

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

**UNDER SECTION 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA
ACT, 1992**

AGAINST M/S ZOOM INDUSTRIAL SERVICES LTD.

1. M/s Subhash Projects & Marketing Limited (hereinafter referred to as 'SPML') is a listed company, whose shares 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 (hereinafter referred to as 'BSE', 'CSE', 'DSE', 'BgSE', 'GSE' and the 'UPSE' respectively).
2. M/s. Zoom Industrial Services Ltd (hereinafter referred to as 'Zoom') is an associate of SPML and also a listed company. Shri Subhash Chand Sethi, one of promoter directors of SPML, was also a director of Zoom at the relevant time.
3. SPML came out with two simultaneous (but not linked) rights issues of :
 - i. 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
 - ii. 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 issues 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).

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 to inter alia, irregular subscription, price manipulation before the rights issue, non-disclosure and misstatements in the letter of offer, violations of Debenture Trustee regulations, non-listing of shares etc.
5. SEBI initiated investigations into the above issues, vide Chairman's order dated June 08, 1999. Price volume data for SPML at various exchanges viz. BSE, CSE, DSE, BgSE, GSE and UPSE was called for and analysed. Analysis for the period April 01, 1995 to March 31, 1996 i.e the year in which the rights issues were made, 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 of these two, major volumes and trading was noted at CSE.
5. 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 that of debentures to the extent of 110.23%.
6. Subsequently, on account of certain non-disclosures, SPML was directed by SEBI to allow investors to withdraw their applications up to November 11, 1995. It was observed that HFCL withdrew applications amounting to Rs. 2 crores from the equity issue (more than 10% of the issue). This should have logically brought down the subscription of the equity rights issue from the 90.07% mentioned in the three day report. However, inexplicably, the final report showed the equity issue to be still having minimum 90% subscription, even after the withdrawal of applications amounting to 10% of the issue, by HFCL. Thus, it was clear that applications had been received after the closure of the issue, to make up for the deficit in meeting 90% subscription.
7. Investigations carried out by SEBI inter-alia revealed that –
 - I. The rights issue of SPML did not genuinely receive minimum subscription of 90% of the issue;

- II. Zoom, acting in connivance with SPML, had subscribed to a major portion of the rights issue of SPML, after the date of closure of the issue, in order to create an illusion that the rights issue of SPML had received a minimum subscription of 90%.
 - III. Zoom's subscription to the issue was funded by SPML, from the issue proceeds itself, in violation of the terms of letter of offer and provisions of Section 77 of the Companies Act.
8. In view of these findings of investigation, SEBI issued a notice dated August 30, 2002, to Zoom, 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 SEBI (Disclosure and Investor Protection) Guidelines. Zoom was 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.
9. In reply to the said notice, Zoom, vide their letter dated January, 16, 2003 inter alia submitted that they had subscribed to the said rights issue in due time i.e. on or before November, 06, 1995 (the date of closure of the issue). As regards the allegation that upon verifications of subscriptions made with certain bankers viz, Vysya Bank Limited, H. B. Sarani, Kolkata, Zoom among others, was seen to have made applications vide cheques taken from cheque books issued only on November 08, 1995 as per the bank records, based on which Zoom could have deposited these cheques for subscription to the rights issue only after November, 06, 1995, which was the last date of receiving such applications, and that these cheques were instead received with a back date after the closure of the issue, to make up the deficit in meeting 90% minimum subscription, Zoom submitted that all the cheques issued by it towards subscription for the rights issue, were deposited with the collecting bank before the date of the closure of the issue on November 06, 1995 and the receipt of these cheques were checked and duly stamped with the dates mentioned therein, as was apparent from the records available with SPML. Zoom challenged the manner in which the Vysya Bank Limited, who had received these cheques as per their stamp on November, 06,

1995, showed the same to have been issued by them, as per their records on November, 08, 1995. Zoom stated that the purported bank documents on the basis of which such allegations were made, had not been properly proved and the photocopies annexed to the show cause notice were not certified under the Bankers Books Evidence Act and the concerned persons who maintained the bank books had not prepared any affidavit and the person who had allegedly collected these cheque books had not been identified. Zoom submitted that no attempt was made to ascertain as to whether the bank's books were maintained and entries made contemporaneously. It further stated that 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 and stated that they could not be held responsible or be bound by the manner in which the bank records were maintained. Zoom further denied the contention that although they were entitled to certain rights shares, they had renounced the same, in favour of others and that soon thereafter, they had applied for shares and debentures in excess of their entitlements, using the funds provided by SPML.

10. Referring to the flow chart as brought out in the show cause notice, Zoom stated that the same did not indicate that SPML had funded them for the acquisition of those rights shares but only indicated that the overdrafts were taken by them from the Vysya Bank Limited for Rs.2 Crores on November, 09, 1995. Referring to certain payments, shown to have been made by SPML to them in the end of November to December 1995, Zoom stated that these payments were ultimately used by them to clear the above overdrafts and that this money, received by them from SPML, could not have been the money with which they applied for the shares. Zoom admitted the possibility of receiving certain payments from SPML at a later date, and also loans or other payments from other sources and reiterated that these loan amounts were not used for subscribing to the issue but for repayment of earlier loans. On the basis of the above, while seeking the inspection of the originals of all the documents as well as a right to cross examine all the persons on whose assertions reliance had been placed in the show cause notice, Zoom requested that the proceedings against them be dropped in view of the submissions made above and further requested for a personal hearing.

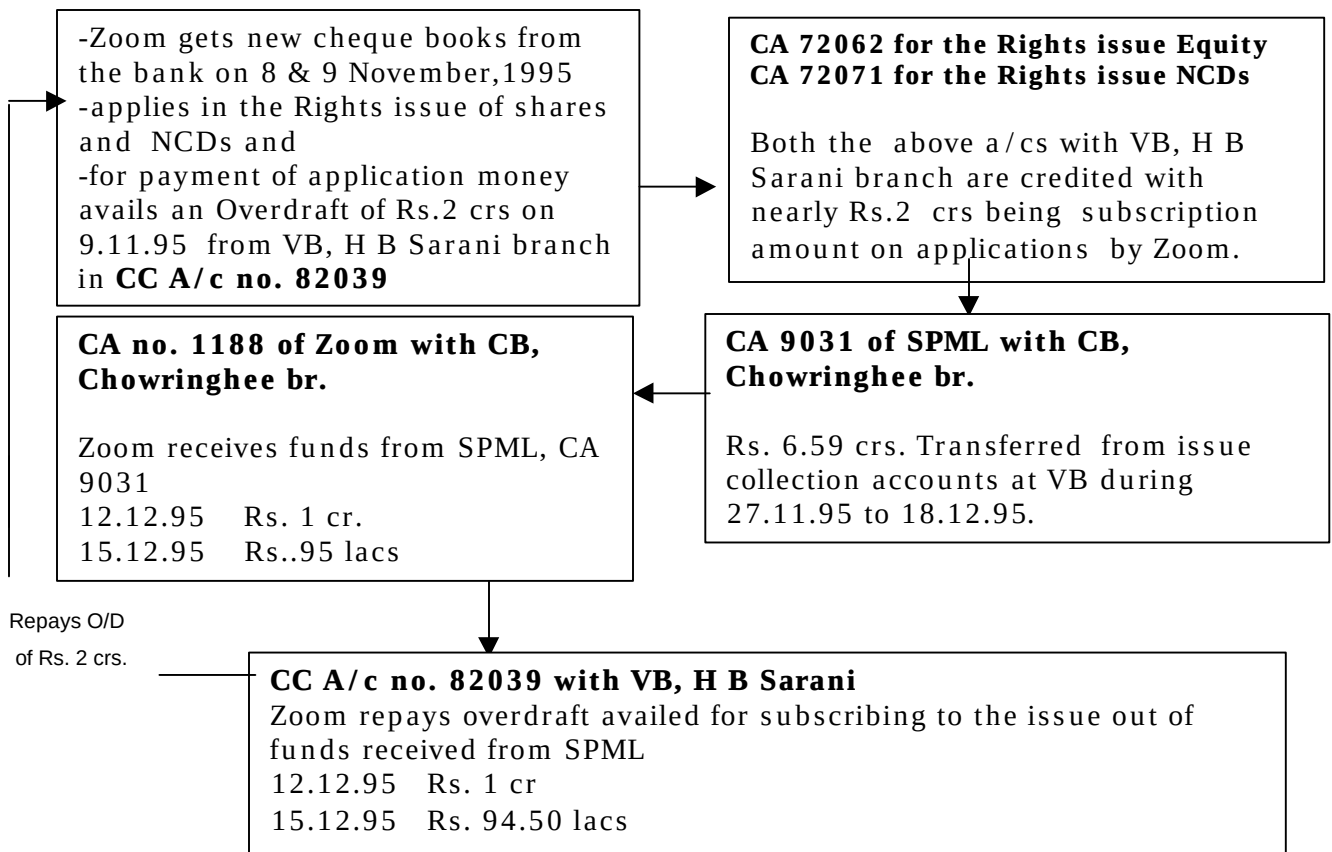
11. In view of the request for a personal hearing, Zoom was advised to appear before the Chairman, SEBI, for a personal hearing on February 12, 2003. However, after several adjournments, granted on account of their requests for the purpose of inspection of the documents, requests for the copies of the complaints referred to in the show cause notice, etc the hearing was finally held on December 02, 2003. On the said date, 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, appeared before me and inter alia stated that no action should be taken against Zoom, as the allegations contained in the show cause notice were incorrect.
12. While stating that neither the cheque books were listed serially nor were they issued chronologically, they drew my attention 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, Vysya Bank had on the one hand, claimed that the cheques books had been issued after November 06, 1995 and on the other hand, accepted the applications for the rights issue with cheques issued from these very cheque books, by putting its stamp on such applications with dates on or before November 6, 1995. It was stated that it was for the Bank to explain as to how one of its records showed the issue of a cheque book after November 6, 1995, while another set of its own records showed the receipt of cheques from this cheques book by the Bank (with application forms), on or before November 6, 1995. It was further stated that 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 in the acceptance of the applications by the Bank. In view of the above, Zoom 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 of the issue.

13. It was also submitted on behalf of Zoom that inspite 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.
14. 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 Zoom, the findings of the investigation, the show cause notice dated August 30, 2002 and the reply of Zoom to the same.
15. From the findings of the investigation, I have noted that certain allegations have been leveled against Zoom as regards the manner of subscription to the rights issue of SPML, which I shall proceed to deal with as under:
16. As per the three day post issue monitoring report dated November 9, 1995, the rights issue of equity shares of SPML was stated to be subscribed to the extent of 90.07% and debentures to the extent of 110.23%. 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 to nearly 2,81,104 shares and 1,87,403 debentures of SPML. Zoom 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), the applications being in excess of its entitlement.
17. A scrutiny of some of the composite application forms received in the issue revealed that Zoom had renounced its own entitlement in favour of others (e.g.CAF No.10488 4; 10533 3; 10260 1; 10667 4). In the end, however, Zoom had applied for shares and debentures in excess of its entitlement and they had done so even when they did not have any funds to support such applications.

The renouncing of entitlement initially and putting in applications in excess of their entitlement ultimately and that too after the closure of the issue, leads me to believe that they did not have any intention originally to subscribe; but, when the issue received very poor response from the shareholders, Zoom had, with a view to aiding and assisting their associate, put in applications after the closure, to bail out the issue.

18. I have also noted that on November 9, 1995 (after the closure of the issue), Zoom availed an overdraft of two crore rupees from the Vysya Bank Ltd. Although Zoom has stated that it had received these amounts for some other purpose, upon correlating the funds flow pattern in the bank accounts of Zoom, the rights issue accounts and that of SPML, it can be stated that the overdraft availed by Zoom was used to subscribe to the rights issue and also that the overdraft was repaid immediately after the closure of the rights issue of SPML, out of funds transferred from SPML. The same is depicted below:



The funds flow chart clearly shows that the overdraft availed of by Zoom for subscribing to the issue was repaid immediately after the closure of the issue, out of the funds transferred to its account by SPML, from the issue proceeds.

17. Further, a verification of the subscription details to the rights issue revealed that out of the three bankers to the issue, maximum collections were 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.
- ✍ 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, H B Sarani Branch, Calcutta, which were issued to and collected from the bank, by Zoom, only on 8th and 9th November, 1995 i.e. after the date of 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 leaves nos. 576481, 576392 etc. of Federal Bank. These cheque books were also issued to the relative account holders only on 8.11.1995 & 12.11.1995 i.e. after the date of closure of the issue.
- ✍ As per the 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. would have been accepted on a date which would have been subsequent to the date of acceptance for applications bearing BSN No.370, 371 etc.
- ✍ Based on the above and going by the fact that the cheques used against Zoom's applications 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 inferred 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, i.e 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% of the issue size. If these applications,

apparently submitted after closure of the issue, 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	
Valid applications	3009750	82.4% to the issue size

Thus, a major part of the subscription to the issue was brought in after the date of closure of the issue, in order to create an illusion of minimum 90% subscription having been received. In case these applications were to be disregarded, the issue is seen to have failed to receive minimum subscription. It is thus apparent that but for the active connivance on the part of Zoom with SPML, the rights issue of SPML would have failed.

18. Similarly, in the case of debenture issue also, a number of applications were made by Zoom which were accompanied by cheque leaves from cheque books issued to the applicant after the date of the closure of the issue. In any case, since the equity issue had failed to receive minimum subscription, as shown earlier, the entire composite issue of equity and debenture had also failed.
19. I would like to mention that the findings mentioned above, have been arrived at, by the investigation team, on a test check basis only, as it was not found to be possible to call for and check details of each and every bank account held by SPML. However, on the basis of the above findings alone it is clear that the issues had failed to garner minimum subscription.

20. I have noted that the three day monitoring report was apparently issued by Canbank without any independent verification, as was required of them as a registered intermediary and a reputed public institution, but merely on the basis of a certificate issued by the registrar to the issue and the company. In fact, I have noted that in this issue 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.
21. As regards the issue raised by Zoom on 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, on account of an individual act of omission and commission of an officer of the bank, who had concealed the information from the corporate office. This delinquent official is stated to have been 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.
22. In this context it would be relevant to refer to the objects of the rights issue, as mentioned in the letter of offer 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.
23. In the said prospectus, the estimated cost of project is shown 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, as seen from the investigation report and on the basis of the facts on record, which substantiate the contents of the report viz incidents such as applications being accepted after the closure date, applications accompanied by outstation cheques being accepted after the closure date, applications by SPML being accepted after the closure date, cheques which were returned unpaid being re-presented by the

registrar, especially applications by the Sethi family/ company's associates, temporary overdrafts being arranged by the banks for subscribing to the issue, which were later on repaid out of issue proceeds and applicants being funded by SPML etc, it would be logical to infer that the issue had failed to receive minimum subscription necessary to fund the objects of the issue, as stated in the letter of offer and also that Zoom acted in concert with SPML and its directors/and its associates and sought to create an illusion that the rights issue of SPML had genuinely received mandatory minimum subscription of 90%, by putting in applications after the date of closure of the issue, in order to bail out the issue.

24. The above said action is in violation of the terms of letter of offer, circulars and SEBI Guidelines on Disclosure and Investor Protection (GLIP No.1/SEBI/PMD/92-93) dated June 11, 1992 and amendments thereto, provisions of Companies Act and is not in the interest of genuine investors in the issue as well as orderly development of the capital market.
25. 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 activities that are deceptive, or abet the carrying out of such transactions, are not fit or proper persons to operate in the market. In the said case, Zoom had applied to the issue without having necessary funds to make the application, it had arranged for funds by way of an overdraft from the bank, applied after the closure of the issue and later repaid the overdraft from the issue proceeds itself. In doing so, Zoom had helped SPML in creating an illusion of subscription to the rights issues, which, in reality, had been unsuccessful in garnering adequate subscription and would have failed, if not for the artificial subscriptions managed by the issuer company/associates.
26. Accordingly, in view of the facts and circumstances of the case and the blatant violations by Zoom of the provisions formulated by SEBI for the protection of the investors, I find that a direction restraining them from accessing the securities market and dealings in the securities market for an appropriate period 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 of the capital market, as well as for the protection of the investors.

27. In view of the above and in exercise of the powers conferred upon me under Section 19, read with Section 11B of the Securities and Exchange Board of India Act, 1992, I hereby prohibit M/s. Zoom Industrial Services Limited from accessing the securities market and dealing in securities, directly or indirectly, for a period of eighteen months.
28. This order shall come into force with immediate effect.

PLACE : MUMBAI
DATE : JUNE 25, 2004

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