

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 SPML INDIA LTD, IN THE MATTER OF SUBHASH PROJECTS AND 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. SPML India Limited (hereinafter referred to as 'SPMLIL') is an associate of SPML and also a listed company.
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. As per the three day post issue monitoring report 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%.
5. 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. 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. One of the applications made was of SPMLIL, for 1,91,200 debentures (8% of the issue size). However, as per the Letter of Offer for the rights issue of SPML dated 19th September, 1995, under the head "Financial/ other interest of Group Companies as on 31st March, 1995", SPMLIL was shown to be holding only 7500 shares of SPML; and on this holding, they were entitled for only 3000 debentures of SPML. Thus, it appeared that they had applied for debentures in excess of their entitlement.
7. 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, it was 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, including SPMLIL, 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 an 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.

8. In view of these findings of investigation, SEBI issued a notice dated August 30, 2002 to SPMLIL as well as SPML and its directors, 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 'FUTP Regulations') and Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines.
9. As against SPMLIL, it was alleged that SPMLIL had applied for the rights issue after being funded for the same by SPML itself, the monies having been routed through Subhash Capital City Limited, another associate of SPML.
10. SPMLIL had applied vide composite application Form No.26 for 1,91,200 debentures, which was found to be in excess of their entitlement. Upon investigation, it was revealed that the concerned bank account did not have funds to support such an application and the cheque no. 093817, deposited along with the application of SPMLIL was dishonoured. The said cheque was subsequently re-presented on 27.11.1995, after necessary funds had been arranged in the concerned account. These funds were found to have been arranged by their associate Subhash Capital City Limited (in turn funded by SPML) and the same was done so to ensure 90% subscription. SPMLIL 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.
11. In reply, to the same, Shri Subhash Sethi, Vice Chairman & Managing Director, SPML, vide his letter dated January 07, 2003, on behalf of SPMLIL, SPML and its directors, denied all the allegations leveled against them as regards any irregularity in the rights issue subscription, made through various complaints. With reference to the allegations made against SPMLIL, it was submitted that although it had applied for debentures and the cheque presented by it was dis-honoured, the same cheque had not been re-presented. Instead a different cheque was issued by a different party namely, Subhash Capital City Limited, in favour of SPML, for allotment of debentures. It was stated that there was no evidence of payment made by Subhash Capital City Limited to SPMLIL for the purpose of acquisition of the said shares and the cheque of Subhash Capital City Limited and their application was before the closure of the issue.
12. As regards the allegation that one M/s Raj Investments had dealt heavily in the shares of SPML during the period of the rights issue of SPML, at the behest of Shri Sethi and that the shares so bought by M/s Raj Investments were delivered to associates of SPML, Shri Sethi denied that shares by Raj Investments were ultimately sold to the associates of SPML and added that although SPMLIL, which had purchased 11,600 shares from Raj Investments, was an associate of SPML, the said purchase had been disclosed to SEBI and there was nothing secret about it.
13. The allegation to the effect that funds had been routed through associates to camouflage any transaction as also the allegation that SPML had directly or indirectly funded the subscription of their associates, including that of SPMLIL, in their rights issue or that such funding was done out of issue proceeds, was denied. The allegation of 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% was also denied.
14. It was further denied that pursuant to any agreement, Raj Investments bought and sold shares of SPML out of funds provided by SPML and its associates or that the shares which were purchased by Raj Investments were ultimately sold to associates of SPML. The issue that Raj Investments was taken in as a accomplice by SPML and its associates, including SPMLIL, to artificially create a market in the shares of SPML with a view to increasing the price of the scrip from Rs. 125/- to Rs.275/- and maintaining the same till the rights issue was complete in order to induce the investors to subscribe to the rights issue was denied. On the basis of the above, SPMLIL requested that the proceedings against them be dropped and further requested for a personal hearing.
15. In view of the request for a personal hearing, SPML, its directors and associates (including SPMLIL) 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 for a 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 on December 02, 2003.
16. Meanwhile, NSE informed SEBI that during the period April 3, 2002 to June 14, 2002 (Sett no 2202064N to 2202114N), SPMLIL was found to have entered into transactions which were not genuine, while dealing in the scrip of SPML, through the broker M/s Neon Vinimay P Ltd, an associate. It was stated that the counter party in the said transactions was also its associate, M/s 20th Century Engineering Ltd. In response to the information submitted by NSE, SEBI issued another notice dated August 5, 2003 to SPMLIL, asking it to show cause as to why appropriate directions should not be issued against it under section 11B of the Act read with Regulations 11 & 12 of the Regulations, on the ground of SPMLIL having indulged in acts which were calculated to create a false or misleading appearance of trading on the securities market, which was in

violation of Regulation 4(b) of the SEBI FUTP Regulations. SPMLIL 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.

17. In reply to the said notice, SPMLIL, vide its letter dated October 06, 2003 submitted that their purchase of shares of SPML, against payment, could not amount to creating a false or misleading appearance of trading on the securities market, since the said purchases were genuine purchases and there was no restriction in law on a company like them in purchasing shares of another company like SPML. It was stated that the expression 'false and misleading appearance of trading' clearly conveyed an idea that there was in fact no actual trading, although in their case, the very allegation in the show cause notice indicated that there was actual trading and it was in fact quantified as being 36.09% of the total gross quantity for the period under scrutiny. SPMLIL stated that no material apart from narrating certain so-called suspicious circumstances has been disclosed, so as 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. On the basis of the above, it was stated that there was no violation of Regulation 4(b) of the Regulations, and consequently the provisions of Section 11B of SEBI Act, 1995 or Regulation 11 and 12 of the Regulations, would not apply.
18. SPMLIL challenged the validity of the proceedings and stated that the show cause notice had been issued without any lawful and valid basis and the same was therefore, bad in law. It was further stated that although a show cause notice is required to be issued by the Board, the same had been issued by the Investigating Officer which was not permissible in law and that the basis of issuance of the show cause notice was non-existent and the concerned authority who had issued the purported show cause notice had no authority or jurisdiction to do. On the basis of the above, it was submitted that the present show cause notice had been issued without fulfilling the requisite formalities.
19. As mentioned above, on the basis of their request for a personal hearing, SPML, its directors as well as SPMLIL and other associate companies of SPML appeared before me for a personal hearing on December 02, 2003. They 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 reiterated that SPML, its directors and associates, including SPMLIL, 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. It was however submitted that at times 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.
20. 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 5, 2003 issued to SPMLIL and their replies to the same.
21. I have noted that SPMLIL had applied for 1,91,200 debentures (8% of the issue size) in the rights issue of SPML. However in terms of their holding in SPML, i.e. 7500 shares of SPML, as seen from the Letter of Offer for the rights issue of SPML dated 19th September, 1995, under the head "Financial/ other interest of Group Companies as on 31st March, 1995", SPMLIL was entitled for only 3000 debentures of SPML. There is also no indication of any source of funds for the said application. Keeping these facts in mind, it cannot be denied that SPMLIL had applied for debentures in excess of its entitlement, without having any funds to support such application, a fact that is clear from the observation that the cheque accompanying the application of SPMLIL i.e. cheque No. 093817 drawn on Canbank, Chowringhee Branch, Calcutta, was returned unpaid and the application was shifted to cheque return schedule by Vysya Bank, H B Sarani Branch, Calcutta, the collecting bank for the issue.
22. In this regard I have noticed that during the recording of statement of Shri Subhash Chand Sethi, VC & MD SPML, it was vehemently denied that no application had been made by SPMLIL vide application no. 26. However, during the course of the personal hearing held before me on December 2, 2003, it was 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 of the bank which received the said application had listed this application against BSN 282. Thus there is a clear contradiction in the stand of SPMLIL indicating non transparency as regards their actions in the issue process which is clearly suspect from the facts above stated.
23. It cannot be ruled out that probably at the instance of SPML /its promoters and associate companies, and much against the normal practice of banks, the cheque was re-presented after necessary funds were arranged in the account of Subhash Capital City Ltd. (another associate of SPML), which had issued the cheque that had accompanied the application of SPMLIL.
24. I have also noted certain other instances of selective representations of cheques returned in respect of applications by the other associates of SPML. Thus there is a clear indication of the active involvement of SPML / its promoters / associates,

including SPMLIL, in causing the bank to selectively re-present returned cheques, after providing for funds in the relevant accounts.

25. As regards the contention of SPML and its associates (including SPMLIL) regarding 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. These facts when viewed cumulatively give rise to the conclusion that SPMLIL acted in connivance with SPML and its other associates to create an illusion that the rights issue of SPML had genuinely received the minimum mandatory subscription of 90%.
26. I have further noted from the investigation report that there was active trading in the shares of SPML around the time of its rights issues, mainly by one M/s Raj Investments, at CSE and BSE, through various brokers, at the instance of Subhash Sethi and Shri M P Verma (Verma), Managing Director of Zoom, an associate of SPML. The deliveries were effected to various group companies of SPML, as instructed by Shri Sethi and Shri Verma. The date-wise sauda ledger of Raj Investments showed that Raj Investments had dealt in the shares of SPML through more than half a dozen brokers and the gross traded quantity was over 20,00,000 shares of SPML, amounting to Rs.45 crores, during the year 1995-96, the year of the rights issues. 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:
- SPMLIL (listed as one of the associates of SPML in the rights letter of offer);
 - Neon Vinimay (P) Ltd. (an NSE member, having same address of SPML, fully owned by 20th Century Engineering Ltd. and Subhash Capital City Ltd., both associates of SPML. The directors of SPML viz. Shri Anil Sethi and Subhash Sethi are also directors of Neon Vinimay);
 - 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)
27. Although SPMLIL has denied that Raj Investments was taken in as a accomplice to artificially create a market in the shares of SPML with a view to increasing the price of the scrip from Rs.125/- to Rs.275/- and maintaining the same till the rights issue was complete, in order to induce the investors to subscribe to the rights issue, there is clear evidence on record to show that SPMLIL & Gladiator Suppliers (P) Ltd. apparently purchased shares of SPML at Rs.245/- per share during the time of rights issue of SPML. I find that no adequate explanation has been offered by SPMLIL as regards their role in the said matter.
28. In view of the above facts, I hold that SPMLIL is guilty of the charge as brought out in the show cause notice dated August 30, 2002, of their having violated the provisions of Regulations 4(a) to (e) of the FUTP Regulations.
29. As regards the observation of NSE regarding involvement of SPMLIL as a client in the trading of the shares of SPML for the period April 3, 2002 to June 14, 2002 (Sett no 2202064N to 2202114N), through the trading member Neon Vinimay P Ltd. (Neon), Member, NSE, I have observed that the counter party to all the trades of SPMLIL, during the said period, was M/s 20th Century Engineering Ltd, an associate of SPMLIL. In addition, Neon, the broker for all these trades is also an associate of SPML, SPMLIL and 20th Century Engineering Ltd. The fact that the buyer, seller, broker as also the company whose shares were being traded by these entities, were related to each other leads one to conclude that the trades under consideration were non-genuine and were meant to serve purposes other than that of ordinary trading in the market. However, I have also noted that these trades were restricted to only six days out of a period of two and a half months and the total shares traded did not amount to a significant volume, on an absolute basis. That being the case, it cannot be said that there was a malefide intention on the part of SPMLIL 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. Moreover, no substantial proof has been brought out as regards SPMLIL's involvement during the said period i.e April 3, 2002 to June 14, 2002 in creating artificial volume and increasing /maintaining the price of the SPML shares in the course of trading in the scrip of SPML.
30. In view of the above, although the trades of SPMLIL in the shares of SPML do not seem to have distorted the trading in these shares in any significant manner; the findings regarding pattern of trading, the company whose shares were traded, the broker and the counter party being associates etc, lead to questions, for which no adequate explanations have been offered by SPMLIL. Hence, I hold SPMLIL guilty of having created artificial volumes in the shares of SPML and thus having violated the provisions of regulation 4(b) of the FUTP Regulations.

31. As regards the issues raised by SPMLIL 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 SPMLIL, as regards its role in indulging in non-genuine transactions. Hence, the material provided by NSE was considered sufficient to proceed against SPMLIL. 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 SPMLIL did not arise. Hence, the argument put forth by SPMLIL 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.
32. In the above 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."*
33. 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.
34. Accordingly, in view of the facts and circumstances of the case and the blatant violations by SPMLIL 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 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 thereof as well as for the protection of the interest of investors.
35. 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 SPML India Limited from accessing the securities market and dealing in securities for a period of two years
36. This order shall come into force with immediate effect.

PLACE : MUMBAI

DATE : August 18, 2004

A.K.BATRA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA