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**(1998) 12 DEL CK 0037**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 5231 of 1998 and C.M. No. 10279/98

M.Z. Khan

APPELLANT

Vs

Securities and Exchange Board Of India and Others

RESPONDENT

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**Date of Decision :** 10-12-1998

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Securities and Exchange Board of India Act, 1992 — Section 11

**Citation :** (1999) 1 AD 682 : AIR 1999 Delhi 164 : (2001) 107 CompCas 141 : (1999) 77 DLT 706 : (1999) 48 DRJ 189

**Hon'ble Judges :** A.D. Singh, J

**Bench :** Single Bench

**Advocate :** Mr. Arun Jaitley, Ms. Pallavi Shroff and Mr. Manu Nair and Ms. Vinati Kastia, Mr. V.P. Singh and Mr. Santosh Paul, for the Appellant;

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## **Judgement**

Anil Dev Singh, J.—This is writ petition whereby Shri M.Z. Khan, who is a shareholder of the third respondent-Raasi Cement Limited challenges the order of the Central Government dated October 6, 1998 passed in appeal u/s 20 of the Securities and Exchange Board of India Act, 1992 (for short "the SEBI Act") against the order of the Securities and Exchange Board of India (for short "the SEBI") to the extent it declined the petitioner's prayer for stay of the public offer of the fourth respondent- Dr. B.V. Raju acting in concert with respondents 5 to 13, to the shareholders of Sri Vishnu Cement Limited (for short "SVCL"), whose names appeared in the register of members as on the close of the business hours of August 5, 1998 offering to acquire up to 47,44,000 equity shares of SVCL at a price of Rs. 100/- per share, fully paid up, payable in cash, representing up to 20% of the issued capital of SVCL, from the shareholders.

2. Brief facts giving rise to the writ petition are as follows:-

2.1 The third respondent-Raasi Cement Limited (RCL) was incorporated under the Companies" Act, 1956 in the year 1983. The company was promoted by the fourth respondent Dr. B.V. Raju, his relatives and associates. They controlled the

management of the third respondent. The third respondent is one of the promoter shareholders of the fourteenth respondent-SVCL. The third respondent at the time of promotion of the fourteenth respondent invested substantial sum of money in the latter. At that point of time it held approximately 27% of the equity share capital of the fourteenth respondent. It is the case of the petitioner that both the third and the fourteenth respondents were being controlled by the fourth respondent Dr. B.V. Raju and his relatives/associates. It appears that the fourteenth respondent fell on bad days and became a sick company within the meaning of Sick Industrial Companies (Special Provisions) Act, 1985 (for short "the SICA"). On April 20, 1995 the Board for Industrial and Financial Reconstruction ( for short "BIFR") sanctioned a rehabilitation scheme for the fourteenth respondent. Pursuant to the said scheme, the third respondent invested a further sum of about Rs. 4.86 crores by acquiring approximately 13% of equity share capital of the fourteenth respondent on a preferential allotment / private placement basis thereby increasing its total shareholding in the fourteenth respondent to 39.5%. The allotment of shares to the third respondent was made with the stipulation that the shares so allotted shall not be transferred for a period of three years from the date of allotment. The third respondent from time to time had been executing non-disposal undertakings with the financial institutions in respect of the loans availed of by the fourteenth respondent. Besides the third respondent had been extending managerial and material support to the fourteenth respondent.

2.2 On September 27, 1997, the Board of Directors of the third respondent-RCL decided to sell 50% of its stake in the fourteenth respondent-SVCL. Again on December 17, 1997 the Board of "RCL" decided to sell the remaining 50% of the shares of SVCL. For this purpose the Board authorised Shri B.V. Raju (for short "Raju"), a Co-promoter and Chairman of the fourteenth respondent to take necessary steps for disposal of the shares. The Board also took a decision to sell its stake in SVCL at par. Pursuant to the decisions of the Board, the third respondent sold the shares of SVCL held by it to the alleged Raju companies, namely, Sita Holdings Private Ltd., Bhoopathy Engineering Consultants Private Ltd., Kumudham Equity Holdings Private Ltd., Sri Ram Priya Consultants Private Ltd., Sri Ram Priya Developers Private Ltd., Sphinx Estates Private Ltd., Then pannai Lease Finance Ltd., Vanitha Finance Ltd., and Sri Vishnu Finance and Investments Ltd. These deals were carried out by means of agreements executed on December 5, 1997 and December 18, 1997.

2.3 It appears that India Cement Group in December 1997 acquired 7,80,000 shares of the third respondent-RCL. Subsequently, on April 5, 1998, the fourth respondent Dr. B.V. Raju and his associates, Mr. K.V. Vishnuraga and Mr. Ravinder Verma entered into an agreement with I.C.L Securities Limited whereby 13,16,760 shares of RCL were sold to the latter. In May 1998 the petitioner acquired some shares of the RCL After the acquisition of shares of RCL by the petitioner in May 1998 and by India Cement Group in December 1997, a complaint was filed by the former on July 15, 1998 with the SEBI in respect of the

manner in which Raju and others purchased 39.5% shares of SVCL from RCL and a suit was filed by RCL against Dr. B.V. Raju and his associates on August 5, 1998 in the court of the Chief Judge, City Civil Court at Hyderabad for cancellation of the above said sale agreements dated December 5, 1997 and December 15, 1997. Both in the complaint and the suit it was primarily urged that RCL invested of the shares of SVCL by the fourth respondent and his associates by violating the Takeover Code and by perpetrating a fraud on RCL.

2.4 In so far as the civil suit is concerned, it needs to be noticed that the civil court by means of an interim order dated August 7, 1998 restrained Raju Group from in any manner dealing with or alienating or encumbering the shares of SVCL acquired by them from RCL. In this writ petition we are not concerned with the order passed by the court of the Chief Judge, City Civil Court at Hyderabad.

2.5 While the complaint of the petitioner was pending before the SEBI, respondents 5 to 13 announced their intention to make a public offer to the shareholders of SVCL through a public announcement, which was published in various city editions of the Indian Express, Jansatta, Andhra Prabha and Endue dated August 5, 1998 and August 6, 1998, for the purposes of acquiring 47,44,000 equity shares of SVCL representing 20% of its issued capital from the shareholders whose names appeared in the register of members as on the close of business hours on August 5, 1998. The SEBI reacting to the public announcement vetted the letter of offer of respondents 4 to 13 for the purposes of overseeing whether the disclosures contained therein are adequate and are in conformity with the SEBI Takeover Code.

2.6 Subsequent to the Public announcement, the fourth to thirteenth respondents, from August 21, 1998 to August 26, 1998, acquired about 26% of the equity capital of SVCL from the financial institutions as per the following details :-

1. 15,05,200 shares at Rs.55/- per share in a negotiated deal with ICICI on August 21, 1998.
2. 31,22,600 shares at Rs.90/- per share in a negotiated deal with IDBI on August 25, 1998 .
3. 15,45,800 shares at Rs.100/- per share in a negotiated deal with IFCI on August 26, 1998.

2.7 At present the fourth respondent and the said companies (respondents 5 to 13) hold about 69.91% of the equity capital of SVCL.

2.8 Reverting back to the complaint of the petitioner, it needs to be noticed that a personal hearing was given to the petitioner by the SEBI on September 1, 1998. Thereafter, on September 3, 1998 the petitioner's solicitor Shah Desai Doijode & Phatarphekar submitted a brief synopsis of the submissions of the petitioner highlighting the plea that respondents 4 to 13 acted in concert, within the meaning of Regulation 2(e) of the Securities & Exchange Board of India

(Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (for short "the Takeover Regulations/ Code") in acquiring 39.9% of the equity shareholding of SVCL in December 1997, thus, violating Regulation 10 thereof as any acquisition of ten percent or more of the voting rights in a company by a person or group of persons acting in concert requires public announcement, to be made in accordance with the provisions of Regulation 14(1) thereof. It was also urged therein that since the acquirers had not fulfilled the obligations laid down in Regulations 10 and 14(1) they cannot be allowed to make any offer for acquisition of shares of any listed company for a period of 12 months from the date of closure of the offer as per Regulation 22(15). It was also contended therein that the Public offer should be suspended till the completion of the investigation as the acquisition of 39.5% shares of SVCL belonging to RCL by Raju Group of Companies was illegal.

2.9 On August 4, 1998, pursuant to the complaint of the petitioner, the SEBI by means of a notice sought Explanation from Dr. B.V. Raju why action should not be taken against him under the provisions of the Takeover Regulations. On receipt of the notice Dr. Raju by his letter dated August 7, 1998 sought inspection of the complaint and other connected documents. The SEBI thereupon provided the text of the complaint to Dr. Raju through M/s. Lezard Credit Capital Ltd which was acting on behalf of Dr. Raju. Thereafter, all concerned including the petitioner were given a hearing by the Board. On September 4, 1998 the SEBI made the following directions:-

"I have gone through and taken into account the submissions advanced on behalf of all these parties. Taking into consideration the complaints received by the Board, I feel that it will only be appropriate to examine the issues relating to SEBI. As was argued on behalf of Dr. Raju, no party can simultaneously pursue two remedies on the same issues at the same time. In any case the representatives of Raasi Cements Limited clearly stated that they would be going through the court process rather than seeking remedy from SEBI. However, since some of the complaints related to alleged irregularities and illegalities in the past acquisition of 39.5% shares of SVCL, are falling within the jurisdiction of SEBI, it is ordered that the concerned division of SEBI would examine these thoroughly and initiate appropriate action under the Regulations thereafter, in case these are found to be correct.

It also find it difficult to combine the issue of the past acquisition of 39.5% shares of SVCL and the present public offer. The regulation 22(15) of the Regulations cited by the learned counsel for S. Khan, the complainant in this regard, to my mind would really not be applicable to the present matter for the reason that this regulation envisages a situation where there is a Public offer with a closure date. Even according to the complainants no public offer was made by the acquirer earlier. Secondly, if this argument is accepted, the shareholders of SVCL would necessarily be harmed because under the offer, they are to get a price which is a multiple of the price which prevailed before the

public announcement was made.

In view of the above, the public offer process should be allowed to proceed in accordance with the procedure specified in the Regulations. This would be in the interest of the shareholders who should decide whether to accept or reject the said offer."

2.10 Thus, while finding a prima facie case against Dr. Raju and respondents 5 to 13, the SEBI allowed the process set in motion by the public offer to complete in accordance with the procedure specified in the Regulations. The petitioner not being satisfied with the order passed by the SEBI filed an appeal before the Appellate Authority. The Appellate Authority by means of the impugned order dated October 6, 1998 declined to interfere with the order passed by the SEBI. In this regard it directed under :-

"In view of above, we are inclined to uphold the order of SEBI directing an inquiry into various allegations against Dr. Raju and other companies in purchase of 39.5% shares of SVCL held by RCL. Also, SEBI must complete the inquiry within about two months, and take further action in accordance with law on the result of the inquiry report. We do not find adequate grounds, however, to interfere with the above offer made by Dr. B.V. Raju and others for purchase of 20% shares from public at their stage and reject this request for reasons mentioned above.

In view of above order of SEBI is upheld. It must, however, complete the enquiry initiated by it by 15th December 1998 and take further action in accordance with law during this period."

3. The petitioner being aggrieved of the above said order of the Appellate Authority has filed the instant petition.

4. Mr. Arun Jaitley and Mr. K. Parasaran, learned senior counsel for the petitioner and the third respondent respectively, contended that the Appellate Authority and the SEBI were not right in allowing the public offer process to proceed. They ought to have suspended the public issue in view of the irregularities and illegalities in the acquisition of 39.5% shares of SVCL by respondents 4 to 13. Learned counsel submitted that in order to preserve the status quo till SEBI completes its enquiry, respondents 4 to 13 should be restrained from despatching cheques to the shareholders of SVCL who have sent their shares with transfer forms to the respondents 4 to 13. The thrust of their contention is that the process set in motion by the above said public offer should not be allowed to be completed before SEBI takes a final view of the matter on conclusion of the enquiry initiated by it in regard to the legality of the purchase of 39.5% shares of SVCL by respondents 4 to 13 from RCL at the time when B.V. Raju and his associates were in control of the management of the RCL.

5. Learned senior counsel submitted that the sale of 39.5% shares of SVCL by RCL, when Raju group was in management of the latter company, and purchase

thereof by the same group raise serious issues. They further contend- ed that an analysis of the facts clearly show that the respondents 4 to 13 have violated the Takeover Code thus rendering the acquisition of shares of RCL to be illegal. The facts which have been highlighted, though noticed earlier, need to be restated in order to judge the seriousness, of the questions arising from and connected with the acquisition of 39.5% shareholding of the SVCL by respondents 4 to 13. These are: RCL was one of the promoters of SVCL. SVCL was declared a sick company under the SICA. In order to revive the unit, the BIFR sanctioned a rehabilitation scheme envisaging concessions and reliefs from banks and financial institutions subject, however, to the promoters bringing in Rs. 5,37,00,000/- by way of equity share capital at par/interest free unsecured loans. Pursuant to the scheme, RCL invested additional sum of Rs. 4.86 crores and was allotted preferential shares with the condition that the shares so allotted shall not be transferred for a period of three years from the date of allotment. A non-disposal undertaking was also furnished to the financial institutions. After about five months of investing Rs. 4.86 crores, the Board of Directors of RCL, when Raju group was in control of the Management of RCL, at its 110th meeting held on September 27, 1997 resolved to disinvest 50% of the SVCL shares held by it at a market value or face value of Rs. 10 per share, whichever was higher subject to obtaining approvals from financial institutions, if any, required for the same and compliance of SEBI guidelines where necessary. According to item No. 8 of the minutes of the 110th meeting, the board, inter alia, took the decision on the ground that even though SVCL was earning profits for the last four years, it could not wipe out its past losses fully or declare dividend so far. It was also noted that SVCL would take some more years to pay dividend to its shareholders and the present market rate of SVCL Shares was varying from Rs. 7 to Rs. 9. The board authorised Dr. B.V. Raju, Executive Chairman, Shri N.K.P. Raju, Executive Vice-Chairman and Managing Director, and Mr. K.V. Vishnu Raju, Managing Director of the company, to identify the purchasers for the disposal of the said equity shares of SVCL and finalise the terms of the sale. Again at 120th meeting of the Board of Directors of RCL held on December 17, 1997, a decision was taken to disinvest the remaining 50% shares of SVCL at a price of Rs. 10 per share subject to the necessary approvals, if any, required from the financial institutions or any other agency like BIFR, etc. Armed with the authorisation for sale of the shares of SVCL, steps were taken by the above said Rajas leading to agreements for sale of the shares to the nine companies. Stamp papers of all the agreements were purchased from the same stamp vendor N. Laxmi. All the agreements were executed at Isnapur outside the jurisdiction of Hyderabad Stock Exchange though RCL and six out of the nine companies were having a common registered office at Hyderabad. As a result of these agreements RCL was divested of 39.5% shares of SVCL. After the purchase of 39.5% shares in the above manner respondent No. 4 and nine companies made a public announcement for purchase of 20% of the issued capital of SVCL on the plea that now they are acting in concert as after having bought 39.5% shares applied for formal consent of the financial institutions and on June 4, 1998 IDBI conveyed no objection on the

condition that nine companies were to jointly and severally execute an undertaking not to dispose of their respective shareholding in the company. After announcement of the public issue the respondents 4 to 13 purchased 26% shareholding of RCL from financial institutions.

6. In view of these facts learned senior counsel for the petitioner and the third respondent submitted that the sale of 39.5% shares even when viewed in isolation raises very serious questions but the seriousness of the (questions is heightened when viewed in the context of the subsequent acquisition of 26% shareholding of SVCL from the financial institutions by respondents 4 to 13 without making public announcement as per the requirement of Regulation 11(1).

7. I have considered the submissions of the learned senior counsel for the petitioner and the third respondent. I am in complete agreement with the learned senior counsel that the acquisition of the shares by the respondents 4 to 13 raises serious questions. These can be enumerated thus :-

(1) Whether the above said acquirer companies are the shell companies of Raju? If so, whether the corporate entities of these companies should be ignored and the veil drawn aside?

(2) Whether the nine companies acted in concert within the meaning of Regulation 2(e) of the Takeover Regulations in acquiring 39.5% of the equity shareholding of SVCL from RCL in violation of Takeover Regulations inasmuch as no public announcement was made as required thereunder?

(3) What is the implication of the following facts in the context of the Regulation 11(1):-

i) Each one of the nine companies made identical offers to RCL to buy shareholding in SVCL;

ii) All the agreements whereby the transfer of shares took place were executed on two dates, viz., December 5, 1997 and December 18, 1997 at Isnapur outside the limits of Hyderabad though Six of the nine companies have a common registered office at Hyderabad;

iii) Stamp papers for the agreements were purchased from the same stamp vendor, namely, N. Laxmi;

iv) All the agreements contained the same terms and conditions;

(4) Whether the acquisition of 39.5% of the equity shareholding of SVCL from RCL by the nine companies was-

(a) in violation of the Regulation 7 which provides that any acquirer who acquires shares or voting rights (which taken together with shares or voting rights, if any, held by him) would entitle him to more than five percent shares or voting rights in a company shall disclose the aggregate of his shareholding or voting rights in that company, to the company within four working days from the receipt of

information of allotment of shares or the acquisition of shares or voting rights, as the case may be and every company whose shares are acquired in the above manner shall also disclose to all the stock exchanges on which the shares of the said company are listed the aggregate number of shares held by each of such persons referred above within seven days of receipt of said information.

(b) in violation of Regulation 10 which lays down that no acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him) entitle such acquirer to exercise ten percent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the Regulations.

(c) in violation of Regulation 14 which requires that public announcement referred to in regulation 10 or regulation 11 is to be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting right or deciding to acquire shares or voting rights exceeding the respective percentage specified therein.

(5) When the sale of shares of SVCL was required to be made with the approval of the financial institutions during the lock in period -

(a) what is the effect of sale without prior approval of the financial institutions, and

(b) what is the effect of the subsequent approval of the financial institutions after the sale of shares?

(6) Whether the transfer of shares to nine companies was made for an unlawful object or consideration and was in violation of section 6 read with section 23 of the Indian, Contract Act.

(7) Whether the stake of RCL in SVCL was rightly sold at par without taking into consideration the replacement cost of a similar plant ?

(8) When the shares of SVCL held by RCL were sold to nine companies on the ground that due to accumulated losses the company was not in a position to pay dividend to its shareholders, whether such a reason was not a camouflage as otherwise Dr. B.V. Raju will not be retaining his own individual shareholding in SVCL ?

(9) Whether Dr. B.V. Raju ought to have refused himself from participating in the discussions pertaining to disinvestments of equity shares of SVCL held by RCL when the matter came up before the Board of Directors of RCL at its 110th meeting and whether his participation amounts to insider trading ?

8. Even though these questions are of a serious nature and the fact that the SEBI has instituted an inquiry shows that there is a prima facie case of violation of the Takeover Code by the nine companies, but the matter is one for the investigation of the SEBI. Under Chapter V of the Takeover Regulations detailed

procedure has been laid down for the investigation by the SEBI into the complaint received from the investors, the intermediaries or any other person on any matter having a bearing on the allegations of substantial acquisition of shares and takeovers. The SEBI can also investigate the matter suo-moto upon its own knowledge or information, in the interest of securities market or investors interests, for any breach of the Regulations. The investigation can also be carried out by the Board to ascertain whether the provisions of the SEBI Act and the Regulations have been complied with. For the purpose of investigation the Board is authorised to appoint one or more persons as investigating officer. Under Regulation 40, it is the duty of the acquirer, the seller, the target company, the merchant banker whose affairs are being investigated and of every director, officer and employee thereof, to produce to the investigating officer such books, securities, accounts, records and other documents in its custody or control and furnish him with such statements and information relating to his activities as the investigating officer may require, within such reasonable time as the investigating officer may specify. The acquirer, the seller, the target company, the merchant banker and the persons being investigated are required to allow the investigating officer to have reasonable access to the premises occupied by him or by any other person on his behalf and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the acquirer, the seller, the target company, the merchant banker or such other person. The investigating officer, in the course of investigation, is entitled to examine or to record the statements of any director, officer or employee of the acquirer, the seller the target company, the merchant banker. The Takeover Regulations enjoin upon every director, officer or employee of the acquirer, the seller, the target company, the merchant banker to give to the investigating officer all assistance in connection with the investigation, which the investigating officer may reasonably require. The investigating officer, on completion of the investigation is required to submit a report to the Board. The Board can also direct the investigating officer to submit interim report which he is bound to submit. Under Regulation 42, the Board after consideration of the investigation report, is required to communicate the findings of the investigating officer to the acquirer, the seller, the target company, the merchant banker, as the case may be, and extend an opportunity to file reply and of being heard to the concerned. The SEBI upon considering the reply is authorised to call upon the acquirer, the seller, the target company, the merchant banker, as the case may be, to take such measures as it may deem fit in the interest of the securities market and for due compliance with the provisions of the SEBI Act and the Regulations. Under Regulation 43, the Board can appoint a qualified auditor to investigate into the books of account or the affairs of the person concerned. Besides, under Regulation 44, the Board, in the interests of the securities market and without prejudice to its right to initiate action including criminal prosecution u/s 24 of the SEBI Act, can issue directions including-

(a) a direction to the person concerned not to further deal in securities;

- (b) direction to the person concerned interdicting him from disposing of any of the securities acquired in violation of these Regulations;
- (c) direction to the person concerned to sell the shares acquired in violation of the provisions of these Regulations;
- (d) direction for taking action against the person concerned.

Regulation 45 lays down penalties for non-compliance of the provisions of the Regulations. Regulation 46 provides for appeal to the Central Government from an order of the SEBI under the Regulations.

9. Thus, it is clear that the Board has the power to carry out investigations and to take action in accordance with the Regulations against the one who violates the Takeover Regulations, namely, acquirer, the seller, the target company, the merchant banker, as the case may be. In this context a question also arises for consideration as to whether the Board has the power to pass interim orders. It seems to me that the SEBI has power to pass interim orders before and during the inquiry or investigation to effectuate the purpose of the SEBI Act and the Regulations. u/s 11 of the SEBI Act, the SEBI has the power to protect the interests of the investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit. The power is of a very wide nature and is not hedged in by any restrictions. This power will embrace the power to issue interim orders. The SEBI in a fit case can pass interim orders in the interests of investors and to promote the development of and to regulate the securities market. Under the same provision, it can frame regulations as well for the same purpose. The final orders after the inquiry are contemplated u/s 11B of the Act and at that stage it can issue such directions to any person referred to in the section as may be appropriate in the interests of investors and securities market. Both under sections 11 and 11B the duty is cast on the Board to protect the interests of the investors in securities and to promote and regulate the securities market. If at the initial stage it becomes necessary to pass an interim order, the SEBI has been endowed with such a power u/s 11 of the Act. In case the provisions of section 11 are construed in a restrictive manner, the interests of the investors in securities and development and regulation of securities market will suffer. Mr. Raval, the learned Additional Solicitor General has also taken the same position on behalf of the Board. Though the SEBI is possessed of the power to pass an interim order, in the instant case it did not exercise that power on the ground that it was in the interest of the shareholders to allow them to receive the value of their shares at the rate of Rs.100/- per share which is the same rate at which the shares of SVCL held by the financial institutions were purchased by the nine companies. It cannot be said that the reason for not suspending the process set in motion by the public announcement was not adequate or was arbitrary or the reason suffered from illegality or irrationality. The grant of interim order was in the discretion of the SEBI. Such discretion cannot be interfered with even when serious and substantial questions have been raised by the petitioner and the

third respondent. Those questions are for the SEBI to determine. I have no doubt that the SEBI will bestow its consideration on the issues which arise in the case. The determination of these questions will not be made by this Court sitting in writ jurisdiction when such determination lies in the domain of the authorities mentioned in the Regulations. Not only the authorities have to consider the questions raised by the petitioner and the third respondent they have also to consider the defenses which may be raised by respondents 4 to 13 in regard to the allegation of violation of Takeover Regulations including the ones which were indicated by Mr. Desai, while making his submissions on behalf of respondents No. 4 to 13, which can be summarised thus :

(a) that the public offer is in the interest of the investors as they are being paid Rs.100/- for each share as against the average price preceding the date of public announcement at the three stock exchanges being between Rs.13.49 and Rs.14.02. No other person has made an offer to buy the shares of SVCL at a price higher than Rs.100 per share.

(b) that Takeover Code is not applicable as the same persons who are promoters of SVCL remained in control thereof at all material points of time as prior to December 1997 Raju group was in control of RCL and SVCL.

(c) even if the allegation that RCL transferred SVCL shares to the nine shell companies belonging to Raju group is accepted it will make no difference as there is no change in control of SVCL and there is no takeover of SVCL from the persons presently managing and controlling the same.

(d) the transfer of SVCL shares by RCL to the nine companies is exempted by regulations 3(1)(e) and 3(1)(g).

(e) The petitioner has been put up by the third respondent as having filed the civil suit it could not file a parallel proceeding by way of writ petition. The pleas now being raised by the third respondent are dishonest and fraudulent.

10. In response to the above defenses, the learned senior counsel for petitioner submitted that same were not available to respondents 4 to 13. The price of shares would have gone beyond Rs.100 if even playing field was provided to them and other competitors as nine companies already having purchased 39.5% shareholding in violation of the Takeover Code and also having purchased 26% shareholding of the RCL from the financial institutions, no prudent person will come forward to buy minority shareholding. It was further contended that the conditions for application of exemption regulations 3(1)(e)(i) and 3(1)(k) have not been complied with by respondents 4 to 13 and, Therefore, the exemptions are not available to them.

11. Learned counsel for the petitioner also contended that the present offer could not be said to have been triggered because of the acquisition of shares of SVCL from the financial institutions, or the furnishing of non-disposal undertakings to the financial institutions after the acquisition of 39.5% shareholding of SVCL

from RCL. He canvassed that triggering point would be the acquisition of 39.5% shares by respondents 4 to 13.

12. All the pleas raised by the petitioners and respondent No.3 and the defenses which are available to respondents 4 to 13 are to be considered by the SEBI. The SEBI, which is an expert body, is capable of securing the rights of the parties. Learned counsel for respondents 4 to 13 conceded that on completion of inquiry the SEBI can pass such orders as would be warranted in the circumstances of the case. He also stated that if ultimately the SEBI comes to the conclusion that respondents 4 to 13 have violated the Takeover Code it can always pass orders to undo the wrong. For the purpose of illustration he submitted that the SEBI can even ask the respondents 4 to 13 to hand over shares to the financial institutions or such other persons as it would deem appropriate.

13. Mr. V.P. Singh, learned senior counsel appearing on behalf of body of shareholders of SVCL submitted that the sale of shares pursuant to the public offer made by respondents No. 4 to 13 is in the interest of the shareholders and the transactions should be allowed to be completed.

14. In the circumstances, I am not inclined to interfere with the order passed by the AAIFR except to the extent of issuing a direction to the respondents 4 to 13 to secure the availability of the shares of SVCL held by respondents 4 to 13 and those they will acquire as a result of the public announcement. Accordingly, respondents 4 to 13 are interdicted from selling, transferring alienating or parting with the shares of SVCL so far acquired by them, and those which may be acquired by them as a result of the public offer until the decision by the SEBI. The respondents 4 to 13 shall also not create third party interests in these shares. The shares shall be kept available with the respondents 4 to 13 for carrying out any direction of the SEBI with regard thereto.

15. While deciding the controversy the Board will keep in view the following facts as recorded in the agreement dated April 5, 1998 by and between Dr. B.V. Raju and his associates/relatives, namely, K.V. Vishnuraga and M. Ravinder Verma on the one hand, and ICL Securities Ltd. on the other:-

1. RCL had sold 93,68,600 equity shares of SVCL for an amount of Rs. 9,36,86,000/- in December 1997. (See clause (e) of the agreement)

2. Several documents specified in Schedule B to the agreement were executed by B.V. Raju, his associates, companies and trusts which belong to group of B.V. Raju and various persons who had after public offer aligned with B.V. Raju and offered support to him. (See clause 10.1 of the agreement).

3. The 17 companies have been mentioned in Schedule B to the agreement out of which nine companies are the ones which bought the shares of SVCL from RCL. Thus, at least on April 5, 1997 the ICL was aware of the sale of shares of SVCL to the nine companies and even then it entered into agreements with B.V. Raju and his associates. At the same time, B.V. Raju made no bones about the

nine companies being his associates.

4. The agreement dated April 5, 1998 between Dr. Raju and two of his associates/ relatives on the one hand and ICL Group on the other specifically refers to the fact that pursuant to the decision of the Board of Directors of RCL, the shares of SVCL held by RCL were sold in December 1997. By virtue of this agreement Raju group agreed to sell the shares of RCL held by it to the ICL and withdrew its resistance to the public offer of ICL and group companies made on March 2, 1998 for acquisition of 20% of the shares of RCL under the Takeover Code. This was done with a view to amicably resolve the issues and to settle the litigation which had commenced between the two groups.

The Board will also determine the triggering event in accordance with law without being influenced by the observations of the appellate authority. It will be open to respondents No. 4 to 13 to make the payment to the shareholders who had accepted the public offer, within three days. The time under Regulation 22(12) is accordingly extended.

It is submitted by learned counsel for the parties that it is in the interest of parties that SEBI completes the inquiry expeditiously. Having regard to the submissions of learned counsel for the parties, it is directed that the SEBI shall complete the inquiry expeditiously preferably by 31st January, 1999. Dasti.

With the above observations and directions, the writ petition is disposed of.