

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

**IN THE MATTER OF M/s. DEVENDRA SHANITLAL KOTHARI,
STOCK BROKER, INB 010905228 IN THE SCRIP OF GREENFIELD
TRADING AND FINANCE LIMITED**

Date of hearing : October 18, 2006

Appearances :

For Noticees : Shri Gaurav Joshi, Advocate
Shri Deepak Shah, Advocate
Shri Deepak S Kothari

For SEBI : Shri P.K.Bindlish, General Manager
Shri Atul Agarwal, Manager
Ms. Kshama Chavan, Legal Officer

ORDER

UNDER REGULATION 13 (4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 IN RESPECT, OF M/S DEVENDRA SHANITLAL KOTHARI, MEMBER OF THE STOCK EXCHANGE, MUMBAI IN THE SCRIP OF GREENFIELD TRADING AND FINANCE LIMITED.

1.0 Background

1.1 Greenfield Trading & Finance Ltd (hereinafter referred to as “GTFL”) was incorporated as a Public Limited Company on March 13, 1995 and obtained certificate of commencement of business on 6th April, 1995. The main objective of the company was to carry on and undertake the business as exporters, importers, retailers, merchants and trading operations of various kinds and to act as commission

agents etc. The shares of GTFL were listed on The Bombay Stock Exchange Limited (hereinafter referred to as “BSE”).

- 1.2 As per BSE, the latest capital structure of GTFL comprised of Rs. 99.60 lacs divided into 996000 equity shares of Rs.10 each. As per the distribution schedule as on June 30, 1992, it is observed that top 30 shareholders were holding around 958780 shares which works out to around 96.20%. By this it is observed that floating stock of GTFL was very less and that GTFL was a closely held company.
- 1.3 The scrip was quoting around Rs.52 as on January 16, 1996 with a volume of 600 shares. The scrip started moving up from this level and reached Rs. 210 as on February 22, 1996 with a volume of 146750 shares. Later the scrip came down to Rs.122 by March 15, 1996. However, the volumes were on the higher side and average daily volume was more than 1.5 lac shares. Once again the scrip started moving up and reached Rs.450 by May 16, 1996 with a volume of 18,600 shares. The last quotation was Rs.420 on June 6, 1996 after which the scrip was placed under indefinite suspension by BSE.
- 1.4 Due to huge rise in the volume and price of the scrip various surveillance measures were taken by BSE, which included imposition and revision of heavy margins and suspension of the trading in the scrip on January 24, 1996, January 30, 1996 and February 8, 1996. Still, the scrip witnessed upward movement both in respect of price and volume. Although the company declared 1:1 bonus in the month of April 1996, the general fundamentals of the

- company were not good for investors to make an investment in the scrip of GTFL.
- 1.5 In view of the unexplained price rise, BSE requested SEBI for granting them the permission to suspend trading in the scrip indefinitely. Based on the permission granted by SEBI, BSE indefinitely suspended the dealing in the scrip w.e.f. June 7, 1996.
 - 1.6 In view of the above, SEBI initiated an investigation into the affairs relating to the dealing in the scrip of GTFL during the period January to June 1996 (hereinafter referred to as the investigation period).
 - 1.7 The analysis of the dealings of the top trading members of BSE revealed that the interest of the investing community in the scrip was scant. Keeping in view of the low floating stock and fundamentals of the company, which were not too encouraging, the volumes recorded in the scrip supported by the price rise during the period of investigations did not appear to be genuine investment buying, but appeared manipulative.
 - 1.8 The majority of the deals occurred among the common clients like M/s. Fathepuria Enterprises, Umi Investments, Matta Investments, BNP Securities, Shri Kiran J. Desai, Niyati Investments, MP Investments, Rajan Bhuchar etc. who had direct connections with the management/ promoters / directors of the company.

- 1.9 M/s Devendra Shantilal Kothari, (hereinafter referred to as “DSK”) is a Stock broker of BSE and is registered with SEBI having registration number INB 010905228.
- 1.10 During the investigation, it was found that DSK was one of the brokers who had dealings in the scrip. In all, DSK was involved on gross basis in the dealings of 406050 shares and on net basis in the dealings of 24950 shares of GTFL.
- 1.11 The trading details furnished by DSK revealed that maximum trading was done on behalf of their registered sub-broker, M/s. Archana Investments who in turn traded for ultimate clients such as Kiran J Desai (identified as one of the main manipulators acting for the management of GTFL).
- 1.12 From the dealings of the clients and from the depositions made during investigation, it appeared that DSK failed to exercise due skill care and diligence while dealing with the above clients.

2.0 Enquiry Proceedings

- 2.1 In view of the alleged irregularities observed during the investigation period, Chairman, SEBI, vide its order dated July 24, 2003, appointed an Enquiry Officer to enquire into the contravention /s alleged to have been committed by DSK.
- 2.2 A show cause notice under Regulation 6 of SEBI (Procedure for holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as “Enquiry Regulations”)

was issued to DSK vide letter dated January 27, 2004 for the alleged irregularities. It was alleged that DSK failed to exercise due skill, care and diligence while dealing with the above clients and therefore appeared to have violated the provisions of Code of Conduct prescribed for Stock Brokers specified in Schedule II to Regulation 7 of SEBI (Stock Broker and Sub Broker) Regulations, 1992(hereinafter referred to as “Stock Broker Regulations”).

- 2.3 DSK vide its letter dated February 11, 2004 filed its reply to the aforesaid notice.
- 2.4 An opportunity of personal hearing was granted to DSK by the Enquiry Officer on October 29, 2004 wherein submissions were made.
- 2.5 On completion of the enquiry, the Enquiry Officer submitted a report dated November 11, 2004 recommending a minor penalty of suspension of certificate of registration for a period of three months.

3.0 Show Cause Notice and Reply

- 3.1 Subsequent to the submissions of the said Enquiry Report, a show cause notice dated November 25, 2004 was issued to DSK under Regulation 13(1) in Enquiry Regulations asking it to show cause as to why penalty as recommended by enquiry officer should not be imposed upon DSK. In terms of Regulation 13(2) of Enquiry Regulation DSK was given time of 15 days to reply to the aforesaid notice. In the absence of any reply it was to be presumed that it had no explanation to offer and the SEBI Board shall be free to take such action in the matter as it deems fit.

3.2 DSK vide its letter dated December 09, 2004 made the following submissions that :-

- a) *The volume of 406050 shares traded by us in GTFL during the period under investigation could in no way be attributed to the alleged circular trading in the scrip.*
- b) *The trades undertaken were on behalf of a sub-broker only and not on behalf of the promoters of GTFL or for any other entity.*
- c) *DSK had no overt or covert prior understanding with the counter party member or his/their clients to enter into any circular trading in the scrip of GTFL.*
- d) *DSK merely executed the instructions of the sub-broker in good faith and in ordinary course of business and therefore, it cannot be inferred that it was a part of the alleged wrong doing of the sub-broker and /or the ultimate client.*
- e) *DSK had received all the dues from the clients and there was no defaults by their clients on their financial commitments. Only on one occasion that M/s Archana Investments failed to make pay in on time that DSK had to enter into a spot trade on its behalf. Looking at the otherwise financial regularities M/s Archana Investments there was no cause for any apprehension on the financial soundness of the sub broker*
- f) *DSK has exercised due skill, care and diligence in the conduct of business.*
- g) *DSK had taken all care, which was required to be taken about the credibility and financial soundness of the sub-broker for payment and its capacity to trade in the market.*

4.0 Personal Hearing

4.1 An opportunity of personal hearing was granted to DSK before me on October 18, 2006 wherein persons recorded on first page of this Order appeared on behalf of DSK and made detailed submissions.

5.0 Consideration of Issues

5.1 I have carefully considered the findings of investigation, the Enquiry Report, show cause notice issued to DSK and the submissions made

by DSK in response to the show cause notices and my findings are as under :

5.2 I have noted from the investigations that:

- i. The floating stock of the company being very low and the fundamentals of GTFL being not too good, the price movement during the period January 1996 to June 1996 appeared to be artificial.
- ii. DSK did not enter into trades on its own account and as far as the client trades are concerned they were through sub broker and hence the question of personal interest did not arise.
- iii. Archana Investments, sub-broker of DSK used to trade on behalf of the clients. These entities have traded on behalf of the management of the company.

5.3 I have observed that the clients as stated above were employed as front entities by the management of GTFL and indulged in circular trading by enrolling as common clients with the brokers of BSE.

5.4 I have further noted that many of the clients who had traded in large quantities had registered as client with more than one trading member. Some of the clients have even registered with four to five trading members at the same point of time. Since their volumes with various members were on a higher side, it appeared that there was a serious attempt made to manipulate the share price and also creating or building artificial volumes in the scrip.

- 5.5 I have also noted the submission made by DSK that since the clients were meeting all their obligations as per schedule there was no reason for it to suspect their credentials. Further DSK submitted that it was also not aware that the same set of clients was also dealing with other members of the Exchange in the same scrip.
- 5.6 However, DSK being a registered intermediary cannot absolve themselves of the duty of due skill, care and diligence while dealing with the clients. Clause A (2) of Regulation 7 of the Stock Broker Regulation requires that “A stock broker shall act with due skill, care and diligence in the conduct of all his business.”
- 5.7 I agree with the finding of enquiry officer that the introduction of special margin and suspension of trading in the scrip by BSE should have provided enough indication to DSK that there was something unusual and it should have prompted it to examine the trades in the scrip.
- 5.8 In view of the above, I agree with the findings of the Enquiry Officer that DSK had failed to exercise due skill, care and diligence while dealing with the clients and have therefore violated Clause A (2) of the Code of Conduct as specified in Schedule II of Regulation 7 of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.
- 5.9 However, keeping in view the nature of violation committed by DSK, I am of the view that a penalty of suspension of certificate of registration for a period of three months as recommended by the Enquiry Officer would be excessive.

- 5.10 Considering the facts and circumstances of the case, the imposition of penalty of censure would be adequate to meet the ends of justice.

6.0 Order

Therefore in exercise of the powers conferred upon me by virtue of section 19 read with Regulation 13 of SEBI(Procedure for Holding Enquiry by the Enquiry Officer and Imposing Penalty)Regulations, 2002, I hereby 'Censure' Devendra Shantilal Kothari, member of BSE, to the effect that the broker should be careful in future and exercise due skill, care and diligence in the conduct of its affairs as a capital market intermediary. I also direct DSK to note that any instances of violation or non-compliance of the SEBI Act and Rules and Regulations in future shall be dealt with stringently.

DATE : 15.03.2007
PLACE : MUMBAI

T.C.NAIR
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA