



# SUPREME PETROCHEM LTD

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Ref: CFA/CS/letters/buyback

December 24, 2009

Securities and Exchange Board of India,  
SEBI Bhavan,  
Plot No.C4-A, G Block,  
Bandra-Kurla Complex,  
Bandra (East),  
Mumbai - 400 051

Dear Sir,

**Sub: SEBI (Informal Guidance) Scheme, 2003 - Request for Interpretive Letter for  
Second Buy-back of Shares U/S 77A of the Companies Act, 1956**

- (1) Supreme Petrochem Ltd (SPL) is a Public Limited listed Company which has recently completed its first offer for buy-back of equity shares.
- (2) The buy-back was authorized by the Board of Directors and was made through the open market route.
- (3) The relevant dates are as follows:-
 

(a) Date of the Board Resolution authorizing buy-back	:	05.12.2008
(b) Public Notice of buy-back	:	05.12.2008
Published in Newspapers	:	07.12.2008
(c) Public Announcement of buy-back	:	16.12.2008
Published in Newspapers	:	16.12.2008
(d) Corrigendum to Public Announcement of buy-back	:	
(as per SEBI's advice dated 24.12.2008)	:	26.12.2008
Published in Newspapers	:	27.12.2008
(e) Buy-back opened*	:	24.12.2008*
(f) Offer closed on	:	04.12.2009
(g) Maximum size of the buy-back 75,00,000 equity shares of Rs.10/- each	:	
(h) Buy-back price maximum Rs.14/- per equity share.	:	

\* Actual buy-back commenced from December 31, 2008 after corrigendum was published.

- (4) SPL brought back 15,37,907 shares (1.56% of the paid-up Share Capital) against the maximum authorized quantity of 75,00,000 shares during the offer period as the share price went above Rs.14/- per share.

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- (5)(a) As per Section 77A(2) of the Act a company may purchase its own shares or other securities, out of its free reserves; or the securities premium account; or the proceeds of any shares or other specified securities.
- (5)(b) As per section 77 A (2)(b)&(c) of the Act, no company shall purchase its own shares or securities as mentioned above unless the buy-back is authorized by its articles and a special resolution has been passed in general meeting of the company authorizing the buy-back.
- (5)© A proviso to Section 77A (2)(b)(A) of the Act states that nothing in this clause i.e clause 2 shall apply in any case where the buy-back is or less than 10% of the total paid-up equity capital and free reserves of the company and has been authorized by the Board by means of a resolution passed at its meeting.
- (5)(d) A second proviso to the section further states that no offer of buy-back shall be made within a period of 365 days reckoned from the date of preceding offer of buy-back, if any. An explanation in this regard clearly states that offer of buy-back means the offer of such buy-back made in pursuance of the resolution of the board referred in the second proviso. Thus, clear interpretation of Section 77A (2)(A) proviso and Section 77A (2)(b) states that once the buy-back has been made with the authorization of the board and not that of the shareholders, no further offer of buy-back of any securities can be made within 365 days reckoned from the date of preceding offer. However, the company can make a further offer within a period of 365 days if it is authorized by its members by way of a special resolution, provided the aggregate of authorization does not exceed the quantum of 25% in a financial year. As regards "date of offer" there is no clear explanation in the Act as to what exactly date of offer shall mean.
- (5)(e) The Companies (Amendment) Act, 2001 in its Statement of Objects and Reasons provides that if the buy-back is to the extent of or less than 10% of the total paid-up capital and free-reserves of the company and such buy-back had been authorised by means of a resolution passed at its board meeting, such buy-back shall not require special resolution to be passed by a general meeting as required under Section 77A (2)(b), which prohibits a company to purchase its own shares or other specified securities unless a special resolution is passed in the general meeting of the company authorizing the Buy-back. It is further provided in the Statement of Objects and Reasons to the Companies (Amendment) Act, 2001 that no offer of buy-back referred before (i.e. an offer made pursuant to a Board resolution) shall be made within a period of 365 days reckoned from the date of the preceding offer of buy-back.

It therefore appears that the intent of the legislature while making such amendment was to liberalise the provision relating to buy-back of shares and at the same time protect the interest of the shareholders by restricting the power of the board of directors of the company in respect of such buy-back. There appears no such restriction on the buy-back offer pursuant to the Special Resolution passed by the members in the General meeting

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In view of the above, please issue an interpretive letter advising:-

- (i) The date on which the period of 365 days for making the second buy-back offer pursuant to the board resolution would end i.e. whether the period of 365 days is to be reckoned from the date of the public announcement, or from the date of opening of the offer or from any other date.
- (ii) Whether the Company can immediately proceed with the second buy-back offer pursuant to the Special Resolution passed by the members or whether the cooling period of 365 days will be applicable to the second offer through the members resolution also.

A payorder no. 244575 dated December 12, 2009 drawn on ICICI Bank Limited, Mumbai in favour of The Securities and Exchange Board of India for Rs.25,000/- is enclosed.

Please issue the Interpretive Letter at the earliest.

Thanking you

Yours faithfully

For **SUPREME PETROCHEM LTD**

A handwritten signature in dark ink, appearing to read 'R. Kuddady'.

**RAVI V KUDDYADY**  
**GENERAL MANAGER**  
**(LEGAL & SECRETARIAL SERVICES)**