

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 NEON VINIMAY PVT LTD, MEMBER, NATIONAL STOCK EXCHANGE OF INDIA LTD., 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 (for brevity's sake, hereinafter referred to as 'BSE', 'CSE', 'DSE', 'BgSE', 'GSE' and the 'UPSE' respectively).
2. M/s Neon Vinimay P Ltd. (hereinafter referred to as 'Neon') is a trading member on the capital market segment of the National Stock Exchange of India Ltd. (NSE), having SEBI Registration Number INB230910030 and is promoted by Subhash Capital City Ltd. (now known as International Constructions Ltd.) and 20th Century Engineering Ltd, both being associate concerns of SPML. The directors of Neon are Shri Paras Mal Jain and Shri Subhash Chand Sethi (who is also the Vice Chairman & MD 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. 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 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.
6. Thereafter SEBI carried out preliminary investigations and based on the preliminary investigation report; vide its order dated June 8, 1999, ordered the case for formal investigation. Upon the completion of the same, the 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 by SPML;
 - v. SPML accepted applications directly and later lodged them with the bankers to the issue;
 - vi. SPML accepted applications accompanied by outstation cheques, which was not in accordance with the terms of the letter of offer;
 - vii. SPML had directly or indirectly funded the subscription to the issue by Sethi family, Zoom Industrial Services Ltd., SPMLIL etc.;
 - viii. 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 ensure successful subscription to the rights issue.

7. In view of these findings of investigation, SEBI issued a notice dated August 30, 2002 to Neon as well as SPML, its directors and associate companies 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') and Securities and Exchange Board of India Disclosure and Investor Protection Guidelines. Neon 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 the meantime, investigations were conducted by the NSE for a different period i.e. April 3, 2002 to June 14, 2002 (Sett. No. 2202064N to 2202114N) in the matter of the trading in the scrip of SPML. It was alleged that the price of the scrip of SPML had fallen from Rs.45/- to around Rs.20/- during the period April 10, 2002 to May 27, 2002 and that Neon had acted as a broker and entered into transactions on behalf of two of its associate companies namely 20th Century Engineering Ltd and SPML India Ltd, in the scrip of other associate company viz. SPML and also entered into cross deals for the said clients, even though it was aware that both were associate companies and also associate companies of SPML. It was noted that that Neon had dealt on behalf of the said two major clients (associated with SPML) and these trades accounted for more than 80% of the total gross quantity traded in the market during the entire period. It was seen that apart from some proprietary trading and trading on behalf of the aforesaid two clients, some other clients viz. Suman Jain, Sarita Jain, Mayank Securities Pvt. Ltd had dealt through Neon in the shares of SPML
9. On the said basis, SEBI issued another show cause notice dated August 1, 2003 to Neon calling upon it to show cause as to why appropriate directions should not be issued against it under Regulation 11 & 12 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Markets) Regulations, 1995 read with section 11B of SEBI Act, 1992. In reply to the show cause notices, Neon vide its letter dated August 23, 2003 inter alia submitted that during November, 1995 i.e the period of the rights issues of SPML, it was not registered as a SEBI Broker, but was a mere group company of SPML, having been promoted by two of the other group companies namely; Subhash Capital City Limited and 20th Century Engineering Ltd. It was submitted that Neon was registered as a SEBI registered NSE broker only on May 20, 1996 under INB No.230910030.Hence the subject matter of the charge against it was a pre-registration charge. It was stated that although Subhash Capital City Limited had been issued a notice along with it on August 30, 2002, 20th century Engineering Ltd. was not issued a notice. It was further stated that in the notice dated August 30, 2002, not a single allegation was leveled against Neon individually. It was submitted that it was not a broker and /or a participant in the said issue and the only involvement prior to registration as a broker was acquiring approximately 8000 shares under the rights issue, against payment of the value of Rs.16 lakhs at the rate of Rs.200/-, as against the total quantity of shares under the rights issue worth Rs.73 crores approximately. Neon stated that unconnected with the said investigation proceedings, in March 2003 in respect of NSE settlement nos.64 to 114 i.e. 50 settlements spread over the period from April 03, 2002 to June 14, 2002, it had traded in 31 settlements only, much beyond the period covered by the show cause notice dated 30.08.2002 and that thereupon investigation was conducted by NSE, where after NSE issued a letter dated April 07, 2003 as regards the trades in the shares of SPML. In reply to the same, Neon, vide letter dated April 09, 2003 had replied that it had executed transactions on a pure profession basis (brokerage earning) without any intention of creating a false market in the security and that since their client M/s. 20th Century Engg. Ltd. was in need of funds, they had sold the shares to their sister concern M/s. SMPL India Ltd. through the market and as such it was only a transfer of holding between their sister concern. It was further stated that the trades had been entered into over a span of time as the process of dematerialisation of the securities had been done in batches. As regards the trades entered for two other clients viz, M/s. Mayank Securities Pvt. Ltd. & Mrs. Sarita Jain, it was stated that the said entities were pure investors who had sold their securities in the market as per their desires. As such not a single share had been delivered into the open market and it was clear and evident that there was no malafide intention of creating a false market or fooling any investor. Neon stated that the trades in any proprietary code had been very small to effect any market manipulation. It was submitted that the scrip of SPML was listed on other stock exchanges also with not much trading, which again clearly suggested that there was no wrong intentions behind the trades.
10. With regard to the allegation that the trades executed by Neon accounted for more than 80% of the total gross quantity for the market for the entire period under scrutiny, in the year 2002 and that they had executed cross deals on behalf of their clients, Neon reiterated that SEBI had not conducted any investigation in this regard and that during the entire period from April to June 2002, they had executed only 31 trades. It was stated that all their trades were delivery based and in respect of the scrip of SPML, NSE had not imposed any circuit whether on the lower side or on the upper side, which clearly showed that during this period there was not much market volatility which could have justified NSE surveillance and/or imposition of any circuit breakers. No participant in the market had traded in such a manner which would justify imposition of circuit breaker and therefore, the allegation of market appearance and making false market was without any basis. It was further stated that no evidence has been brought out to indicate that they had executed cross deals, and Suman Jain, Sarita Jain and Mayank Securities Pvt. Ltd. were only their customers, while the other two entities namely 20th Century Engineering

Ltd. and SPML India Ltd. were their group concerns. Hence, the trades for the non associate companies could not have any bearing to the charges leveled. It was further provided that although they had traded in 22 settlements, all the trades were delivery based and had no relevance whatsoever to the charges levelled. It was stated that there were no cross deals, although there was a trade which could be called a cross deal in which there were seven transactions but each transaction pertained to a single digit quantity of shares and hence was of insignificant value and could not be the basis of the charges now leveled.

11. Neon denied that during the period April 10, 2002 to May 27, 2002, the scrip of SPML had fallen from Rs.45/- to Rs.20/- and stated that instead the price which was Rs 23.95 on April 03, 1992 and had gone upto Rs.30/- on June 14, 2002. Neon denied indulging in any act which was calculated to create a false or misleading appearance of trading on the securities market and submitted that all the trades executed by them, except 7 trades were all delivery based, for which the price was paid and the shares were subsequently transferred to the full account of clients and then forwarded to the concerned parties. Neon enclosed the evidence in support thereof and enclosed a bank statement to support and corroborate their submission. Neon referred to the daily transaction sheet of the NSE which showed that they raised the trade only between 10 to 10.30 a.m. on a single occasion on the day of transaction whether it was for a buyer or seller, while the rest of the trading day was left open for the remaining investors. It was stated that their daily sheet and the daily transactions statements of NSE did not show repetitive transactions on the same day, which showed that there was no manipulative intention, to create a false market or to practice deception or fraud or manipulate the price for the scrip. On the said basis Neon stated that they had not created a false market or sought to indulge in an act detrimental to an investor or interfere with the smooth and fair functioning of the market nor involved in excessive speculative business in market beyond the reasonable level and beyond their financial capacity. Neon submitted that it consisted of single office with 5 members serving as staff without any branches anywhere in the country and that they were the smallest broker in the country.
12. Neon questioned the action initiated by SEBI on the ground that although they had made their submissions during the course of the hearing held before the NSE on or about 12.06.2003, no action had been initiated by NSE since then, either under the NSE Bye-Laws, rules or regulations. Despite that same, after nearly four months and without any independent investigation conducted by SEBI, as was mandatorily required by SEBI as the apex regulatory authority, SEBI had issued them the show cause notice dated August 01, 2003 relying on a third party investigation. It was stated that since there was no pre-show cause notice, followed by a report submitted to the Board and no direction obtained thereof, the show cause notice issued under Regulation 11 was otherwise incompetent and not maintainable. Referring to Regulation 10, which also required the Board to give them an opportunity before issuing any show cause notice, it was stated that SEBI had issued a notice at the investigation stage and hence reference to the said Section 11B was premature and Regulation 11 had been wrongly invoked in the absence of omission to comply with Regulation 10.
13. Thereafter, on the basis of their request for a personal hearing, an opportunity of hearing was granted to them. Shri P.M Jain appeared before me for the personal hearing on December 02, 2003. He was represented by Shri Bharat Merchant, Advocate, who, while reiterating the contentions advanced earlier by Neon once again stated that Neon was not guilty of any default and no action should be taken against them.
14. I have taken into consideration the facts and circumstances of the case, the material available on record which includes the facts leading to the investigation, the findings of the investigation, the show cause notices dated August 30, 2002 and August 1, 2003 issued to Neon and its their replies to the same annexed with the documents to substantiate their stand.
15. I have noted that in the first show cause notice dated August 30, 2002, not a single allegation has been directly leveled against Neon. There is a passing reference to their having received shares of SPML from one M/s Raj Investments, who was alleged to have traded heavily in the shares of SPML during the rights issue of SPML, so as to create volumes in the shares and to maintain the share price, in order to induce investors to take part in the rights issue of SPML. The only involvement of Neon in the issue is its acquisition of 8000 approximately shares under the rights issue, against payment of the value of Rs.16 lakhs at the rate of Rs.200/- as against the total quantity of shares under the rights issue worth Rs.73 crores approximately. These figures do not seem so shocking so as to necessitate initiation of proceedings for manipulation in the market. On account of the lack of evidence regarding any significant role of Neon in the various irregularities noticed in the rights issue of SPML, I am unable to reach a conclusion regarding any misdeeds on their part, as regards the rights issue of SPML.
16. As regards the trades of Neon in the shares of SPML during the period April 3, 2002 to June 14, 2002 (Sett no 2202064N to 2202114N), I have observed that
 - i. The trades of Neon accounted for more than 80% of the total gross quantity for the market for the entire period under scrutiny.
 - ii. Most of these trades were done for their associate companies, SPML India Ltd. and 20th Century Engineering Ltd, leading to a situation where the broker, the counter parties and the company whose shares were traded were all associated with each other.

iii. Neon had executed 21 cross deals for a gross traded quantity of 1,49,024 shares, buying on their own account and for the clients SPML India Ltd, and selling on their account and for the client 20th Century Engineering Ltd.

17. I have noted that Neon has not denied their investment to this effect. Neither has Neon put forth any other information/details on record, to rebut the details of its trading, as recorded in the investigation report/show cause notice. Hence it can be stated that the said information is undisputed. The details of the trades above 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. Hence, I am of the view that Neon had entered into transactions on behalf of their associate companies which are not genuine trade transactions and indulged in acts which were calculated to create a false or misleading appearance of trading on the securities market which is in violation of Regulation 4(b) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Markets) Regulations, 1995. Further it is also violative of Clause A(3) & A(4) of Code of Conduct specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.
18. However, I have also noted that it has not been established that the above trades of Neon had resulted in any distortion in the market or that anybody was actually deceived by the trading of Neon. Nor is there any finding that the trades had resulted in artificial volumes which increased /maintained the price of the SPML shares. The same argument also holds good for the allegation regarding cross deals.
19. Incidentally, I have noted that 20th Century too was charged on the same count, on the basis of which this forum had held 20th Century guilty of the said charge, and has levied a penalty of prohibited 20th Century 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 one year.
20. 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, more specifically those at point 16 and 17 above, I am of the view that a suitable penalty ought to be levied on Neon for having indulged in non-genuine transactions.
21. 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) *....."*
22. 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.
23. Accordingly, in view of the facts and circumstances of the case, and for the protection of the investors, I find that an appropriate penalty ought to be levied on Neon. 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.
24. 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 direct that the certificate of registration of M/s Neon Vinimay Pvt Ltd, member, NSE, having SEBI Registration Number INB230910030, be suspended for a period of one month.
25. The order will come into effect on expiry of three weeks from the date of this order.

PLACE : MUMBAI

DATE : AUGUST 19, 2004

A.K.BATRA
WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA