

SECURITIES AND EXCHANGE BOARD OF INDIA

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

Name of the noticee : M/s. Triveni Management Consultancy Services Limited

Date of hearing : 14-06-2006

Appearance of the parties

For the noticee : Shri N. B. Shetty, Chairman
Shri Aftab Kayalwalla, Back Office Head
-Authorised Representatives

For SEBI : Shri P. K. Bindlish, General Manager
Shri Pradip Bhowmick, Manager

WTM/TCN/ID3/31/06/2007

ORDER

UNDER REGULATION 13(4) OF THE SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002, AGAINST M/s. TRIVENI MANAGEMENT CONSULTANCY SERVICES LIMITED BEARING SEBI REGISTRATION NO. INB230652831, MEMBER OF THE NATIONAL STOCK EXCHANGE IN THE MATTER OF M/s. SNOWCEM INDIA LIMITED

1.0 BACKGROUND

1.1 The National Stock Exchange (hereinafter referred to as "NSE") conducted an investigation into the dealings in the scrip of M/s. Snowcem India Limited (hereinafter referred to as SIL) for the period June 3, 1999 to August 10, 1999. In their report submitted to the Securities and Exchange Board of India (herein after referred to as 'SEBI' or 'the Board'), they had observed that scrip of SIL record-*ed a dramatic increase in the average number of trades and from an average of 3 trades a day during the period March 1, 1999 to May 25, 1999, it went up to as high as 173 trades a day during the period June 3, 1999 to August 10, 1999. There was a major spurt in the total volume in the scrip. From an average daily volume of 12,521 shares during the period March 1, 1999 to May 25, 1999, it recorded a five-fold increase to record volumes of 68,370 shares a day during the investigation period i.e. from June, 1999 to August, 1999. The increasing trend in volumes was accompanied by the price rise in the scrip as well. The scrip price of SIL fluctuated between Rs.48.10 to Rs.55.80 during the period March 1,1999 to May 25,1999. From June 3,1999, it started rising and touched Rs.127.95 on August 10,1999. From the analysis of the trading details of various members along with their clients, NSE observed that some entities associated / close to the Snowcem Group had been actively involved in trading of its shares during the said period resulting in unusual spurt in prices and traded volumes. It was further observed that in some settlements their contribution was as high as over 90% of the total market activity.

1.2 Pursuant to the above, SEBI conducted investigation into the dealings in the scrip of SIL and observed that Kosha Investments Limited (herein after referred to as KIL) as the predominant trader in the scrip during the aforesaid period of investigations. It was further observed that SIL had reissued forfeited shares which were allotted to one Shri Sourabh Bora who was identified as one of the top clients who had traded in the scrip apart from KIL. The money received by KIL from SIL was time and again utilized for the purpose of making payments to brokers. It was observed that the timing of the fund transfers from the books of the company to the account of KIL and from KIL to the accounts of the brokers/sub-brokers suggested that there were clear-cut intentions on the part of the company to manipulate the scrip price of SIL. In almost all the occasions it was observed that the funds were transferred from the account of SIL and credited into the account of KIL prior to their placement of transactions in the scrip of SIL. KIL was identified as the promoter group company of SIL and this has been agreed by the management of SIL. It was further observed that KIL being the predominant buyer in the scrip was responsible for the price movement in the scrip of SIL. From the trading details submitted by the exchanges, it was revealed to SEBI that KIL had employed manipulative tactics either to maintain the scrip price and / or to increase the price drastically. It was further observed that transfer of funds occurred frequently and it revealed that the management of SIL was directly responsible for the price movement in the scrip during the said investigation period. SIL transferred the funds to the account of KIL, its promoter group company, and on the very same day two other transactions have taken place i.e. one wherein KIL transferred the funds to Shri Sourabh H. Bora to enable him to make payments towards the allotment of forfeited shares and second transactions being Shri Sourabh Bora making payments to SIL in respect of the forfeited shares allotted to him. It also revealed during the investigation by SEBI with regards the fund transfers that SIL was well aware of the lending of money for the purpose of making payments towards forfeited shares. It was further revealed that Shri Sourabh Bora had given cheques during the first week of September,1999 and these cheques were presented to the bank for realization only in the last week of September,1999 and the actual realization of the cheque took place on October 1,1999 after the bank account of Shri Sourabh Bora was adequately capitalized by way of transfer of funds from SIL. In addition to the above, the records indicated that Shri Sourbh Bora still owed more than Rs.6 crores to KIL which in turn owed more than Rs.15 crores to SIL which revealed that Shri Bora had not made the payments to the company towards the forfeited shares allotted to him and the whole matter was just a book entry and the company managed to create shares without actual infusion of funds. Subsequently, it was revealed in investigation that KIL and Shri Sourabh Bora indulged in trading in the scrip of SIL through various members of BSE and NSE including M/s. Triveni Management Consultancy Services Ltd., a corporate member of NSE.

1.3 M/s. Triveni Management Consultancy Services Ltd. (hereinafter referred to as 'the noticee' or 'the `broker') is a member of NSE with SEBI Registration No. INB230652831. Investigation report revealed discrepancy in the client introduction/registration

formalities by the noticee at the time of inducting M/s. Kosha Investments Limited (KIL) as their client. It was alleged that the trading by KIL in relatively less liquid scrip should have alerted the broker and that it has failed to monitor the dealings of KIL. Thus, the broker has violated the provisions of Regulation 4(a), (b) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 1995 and SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 and the provisions of code of conduct prescribed for stock brokers contained in schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992. In view of the allegations brought out by the investigations it was proposed to conduct an enquiry so as to ascertain whether any of the aforesaid provisions have been violated or not.

2.0 ENQUIRY PROCEEDINGS

2.1 An Enquiry officer was appointed by SEBI vide an order dated 11-07-2002 for inquiring whether the noticee has contravened the provisions of Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Regulations, 1992, SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.

2.2 The Enquiry Officer, after conducting the enquiry as per the procedure prescribed under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'the Enquiry Regulations') submitted a report dated March 12, 2004 to the Board. The Enquiry Officer found that the client agreement was back dated which was in violation of SEBI Circulars SMD-1/23341 dated 18-11-1993, SMD/POLICY/IECG/1-97 dated 11-02-1997 and SMDRP/POLICY/CIR/5-97 dated 11-04-1997 and observed that in view of the contraventions violated the provisions of Clause A(1) and (4) of the Code of Conduct as specified in Schedule II of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992. The Enquiry Officer has also found that the broker had committed irregularities and had aided and abetted KIL in price manipulation by executing orders on its behalf thereby violating the provisions of regulation 4(a) and (b) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995. In view of the above findings, the Enquiry Officer had recommended a major penalty of suspending the Certificate of Registration of the noticee for a period of 4 (four) months.

3.0 SHOW CAUSE NOTICE UNDER REGULATION 13(1) OF THE ENQUIRY REGULATIONS AND HEARING

3.1 After considering the Enquiry Report, the Board issued a notice dated 15-03-2004 under Regulation 13(1) of the Enquiry Regulations, to the broker, requiring it to show cause as to why appropriate penalty including the penalty as recommended by the Enquiry Officer should not be imposed. A copy of the Enquiry Report was enclosed with the notice and it was informed that the broker may if it so wishes, reply within 15 days of receipt of the notice, failing which it would be presumed that it has nothing to submit and that SEBI would proceed accordingly.

3.2 The broker replied to the notice by its reply dated 13-04-2004 putting forth their submissions. The broker had also filed their written submissions dated 20-05-2004. The main submissions made by the noticee are as follows -

- That they have transacted on behalf of KIL as per their instructions

during the period from 1996-97 to 21-07-1999 and not only during the investigation period i.e, 03-06-1999 to 10-08-1999

- That the Enquiry Officer had cited only one solitary instance of technical mistake in client registration form which was un-intentional
- That the Enquiry Officer has completely ignored the fact that KIL has performed their obligations of pay-in in time and that only when defaulted in payment for the last bill the noticee had stopped all transactions
- That as regards the price rise, the noticee stated that the share price of SIL might have gone up to Rs.127.95 on August 10,1999 but KIL has done transaction with them only upto July 21,1999 which was in the range of Rs.53-58.
- The noticee submitted that even if it was assumed for the sake of argument that the share price has increased on August 10,1999 to Rs.127.95, it has not been traded on their terminal. The noticee pleaded to take note that there was no noticeable increase or decrease in volume of the scrip even prior to or even immediately after the day of transactions done by KIL through them.
- The noticee submitted that they were not aware of any price movement at any point of the time that was because of KIL and that KIL was doing the transactions in the scrip of SIL with them from 1996-97. The noticee submitted that even otherwise also KIL had done transaction with them in the range of Rs.56-57 only. KIL was in fact purchasing shares when the price of the scrip was stable. It is established therefore that a purchase in normal course of business in the scrip cannot influence price rise in any manner and the price rose after the KIL stopped business with the noticee. Hence this cannot be taken to mean that the price rose because the KIL was purchasing the shares through them.
- The noticee stated that they were not aware or made aware of, if management of SIL was in any way was directly / indirectly involved in price movement of the scrip during the time of the investigation period or any other time. The purchase of 1,25,000 shares by KIL on 23-07-99 was not done through the noticee.
- The noticee has stated that the total purchases done during the investigation period was only 1,77,800 shares and not 3,01,500 and accordingly the volume on gross basis of 3,93,500 for the whole year of 1999-2000 is incorrect. The noticee in their said reply, denied that they entered into any synchronised deals on 1/7/1999, 7/7/1999 and 21/7/1999, while trading in SIL.

- The noticee has stated that they have entered quote for quantities which were in no way matching with the sale quantity and not even at the same time the sale quote was put. It is also to make clear the existing sale quote put at 11.03.58 by the seller was open to thousands of BOLT's situated at more than 300 cities across the country. The noticee has stated that matching of 3 trades of 4,000, 35,000 and 1,000 shares put at different timing with the sale quote of 1, 20,000 which was already there prior to the noticee's quote, can never be a structured deal and that it can only be concluded that the buy quote was matched as there was existing seller of large quantity on the screen and not because it was a structured deal.

- The noticee has denied that there were any structured/synchronised deals and stated that matching of some transactions cannot be a base for assumption of any nexus of the broker and ultimate client and for price manipulation for having

entered into any structured / synchronised deals. The noticee has pleaded ignorance that there was any investigation in the scrip and the investigation period.

- The noticee has submitted that KIL was dealing in the scrip of SIL since 1996-1997 and the trade data of last 3 years submitted with out reply dated 13/4/2004 would prove that practically each and every day since last 3 years there were regular volumes in the scrip of SIL. The scrip being listed on NSE and BSE on B1 Group supports that the scrip of SIL is not relatively illiquid scrip. All the trades had been carried out by KIL and the purported 'appearance' is not an illusion but a reality as can be evidenced from the fact that payments and deliveries were made for the shares that were transacted on the Exchange.

- The noticee has submitted that they had not dealt on behalf of their clients in any manner whereby creating a false or misleading appearance of trading in the shares of SIL and further stated that all the deals made by them on behalf of their clients have resulted into genuine purchase and were not in the nature of speculative transactions. The noticee has further submitted that they had promptly met their pay-in obligation by making timely payment to the Exchange in respect of each and every transaction carried out by them by the respective pay-in debits. The noticee has denied that they have violated the code of conduct for stock brokers as applicable in general and stated that they have always maintained high standards of integrity, promptitude and fairness in the conduct of all their business.

- The noticee has submitted that they have done transactions not only on behalf of the said clients but for other clients as well. Nowhere can it be seen or proved from the trade log or from the findings of the investigation report that they have indulged in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains. The noticee stated that they had never purchased or sold shares in their proprietary account for a personal gain and that the purchase of shares of SIL was only on behalf of their clients.

- The noticee has pleaded not being guilty of having violated any Rules or Regulations and further pleaded for withdrawal of the penalty for suspension of certificate of registration of four months and for a lenient view to be taken in this case.

A notice dated 15-05-2006 was sent to the broker requiring it to appear before me for a hearing scheduled on 30-05-2006. I note that the broker vide his letter dated 24-05-2006 sought for an adjournment. On receipt of his request for adjournment, the hearing was re-scheduled to 14-06-2006. On the appointed date, the noticee represented by Shri N. B. Shetty, Chairman and Shri Aftab Kayalwalla, Back Office Head made their submissions.

4.0 CONSIDERATION OF ISSUES

4.1 I have carefully considered the observations made in the show cause notice, the submissions made by the broker and other the material available on record. The main issues for consideration before me are:

a) Whether the broker has exercised proper skill and care while dealing in securities on behalf of KIL?

b) Whether the broker has aided and abetted KIL in price manipulation of the scrip of SIL thereby contravening the provisions of Regulation 4(a) and 4(b) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995.

4.2 I note that the Enquiry Officer has observed that the Client agreement was back dated, which is in violation of SEBI circulars SMD-1/23341 dated 18/Nov/1993, SMD/POLICY/IECG/1-97 dated 11/Feb/1997 and SMDRP/POLICY/CIR/5-97 dated 11/APR/1997 and therefore the conduct of the broker is in violation of Clause A (1) and (4) of the Code of Conduct as specified in Schedule II of the SEBI (Stock Brokers & Sub Brokers) Regulations 1992. I note that the broker has submitted that they have kept soft copies of agreements of all clients on computer itself and that they had carried out the physical inspection of all the member constituent agreement in the third week of October, 1997 and had found that the member constituent agreement of KIL was missing. They had then taken the print of the agreement in a stamp paper which was dated 24-10-1997. The broker has submitted that the same was sent to KIL for signature and was also signed by KIL without noticing the date. The broker has submitted that it was an administrative lapse. I find that the submission made by the broker cannot hold good since an inference can always be drawn that the broker has failed to enter into an agreement with KIL. Even assuming that the agreement has been lost, the broker has not taken care to keep these essential documents in safe custody. I further note that the noticee has submitted that the Enquiry Officer had cited only one solitary instance of technical mistake in client registration form which was un-intentional. Even though such lapse may be un-intentional the noticee must be visited by an appropriate penalty so that the same is not repeated. Thus I agree with the view taken by the Enquiry Officer.

4.3 I note that the Enquiry Officer has observed that when KIL dealt with in the scrip of SIL, it should have alarmed the noticee. The noticee has replied that the scrip of SIL was not illiquid and that KIL has traded in the scrip from February/March of 1997. I note that the noticee has submitted that the investigation was carried out for only 4 settlements and that the other settlements were not looked into. With respect to the allegation that since KIL was a bulk purchaser and the trades were executed by the noticee, the noticee was also hand in glove with KIL, I find that there is lack of material to charge the noticee for market manipulation as KIL was trading through them from 1997 onwards and that the scrip was not illiquid as alleged. I further find that charge of violating the provisions of Regulation 4(a) and (b) of the SEBI (Prohibition of Unfair and Fraudulent Trade Practices relating to Securities Market) Regulations, 1995 therefore does not sustain.

4.4 But I find the noticee has not taken due care and diligence as it should have and therefore has contravened the SEBI circulars cited supra as well as the provisions of Clause A(1) and (4) of the Code of Conduct prescribed for stock brokers mentioned in SEBI (Stock Brokers and Sub-brokers) Regulations, 1992. However, I find the penalty recommended by the Enquiry Officer would be harsh for the lapses of the noticee. Taking into account the facts and circumstances of the case, I conclude that a penalty of censure would suffice for the aforesaid lapses of the noticee.

4.0 ORDER

Therefore, in exercise of the powers conferred upon me by virtue of Section 19 of the Securities and Exchange Board of India Act, 1992, read with regulation 13(4) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby censure M/s. Triveni Management Consultancy Services Ltd., a member of the National Stock Exchange.

PLACE: MUMBAI

T. C. NAIR

DATE: 19.06.2007

**WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**