML's account to Raj Inv. via Blue Chip Capital Market P Ltd. (Blue Chip), Jain Enclave P Ltd. (Jain Enclave), Vardhman Finvest P Ltd. (Vardhman) and Sarawgi Developers P Ltd. (Sarawgi) (hereinafter collectively called the four finance companies) which belonged to Raj Group. I have further noted that the amounts received by Raj Inv from SPML through the four finance companies were immediately paid to various brokers, many of whom had dealt in the scrip of SPML. From the same it is noted that SPML provided funds to Sarawgi, Vardhaman and Jain Enclave for the purchase of SPML shares/ debentures by way of subscribing to the rights issue and/or for purchasing the shares from the market to maintain the price and that the four finance companies received funds from SPML for the purpose of trading in the shares of SPML. The fact that the trading in the shares of SPML was done mainly by Raj Inv at the instance of Subhash Sethi and Shri M P Verma (Verma), Managing Director of Zoom and delivery was effected to various group companies of SPML as instructed by them, gains further strength from the date-wise sauda ledger of Raj Inv given by Patni, the authorized signatory which also shows that Raj Inv had dealt in the shares of SPML through more than half a dozen brokers and the gross traded quantity was over 20,00,000 shares of SPML, amounting to Rs.45 crores during the year 1995-96.

53. It is noted that Patni has claimed that there was an oral understanding/ agreement with Subhash Sethi in the matter,

sometime in August 1994 when SPML first decided to launch its rights issue. As per the said understanding/ agreement, SPML would provide funds from time to time to the four finance companies of Raj Group and SPML would pay to Rajin, an aggregate sum of Rs.50 lacs or 3% commission on the total amount of the SPML shares purchased, whichever is higher. Pursuant to that agreement, Rajin bought and sold shares of SPML out of funds provided by SPML and also its own funds. I have noted that Raj Inv received in aggregate, a sum of Rs.540 lacs from SPML through the four finance companies and purchased an aggregate number of 4,22,400 shares of SPML from the market or by subscription. The shares so purchased were billed and made over to the associates of SPML. Some of the companies on whom the bills had been raised could be identified as associates of SPML as detailed below :

- ✍ SPML India Ltd. (listed as one of its associates in the rights letter of offer);
- ✍ Gladiator Suppliers (P) Ltd. (later amalgamated with SPML India Ltd.);
- ✍ Tohfa Vinimay (P) Ltd. and Jeco Commodities (later merged with Astral Traders Ltd., an associate of SPML)

Details collected showed that SPML India Ltd. & Gladiator Suppliers (P) Ltd. apparently purchased shares of SPML at Rs.245/- per share during the time of rights issue.

54. It is seen that as per the investigation report, Raj Inv was the single largest client dealing in the scrip of SPML throughout the period from 1.9.94 to 31.3.1996 through many brokers. Admittedly Raj Inv had dealt in the scrip at the behest of Subhash Sethi with a view to increasing and maintaining the price of SPML shares/ volume in

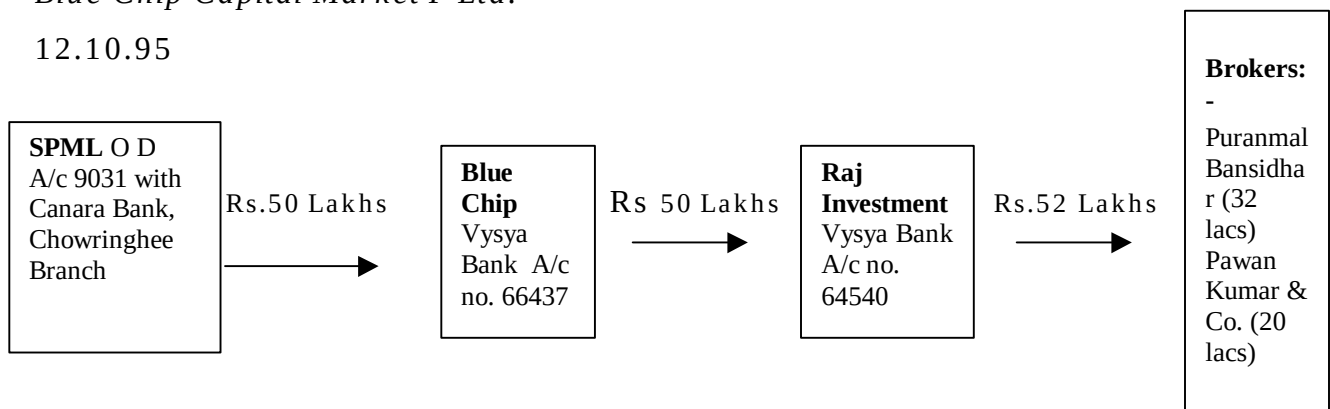
order to ensure the successful subscription of its rights issue. The exercise was undertaken with a view to increase the price of SPML shares which was quoting around Rs.125/- around August 1994 to around Rs.275/- by March 1995 and thereafter maintain the price of SPML shares around the range of Rs.250/- to Rs.275/- till rights issue of SPML was complete. The four finance companies repaid the amounts to SPML only out of monies received from the group companies of SPML.

55. Going by the circumstances, funds flow, records available and probable motives of the parties involved, it can be inferred that Raj Inv was apparently taken in as an accomplice by SPML to artificially create a market in the shares of SPML, with a view to increase the price of the scrip and maintain it, in order to induce the investors to subscribe to the rights issue. This inference is based on the following:

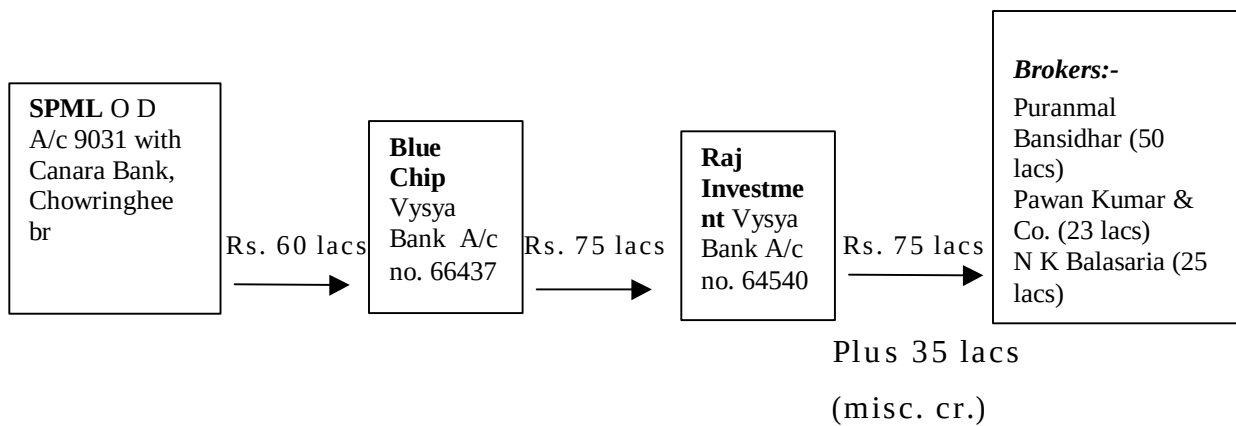
✍ Funds flow in bank accounts of concerned entities clearly established that the amounts purported to have been advanced to the four finance companies by SPML in October/ November 1995 for acquisition of certain property were immediately paid out through Raj Inv to various brokers who had dealt in the scrip of SPML which is clear from the following :-

Blue Chip Capital Market P Ltd.

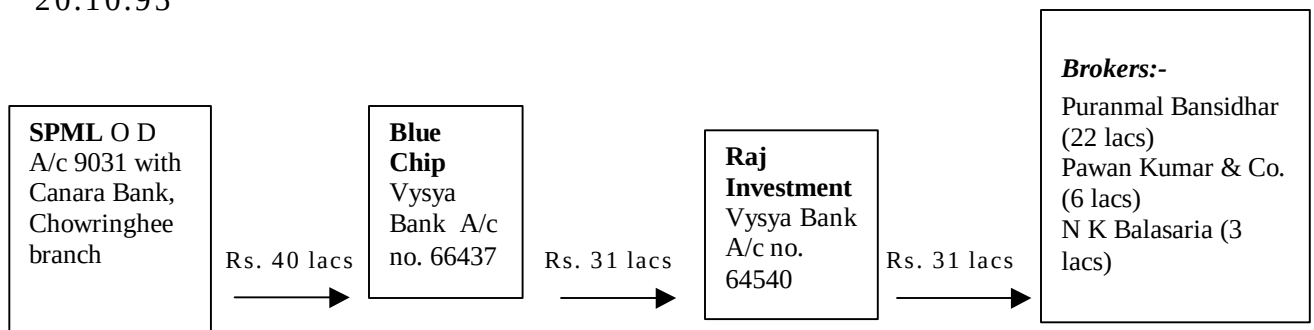
12.10.95



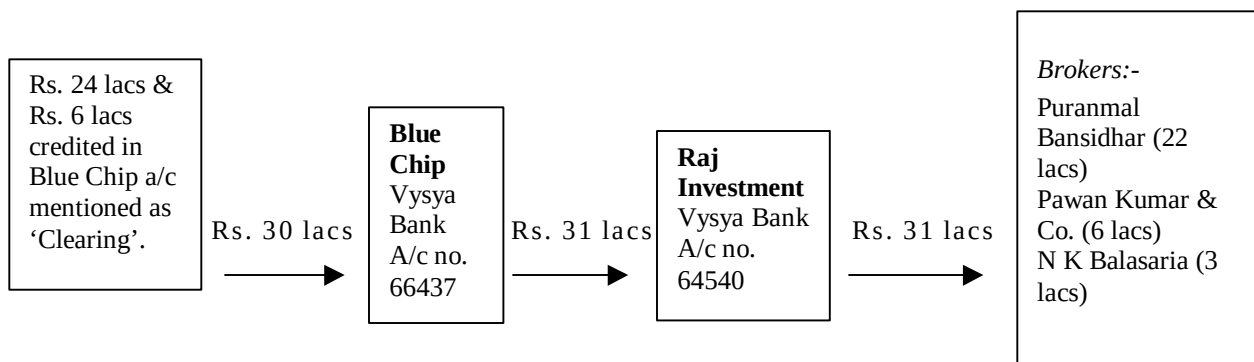
17.10.95



20.10.95

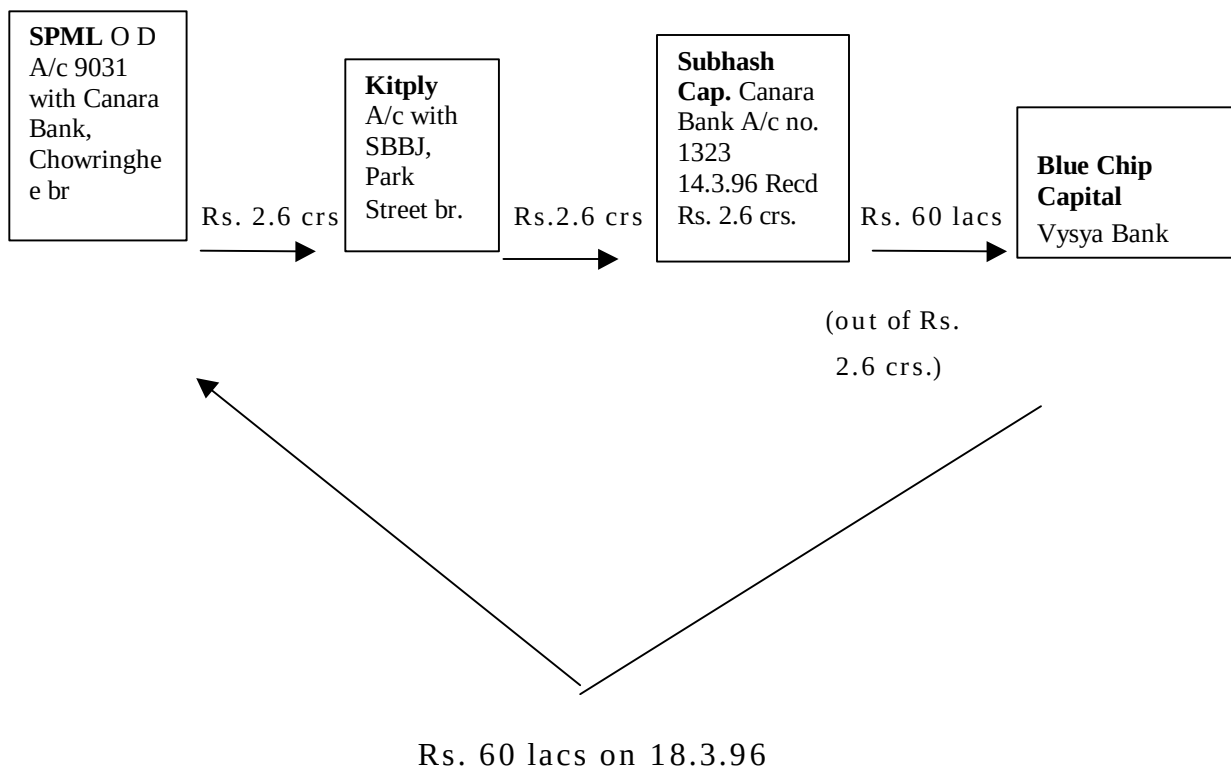


4.11.95



✍ Funds flow also establish that SPML itself had provided funds in March 1996 through a circuitous route to the four finance companies to enable them to return the amount advanced. From the flowchart, it is apparent that SPML had used a circuitous route to pass on the amount to the four finance companies who in turn had remitted the amount to SPML. This belies SPML's claim that the moneys were returned by the four finance companies because they changed their mind about the property. Flowchart for Blue chip is shown as follows:-

3.3.96



The four finance companies had refunded the amount in full or part to SPML in March 1996 upon receiving a like sum of amount from an

associate of SPML viz. Subhash Capital City Ltd. (SCCL) who in turn was funded by SPML.

- ✍ SPML had apparently advanced the sums to the four finance companies free of interest. The inspecting officer of the Department of Company Affairs had also commented upon such interest free lending by the company when company itself was bearing substantial cost for the funds borrowed by it.
- ✍ Such lending by SPML becomes suspect at a time when SPML itself was accessing the capital market for raising further capital for its own needs.
- ✍ The billing done by Rajin for dealings in SPML shares included some companies which could be identified as SPML's associates.
- ✍ SPML was coming out with a right issue of equity share of Rs.10 each at a premium of Rs.190 and the issue opened on 6th October, 1995 and closed on 6th November, 1995. SPML, therefore, had a good motive to ensure that the shares are traded in the market in good volume and at prices above the issue price so that the shareholders could be induced to subscribe to the rights issue.

56. Thus SPML funded Raj Inv through the four finance companies of Raj Group, for trading in the shares of SPML with a view to creating artificial volume and increasing / maintaining price of SPML shares till the rights issue was over so that the shareholders could be induced to subscribe to the rights issue; and SPML also agreed to pay Raj Inv for the purpose an aggregate sum of Rs.50 lacs or 3% commission on the total amount of shares purchased, whichever is higher.

57. When Subash Sethi was questioned about the payments made by SPML to the four finance companies of Raj Group, he informed that SPML had advanced certain sums of money to the four finance

companies of Raj Group for purchase of a property at Calcutta; and that when the deal did not materialise, the advance money was refunded in toto save and except by Vardhaman, where a part sum of Rs.44.5 lacs was still outstanding, for the recovery of which a recovery suit had been filed in the Calcutta High Court. In the subsequent correspondence with SEBI, SPML had once again stated that as the suit was pending and sub-judice before the High Court, it would not be appropriate for SEBI to act and decide the issues in the suit in these proceedings by relying on the false statements of Patni on the basis of which the Show Cause Notice was issued. He further questioned the fact that SPML was denied the right of cross examination of Patni. However it is to be noted that the suit which is allegedly a money suit, gives rise to other incidental facts which lead to the matter of manipulation of price of the scrip under discussion. Even if it were not so, the fact is that the show cause notice was not issued simply on the ground of manipulation by SPML and its directors but also after taking into consideration several other issues viz, willful delay of issuance of advertisement giving additional disclosures, non receipt of genuine minimum subscription of 90% of the issue, active involvement of SPML and its directors/ associates in creating an illusion that the rights issue of SPML had genuinely received mandatory minimum subscription of 90% etc as brought out earlier. As regards the issue of cross examination, an important aspect to be seen is whether the denial of cross-examination would prejudice the person. In the present case, there is sufficient proof in so far as the irregularities committed by SPML and its directors are concerned. Hence I am of the opinion that no prejudice is caused to SPML or its directors in the said matter.

58. Thus both SPML along with their directors; Sh Poonam Chand Sethi, Sh Anil Kumar Sethi, Sh Subhash Chand Sethi and Sh Sushil Kumar Sethi acting in connivance with each other –

- ? Deliberately withheld the issuance on time, of advertisement giving additional disclosures, thus denying the shareholders an opportunity to reconsider their investment decision in the light of additional disclosures, in violation of Regulation 6 of FUTP Regulations.
- ? Took various measures, such as acceptance of applications after the date of closure, acceptance of applications with outstation cheques, funding of applicants etc., in contravention of the terms of letter of offer, SEBI Disclosure and Investor Protection Guidelines and provisions of Companies Act, in order to create an illusion that the rights issue of SPML had genuinely received minimum mandatory subscription of 90%.
- ? Agreed to pay commission for trading and also funded trading/ traded in the shares of SPML, thereby creating artificial volume and increasing/ maintaining the price of the SPML shares till the rights issue was over in order to induce the shareholders to subscribe to the rights issue, in violation of Regulation 4 (a) to 4(e) of FUTP Regulations.

59. SPML has submitted that the funding of about Rs. 5 Crores prior to the Issue could not result in a turnover of Rs. 45 Crores mentioned in the notice in as much as the sum of about Rs. 5 Crores could have been available for a short period of only 15 - 20 days as the pre-issue payments were made between October 12, 1995 and November 4, 1995. However I have noted from the records that there is no proof of refund of the said funds between the dates mentioned

and that out of the said funds, the refund of only 2 crores could be traced and that too only in March 1996. Hence the contention that the funds were available only for a short period of 15 -20 days cannot be accepted as tenable. The fact remains that when SPML was called for to explain all the debits/ credits more than 5 lakhs, they only highlighted the entries and did not provide the full details as regards purpose of payment, name of the entities etc.. Even the information provided in each letter after repeated reminders by SEBI was piecemeal and thus insufficient to reach a conclusion or accept their stand and hence reliance had to be placed on other records /statements. It would not be improper to state that SPML and its directors did not co-operate fully as they ought to have, with the investigation team and instead sought for adjournments at frequent intervals. In view of the same, the flow of funds could be traced only for a period October / November 1995 and thereafter the refund of money in February / March 1996 although the trading done by Raj Inv was for the full year of 1995-96. I have noted from the records that Raj Inv had both bought and sold the shares of SPML and that the turnover of 45 crores mentioned in the notice is the gross turnover and not his net position.

60. I would like to mention that as regards the findings abovementioned, the funds traced by the investigation team was taken on a test check basis as it was not found to be possible to call for and check details of each and every bank account held by SPML. I am aware of the constraints that it is humanly impossible to track each and every payment made to any entity and then track its route to the market. Taking into consideration the availability of time and resources, the investigation team relied upon the copy of bank accounts which could be directly traced for having been used for transfer of funds

for a particular period and the sample check of the said transactions were effected for analyzing the issues.

61. Although it has been contended by SPML, that the Income Tax Department had conducted search and seizure operation of SPML but had ultimately found no concealment of income by it or its directors and issued Demand Notices for NIL amount, the same would have no bearing on the issue under consideration in as much as the focus of investigation by the IT authorities would be the violation, if any of the Income Tax Act while the focus by SEBI, would be the violation if any, of the SEBI Act and the Rules and Regulations framed thereunder as well as its related legislation.
62. I have noted that SPML has denied price manipulation as regards the Rights Issue, by either the company or its directors and stated that the period from 1.4.95 to 31.3.96 has been erroneously taken for consideration of price manipulation just as the transactions which allegedly took place 3 to 9 months after the closure of the Issue also were taken into consideration for the increase in price for the purpose of the Issue and hence the post closure trading in the scrip is wholly irrelevant. It was further contended that neither SPML nor its directors could have had any connection with such trading and could not have derived any benefit from this. It is to be noted that notwithstanding the above, SEBI has the mandate to take into consideration various issues related to the investigation, on the basis of the evidence available on record. As the events during the investigation period had a bearing on subsequent developments, the trading details of all relevant entities during the said period needed to be taken into consideration to decide the issue in its entirety. In

any case, no prejudice was caused to SPML in as much as adequate opportunities have been offered to it at any point of time.

63. I have noted the contention of Mr. P. C. Sethi, who was stated to be the Chairman Emeritus of SPML at the time of the Rights Issue, and stated to be enjoying an honorary position without any involvement in the day to day business or affairs of SPML to the effect that he was not directly involved with the Rights Issue and that as no specific allegations had been made against him in the Show Cause Notice, it would not be just and fair that he be involved any further in these proceedings.

64. In this context, it may be said that as a general rule, all officers of a company are appointed to act in the interests of the company and an important area of their legal responsibility stems from the law of trusts –i.e. a fiduciary relationship with the company. The duties arising from this relationship are well defined viz., to act bona fide and exercise their powers for the benefit of the company, to avoid a conflict of interests and a duty not to restrict but freely and fully, exercise their duties and powers. In addition, they also owe a duty of care to the company not to act negligently in the management of its affairs but exercise reasonable care and such skills as might be reasonably be expected of a person of knowledge and experience. Consequently the issue of Shri Sethi or for that matter any of the other directors mentioned in the show cause notice, not being in charge of and responsible to the company for the conduct of its business would become a question of evidence and depend upon the facts and circumstances of each case. A mere averment, that the day to day management of the company vested with the other officials, who were as in charge of and responsible to the company for the

conduct of its affairs would not suffice for the said entity to escape liability. In the case under consideration, if Shri Sethi's argument were to be accepted, then he ought to have substantiated his stand. Yet apart from making a bare averment to this effect, no further contentions were advanced on this behalf. In any case, raising of capital through issue of prospectus and activities connected therewith can not be termed as day to day activity. Hence in the absence of any satisfactory evidence to indicate that the irregularities under consideration were committed without his knowledge or that he had exercised due diligence to prevent the commission of such an offence, it would be manifest and can be concluded that Shri Sethi along with the remaining persons in charge of SPML as mentioned in the show cause notice was responsible for the conduct of the business of SPML.

65. Though SPML has time and again contended that, there is no violation of the provisions of the Regulations quoted above, from a cumulative reading of the facts available on record and mentioned above and the circumstantial evidence, read with the provisions of the regulation quoted above, I find that SPML acted in concert with its directors and its associate companies to create an artificial/ false market during the said period. SPML supported these entities in carrying out substantial transactions in its scrip by providing financial support, thereby aiding and abetting the price manipulation of the scrip. These acts are violative of the provisions of Regulations 4(a) to (e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and not in accordance with sound market principles.
66. In this context it is relevant to note the provisions of Regulation 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices

relating to Securities Market) Regulations, 1995. which reads as under :

Regulation 4 : No person shall -

- (a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;
- (b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market;
- (c) indulge in any act which results in reflection of prices of securities based on transactions that are not genuine trade transactions;
- (d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities;
- (e) pay, offer or agree to pay or offer, directly or indirectly, to any person any money or money's worth for inducing another person to purchase or sell any security with the sole object of inflating, depressing, or causing fluctuations in the market price of securities.”

67. 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. People, who indulge in manipulative, fraudulent and deceptive transactions, or abet the carrying out of such transactions which are fraudulent and deceptive, are not fit or proper persons to operate in the market.

68. Accordingly, in view of the facts and circumstances of the case and the blatant violations by SPML of the provisions formulated by SEBI for the protection of the investors, I find that a direction restraining it from accessing the securities market and dealings in the securities market for a period of FIVE YEARS would be required. The passing of such an order would be necessary for the regulation of the persons operating in the capital market and the development thereof as well as the protection of the investors.

69. In view of the above and in exercise of the powers conferred upon me under Sections 19, read with Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 and Regulation 11 of the SEBI (Prohibition of fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, I hereby restrain M/s Subhash Projects & Marketing Limited and its directors viz. Sh P C Sethi, Chairman, Emertius, Sh Anil Kumar Sethi, Chairman, Mr Subhash Chand Sethi, Vice Chairman & Managing Director and Mr Sushil Kumar Sethi, Managing Director, from accessing the securities market and dealing in securities for a period of FIVE YEARS.

70. This order shall come into force with immediate effect.

DATE: JANUARY 28TH , 2004

A.K.BATRA

PLACE: MUMBAI

**WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**