

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 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.**AGAINST M/S 20TH CENTURY ENGINEERING LIMITED, IN THE MATTER OF SUBHASH PROJECTS AND MARKETING LTD.****BACKGROUND**

1. M/s 20th Century Engineering Limited (hereinafter referred to as "20th Century") is:
 - i. An associate of M/s. Subhash Projects & Marketing Limited (hereinafter referred to as "SPML"), a company whose shares are listed for trading on The National Stock Exchange of India Ltd. (hereinafter referred to as "NSE").
 - ii. one of the promoters of M/s Neon Vinimay Pvt. Limited, a trading member on the capital market segment of NSE.
 - iii. An associate of M/s SPML India Ltd.
2. The directors of 20th Century are Shri Subhash Sethi, Shri Anil Kumar Sethi and Shri Sushil Kumar Sethi, with Shri Subhash Sethi being a director of Neon and SPML India Ltd also.
3. Investigations were conducted into the trading in the scrip of SPML, for the period April 03, 2002 to June 14, 2002.
4. During the course of the investigations, it was noticed that the share price of SPML had fallen from Rs.45/- to around Rs.20/- during the period April 10, 2002 to May 27, 2002. It was seen that 20th Century had traded in the shares of SPML in 7 settlements during the period under investigation and the traded quantity of 20th century was a significant percentage of the total traded quantity at NSE. It was observed that the trades of 20th Century, in SPML, were done through Neon. It was further observed that the counter party to most of these trades was SPML India Ltd, associate company of both 20th Century and Neon.
5. Thus, it appeared that 20th Century had entered into transactions which were not genuine.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. In view of the above findings, SEBI issued a notice dated August 5, 2003, to 20th Century, 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 SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Markets) Regulations, 1995 (for brevity's sake hereinafter referred to as 'the Regulations') for having allegedly entered into transactions which were not genuine and indulging in acts which were calculated to create a false or misleading appearance of trading on the securities market, while trading in the scrip of SPML, which was its associate company; through its broker Neon, which was also its associate, with the counter party for most of the said transactions also being another associate company, SPML India Ltd.
7. 20th Century was directed to reply to the said notice within 15 days of the receipt of the notice 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 to the same, 20th Century, vide their letter dated October 6, 2003, while denying the charges leveled against them, inter-alia submitted that the sale of shares of SPML by them, against payment, could not amount to creating a false or misleading appearance of trading on the securities market. It was submitted that the said sales were genuine and there was no restriction in law on a company like them in selling shares of another company like SPML. It was submitted that while the expression "false and misleading appearance of trading" clearly conveyed an idea that there was in fact no actual trading, in their case, the very allegation leveled against them showed that there was actual trading, which was in fact quantified as being 41.28% of the total gross quantity for the period under scrutiny. 20th Century challenged the fact that no material had been disclosed as against them, apart from narrating certain so-called suspicious circumstances, to establish that there was any false or misleading transaction or that anybody had calculated to create such false or misleading appearance of trading or anybody was actually deceived by such calculation and by such allegedly false and misleading transactions. It was stated they had not violated any of the provisions of the Act or Regulations and consequently the provision of the Act or Regulation 11 and 12 of the Regulations, would not apply in their case.
9. 20th Century challenged the validity of the proceedings and stated that the show cause notice was issued without any lawful and valid basis and the same was therefore, bad in law. 20th Century also challenged the issuance of the notice by the investigation officer as being not permissible in law on the ground that it had not been issued by the Board as per the

provisions of the Act. 20th Century also sought the inspection of the originals of all the documents on the basis of which the show cause notice was issued, and requested that the proceedings against them be dropped.

10. In reply to the same, SEBI vide its letter dated November 20, 2003, informed 20th Century that the trading details provided by the NSE, as well as the undeniable interconnection existing between themselves, SPML and Neon had been taken into consideration for the said purpose and further advised it to indicate as to whether they desired a personal hearing. However, 20th Century failed to reply to the said letter.
11. Since 20th Century has not indicated their desire to appear before me for a personal hearing, the same is accordingly dispensed with and I will proceed to decide the case taking 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 5, 2003 issued to 20th Century and their reply to the same.

FINDINGS

12. From the records on hand, I have noted the details of dealings done by 20th Century during the period under investigation, which is as follows:-

SN	SN Date	Buy Qty	Sell Qty	Client Gross	% Gross to Mkt Gross	Client Net
2002064	3-Apr-02	0	4500	4500	49.87	(4500)
2002067	8-Apr-02	0	5000	5000	46.06	(5000)
2002095	20-May-02	5001	5001	10002	100.00	0
2002096	21-May-02	0	10001	10001	50.00	(10001)
2002098	23-May-02	0	20000	20000	50.00	(20000)
2002099	24-May-02	0	20000	20000	50.00	(20000)
2002100	27-May-02	0	10000	10000	50.00	(10000)
	TOTAL	5001	74502	79503		(69501)

13. I have noted that 20th Century has traded in 7 settlements during the period under investigation. I have also noted that :
- The traded quantity of 20th Century, as compared to the gross traded quantity in the market, is shown to have ranged from 46.06% to 100%.
 - The gross traded quantity of 79,503 shares in the aforementioned 7 settlements amounted to 41.28% of the gross trading volume at NSE, for the entire period i.e April 03, 2002 to June, 2002.
 - Its net sale position of 69,501 shares (is shown to have been totally bought by its associate company viz. SPML India Ltd.
14. I have noted that 20th Century has not denied their investment to this effect. However, they have not enlarged on this issue, other than stating that sale against payment did not amount to creating a false or misleading appearance of trading on the securities market.
15. I have also noted that 20th Century has not touched upon the fact that it was found to have traded through one of its associate companies viz. Neon as also the fact that Shri Subhash Sethi was a common director of 20th Century, SPML India Ltd & Neon, apart from stating that there was no law which prohibited sale of shares of a company like SPML.
16. Hence, in view of the fact that 20th Century did not place any other information/details on record, to rebut the details of its trading, as recorded in the investigation report/show cause notice, it can be stated that the said information is undisputed.
17. I, therefore, take it as a fact that the trading of 20th Century, in the shares of SPML, accounted for a significant percentage of the total trades on NSE, during the period under investigation. I also observe that on one day 20th Century accounted for 100% of the turnover on the exchange, accounting for both buy and sell side of the transaction. I have also noted that 87% of the shares sold by 20th Century were bought by its associate, SPML India Ltd., with Neon being the common broker to both entities.
18. Taken cumulatively, the above facts lead one to believe that the trades under consideration were non-genuine and were meant to serve purposes other than that of ordinary trading in the market.

19. However, I have also noted the fact that these trades were restricted to only 7 settlements and did not amount to a significant volume, on an absolute basis. That being the case, it cannot be said that there was a mala fide intention on the part of 20th Century to create a false market or fool any investor or to manipulate the share price. I have also noted that NSE had not imposed any circuit on the shares of SPML, on either the lower or the upper side, which would have been the case, if there was volatility in the shares of SPML during the relevant period.
20. Incidentally, I have noted that Neon too was charged on the same count, on the basis of its trading pattern i.e. being aware of the identity of the counter parties in the trade and the fact that both sides of the trades were done by their associate companies. I have noted that this forum had held Neon guilty of the said charge, and has levied a penalty of suspension of its registration for a period of one month.
21. As regards the issues raised by 20th century on the matter of validity of the investigation proceedings, I have observed that SEBI had analysed the trading details forwarded by NSE and had observed that a prima facie case had been made out against 20th century, as regards its role in indulging in non-genuine transactions. Hence, the material provided by NSE was considered sufficient to proceed against 20th Century. Besides, there was unquestionable inter-connection between 20th century, SPML, SPML India Ltd. and Neon, which remains undisputed till date. In view of these reasons, the question of SEBI initiating a separate investigation against 20th Century did not arise. Hence, the argument put forth by 20th Century on the issue of legality of the investigation proceedings, is untenable. In any case, nothing prevents SEBI from proceeding against an entity on the basis of information provided by another agency, if the information provided is considered sufficient for the purpose of initiating the necessary action.
22. The principal object of the SEBI Act and the regulations framed there under is to advance the twin objects of investor protection and promotion and development of the securities market. From the findings above, it is clear that 20th Century had indulged in non-genuine transactions.
23. 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)*
- (b)) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market;*
- (c)*
- (d)*
- (e)*
24. 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.
25. In the case of 20th Century, in view of the findings regarding pattern of trading, gross volumes traded in the scrip of SPML, the shares, broker and counter party being associates etc, lead to questions, for which no adequate explanations have been offered by 20th Century, I hold 20th Century guilty of having violated the provisions of regulation 4(b) of the FUTP Regulations.

ORDER

26. In view of the above, 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 direct that M/s 20th Century Engineering Limited be prohibited from associating with any corporate body in accessing the capital market and also be prohibited from buying, selling or dealing in securities, directly or indirectly, for a period of 1 (one) year.
27. This order shall come into force with immediate effect.

PLACE : MUMBAI

DATE : AUGUST 19, 2004

**A.K.BATRA
WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA