

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM : Dr. T.C. NAIR, WHOLE TIME MEMBER

AGAINST M/S.RAJ INVESTMENT, MS. SAMTA JAIN, PROPRIETOR, RAJ INVESTMENT, M/S. BLUE CHIP CAPITAL MARKETS PVT. LTD., SHRI SANDEEP JAIN, DIRECTOR, M/S.BLUE CHIP CAPITAL MARKETS PVT. LTD., M/S. SHRI VARDHMAN FINVEST PVT. LTD., SHRI RAJ KUMAR JAIN, DIRECTOR, M/S.SHRI VARDHMAN FINVEST P LTD. JAIN ENCLAVE PVT. LTD., SHRI KULDEEP JAIN, DIRECTOR, M/S.JAIN ENCLAVE PVT. LTD., SARAWGI DEVELOPERS PVT. LTD., SHRI SANJAY KUMAR JAIN, DIRECTOR, M/S.SARAWGI DEVELOPERS AND SHRI RAJ KUMAR JAIN ALIAS PATNI

IN THE SCRIP OF M/S. SUBHASH PROJECTS & MARKETING LTD.

Date of hearing : January 12, 2007

Appearances:

For Noticees : Shri Sandeep K Jain, Director, Blue Chip Capital Market Pvt. Ltd.

For SEBI : Shri P.K Nagpal, Executive Director
Ms. Kshama Chavan, Legal Officer

ORDER

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

- 1.1 M/s. Subhash Projects & Marketing Limited (hereinafter referred to as SPML) is a listed company which was incorporated as a private limited company on August 27, 1981 and later became a public limited company on August 27, 1983.
- 1.2 The shares of 'SPML' 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) .
- 1.3 SPML came out with two simultaneous (but not linked) rights issue which was 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). 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 debentures to the extent of 110.23%.
- 1.4 During the period April 01, 1995 to March 31, 1996 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. It was inter-alia observed that Raj Investments (hereinafter referred to as Raj Inv) was acting in concert with Blue Chip Capital Market P Ltd. (hereinafter referred to as Blue Chip), Jain Enclave P Ltd. (hereinafter referred to as Jain Enclave), Vardhman Finvest P Ltd. (hereinafter referred to as Vardhman) and Sarawgi Developers P Ltd. (hereinafter referred to as Sarawgi) all four entities belonging to Raj Group (hereinafter referred to as the "finance companies"/"Raj Group") and traded heavily in the shares of SPML before, during and after the rights issue of SPML. Raj Inv was the single largest client, dealing in the scrip of SPML during the period from September 01, 1994 to March 31, 1996 (hereinafter referred to as "investigation period")

through many brokers and had traded in the shares of SPML pursuant to an oral understanding/arrangement with Shri Subash Chand Sethi, Vice Chairman and Managing Director of SPML. Raj Investment had undertaken the entire exercise with a view to increase and maintain the price of SPML shares in the market and creating artificial volume and trading in the scrip of SPML.

- 2.1 In view of the above, the Securities and Exchange Board of India (hereinafter referred to as 'SEBI') issued a notice dated September 30, 2002 to M/s. Raj Investment, Ms. Samta Jain - Proprietor, M/s. Raj Investment, M/s. Blue Chip Capital Markets Pvt. Ltd., Shri Sandeep Jain - Director, M/s. Blue Chip Capital Markets Pvt. Ltd., M/s. Vardhman Finvest Pvt. Ltd., Shri Raj Kumar Jain - Director, M/s. Vardhman Finvest Pvt. Ltd., M/s. Jain Enclave Pvt. Ltd., Shri Kuldeep Jain - Director, M/s. Jain Enclave Pvt. Ltd., M/s. Sarawgi Developers P. Ltd., Shri Sanjay Kumar Jain - Director, M/s. Sarawgi Developers P. Ltd and Shri Raj Kumar Jain alias Patni asking them to show cause as to why appropriate directions should not be issued against them, inter-alia, under section 11 B of SEBI Act, 1992 (hereinafter referred to as the "Act") read with Regulations 11 & 12 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Markets) Regulations, 1995 (hereinafter referred to as PFUTP Regulations and Regulations 44 & 45(6) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the "Takeover Regulations") alleging violation of the provisions of the said Regulations. As the notice was returned undelivered by the postal authorities stating "door always locked in my duty hours, hence left" the said notice was once again issued vide letter dated February 14, 2003 to the same entities at the residential address given by Shri Raj Kumar Jain alias Patni during the time of recording of his statement by SEBI on September 18, 2000 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.

2.2 In the meantime, during a routine monitoring of the price and volume movement of the scrip of SPML, it was noted that there was a sudden increase in the price and volumes in this scrip on the NSE during the period July 14, 1999 to October 26, 1999 (hereinafter referred to as investigation period II) and that Raj Inv and associates continued to trade in the scrip of SPML and their gross trading volume was found to be around 3.82 lacs shares which amounted to nearly 11.90% of the total trading volume at the NSE. It was further noted that:

- i) Raj Group had traded through a number of brokers viz. Pressman Finance Ltd., Neon Vinimay Pvt. Ltd., AKP Securities Ltd., BPS Securities Pvt. Ltd., JVS Securities Pvt. Ltd.
- ii) Raj Kumar Jain (Patni) was also the Director of Neon Vinimay Private Ltd. (hereinafter referred to as Neon), member NSE till April 1997, which was situated at the place from where SPML also operated.
- iii) The other brokers had indicated Raj Kumar Jain alias Patni as the person incharge of Rahul Fintrade Pvt. Ltd (hereinafter referred to as Rahul)
- iv) Rahul had also traded through Neon and the associates of Rahul had traded through various other members. viz. Transcan Securities (P) Ltd., Shree Bahubali International Ltd., Pressman Finance Ltd. and others.
- v) In settlement no. 38 of 1999, the client of selling broker, AKP Securities Ltd., Raj Investment & Co., Proprietor, Mr. Raj Kumar Jain alias Patni had a net sale position of 28,300 shares while Neon whose client was SPML India Ltd. (hereinafter referred to as SPML India) had a net buy position of 27,160 shares for which SPML India took delivery. The shares were lodged for transfer by SPML India but the same were certified as partly paid up by the Share Transfer Agent (STA) of the company, PCS Industries Ltd. As these certificates were stamped and endorsed as fully paid, the STA, apprehended them to be fictitious. The signatures of the transferor

also differed with the records. These shares were stated to be introduced in the NSE by AKP Securities Ltd. in Settlement Number 1999038. Some of the holders of the shares were Raj Kumar Patni , Raj Kumar Jain, Paras Mal Jain and others.

- vi) Raj Kumar Patni and Sandeep Jain, having the same address (36, Strand Road, 2nd Floor, Calcutta) were registered sub-brokers through the trading member, BPS Securities and traded in the scrip through BPS Securities. Similar instances of partly paid shares held by Jagdish Prasad Purohit were delivered through BPS Securities also, which were returned by the STA under objection.

2.3. Another show cause notice dated August 21, 2003, in continuation to the earlier show cause notice dated September 30, 2002, was issued to Raj Inv and its associates calling upon them to show cause as to why appropriate directions under Regulation 11 and 12 of PFUTP Regulations, 2003, read with Section 11B of SEBI Act, 1992 restraining them from accessing the securities market and prohibiting/suspending them from buying, selling or dealing in the securities market in any manner whatsoever for a particular period should not be issued against them for delivering partly paid shares in the market that were endorsed as fully paid up as alleged in the SCN cited.

2.4 All the said entities i.e. Shri Raj Kumar Jain alias Patni, Shri Sandeep Jain, Shri Kuldeep Jain, M/s. Raj Investments, Shri Sanjay Jain, M/s. Sarawgi Developers Pvt. Ltd, M/s. Jain Enclave Pvt. Ltd, Shri Kuldeep Jain, M/s.Vardhaman Finvest Pvt. Ltd, Smt Samta Jain, M/s. Bluechip Capital Market Pvt. Ltd, replied to the said show cause notices denying the allegations.

2.5 A personal hearing was also granted by me on January 12, 2007 at regional office, Kolkatta. Shri Sandeep Jain appeared and made submissions. Blue chip also submitted its written submissions dated January 12, 2007 which are examined.

2.6 From the findings of the investigation, I have noted that certain common allegations have been leveled against Raj Inv and their associates mentioned in the notice. One of the basis of the findings of investigation is the broker wise analysis which indicates that mainly two brokers at BSE, viz. Puranmal Bansidhar and Nanglia Holdings P. Ltd. were active at the counter of the shares of SPML and that the said brokers had acted on behalf of Raj Inv who had also dealt through many other brokers at the CSE, D.K. Singhania (DKS) and NK Balasaria were found to be the top dealing brokers in the scrip, both on net buy and net sale basis. Raj Inv was the largest client of DKS and carried out many off-market transactions, besides trading on the exchange. It was noted that DKS had passed adjustment entries and issued credit advice from the account of Raj Inv in favour of other brokers who had also dealt in the SPML scrip. The details are shown as under:

DATE	AMOUNT	PAID TO WHOM
01/11/1995	85,00,000	Mathran Securities Ltd.
15/11/1995	1,00,00,000	--- do ---
29/11/1995	20,00,000	--- do ---
17/11/1995	35,80,030	Niraj Kumar Balasaria
24/11/1995	20,95,390	--- do ---

2.7 The flow of funds were traced from the account of SPML to Raj Inv via Blue Chip, Jain Enclave, Vardhman Finvest and Sarawgi (the four finance companies) which incidentally belonged to the Raj Group.

2.8 In reply to the summons issued, Raj Inv and the four finance companies had accepted that the funds provided to them by SPML were for the purchase of SPML shares/ debentures by subscribing to the rights issue and/ or for purchasing the shares from the market to maintain the price. The same is corroborated by the letters dated September 05, 2000 of Vardhaman and Sarawgi and letter dated September 04, 2000 of Jain Enclave.

2.9 It is also noted from the records that Shri Raj Kumar Jain alias Patni (Rajkumar) appeared on behalf of Raj Inv as well as the four finance companies and in his statement admitted to knowing Shri Subhash Sethi for nearly 10 years and upon being questioned about the purpose of the receipt of huge payments by the finance companies from SPML, he affirmed that the amount was received for the purpose of trading in the shares of SPML. This was also earlier stated in the replies filed by the respective companies. He stated that the funds were routed to Raj Inv through the four finance companies as Subhash Sethi informed him that the amount could not be remitted directly in the name of Raj Inv. since SPML could not purchase their own shares.

2.10 Rajkumar further stated that trading in the shares of SPML was done by Raj Inv at the instance of Subhash Sethi and Shri M P Verma, Managing Director of Zoom Industrial Services Ltd., an associate of SPML, and that delivery was effected to various group companies of SPML as instructed by them. The date-wise sauda ledger of Raj Investment provided by Raj Inv shows that during the year 1995-96, Raj Inv had dealt in the shares of SPML through more than half a dozen brokers as detailed below:

Sr.No.	Name of Broker	Purchase		Sale	
		Qty	Amount	Qty	Amount
1	Pawan Kumar & Co.	68,300	1,62,97,800	1,000	2,50,000
2	S N N angalia	33,300	75,15,110	15,900	35,68,890
3	Mathran Securities	2,49,400	5,83,38,085	21,800	54,36,958
4	N K Balasaria	1,05,800	2,45,08,965	12,700	28,91,800
5	D K Singhania	1,68,000	3,52,33,325	3,80,000	8,83,26,150
6	Puranmal Bansidhar	1,46,300	3,40,78,030	46,950	1,12,67,145
7	Miscellaneous	2,65,700	5,49,03,972	5,21,750	10,31,09,092
	Total	10,36,800	23,08,75,287	10,00,100	21,48,50,035

- 2.11 Thus, the gross traded quantity by Raj Inv was over 20,00,000 shares of SPML, amounting to Rs.45 crore and more than the floating stock of SPML (18,91,000 shares); 33% of the equity capital of SPML (60,87,686 shares); and almost equal to the total gross volume of major dealing brokers.
- 2.12 From the aforesaid facts and circumstances and material available on record, it appears that Rajkumar entered into an understanding with Subhash Sethi sometime in August, 1994 when SPML first decided to launch their rights issue and it was decided that SPML would provide funds from time to time to the four finance companies of Raj Group for the purchase of the shares and that SPML would further pay to the Raj Group an aggregate sum of Rs.50 lacs or 3% commission on the total amount of the SPML shares purchased, whichever is higher. The salient features of the said understanding as can be seen from the reply filed by Vardhaman in the Civil Suit No.354 of 1998 filed in the Calcutta High Court corroborates this view. It appears that pursuant to the said agreement, Raj Inv had received a sum of Rs.540 lacs from SPML through the four finance companies, which was used for buying and selling shares of SPML. Subhash Sethi also stated that Raj Inv had deployed its own funds for the purpose and that the aggregate number of 4,22,400 shares of SPML, so purchased were billed and made over to the associates of SPML. On perusal of the details of the bills raised on the associates of SPML over the years 1995-96 and 1996-97, it is noted that Raj Inv was the single largest client dealing in the scrip of SPML throughout the period from September 01, 1994 to March 31, 1996 through many brokers. By its own admission, it had dealt in the scrip at the behest of Subhash Sethi with a view to increasing and maintaining the price of SPML share volume in order to ensure the successful subscription to the rights issue of SPML and had admitted that the exercise was undertaken with a view to increase the price of SPML shares which was quoting about Rs.125/- around August 1994 to about Rs.275/- in March 1995 and thereafter, maintain the price of SPML shares around Rs.250/- to Rs.275/- till the rights issue of SPML was

complete, so as to induce shareholders to subscribe to the issue.

2.13 In his reply to show cause notice dated August 21, 2003, Raj Kumar Jain denied any association with any other company as mentioned in the notice except Raj Investment & Company, and submitted that all the companies named in the notice i.e. the 3rd, 5th, 7th and 9th persons were separate juridical persons who were independent and had no connection with him. He stated that merely sharing a common address could not categorize all of them as a group as all the companies were situated in different office rooms in 36, Strand Road, which was a large commercial four storied building having more than 200 offices. Shri Patni stated that he had traded only in 3,82,000 shares of SPML during the period July, 1999 to October, 1999 and had sold the shares through BPS Securities on behalf of the client, the details of which were provided to NSE and further submitted that although he had dealt in the shares of SPML with BPS Securities, AKP Securities and JVS Securities on behalf of the clients, in the usual course of business, he had never traded through *M/s.Pressman Financial Limited* or Neon. He stated that he had resigned as a director of Neon since 1997 and never held any shares of Neon and could not be deemed to be associated with them, more so when he had never signed and participated in any meeting of the Board of Directors of the said companies. Shri Patni stated that he had never been the person in-charge of Rahul Fintrade Pvt. Ltd. nor did he have any dealings or connection with the company in any manner whatsoever. Shri Patni further stated that he was unaware of any trade in Rahul being executed by Neon, Transcan Securities (P) Limited, Shri Bahubali, or Pressman and stated that in the course of enquiry conducted by NSE in respect of the shares of the SPML, he had co-operated with the NSE officials and stated that the shares were sold by one of the clients whose address was also given. Thereupon, enquiry of the said client was also conducted and all the information given by him was found to be true.

2.14 Shri Patni also denied introducing shares by forging the stamps of fully

paid up shares or otherwise defrauding any person by introducing any share by mis-presentation and stated that trading volumes could not by itself reveal anything. As regards the statement that shares were introduced in the NSE by AKP Securities in Settlement No. 1999038 wherein some of the holders of the shares were stated to be Raj Kumar Patni, Raj Kumar Jain and Parasmal Jain and others, Shri Patni stated that the shares were received by him as fully paid while acting as a sub-broker from the client i.e from Classic Global Securities which were held by Jagdish Prashad Purohit while the other, shares were introduced in the market through BPS Securities. He stated that it was not possible for him and his staff to verify whether the stamps that was affixed on the share certificate for the shares being fully paid up was genuine or otherwise, as it was practically impossible to verify each and every certificate as to whether it is stamped genuinely as fully paid. Shri Patni stated that upon receiving the share certificates, he had handed the delivery thereof through BPS Securities / AKP Securities but upon the same being objected to by the Share Transfer Agent, he had replaced the same and/or paid for and the price thereof was adjusted upon the shares being auctioned by the NSE as per the regulations and therefore it was contended that he had defrauded any person. NSE had also confirmed that the shares were replaced, auctioned or closed out as per its normal procedure. In view of the same, it does not call for any further directions in these proceedings.

- 2.15 Shri Jain in his reply to the show cause notice dated September 30, 2002 (which was forwarded vide letter dated February 14, 2003) challenged the present proceedings on the ground that the alleged transactions took place during 1995-96, while the first show cause notice was received by him on 21st February 2003, i.e., after a passage of almost six years from the date of the alleged transaction. It was stated that in terms of section 24 of the SEBI Act, 1992, the period of offence for the conviction was a period of one year at the relevant time and hence the initiation of any proceedings was barred by limitation under the provisions of the Criminal Procedure Code and that as on the date of

the alleged transaction, the Regulations did not contemplate initiating criminal action. Shri Jain stated that without prejudice to his involvement in the alleged transaction being that of an investment advisor, he was not required to get himself registered. It was stated that in so far as he had not dealt in the shares on account of any client, there had been no violation of the SEBI Act or the Regulations made thereunder. It was stated that the purchase of the shares of any company would lead to the fluctuation of the share price in the market and no fraudulent intention could be imputed merely on account of the alteration of share price due to such purchases. Shri Jain stated that the statements made by him and relied upon by SEBI in the show cause notice were made under the influence of the mis-representation made to the effect that offences committed by SPML would be investigated and no harm would accrue to him or to Raj Investment and that he would not be prosecuted in any manner. However, the action of issuance of show cause amounted to the violation of provision of Article 20 (1) of the Constitution of India and particularly the provisions of Section 24 of Evidence Act. Shri Jain further stated that dealing in the securities as broker by itself or otherwise did not amount to violation of any of the provision of the SEBI Regulations and the statement made by him to SEBI had no relevance nor could it be used against him to incriminate him in any financial offence. He further stated that he was not aware of any alleged agreement between SPML and Mrs.Samta Jain and in the absence of any statement made by SPML or Mrs. Samta Jain and corroborated by each other, existence of an oral agreement could not be proved nor could the same be used as evidence against him.

- 2.16 Shri Sanjay Jain stated that, he had invested funds of his company in consultation with his colleague director in various other companies and stated that Sarawgi Developers had not invested/purchased any shares of SPML and further denied that other investments were in violation of any rules and regulations of the SEBI Act. He further said that he is not aware of the companies mentioned in the notice nor did he have any dealings with them. He stated that the allegations made out in the said

notice were devoid of any merits. Sarawgi Developers while reiterating the submissions made above stated that share were purchased by them in the usual course of their business through Raj Investment, a firm owned by Mrs. Samta Jain and that the said Raj Investment was neither a subsidiary nor a holding nor a company where they were interested. It was stated that the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 1995 also has no application in their case. It was stated that absence of any fraudulent motive or any malafide intention adopting unfair trade practice, as alleged and/or imputed, would be clear from the fact that while they had obtained a loan of Rs.90 lacs from SPML, no amount was utilized for purchasing shares of SPML but refunded back following the terms of the loan granted by SPML. It was stated that SPML is liable for fraudulent and unfair practices. It was denied that they were acting in concert with Bluechip Capital Market Pvt. Ltd., Jain Enclave Pvt. Ltd. and Vardhaman Finvest Pvt. Ltd. The issuance of the notice was also disputed on the ground that the purported transactions had taken place on different dates prior to the regulations that came into force in 2003.

- 2.17 M/s. Jain Enclave Pvt. Ltd., also reiterated the submissions elaborated above and stated that they were an independent company having a separate legal entity and had purchased only 2500 shares of SPML in the usual course of their business through Raj Investment, a firm owned by Mrs.Samta Jain which did not tantamount to violation of any of the SEBI Regulations or any fraudulent or unfair trade practice as alleged, and that the said Raj Investment was neither a subsidiary nor a holding company as far as they were concerned and as such, the allegations were based on conjectures and surmises. It was submitted that while they had obtained the loan of Rs.50 lac from SPML, only a sum of Rs.2,50,000/- (5%) was utilized for purchasing the shares of SPML. It was stated that the full amount was duly refunded by them to SPML following the terms of the loan granted by SPML. The above contentions were also adopted by M/s Vardhaman Finvest Pvt. Ltd which stated that

they had purchased only 12,000 of shares of the SPML. While they obtained a loan of Rs.200 lacs from SPML, only a sum of Rs.19,92,000/- was utilized for purchasing shares of SPML and that the full amount was duly refunded by them to SPML following the terms of the loan granted by SPML. Smt Samta Jain stated that Raj Investment was her proprietorship concern and that she used to act as an Investment Advisor to various parties and used to do trading in shares on her personal account as well on behalf of others. She stated that she had traded in the scrip of SPML during 1995-96 on her behalf and on behalf of her various other companies. These details were supplied to SEBI on various dates. She further stated that at the time of Investigation, her husband Shri Raj Kumar Jain had duly disclosed to SEBI all the facts, upon being assured by the Investigation Officer of total immunity. While reiterating the submissions made by others, she stated that being an intermediary, she had purchased and sold shares, under the generally adopted business process. She admitted that on the said basis they had purchased shares on behalf of Zoom Industries Services Ltd. and others at the instance of their Director, but could not be held liable for any wrong committed by him.

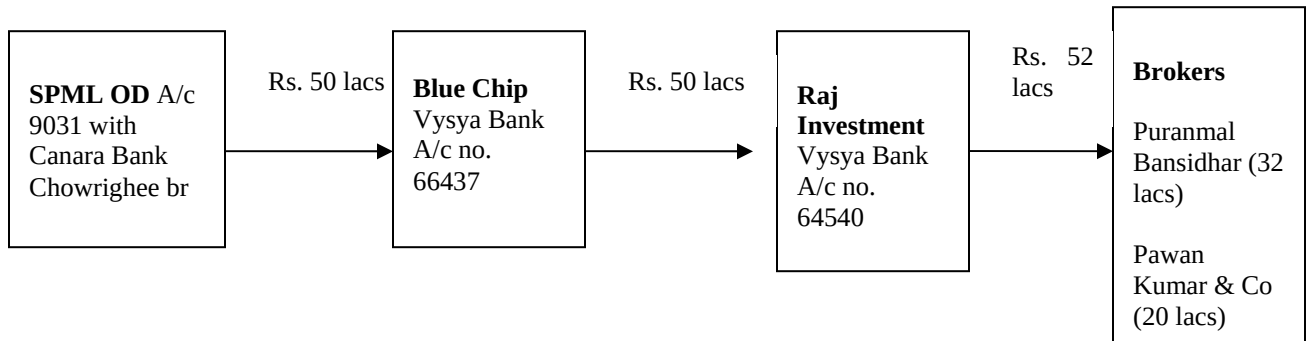
- 2.18 I have also noted the submissions made on behalf of Bluechip Capital Market Pvt. Ltd, denying dealing with the brokerage firm mentioned in the show cause notice or with the other dealing brokers of CSE as mentioned in the notice and their denial in dealing with Dinesh Kumar Singhania & Co. in the shares of SPML or having anything to deal with the adjustment entries passed by Dinesh Kumar Singhania & Company. It was stated that for the transactions entered into by Raj Investment, if any, they could not be held liable. It was stated that as they had not failed to disclose the quantity of 2000 shares purchased by them, they could not be held responsible for the same. Further the receipt of loan and/or giving of loan did not and could not tantamount to any irregularity in respect any security and/ or fraudulent activities as enumerated under the SEBI Act and/ or under the Regulations framed thereon.

- 2.19 While broadly adopting the arguments of other notices, it was further submitted that they were not aware of any statement made by Mr. Raj Kumar Jain and / or by Mr.Subhash Sethi of SPML and/or any oral understanding or agreement made by Mr.Raj Kumar Jain with Subhash Sethi of SPML. Furthermore, as regards the alleged violation of the Takeover Regulations, all the entities submitted that in as much as the alleged transactions took place during the period 1995-1996, the provisions of the 1997 Takeover Regulations would not be attracted. All the entities further submitted that in any case their holdings fell below the threshold limit contemplated even under the Takeover Regulations, 1994.
- 2.20 I have also noted that Subhash Sethi has denied the allegations and claimed that the sums were advanced towards purchase of land and premises No.14A, Beliaghata Main Road, Calcutta and that when the deal did not materialize, the advance money was refunded except by Vardhaman, where a part sum of Rs.44.5 lac was still outstanding, and for the recovery of the same, a recovery suit had been filed in the Calcutta High Court. In the subsequent correspondence with SEBI, it was once again stated that as the suit was pending and sub-judice before the High Court, it would not be appropriate for SEBI to act and decide the issues. However, it is to be noted that the civil suit is for recovery of sums due etc whereas the present proceedings are concerned with the role of the parties in the transactions in securities of a listed company. The nature, object and scope of the civil suit are different and the present proceedings relates to the roles played by the entities under discussion in the manipulation of price of the scrip of SPML.
- 3.1 On a careful examination of the material on record and the facts and circumstances including the tracking of funds flow and movement of securities, it is concluded that Raj Inv and associates had, pursuant to an understanding and acting in concert with Subhash Sethi, artificially created a market in the shares of SPML, with a view to show increased

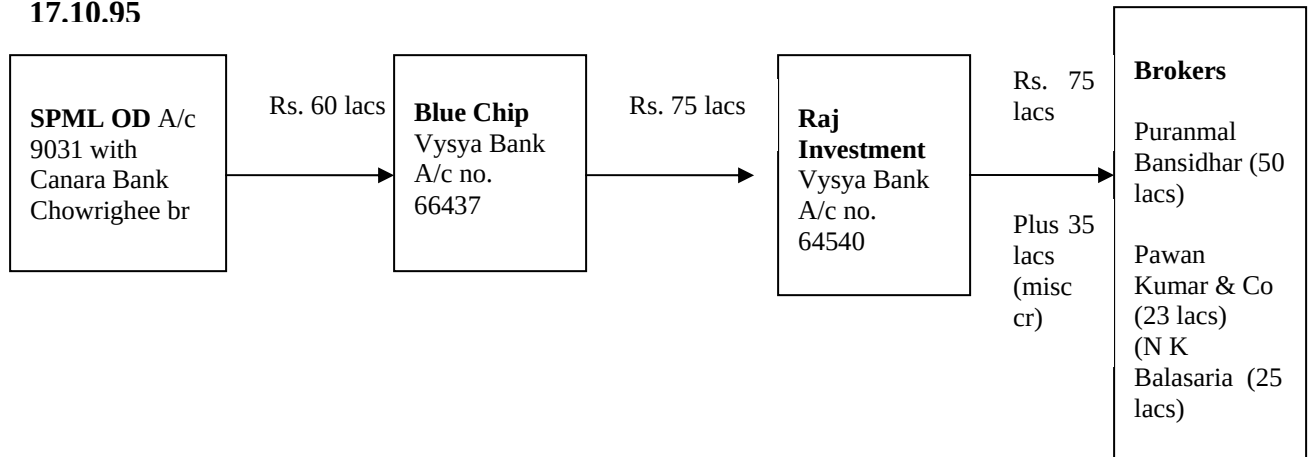
trading activity in the scrip and to increase the price of the scrip and maintain it, in order to induce the investors to subscribe to the rights issue of SPML.

- 3.2 Funds flow in the bank accounts of the concerned entities clearly established that the amounts purported to have been advanced to the four finance companies by SPML in October/November, 1995 for acquisition of certain property were immediately paid out through Raj Inv to various brokers who had dealt in the scrip of SPML. In the case of Blue Chip Capital Market Pvt. Ltd., the same is represented as under:-

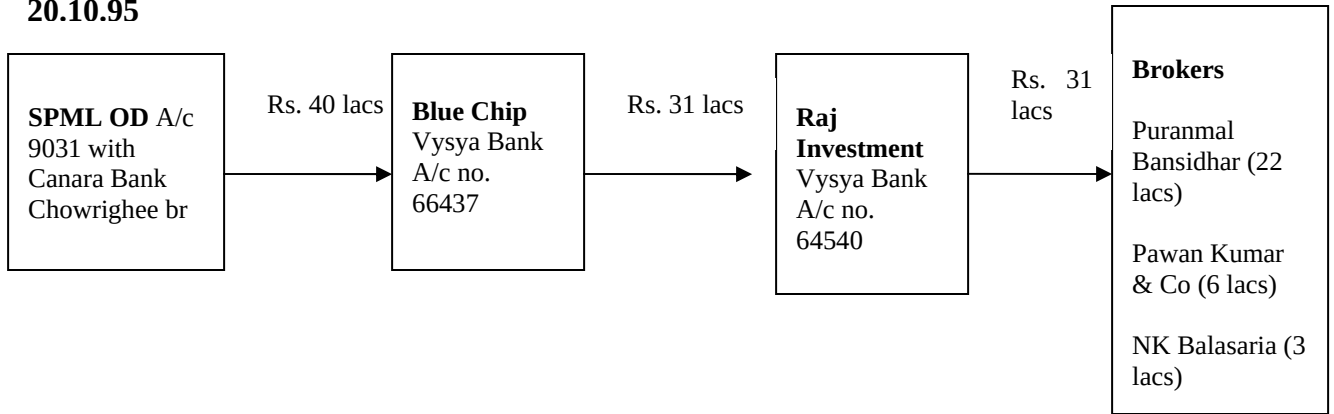
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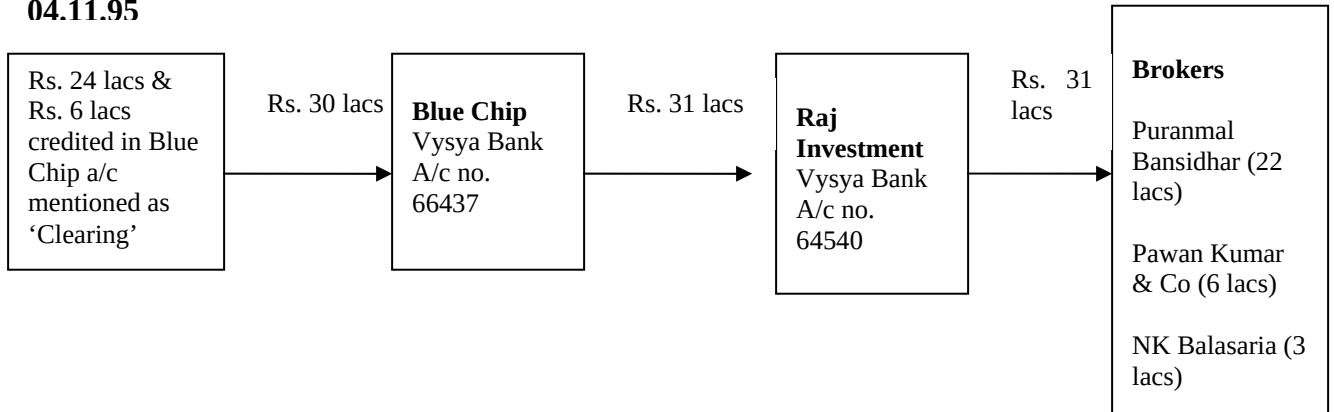
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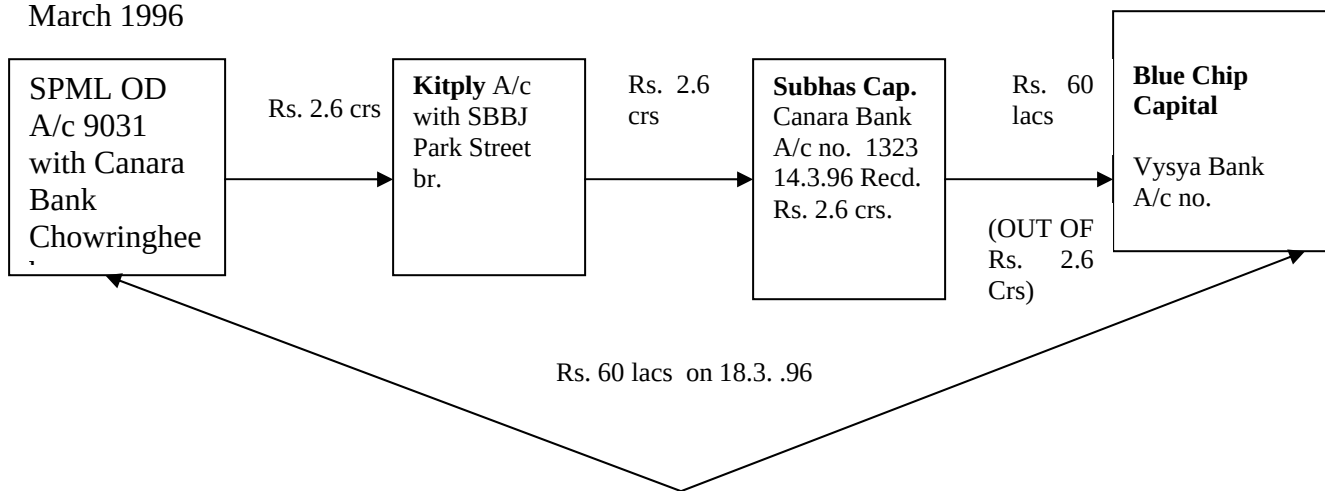
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3.3 Funds flow also established that funds in March, 1996 had been provided through a circuitous route to the four finance companies to enable them to return the amount advanced. From the flowchart, it is apparent that a circuitous route had been used to pass on the amount to the four finance companies who in turn had remitted the amount to SPML. This belies the claim to the effect that the moneys were returned by the four finance companies because they changed their mind about the property.

Flow Chart for transfer of funds from SPML to the four finance companies for refunding sums advanced earlier by SPML

March 1996



The four finance companies had repaid to SPML in March, 1996 upon receiving a like sum of amount from an associate of SPML viz. Subash Capital City (SCCL) who in turn was funded by SPML.

- The four finance companies had been advanced the amount free of interest.
- The billing done by Raj Investment for dealing in SPML shares included some companies which could be identified as SPML's associates
- The large scale transactions in the scrip of SPML by its related entities and the flow of funds in the aforesaid manner through the accounts of SPML to Raj Inv and others for dealing in its shares and these events being in close proximity to the Rights Issue of shares assumes significance
- SPML was coming out with a right issue of equity share of Rs. 10 each at premium of Rs. 190 and the issue opened on 6th October 1995 and close on November 6, 1995. From these events and facts and circumstances, it can be reasonably concluded that to ensure that the shares of SPML were 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.

3.4 Raj Inv along with Shri Rajkumar Jain alias Patni, Shri Sandeep Jain, Shri Kuldeep Jain, Shri Sanjay Kumar Jain and associates Blue Chip, Jain Enclave, Vardhaman and Sarawgi acting in concert with each other, received and routed funds for trading and traded in shares of SPML through Subash Sethi/SPML, thereby creating artificial volume and

increasing/maintaining the price of SPML shares till the rights issue of SPML is closed so that the shareholders of SPML could be induced to subscribe to the issue of securities.

- 3.5 Although all the entities have stated that merely sharing common address could not categorize all of them as a group as all the companies were situated in different office rooms in 36 Strand Road, which was a large commercial four storied building having more than 200 offices. A similar stand has been taken by Blue Chip to the effect that Raj Kumar Patni was neither a shareholder nor a director in Blue Chip and that there are 4 different offices between their office and Raj Kumar Patni's office, it is to be noted that Blue Chip had given a power of attorney to Shri Raj Kumar Patni on September 9, 2000 which was signed by Shri Sandeep Jain wherein it was mentioned that "I/We do hereby appoint and empower the undernoted person(s) to appear, to plead, to argue, to act sign my/our names, to move and file petition, miscellaneous review or appellate proceedings, to accept service of notices, to produce and take back documents to apply for and take delivery of copies and accept any compromise on my / our behalf in any proceedings, to inspect files records papers and documents filed and order therein to represent me/ us in all matters and to do every better necessary and lawful act incidental in above mentioned case or connected proceedings on my /our behalf. I/We further agree to confirm all their acts done under this power". Even the reply of Shri Raj Kumar Jain to show cause notice dated September 30, 2002 shows that he represented Blue Chip also along with 4 other companies mentioned in the show cause notice. Thus, it is clear that of all the entities acted in concert for the purpose brought out earlier i.e. increasing and maintaining the price of the shares of SPML. Acting in concert is something about which actual evidence is normally difficult to come. The Hon'ble Supreme Court in the case of **CIT Vs East Coast Commercial Co. Ltd. [AIR (1967) SC 768] (Kedia Family Case)** in the context of Section 23A of the Indian Income Tax Act, 1922 wherein the question was whether Kedia family had acted in concert to control the affairs of the concerned company. In the facts of the case, there was no evidence of any overt act showing that they were acting

in concert and thereby constituted and acted as a block. In para 14 of the judgement, the Supreme Court observed as follows:

“..... if the members of the Kedia family form a block and had more than 75% of the voting power, it was not necessary to prove that they actually exercised controlling interest. It is the holding in aggregate of a majority of the shares issued by a person or persons acting in concert in relation to the affairs of the company which establishes the existence of a block. It is sufficient, if having regard to their relation, etc., their conduct and their common interest, that it may be inferred that they must be acting together, evidence of actually concerted acting is normally difficult to obtain, and is not insisted upon.”

3.6 Collectively, the gross traded quantity by Raj Inv. and associates works out to over 20,00,000 shares of SPML amounting to Rs. 45 crore and more than the floating stock of SPML (18,19,000 shares); 33% of the equity capital of SPML (60,87,686 shares) and almost equal to the total gross volume of major dealing brokers and their action would be viewed in the context of impending Rights Issue of SPML with an ulterior motive to induce shareholders of SPML to subscribe to the Rights Issue through their trading activity as aforesaid.

3.7 As regards the alleged violation of the Takeover Regulations to the impugned transactions, it is not the common objective of these entities to gain control over the target company pursuant to an understanding as is required under the Takeover Regulations. Substantial acquisition of shares by Persons Acting in Concert to gain control over the target company is a necessary requirement under Takeover Regulations. On the other hand, the common understanding appears to be to create large volumes and push up the prices immediately prior to the Rights Issue to induce the shareholders to invest in the issue by making it more attractive for which the funds were provided by SPML through its associates as discussed earlier. Further, Takeover Regulations, 1997 came into force much later to the impugned transactions. Under these circumstances, there is no adverse

finding on their alleged violations.

3.8 Most of the entities submitted that they had made their statements that were relied upon by SEBI under the impression that SPML and not they would be investigated. Such contentions at this belated stage in my view is untenable and misconceived and obviously an after thought after submitting their statements to the Investigating Officer earlier. SPML and its Directors viz. Shri P C Sethi, Chairman, Emertius, Shri Anil Kumar Sethi, Chairman, Mr. Subash Chand Sethi, Vice Chairman & Managing Director and Mr. Sushil Kumar Sethi, Managing Director, have already been restrained from accessing the securities market and dealing in securities for a period of five years.

3.9 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) Regulation, 1995 which reads as under

Regulation 4:

"No person shall

- i. effect, take part in, or enter into, either directly or indirectly, transactions in securities, within the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;*
- ii. indulge in any act, which is calculated to create a false or misleading appearance of trading in securities market;*
- iii. indulge in any act which results in reflection of prices of securities based on transactions that are genuine trade transactions;*
- iv. enter into purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as device to inflate, depress or cause fluctuations in the market price of securities;*
- v. 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 of any security with the sole object of inflating, depressing or causing fluctuations in the market price of securities”.

- 3.10 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 since the market safety and integrity is put to great jeopardy through such actions.
- 3.11 Having regard to the facts and circumstances, their acts were designed at creating artificial volumes in the scrip prior to the Rights Issue to induce the shareholders of SPML to subscribe to the same. These acts are violative of the provisions of Regulations 4 (a) to (e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995.
- 4.1 For the aforesaid reasons and having regard to the nature and gravity of the charges established and the facts and circumstances of the case and for the protection of investors, I find that a direction restraining them from accessing the securities market and dealings in the securities market for a specified period is essential.
- 4.2 Now, therefore, in exercise of the powers conferred upon me under the Section 19, read with Section 11 B of the SEBI Act, 1992 and Regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003, I hereby restrain M/s. Raj Investments, Ms. Samita Jain, Proprietor, M/s. Raj Investment, M/s. Blue Chip Capital Markets Pvt. Ltd., Shri Sandeep Jain, Director, M/s. Blue Chip Capital Markets Pvt. Ltd., M/s. Shri Vardhman Finvest Pvt. Ltd., Shri Raj Kumar Jain, Director, M/s. Shri Vardhman Finvest P Ltd., M/s. Jain Enclave Pvt. Ltd., Shri Kuldeep Jain, Director, M/s. Jain Enclave Pvt. Ltd., M/s.

Sarawgi Developers Pvt. Ltd., Shri Sanjay Kumar Jain, Director, M/s. Sarawgi Developers and Shri Raj Kumar Jain alias Patni from accessing the securities market and from buying, selling or dealing in securities for a period of six months.

4.2 This order shall come into force with immediate effect.

DATE: 25/9/2008

PLACE: MUMBAI

T C NAIR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA