

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 11 OF THE SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003, READ WITH SECTION 11B OF THE SEBI ACT, 1992.

AGAINST M/S. SUBHASH CAPITAL CITY LIMITED, IN THE MATTER OF SUBHASH PROJECTS & MARKETING 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. Subhash Capital City Limited (hereinafter referred to as 'SCCL') is an associate of SPML.
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 (hereinafter 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.
6. 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%.
7. 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.

8. SEBI's investigations inter-alia revealed that –
 - i. The rights issue did not actually receive genuine minimum subscription of 90% of the issue;
 - ii. 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%;
 - iii. 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;
 - iv. The issuance of advertisement for giving additional disclosures, as directed by SEBI, had been willfully delayed ;
 - v. Applications were accepted directly and later lodged with the bankers to the issue;
 - vi. Applications were accepted accompanied by outstation cheques, which was not in accordance with the terms of the letter of offer;
 - vii. Subscription to the issue was directly or indirectly funded by the Sethi family, Zoom Industrial Services Ltd. (associate of SPML), SPML India Limited (another associate of SPML) etc.;
 - viii. SPML had advanced certain sums of monies through various entities to the entity M/s Raj Investments, for the purpose of creating illusory volumes and trading in the scrip of SPML, with a view to ensure successful subscription to the rights issue.

SHOW CAUSE NOTICE AND HEARING

9. In view of these findings of investigation, SEBI issued a notice dated August 30, 2002, to SCCL as well as SPML, its directors and associates, asking them to show cause as to why appropriate directions should not be issued against them under section 11B of SEBI Act, 1992 (hereinafter 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 (hereinafter referred to as ‘the Regulations’) and Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines.
10. As against SCCL, it was alleged that
 - a) it had, at the behest of SPML, funded the application made by SPML India Limited (another associate of SPML), in the rights issue of SPML.
 - b) SCCL had acted as a conduit for fund flow from SPML to Raj investments (Raj Inv), which had helped SPML in creating illusory volumes and trading in the scrip of SPML, with a view to ensure successful subscription to the rights issue.
11. SCCL 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.
12. In reply, to the same, Shri Subhash Sethi, Vice Chairman & Managing Director, SPML, vide his letter dated January 07, 2003, on behalf of SCCL, SPML, its directors and associates, inter-alia denied all the

allegations leveled against them as regards any irregularity in the rights issue subscription.

13. Furthermore, while seeking the inspection of the originals of all the documents on the basis of which the show cause notice was issued, SCCL requested that the proceedings against them be dropped and further requested for a personal hearing.
14. In view of the same, SCCL, SPML and its directors and associates were advised to appear before the Chairman, SEBI, for a personal hearing on January 18, 2003. However vide letter dated January 01, 2003, they sought postponement of the personal hearing and accordingly the hearing was fixed for February 12, 2003. Finally after several adjournments, which were inter alia sought for the purpose of obtaining certain documents or inspection of documents, the hearing was finally fixed for December 02, 2003. On the said date, SCCL, SPML, its directors and associates appeared before me and were represented by Shri P.C. Sen, Barrister and Senior Counsel, Calcutta High Court, Shri Rajiv Ginodia, Advocate, Calcutta High Court and Shri B.N. Choudhary, Company Secretary, SPML, who inter-alia reiterated that the said entities were not guilty of any default and that no action should be taken against them as the allegations contained in the show cause notice were incorrect

FINDINGS

15. I have taken into consideration the facts and circumstances of the case, the material available on record, which include the facts leading to the investigation, the findings of the investigation, the show cause notice dated August 30, 2002 and their reply to the same. My findings with respect to the allegations against SCCL are as under.

16. I find that SCCL has been charged with funding SPML India Limited, thereby enabling it to subscribe to the issue of SPML.
17. I find that SPML India limited had applied in the issue of SPML vide composite application form No.26, for 1,91,200 debentures, which was in excess of their entitlement. Investigations revealed that the cheque deposited along with the aforesaid application was dishonoured, as the concerned account did not have the funds to support such an application. Investigations revealed that the said cheque (No. 093817, drawn on Canbank, Chowringhee Branch, Calcutta), accompanying the application of SPML India Ltd. was found to have been returned unpaid and the application was shifted to "cheque return" schedule, by Vysya Bank, H B Sarani Branch, Calcutta.
18. It was found that deviating from the normal practice of the bank, the said cheque was re-presented on 27th November, 1995(after closure of the issue), after necessary funds had been arranged in the account, by SCCL, from whose account the cheque accompanying the application of SPML India Ltd was issued. Investigations revealed that necessary funds for honouring this cheque, upon its re-presentation, were found to have been provided by SPML, with a view to bail out the issue.
19. While disputing these findings, SCCL in its defense, stated that there was no evidence of payment made by SCCL to SPML India Ltd for the purpose of acquisition of the said shares and stated that the said cheque of SCCL and their application was made before the closure of the issue. During the recording of statement, Shri Subhash Chand Sethi, VC & MD SPML even denied that any application had been made by SPML India Ltd vide application no. 26. However, I have noted that the bank schedule had listed the aforesaid application against BSN 282, clearly indicating that such an application had been indeed made by SPML India Ltd.

20. Significantly, as against the statements made earlier, during the course of the personal hearing 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 re-presentation after the closing date, while the remaining cheques were presented before the closing date. Thus, there is a clear contradiction in the stand of the concerned entities in this matter, indicating non transparency as regards their actions in the issue process.
21. Taking into account the findings of the investigation, it is clear that this act of SCCL, of funding the application of SPML India Ltd., at the behest of SPML, goes against the terms of offer document, besides being detrimental to the interest of the capital market, as the issue would have failed, if not for these measures taken by the issuer, along with its associates. Thus, SCCL, acting in concert with SPML and its directors, by its actions, not only perpetuated a fraud in the capital market, but in the process, adversely affected the rights of the innocent investors who subscribed to the issue.
22. As regards the allegation regarding SCCL's role in creating illusory volumes and trading in the scrip of SPML with a view to ensure successful subscription to the rights issue, I have noted that during the investigation process, the entities under discussion were not very forthcoming on the issue. Consequently I am constrained to proceed on the issue, based on the information available on record and the submissions made by them thereafter.
23. I have perused the price volume data provided by the BSE & CSE, from which it is clear that the daily volumes around the rights issue time were quite high. At BSE, brokerwise analysis showed that mainly two brokers

were active at the counter and their client was an entity named Raj Investments of Calcutta.

24. I find that Raj Investments had dealt in the shares of SPML through many brokers at CSE also. I have also noted that CSE witnessed maximum trading in the scrip during the period 01.04.1995-31.03.1996. The entity Raj Investments was found to be one of the largest client of D K Singhania (DKS), a Calcutta based broker, found to have been one of the top brokers in the scrip. In addition, Raj Investments had traded in the scrip through other brokers also. Apart from this, Raj had entered into many off-market transactions and the volume of trades in the off-market transactions was found to be higher than their trades on the exchange. It was found that Raj Investments had dealt in the shares of SPML through more than half a dozen brokers and the gross traded quantity was over 20 lac shares, an amount equal to the total gross volume of major dealing brokers.
25. Having examined the funds flow, traced from SPML's account to Raj investments, via four finance companies (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) , I have noted that the amounts received by Raj Investments, from SPML (routed through the four finance companies mentioned above) were immediately paid to various brokers, who were seen to have used this money for dealing in the shares of SPML, as also for subscribing to the rights issue.
26. Funds flow analysis has also established that SPML itself, again provided funds in March 1996, through a circuitous route, to the aforesaid 4 finance companies, thereby enabling them to return the amount advanced earlier, perhaps with a view to ensure that SPML books show no outstanding

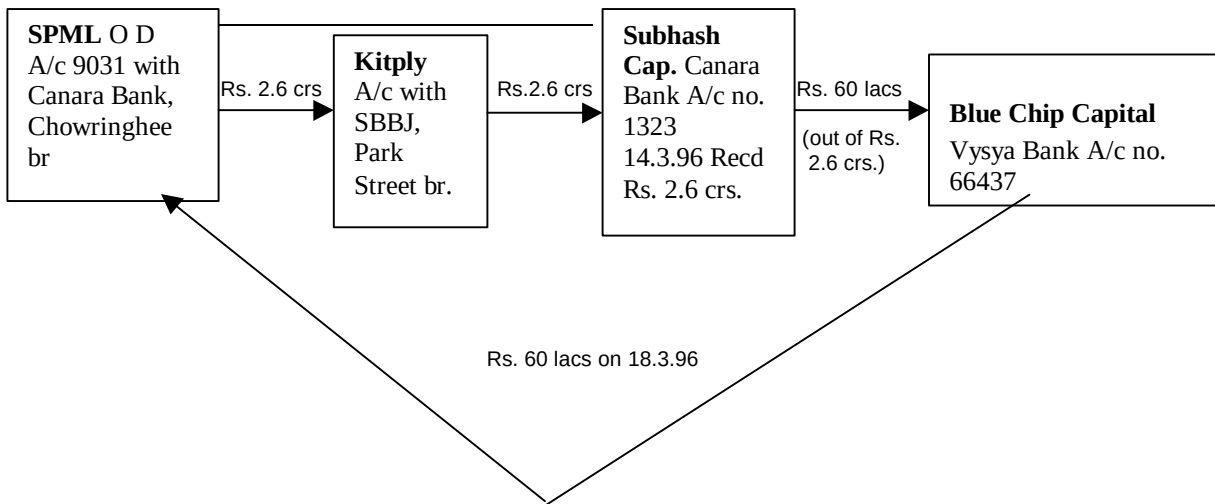
against these 4 companies as on 13.3.1996. This leg of the transaction used SCCL's account for routing the monies to the finance companies.

27. The same can be seen from the flow chart showing the transfer of funds from SPML to the finance companies, for refunding sums advanced earlier by SPML.

Funds flow from SPML to the finance companies,

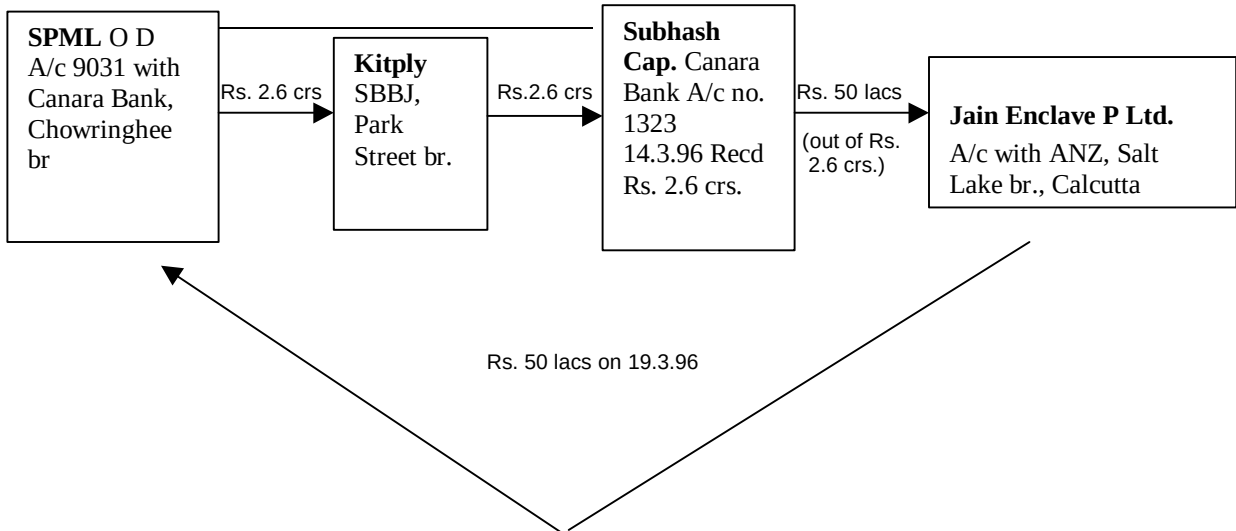
Blue Chip Capital Market P Ltd.

March 13, 1996



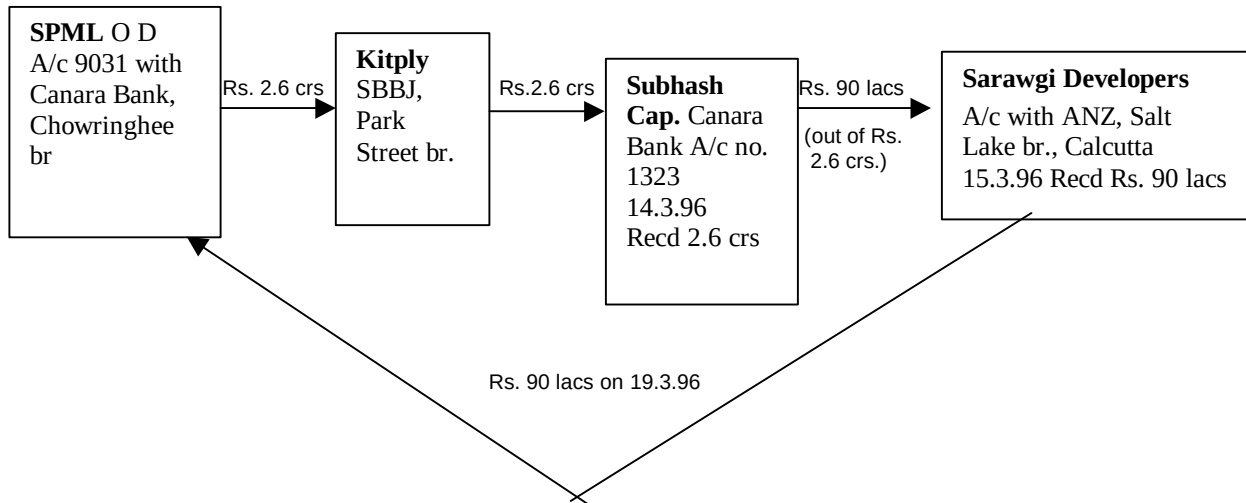
Jain Enclave P Ltd.

March 13, 1996



Sarawgi Developers P Ltd.

March 13, 1996

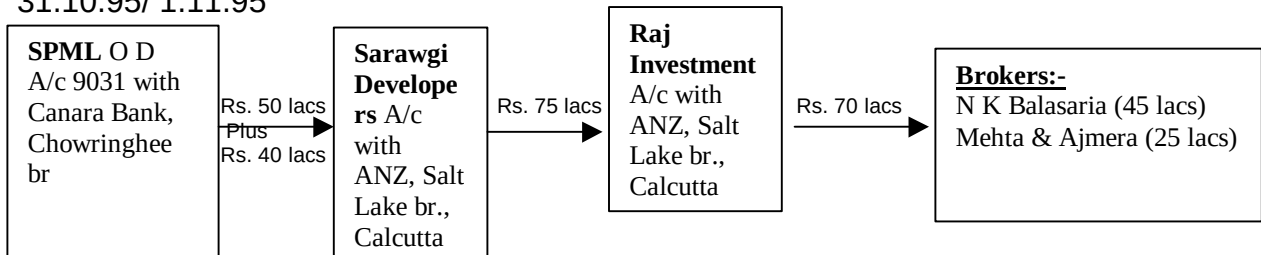


28. Raj Investments had claimed that the monies were given for the purpose of dealing in the shares of SPML. However, I have noted that there are counter claims by Shri Sethi/SPML, to the effect that the monies were advanced for the purchase of a certain property at Calcutta. Since the claims of both the parties are contradictory, I have drawn the necessary inferences based on the circumstances, funds flow, records available and probable motives of the parties involved. On this basis, the position taken by Raj investments is found more plausible and acceptable inter alia for the following reasons:

✍ Funds flow in bank accounts of concerned entities clearly establish that the amount purported to have been advanced to the 4 companies by SPML in October / November 1995 for acquisition of certain property were immediately paid out by Raj Investments to various brokers who had dealt in the scrip of SPML through Raj Investments, as depicted below for one company.

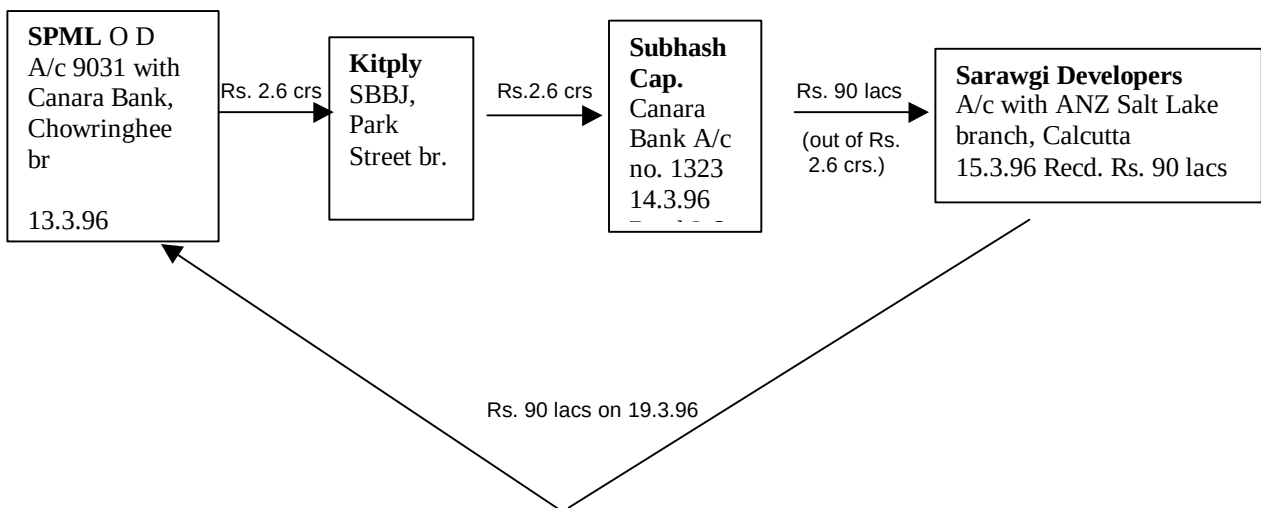
Flow of funds for amount transferred by SPML to Sarawgi Developers Pvt. Ltd.

31.10.95/ 1.11.95



Subsequent refund of money by Sarawgi Developers P Ltd.

13.03.96



The 1st flow chart shows the fund flow from SPML, through one of the finance companies, to Raj Investments, who gave the funds to the brokers, who were found to have traded heavily in the shares of SPML. From the 2nd flowchart, it can be seen that SPML had used a circuitous route to pass on the amount to the four companies, through SCCL, who in turn have remitted the amount back to SPML. Thus, the four companies had refunded the amount in full or part to SPML in March 1996 upon receiving a like sum of amount from SCCL, the associate of SPML (also in turn funded by SPML.)

- ✍ SPML had apparently advanced the sums to the four companies free of interest. Such lending by SPML becomes suspect at a time when they were themselves accessing the capital market for raising further capital for their own needs.
- ✍ The billing done by Raj investments, for dealings in SPML shares, include bills raised against some companies which could be identified as associates of SPML.
- ✍ SPML came out with a right issue of equity shares at Rs. 200 per share, which opened on 6th October, 1995 and closed on 6th November, 1995. SPML therefore had a good motive to ensure that their 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.
- ✍ SPML claimed to have advanced monies in October, 1995 to the 4 companies towards the acquisition of the land and premises no. 14A, Beliaghata Main Road, Calcutta, for being utilised for payment towards the price thereof, as and when the said property was caused to be transferred in favour of SPML by the directors of the said four companies and / or their relatives. SPML further claimed that the 4 companies changed their minds about the said property sometime in February 1996 and agreed to return the moneys advanced, which they did in toto, save and except Vardhman. I find it interesting to note that SCCL, in their petition before the court, against two of the four companies viz. Jain Enclave & Sarawgi, had also claimed that the sums were lent and advanced to the said two companies towards acquisition of the same land and premises, for which SPML had claimed that they had advanced monies earlier and which were refunded to them because the deal did not materialise. However it is inexplicable as to why SCCL, an associate of SPML, should advance monies to the same companies for the same property, at a later date.
- ✍ In their petition, SCCL claimed that in March 1996 they had lent and advanced the sum to the two companies for acquisition of the land and

premises. In the same petition, in a subsequent paragraph it has been further claimed that prior to 09.02.96, the directors/relatives of the two companies changed their mind due to increase in the price of the said property and agreed to repay the amount on or about 09.02.96. The said claim by itself is contradictory if the two companies had changed their minds about the property in February 1996, SCCL should not have lent and advanced the sum at all.

- ✍ It is also pertinent to mention here that the cheques of SCCL favouring Sarawgi, Jain Enclave and Blue Chip were apparently signed by Shri Subash Chand Sethi himself, who as managing director of SPML was authorised to negotiate the property deal on behalf of SPML and hence was fully aware that the purported deal did not materialise. It therefore appears that SCCL had advanced the money not for purchase of the property but in fact to enable the two companies to repay SPML.
- ✍ Three out of four companies against whom SPML/SCCL have filed suits for recovery of money have denied and disputed in their reply filed before the court that the monies were lent or advanced to them towards the acquisition of land or premises. They have stated that they are in no way connected with the said property and have claimed that they never had nor have any right, title and interest in respect of the Premises no. 14 A, Beliaghata Main Road, Calcutta and none of its directors or shareholders had or has any right, title or interest in the said property.

29. A collective reading of the above facts indicates that SPML had indeed paid certain sums of monies to the four finance companies of Raj investments and that the monies so paid were immediately given to brokers, through whom Raj Investments dealt in the shares of SPML. The repayment of monies by the four companies to SPML was also funded by SPML. Thus SPML's claim that the sum was advanced for purchase of certain property appears to be untrue, in view of the facts and

circumstances mentioned above and appears to be a ploy to cover up the actual purpose of such payments.

30. I have also noted that the SPML shares were quoting around Rs.125/- around August 1994 and went up to around Rs.275/- by March 1995, just prior to the rights issue. It is thus apparent that an exercise was undertaken with a view to increase the price of SPML shares and thereafter efforts were on to maintain the price of SPML shares around the range of Rs.250/- to Rs.275/-, till the rights issue of SPML was complete, in November, 1995. Going by the circumstances, funds flow, records available and probable motives of the parties involved, it can be inferred that SCCL, along with other entities like Raj Investments, were taken in as accomplices 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, in violation of Regulations 4 (a) to 4(e) of FUTP Regulations. Having been a party to above mentioned proceedings; SCCL is liable for action in terms of the said regulation and the Act.
31. 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 read 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."*
32. 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/entities who indulge in manipulative, fraudulent and deceptive transactions, or abet the carrying out of transactions which are fraudulent and deceptive, are not fit or proper persons to operate in the market.
33. Accordingly, in view of the facts and circumstances of the case and the blatant violations by SCCL of the provisions formulated by SEBI for the protection of the investors, I find that a direction prohibiting them from accessing the securities market and dealings in the securities market would be required. The passing of such an order would be necessary for the regulation and development of the capital market as well as for the protection of the investors.

ORDER

34. 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 prohibit M/S Subhash Capital City Limited from accessing the securities market and dealing in securities for a period of two years.

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

A.K.BATRA

PLACE : MUMBAI

DATE : August 17th, 2004

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA