

SECURITIES AND EXCHANGE BOARD OF INDIA

Coram: Dr. T. C. NAIR, WHOLETIME MEMBER

DATE OF HEARING: 17-05-2006

APPEARANCE OF PARTIES

For the noticee: none

For SEBI: Shri P. K. Bindlish

Shri Atul Agarwal, Manager

Shri Ganapathy Subramanian, Manager

ORDER UNDER SECTION 11(4) AND SECTION 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND REGULATIONS 11 AND 12 OF THE SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 1995 READ WITH REGULATION 13 (2) OF THE SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 AGAINST SHRI MUKESH MANSUKHLAL KOTHARI, IN THE MATTER OF TRADING IN THE SCRIP OF SOLID CARBIDE TOOLS LIMITED

WTM / TCN/ID-3 / 28/06/2007

1.0 BACKGROUND

- 1.1 M/s. Solid Carbide Tools Limited was incorporated as a private limited company in the name and style of M/s Solid Carbide Tools Private Limited (hereinafter referred to as "SCTL") on 21-08-1990 and subsequently it became a public company and obtained its fresh certificate of incorporation on 18-02-1993. The company is involved in manufacturing industrial rotary cutting tools, circuit board router, circuit board drills etc.
- 1.2 During 1995, SCTL had come out with its maiden public issue. The shares were then listed on the Stock Exchange, Mumbai (hereinafter referred to as "BSE"), Ahmedabad Stock Exchange and Vadodara Stock Exchange. SCTL was promoted by Shri Mukesh Mansukhlal Kothari, Chief Promoter (hereinafter referred to as "Shri Kothari") and Shri Subrato Nag. Shri Kothari was holding individual membership card as stock broker of BSE in the name and style of Mukesh Mansukhlal Kothari (hereinafter referred to as "Broker").
- 1.3 In January 1996, the scrip of SCTL was trading at Rs.20/- per share on BSE with average volume of 4, 00, 000 shares which reached Rs.30/- per share and volume of 6, 00, 000 by the end of February 1996. Subsequently by end of May 1996 the price of the scrip fell to Rs.10/- per share. There was no active trading in the scrip of SCTL at Vadodara Stock Exchange and there was no trading at Ahmedabad Stock Exchange.
- 1.4 Securities and Exchange Board of India (hereinafter after referred to as "SEBI") conducted investigation into the trading of the scrip of SCTL during January 1996 to June 1996 (hereinafter referred to as "investigation period").
- 1.5 Shri Kothari did not provide any information to SEBI during its investigation nor did he respond to any summons issued by SEBI to appear before investigation team. All the communication sent to Shri Kothari was accepted by SCTL on his behalf. On 7th June 2000 SEBI received a letter dated 30th May 2000 from Kothari wherein he mentioned that his clients and creditors ransacked his office and took away important records relating to trading transactions, properties etc and many of his clients, creditors lodged their claims with BSE and the Recovery Department of BSE. In view of the aforesaid, he expressed his inability to furnish information sought by SEBI.
- 1.6 Investigation conducted by SEBI revealed that during January 1996 and June 1996 Shri Kothari traded heavily in the scrip of SCTL on his own account. There was nothing in the fundamentals of SCTL nor was there any commensurate corporate announcement or development during the period of investigations which could justify the trading in the scrip of SCTL. Further it was also found that Shri Kothari had registered himself as a client with KH Parekh, Member, BSE, Rajesh Finvest, a sub-broker to Shailesh Shah, member, BSE and traded heavily in the scrip of SCTL. On 10th December 1996, Shri Kothari's broking entity was declared a defaulter by BSE.
- 1.7 The transactions carried out by Shri Kothari was alleged to violate clauses (a), (b), (c) and (d) of Regulation 4 and Regulation 6 (a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as "FUTP Regulations").

2.0 SHOW CAUSE NOTICE, REPLY AND HEARING

- 2.1 After the completion of investigations during March, 2004, a show cause notice dated 25th May 2004 was issued to Shri Mukesh Mansukhlal Kothari for the alleged violation of the provisions of Regulation 4 and 6 (a) of the FUTP Regulations. The notice required the noticee to show cause as to why suitable directions including issuing such directions restraining him from buying, selling or dealing in securities for a specified period should not be issued under section 11(4) (b) read with Section 11 and 11B of Securities and Exchange Board of India Act, 1992 read with regulation 11 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.
- 2.2 The show cause notice was sent by hand delivery but could not be served since the office of Shri Kothari was found closed. Further attempts made by SEBI to serve the show cause notice failed and finally it was pasted on the office door of Shri Kothari on 5th June 2004. SEBI did not receive any response from Shri Kothari to the said show cause notice.
- 2.3 Further vide letter dated 5th July 2004, Kothari was informed that an opportunity of personal hearing was granted to him on 9th July 2004. This letter was also returned undelivered and hence it was posted at the last known address of Kothari on 8th July 2004. Neither Shri Kothari nor his representative was present during the personal hearing. Subsequently, a notice dated 05-05-2006 was sent to Shri Kothari requiring him to be present for a hearing before me scheduled on 17-05-2006. A copy of the said notice was also pasted at his premises on 10-05-2006. I note that even on this date the noticee failed to appear. Since the noticee had failed to show up at any stage of the proceeding before SEBI, no useful purpose could be served by providing further opportunities to the noticee to make his submissions. Therefore, I proceed to consider the issues on merit.

3.0 CONSIDERATION OF ISSUES AND FINDINGS

- 3.1 I have carefully considered the investigation report and the show cause notice issued to Shri Kothari. I note that Shri Kothari did not co-operate with the investigation team during investigations by either responding to the show cause notice issued to him after the completion of investigation or being present in person or through representative during the personal hearing granted to him.
- 3.2 I note from the prospectus (when SCTL came up with its public issue during 1993) of SCTL that Shri Kothari was one of the promoters of SCTL and that he was also having a proprietorship concern in the name and style of M/s. Mukesh Mansukhlal Kothari, which was a member of BSE. He traded in the scrip of SCTL through his own broking entity and through other members of BSE. Shri Kothari was one of the top traded members at BSE, details of which are given in Table – 1 as under:

Table - 1

SETT. NO.	DATE	BUY	SELL	Gross	NET
5	26.04.96	228100	0	228100	228100
6	03.05.96	64400	0	64400	64400
7	10.05.96	99500	0	99500	99500
8	17.05.96	63100	2700	65800	60400
9	21.06.96	44400	83400	127800	-39000
		499500	86100	585600	413400

- 3.3 I note that Shri Kothari had also taken huge positions in the scrip of SCTL as a client to KH Parekh, Member BSE and Rajesh Finvest, a sub-broker to Shailesh Shah, member BSE. Shri Kothari managed to corner substantial quantities of floating stock in the scrip of SCTL which was available in the market. This led to the gradual upward price movement during investigation period. Details of trades done by Kothari through these members are given in Table – 2 and Table – 3 as under

Table – 2

S.No	Date	BUY	SELL	GROSS	NET
Rajesh Finvest					
1	24.05.96	0	60000	60000	60000

Table – 3

S.No	Date	BUY	SELL	GROSS	NET
K H Parekh					
1	02.02.96	69100	72500	141600	-3400
2	16.02.96	99400	100000	199400	-600
3	01.03.96	124600	31100	155700	93500
4	13.03.96	44200	44000	88200	200
5	29.03.96	200	50250	50450	-50050

6	12.04.96	0	25000	25000	-25000
7	26.04.96	0	17900	17900	-17900
8	08.04.96	0	34500	34500	-34500
9	07.06.96	40500	39000	79500	1500

Total Table-2+Table-3)	378000	414250	792250	-36250
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The above tables would reveal that Shri Kothari had taken substantial position in the scrip both as a broker and as a client. He was clearly responsible for cornering the scrip of SCTL. Further, he had taken advantage of the price movement and sold large chunk of shares of SCTL through other brokers when the scrip price gradually moved.

- 3.4 I note that Shri Kothari had also misused the Client Account of his broking entity maintained with Bank of India, Stock Exchange Branch, bearing Account No. 13311. Certain payments from the Client Account were made to SCTL and the actual reason why the funds were transferred to the account of SCTL could not be ascertained due to the non-co-operation of Shri Kothari during investigation. Details of funds transferred from client account to SCTL are given in Table – 3 as under

Table - 3

S.No.	Issued to	Date	Cheque No	Amount
1	Solid Carbide Tools Ltd	11.04.1996	21812	100000
2	Solid Carbide Tools Ltd	11.04.1996	21814	500000
3	Solid Carbide Tools Ltd	11.04.1996	21813	1000000
4	Solid Carbide Tools Ltd	11.04.1996	21815	288000

- 3.5 I find that Shri Kothari by making payments to SCTL from the client account has violated SEBI Circular SMD/SED/CIR/93/23321, issued on 18th November 1993. According to the said circular, it is mandatory for a member to maintain a separate client account which shall be used only for the purpose of making payments to clients and receiving payments from clients.

- 3.6 I note that M/s. On Time Professionals (P) Ltd, (hereinafter referred to as "OTPL") who acted as registrar and share transfer agent to SCTL, rejected transfer requests for 11,900 shares with a remark "Sole transferor's signature different from the specimen lodged with the company. Please obtain a fresh signature". Details of such transfer requests which were rejected are given as under:

NAME OF TRANSFEREE	DISTINCTIVE NO OF SHARES
Ajay Gupta	714101 to 714200
Ajay Gupta	717201 to 717500
Ajay Gupta	716301 to 716600
Prasan Ramchandra Bhandari	740201 to 740400
Parameswariah	739301 to 739500
Savita thareja	738501 to 738600
Poonam Awhad	714401 to 714600
Vijay Kumar Acharya	740001 to 740200
Kishore Kr Jain	764601 to 764800
Ashok Jain	765201 to 774000
Priyavrat	740601 to 740700
Rajkumar Anandani	764501 to 764600
Surya prakash	764301 to 764400
Shah jagdish Babulal	740501 to 740600
Shah Jagdish babulal	738101 to 738200
Sujatha S Pai	739501 to 739600
Sujatha S Pai	765101 to 765200
Sujata S pai	739901 to 740000
Nitin Chandra Badyakar	764401 to 764500
Nitin Gupta	740901 to 741000
Bachubai Patel	737701 to 737800
Bachubai patel	738201 to 738300
Ajitkumar Biswas	Cer No 7843 (100 shares)

From the Member's Register of SCTL on 29th September 1995, it was found that these shares were issued to Mukesh Kothari Investment and Finance Co. Ltd. (hereinafter referred to as "MKIFCL"), a company promoted by Shri Kothari. These

shares were issued under promoter's quota and hence, were under lock-in period. As has been brought out by the investigations, when OTPL received transfer requests, the shares should have been returned with remark that the shares were under lock-in instead they were rejected with the remark "Sole transferor's signature different from the specimen lodged with the company. Please obtain a fresh signature".

- 3.7 In view of the above, I find Shri Kothari had fraudulently offloaded those shares (which were issued to MKIFCL under promoter quota and were under lock-in) in the market by taking advantage of higher price he managed to create. OTPL colluded with Shri Kothari in the off-loading, by rejecting the share transfer requests on false ground, the real reason being that the shares were under lock in. Such off-loading of the lock-in shares caused bad deliveries thereby distorting the market equilibrium. I observe that the price of shares of SCTL shot up against low trading volumes despite there being no change in the prospects of SCTL, or that of the fundamentals of the economy. The hike in price of SCTL shares was deliberate and was with a view of defraud unsuspecting investors; I hold Kothari guilty of the same.
- 3.8 In addition to the above, Shri Kothari, by delivering shares held by his promoter group which was under lock-in, had not conducted in a proper manner. The act was totally unbecoming especially in view of the fact that he was a registered broker at that point of time.
- 3.9 The trading done by Shri Kothari was with a view to setting or benchmark the prices at a desired level and lure the unsuspecting investor to trade in the scrip of SCTL. It was possible to manipulate the price with very low trading volume due to lack of liquidity in the market. The scrip of SCTL was made liquid by creating artificial volumes. Kothari had entered transactions without any genuine interest in trading. This has resulted in creation of artificial volumes and price rise in the scrip which otherwise had no interest from the general investors. Unsuspected innocent investors could be trapped by such false appearance of trading. This is detrimental to the interest of investors and the orderly development of the securities market.
- 3.10 Taking into account the aforesaid, I find that Shri Kothari had indulged in fraudulent market practices by creating artificial volumes in the scrip of SCTL through his broking entity and by dealing on his own through other members. He had misused clients account and had off-loaded shares under lock-in in the market in collusion with its registrar and share transfer agent, OTPL, which resulted in bad delivery of shares distorted the market equilibrium. Shri Kothari has thus dealt in securities with an intention to influence their prices and to create a false appearance of trading in the securities market which is not expected of an entity involved in dealing in the securities. The afore-mentioned acts of Shri Kothari are in contravention of the provisions clauses (a), (b), (c) and (d) of Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995. Further, knowingly selling shares which were under lock-in period would amount to fraud and thus would attract Regulation 6(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995. The above referred provisions have been reproduced below for convenience.

"Prohibition against Market Manipulation

4. No person shall:

(a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;

(b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market;

(c) indulge in any act which results in reflection of prices of securities based on transactions that are not genuine trade transactions;

(d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities;

Prohibition on unfair trade practice relating to securities

6. No person shall:

(a) in the course of his business, knowingly engage in any act, or practice which would operate as a fraud upon any person in connection with the purchase or sale of, or any other dealing in, any securities;"

In view of the above, I find that Shri Mukesh Mansukhlal Kothari has violated the provisions of Regulation 4 (a), (b), (c) and (d) and Regulation 6(a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995. It is therefore concluded that the Shri Kothari has contravened the aforesaid provisions and must be penalized accordingly to protect the interests of the investors at large.

4.0 ORDER

- 4.1 In exercise of the powers conferred upon me by virtue of Section 19 of the SEBI Act, 1992 read with Section 11(4) (b) and 11(B) of the SEBI Act, 1992 and Regulations 11 and 13 of the Securities and Exchange Board of India (Prohibition of Fraudulent and

Unfair Trade Practices Relating to Securities Market) Regulations, 2003, I therefore hereby prohibit and restrain Shri Mukesh Mansukhlal Kothari from buying, selling or dealing in securities in any manner for a period of two years.

This order shall come into force with immediate effect.

Place: Mumbai
Date: 15.06.2007

T. C. Nair
Whole Time Member
Securities and Exchange Board of India