WTM/RKA/CFD-DIL-1/14/2012

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: RAJEEV KUMAR AGARWAL, WHOLE TIME MEMBER

ORDER

Under Sections 11, 11A and 11B of the Securities and Exchange Board of India Act, 1992 (SEBI Act) read with clause 17 of SEBI (DIP) Guidelines.

In respect of the show cause notices dated December 02, 2008 issued to:

1. M/s. SVPCL Limited (PAN: AAFCS0765A)
2. Mr. K. Mallikajuna Reddy (PAN: AKGPK3343N)
3. Mr. K. Sudhakara Reddy (PAN: AMDPK9619E)
4. Dr. Y. R. Nagarjuna Kumar (PAN: AAUPY4107A)
5. Ms. K. Mahitha (PAN: AMXPK7308J)
6. Ms. K. Aparna (PAN: AMEPK4827B)
7. Dr. K. Sudhakara Reddy (PAN: AEKPK6424N)
8. Dr. K. Seshaiah (PAN: AENPK1078H)
9. Mr. Penumoli Parandhama Reddy (PAN: AFIPP8045B); and
10. Mr. K. V. Kondaiah Sastry (PAN: AMCPK0124B).

Date of Hearing: December 13, 2011

Appearances:

For Noticees : Mr. Vinay Chauhan, Advocate and Mr. Joby Mathew, Advocate for notices no. 1 to 4 and Mr. R. Sridhar Reddy, Advocate for noticees no. 5 to 10.

For SEBI:

Mr. Santosh Shukla, Joint Legal Adviser
Mr. Sanjay Purao, Dy. General Manager
Ms. Divya M. Kulshrestha, Asst. General Manager
Mr. Amitesh Kumar, Asst. Legal Adviser
Ms. Esha Kapoor, Asst. Manager

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1. M/s. SVPCL Limited (the company) came out with an initial public offer (IPO) of Rs.34.5 crore which opened for subscription on October 22, 2007 and closed on October 26, 2007. UTI Securities Limited and BOB Capital Markets Limited (merchant bankers) were the merchant bankers for the IPO. It was disclosed in its Red Herring Prospectus that shares, issued in the public issue, would be listed on Bombay Stock Exchange (BSE) and National Stock Exchange (NSE).

2. The BSE refused the final listing permission of shares of the company vide its order dated January 21, 2008 for the reasons stated in that order. The company's application for listing made with NSE stood 'deemed to be refused' in terms of section 73 (5) of the Companies Act, 1956. Against the decision of BSE the company filed a writ petition no. 1061 of 2008 before the Hon'ble High Court of Judicature at Andhra Pradesh. Hon'ble High Court vide its order dated February 29, 2008 disposed off the writ petition without expressing any opinion on merits and held that questions raised therein can be effectively gone into by the Securities Appellate Tribunal (SAT) under Section 22A of the Securities Contracts (Regulation) Act, 1956. Thereafter, the company filed an appeal no.47/2008 before the Hon'ble SAT challenging the aforesaid decision of the BSE. The company, however, did not prefer any appeal against the deemed refusal by the NSE before the SAT. The Hon'ble SAT vide order dated May 09, 2008 dismissed the appeal and held that the IPO of the company must fail in view of the observations of Hon'ble SAT in the said order.

3. Thereafter, vide letter dated May 21, 2008, SEBI advised the merchant bankers to ensure refund of the application monies forthwith to all the investors/applicants who had applied to shares of the company along with the applicable rate of interest. A letter was also sent to the company on the same date advising it to fund the escrow account *(i.e. the bank account where the application monies were kept as per the provisions of the Companies Act)* for the interest amount due and extend full co-operation to intermediaries to enable them to refund the application money along with applicable interest to the investors/applicants.

4. In the meantime, the company preferred an appeal against the order dated May 09, 2008 passed by Hon'ble SAT before the Hon'ble Supreme Court. The said appeal was dismissed by the Hon'ble Supreme Court on August 20, 2008 holding that no case for interference was called for.

5. SEBI vide letter dated August 21, 2008 advised the merchant bankers to immediately take steps to ensure refund of the application money along with the applicable rate of interest to the applicants of the public issue of the company. A reminder to the said letter was also sent to the merchant bankers on August 29, 2008. It was, however, informed by the merchant bankers through various correspondences to SEBI that the company had not deposited interest amount payable to the investor in the escrow account.

6. The company vide letter dated September 01, 2008 requested SEBI to allow it to refund the money lying in the escrow account to all investors and sought three weeks' time to pay the interest amount. SEBI vide letter dated September 17, 2008 advised the company to ensure that the application money along with the interest at applicable rate as stipulated under section 73 of the Companies Act is paid to all the investors/applicants in the IPO of the company within the period of three weeks from the date of the aforesaid letter of the company (i.e. by September 21, 2008), failing which SEBI may take action, as it may deem appropriate, in accordance with law.

7. Thereafter, on various occasions the company made assurances to SEBI that it was making efforts and will be depositing the interest amount before next day or next week. Vide its letter dated October 03, 2008, the company informed that it was making alternate arrangement by way of market borrowings and would definitely be able to meet all its commitments to investors before second week of October, 2008. The company vide letter dated October 17, 2008 once again requested for permission to disburse the principal amount (i.e. the application monies) immediately to the applicants and undertook that the interest amount will be deposited in the escrow account on or before October 31, 2008.

8. Meanwhile, SEBI received large number of complaints from the applicants in the IPO asking for refund of their application money along with the interest that had not been paid by the company. Considering peculiar facts and circumstance of this case and as an investor protection measure, SEBI vide letter dated October 23, 2008, advised the company to refund the application monies lying in escrow account immediately and to pay the interest amount payable thereon within time limit as undertaken by the company i.e. by October 31, 2008, failing which the company shall be liable to pay interest @ 15% p.a. for the period of delay, on the interest liability as on the date of refund of the application money.

9. Thereafter, the merchant bankers informed SEBI that the company did not deposit the interest amount payable to the applicants in the escrow account. SEBI was in receipt of large number of complaints from the applicants in the IPO, asking for payment of the interest amount on the application monies. This non- payment of interest on account of delayed refund of application monies was in contravention of the provisions of section 73(2) of the Companies Act, clause 6.13.2 of the erstwhile SEBI (DIP) Guidelines, 2000 ('the DIP Guidelines'), the disclosures made in the Red Herring Prospectus of the company and the advice of SEBI vide letter dated October 23, 2008.

10. In view of the aforesaid, SEBI issued Show Cause Notices (SCNs) to the company, its promoter and directors on December 2, 2008 to show cause as to why without prejudice to their liability as stated above , appropriate action including direction under sections 11, 11A and 11B read with clause 17 of DIP Guidelines should not be initiated against them.

11. The company vide letter dated December 24, 2008 informed SEBI that it had filed a writ petition on December 16, 2008 before the Hon'ble High Court of Andhra Pradesh against the SCN issued by SEBI and the Hon'ble High Court had suspended the SCN issued to it. In the absence of any stay *qua* the proceedings against the promoters and directors, SEBI proceeded in respect of SCNs issued to them and granted opportunity of personal hearing on April 08, 2009. However, neither the promoters nor the directors appeared for the hearing. Thereafter, the promoters/directors vide letter dated April 23, 2009 informed SEBI that they had also filed a writ petition before the Hon'ble High Court of Andhra Pradesh and an interim order has been passed, staying all proceedings in pursuance of SCNs issued by SEBI.

12. The Hon'ble High Court of Andhra Pradesh on July 18, 2011 passed a common order disposing of the aforesaid appeals. Vide the said order, the Hon'ble High Court directed the company and its promoters/ directors to file their replies to the SCNs issued by SEBI within one month from the date of order. The noticees, however, did not file their replies.

13. The company replied to the SCN vide letter dated November 21, 2011 wherein it raised preliminary objection that the SCN issued under section 11 and 11B of SEBI Act is not maintainable against it as it is neither a listed company nor an intermediary nor any entity who is associated with the securities market. It also stated that its IPO failed due to negligence on part of the merchant bankers and they are liable for the consequences of the failure of the issue.

14. Mr. K. Mallikarjun Reddy, Mrs. K. Mahitha, Mrs. K. Aparna and Mr. K. Sudhakar Reddy vide separate letters dated November 23, 2011 sent their replies adopting the reply of the company. The other noticees did not file any reply.

15. Since the noticees did not file their replies within time given by Hon'ble Andhra Pradesh High Court, an opportunity of personal hearing was granted to them on October 20, 2011. Hearing was, however, adjourned to December 13, 2011 on their request. During the hearing on December 13, 2011, the authorised representative of

the company did not raise any contention or objection to the SCN and requested that the company may be given time to make payment of interest and interest on interest as contemplated in the SCN. He further submitted that the company shall submit a proposal suggesting the manner of these payments to the applicants in the IPO. He sought 3 weeks time for submitting the proposal which was granted subject to the conditions that in case the proposal is not made within the stipulated time and; if SEBI is not satisfied with the same, it may take appropriate action including debarment/restraint order under sections 11 and 11B of SEBI Act against the company and its promoters/directors as contemplated in the SCNs.

16. Ms. K. Mahitha and Ms. K. Aparna (promoters), Dr. K. Sudhakara Reddy, Dr. K. Seshaiah, Mr. P. P. Reddy and Mr. K. V. Kondaiah Sastry (non-Executive and independent directors) filed their common written submission through their advocate vide letter dated December 23, 2011. They have submitted that as per section 73(2) of the Companies Act, the company and the directors, who are 'officers in default', are responsible to refund application money along with the interest component thereon to the investors. As per section 5 of the Companies Act, 1956 the promoters and independent directors do not fall within the meaning of 'officer who is in default'. They have also submitted that the declaration in the prospectus signed by the non-executive and independent directors states about the statements made in the prospectus and therefore the responsibility to pay interest to the applicants squarely falls on the company and the directors who are 'officers in default'. Further, Dr. K. Seshaiah and Mr. P. P. Reddy resigned as independent directors in June 2008 and August 2008 respectively, and Mr. K.V. Kondaiah Sastry resigned in 2011. In view of this, these noticees should not be held responsible for lapse on part of the company and they should be exonerated. Dr. Y. R. Nagarjuna Kumar filed written submission vide letter dated January 12, 2012 wherein he has also taken the same argument. He has further submitted that he had resigned on August 11, 2008.

17. Subsequently, the company vide letter dated January 03, 2012 filed its written submission including the proposal with regard to discharge of its payment obligations. In these written submissions, the company has stated that –
    (a) since the IPO became void, it resulted in huge financial loss to the company by way of expenses such as issue related expenses, fees paid to SEBI and stock exchanges, security deposits, advances for machinery which were forfeited by the vendors consequently, etc.;

(b) the turnover of the company reduced from Rs.83,44,78,501/- for the year ended 2008 to Rs.10,76,45,805/- for the year ended 2011;

(c) Income Tax Department issued notice and attached the bank accounts which resulted in the slowdown in the turnover of the company.

18. The company has agreed to pay the interest @ 15% per annum for delayed refund of application monies of Rs.32,98,27,875/ on October 23, 2008 and the interest amount so calculated amounts to Rs.4,77,12,553/. It has, however, requested SEBI to allow it to pay the interest @ 4% per annum on this interest amount of Rs.4,77,12,553/- for the period from November 01, 2008 to December 31, 2011. This works out to Rs.61, 07,207/-. The company has further requested that it may be allowed to pay the total interest amount of Rs.5,38,19,760/ (Rs.4,77,12,553 + Rs.61,07,207) in 8 quarterly equal installments of Rs.67, 27,470/- each.

19. Mr. K. Mallikarjuna Reddy and Mr. K. Sudhakar Reddy in their written submissions dated January 12, 2012 have submitted that the proposal given by the company would be complied if the same is accepted by SEBI. They have further stated that they would ensure that the company pays interest as undertaken by it in its proposal.

20. I have carefully considered the SCNs, replies and oral as well as written submissions made by the noticees, proposal of the company and other relevant material available on record. I note that the company and Mr. K. Mallikarjuna Reddy (promoter/ Managing Director) and Mr. K. Sudhakar Reddy (promoter/Executive Director) have not disputed their obligations to pay the interest on application monies on account of delayed refund thereof and also to pay the interest on that interest levied due to delayed payment of interest amount on the application monies. These two directors are 'officer- in default' for the purposes of the liability under section 73(2) read with section 5 of the Companies Act.

21. The other promoters/ directors have contended that they are not liable to pay interest prescribed in section 73(2) and as advised in the SCN. In this regard, I note that as per section 73 (2) of the Companies Act, the company and every director of the company who is an officer in default is jointly and severally liable, to repay all the money with interest at prescribed rate. The words "every director who is an officer in default" in this section will obviously include all the directors who are 'officers in default' as defined in section 5, irrespective of the fact whether they are independent or executive or non-executive directors.

22. In terms of provisions of section 5 of the Companies Act the words "officer in default", for the purposes of obligation of directors under section 73(2) mean all of the following:
    (a) managing director and whole time director
    (b) manager
    (c) secretary,
    (d) any person according to whose direction/instruction board of directors is accustomed to act.
    (e) any person charged by board of directors with responsibility of complying with that provision and that person have given his consent.
    (f) where the company does not have managing director or whole time director or manager or any director specified by board in this behalf, or, if no director is so specified, all directors.

23. In view of the above provision of section 5 of the Companies Act, an independent/ non-executive director could also be an officer in default if he was charged by the board of directors with responsibility to comply with the obligations and he has agreed for that responsibility. In this case, at the relevant time, the company had managing director, executive directors and non-executive/independent directors. I note that Ms. K. Mahitha Ms. K. Aparna were not directors who were officers in default for the purposes of the obligations to pay interests in terms of section 73(2) of the Companies Act. They are also not the concerned persons for payment of interest on account of delayed refund in terms of clause 6.13.2 of the erstwhile DIP Guidelines.

24. Dr. K. Seshaiah, Mr. P. P. Reddy and Mr. K.V. Kondaiah Sastry were independent directors of the company and they resigned on June 25, 2008, August 11, 2008 and March 02, 2011 respectively and have submitted copies of Form 32 in this regard. Dr. Y. R. Nagarjuna Kumar, a non-executive director also had resigned on August 11, 2008. There is no material on record to establish that these independent/ non-executive directors were 'officers- in -default' with regard to refund of application monies and payment of interest.

25. Coming to the proposal of the company, I note that now the company has requested for following two permissions with regard to discharge of its obligation to pay interests as contemplated in the SCN-
    (a) to pay interest @ 4% per annum on interest amount of Rs.4,77,12,553/- instead of 15% as advised by SEBI in the SCNs.

(b) to pay the total interest liability of Rs.5,38,19,760/- as per its calculation (Rs.4,77,12,553 + Rs.61,07,207) in 8 quarterly equal installments of Rs.67, 27,470/

26. I note that in this case, liability to refund the application monies and pay interest under section 73(2) of the Companies Act arose on November 10, 2007. After constant and repeated advices issued by SEBI, the company refunded the application monies to the applicants on October 27, 2008, as informed by Aarthi Consultants Pvt. Ltd. (Registrar to the issue) to BOB Capital Markets Limited which, in turn, informed SEBI vide its mail dated December 13, 2011. However, the payment of interest liability under section 73(2) was not discharged. In view of this default, SEBI, in the interest of the investors, issued instructions vide letter dated October 23, 2008 to pay interest @ 15% p.a., for period of delay, on the interest liability.

27. I further note that the statutory liability to pay interest under section 73 (2) is to be determined having regard to the length of the period of delay in making the repayment of application monies. Had the applicants been paid the interest within the stipulated time or the time permitted by SEBI, the applicants/ investors would have not lost the opportunity to avail benefits of the monies that they were entitled to get as per section 73(2). The interest amount has not been paid to the applicants to date. The company has proposed to pay the interest amount to the applicants in installments which will again delay the payment of interest amount to the applicants. The company has, however, submitted that its IPO that became void has resulted in huge financial loss. In view of this, it has requested that interest @ 4% p.a instead of 15% on interest amount as advised in the SCN may be charged. Considering the circumstances of the company and taking into account the interest of investors, I am of the view that interest @ 9% per annum on the interest amount would be equitable.

28. In view of the difficulties expressed by the company, I am inclined to grant time for payment of the interests. However, considering the interest of small investors, the installments and the payments to each investor have to be aligned in such a way that the larger number of small investors are paid at the earliest.

29. I, therefore, in exercise of the powers conferred upon me by virtue of Section 19 read with sections 11, 11A and 11B of the SEBI Act, 1992 and clause 17 of SEBI (DIP) Guidelines read with regulations 107 and 111 of the SEBI (Issue of Capital

and Disclosure Requirements) Regulations, 2009, issue following directions in the interest of the investors**:**

(a) The company M/s. SVPCL Limited shall pay the interest on application monies @ 15% per annum and interest thereon @ 9% per annum in a maximum of 7 quarterly installments as illustrated in the Annexure to this order.

(b) Payment shall be made through the Registrar to the issue, Aarthi Consultants Pvt. Ltd. through process followed by it for refund of application monies in public issues. The Registrar to the Issue shall, within 7 days from the end of each quarter, file a certificate with SEBI containing details of the payments made to the investors in compliance of this order.

(c) In case the aforesaid amount is not paid by the company within the specified time as aforesaid, then, without prejudice to SEBI's right to enforce the payment of interest amounts, M/s. SVPCL Limited, Mr. K. Mallikarjuna Reddy (PAN:AKGOK3343N) and Mr. K. Sudhakar Reddy (PAN: AMDPK9619E) shall be restrained and prohibited from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market, directly or indirectly, for a period of three years from the date of default in payments schedule prescribed in the Annexure to this order.

30. The show cause notice dated December 02, 2008 is accordingly disposed of.

31. A copy of this order shall be served on all recognized stock exchanges and depositories to ensure that the consequential direction given in para 29 (c) above are complied with at the relevant time.

32. This Order shall come into force with immediate effect.

DATE: April 18, 2012 **RAJEEV KUMAR AGARWAL**
PLACE: MUMBAI **WHOLE TIME MEMBER**
SECURITIES AND EXCHANGE BOARD OF INDIA

Enclosure- Annexure

Annexure to the Order dated April 18, 2012 in the matter of SVPCL Ltd.

The Annexure contains the payment schedule based on the data, as provided by M/s SVPCL Ltd.:

(1) Amount to be paid per investor (as on Feb 29, 2012) (Rs.)	(2) No. of investors	(3) %age of investors (Col 2/ total no. of investors) * 100	(4) Amount to be paid (as on Feb 29, 2012) (As per data provided by the company) (Rs.)	(5) Additional Interest (Col 4) * interest @ 09% p.a for the period from March 1, 2012 upto final payment) Rs.	(6) Total Interest Liability (Amount including additional interest) (Rs.) (Col 4 + Col 5) (Assuming 1st payment on May 01, 2012 and subsequent payments are made on 1st of every quarter.)	(7) Payment in
0-2963	4849	53.38	7225230	108379	7333609	Quarter I
2964-4233	1833	20.18	7166539	214996	7381535	Quarter II
4234-7408	522	5.75	3098293	162660	3260953	Quarter III
7409-9713	911	10.03	3929582	206303	4135885	Quarter III
7409-9713	911	10.03	3929582	294719	4224301	Quarter IV
9714-16932	293	3.23	3743112	280733	4023845	Quarter IV
16933-17991	631	6.95	5676161	553426	6229586	Quarter V
17992-470298	43	0.47	2662603	259604	2922207	Quarter V
16933-17991	631	6.95	5676161	681139	6357300	Quarter VI
17992-470298	43	0.47	2662603	319512	2982115	Quarter VI
470299-16284757	1	0.01	16284757	2320578	18605335	Quarter VII
Total			**6,20,54,622**	**54,02,049**	**6,74,56,671**	

Notes:

i. The shaded cells represent the investors who would be paid half the amount due to them in that quarter.

ii. The aforesaid amounts indicate the interest liability of the company, inclusive of TDS (wherever applicable) based on the data provided by M/s SVPCL Ltd. as on February 29, 2012. Hence, the figures are subject to change, depending on when the payment is made to the investors. Company can always make the payment earlier than as indicated in the above payment schedule.

iii. A description of column headings and an explanation of how entries in the first row are arrived at:

a) Col 1: It is the range of interest amounts per investor that the company is to pay in a particular quarter.
b) Col 2: It is the no. of investors which fall in a particular interest payment bracket. For example- an amount ranging from Nil to Rs.2963 is due to 4849 investors in Quarter I. Total no. of investors, as per the data provided by the company, is 9083.
c) Col 3: The percentage of investors is arrived at by dividing the no. of investors for a particular payment bracket by the total no. of investors (9083) and multiplying the same by 100.
d) Col 4: The total amount due to 4849 investors, to whom an amount ranging from nil to Rs.2963 is payable is Rs.72,25,230/- (as on February 29, 2012, based on data provided by the company)
e) Col 5: Additional Interest- It is the interest for the period from March 01, 2012 till the time the final payment is made. It is calculated as (7225230*0.09*2/12)=Rs.1,08,379/-. For example- if the payment is made on May 01, 2012, such payment would include an additional interest of Rs.1,08,379/- being the interest for the period from March 01, 2012 to May 01, 2012, i.e. for 2 months.
f) Col 6: It is the total interest liability of the company in respect of investors falling in a particular interest bracket, i.e. inclusive of TDS (wherever applicable). The total interest liability of the company in respect of investors to whom it owes Nil to Rs.2963 is Rs.73,33,609/- (Rs.72,25,230 +Rs.1,08,379) as on May 01, 2012.
g) Col 7: The indicative quarter in which the payment is to be made.

iv. The payment schedule is based on the details provided by SVPCL Ltd. and assuming that the first payment would be made on May 01, 2012 and subsequent payments shall be made on the first date of each quarter i.e. July 01, 2012 for Quarter II, October 01, 2012 for Quarter III and so on.

v. All the figures, as indicated in the payment schedule reflect the interest liability of the company, i.e. they are inclusive of TDS (wherever applicable).

vi. The total interest liability of the company (as indicated in Column 6 of the payment schedule) is prepared assuming that the first payment would be made on May 01, 2012 and subsequent payments would be made on 1st day of every quarter as indicated in point iii above.

vii. The company shall pay all the investors in Quarter I to whom interest amounts ranging from Rs.0-2963 are due. Such amount shall include interest @ 09 % per annum on the interest due till the time final payment is actually made to them. Further, the investors to whom interest ranging from Rs.7409-9713 is due would be paid half the amount due to them in the third quarter and the remaining half would be paid in the fourth quarter. Such payment would include interest @ 09 % per annum on the interest due till the time final payment is actually made. Subsequent payments shall be made similarly.

viii. Interest payment to each investor would be inclusive of the interest levied @ 09 % per annum on the interest as on date of refund of application money up to the time when final payment is made to that investor.

DATE: April 18, 2012
PLACE: MUMBAI

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA