

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

**IN THE MATTER OF M/s. MP VORA SHARES & SECURITIES PVT.
LTD., MEMBER OF THE BOMBAY STOCK EXCHANGE LTD. REGN. NO.
INB 011044139 IN THE SCRIP OF OJAS TECHNOCHEM PRODUCTS
LTD.**

Date of hearing : August 17, 2007

Appearances

For Noticees : Shri M P Vora, Managing Director

For SEBI : Shri P.K.Bindlish, Chief 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 against M/s M P Vora Shares & Securities Pvt. Ltd., Member of BSE.

- 1.1 Ojas Technochem Products Limited was promoted as a private limited company on September 11, 1990 under the name of Ojas Tar Private Limited with the Registrar of Companies, Gujarat at Ahmedabad. Subsequently, Ojas Tar Private Limited was converted into public limited company and the name of the company was changed to Ojas Technochem Products Limited (hereinafter referred to as "OTPL"). At the time of the public issue in the year 1993, it was stated in the prospectus of OTPL that it manufactures industrial bitumen, roofing belts and bitumals. The shares of the company are listed at Vadodara

Stock Exchange (hereinafter referred to as “VSE”), Ahmedabad Stock Exchange (hereinafter referred to as “ASE”) and the Bombay Stock Exchange Ltd. (hereinafter referred to as “BSE”).

1.2 Securities and Exchange Board of India (hereinafter referred to as ‘SEBI’) had initiated investigation into buying, selling and dealing in the shares of OTPL during the period November 1999 to March 2000 (hereinafter referred to as “investigation period”) upon an investigation report forwarded by BSE to SEBI which hinted on the possibility of price manipulation. It was stated that a director of the company has sold shares and the clients related to each other had routed their trades through a sub broker who was also a member of ASE.

1.3 It was found that OTPL had made a preferential allotment to following allottees on January 13, 2000. The allotment was made for 60,00,000 equity shares of Rs.10/- each. The details of preferential allotment of equity shares are as under:

Sr. No	Folio No.	Name of Allotees	Certificate from	Cert to	DNR from	DNR to	No. of Shares
1	P00015	Nrupesh C. Shah	85001	91000	8851051	9451050	600000
2	P00016	Falguni N. Shah	91001	97000	9451051	10051050	600000
3	P00017	Pratima G. Jhaveri	97001	103000	10051051	10651050	600000
4	P00018	Ankit G. Jhaveri	103001	109000	10651051	11251050	600000
5	P00019	Shailesh S. Jhaveri	109001	115000	11251051	11851050	600000
6	P00020	Harsha M. Shah	115001	121000	11851051	12451050	600000
7	P00021	Annal A. Jhaveri	121001	127000	12451051	13051050	600000
8	P00022	Sheetal A Jhaveri	127001	133000	13051051	13651050	600000
9	P00023	Yogesh K. Bhavnagari	133001	139000	13651051	14251050	600000
10	P00024	Saumil A. Bhavangari	139001	145000	14251051	14851050	600000
			Total				6000000

- 1.4 In addition to that OTPL had also made preferential allotments of 1,00,00,000 shares, 78,80,000 shares and 3,00,00,000 on August 1, 2000, August 3, 2000 and November 23, 2000 respectively, as per information provided by the Vadodara Stock Exchange (hereinafter referred to as VSE). These shares were listed on VSE on October 5, 2000, October 25, 2000 and December 15, 2000 respectively. OTPL made further allotment of 5,00,00,000 shares on swap basis on October 19, 2000. However, these shares were not listed at any exchange. The preferential allotment of 60,00,000 shares as detailed above and other preferential allotments subsequent thereto were not listed at BSE. The preferential allotment of 60,00,000 shares was, however, listed on VSE on January 17, 2000.
- 1.5 OTPL was moderately illiquid scrip during January 1999 to October 1999 except on few occasions when occasional liquidity was observed. However the scrip witnessed heavy liquidity during November 1999 to February 2000 along with rise in price. On February 9, 2000, the number of shares traded had reached 33,13,100 and the price had gone to Rs. 23.60 (closing price) from a volume of 27,500 shares and the close price of Rs. 3.55 on November 1, 1999.
- 1.6 M/s. MP Vora Shares & Securities Pvt. Ltd. (hereinafter referred to as “the broker”), member of BSE was identified as one of the broker who traded substantially in the scrip of OTPL during the period November 1999 to March 2000 for their clients and unregistered sub broker Kirtikumar Kantilal Shah. The gross buy by the broker was 11,99,900 shares of OTPL and gross sale of 16,60,000 shares thereby affecting net sale of 4,60,100 shares of OTPL during the period.

- 1.7 It was alleged that the broker facilitated introduction of unlisted shares and failed to exercise due skill and care and has thus violated Clause A (2) of the Code of Conduct specified for a broker under Schedule II of Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as “Stock Brokers Regulations”). Besides they have also dealt on behalf of an un-registered sub broker in violation of SEBI Circulars viz., SEBI/SMD/POLICY/CIRCULAR 3/97 dated March 31, 1997 and Circular SEBI/SMD/POLICY 3/98 dated January 16, 1998.
- 2.1 Pursuant to the investigation, an Enquiry Officer was appointed by SEBI Board vide order dated July 06, 2004 in terms of provisions of Regulation 5 of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as “Enquiry Regulations”) to examine the irregularities / violations committed by the broker.
- 2.2 The enquiry officer conducted enquiry in terms of Enquiry Regulations and found that the broker had violated Clause A (2) of Code of Conduct for sub brokers specified in schedule II read with Regulation 7 of the Stock Broker Regulations along with the provisions of the two circulars mentioned above. The enquiry officer submitted his report dated December 2, 2005, recommending a penalty of suspension of certificate of registration of the broker for a period of three months.
- 3.1 A copy of the enquiry report was sent to the broker along with show cause notice dated December 21, 2005, in terms of Regulation 13 (2) of

the Enquiry Regulations advising it to show cause as to why action as considered appropriate should not be taken against it.

3.2 The broker vide letter dated January 1, 2006 submitted its reply reiterating most of the submissions made before the enquiry officer. It inter alia submitted as under:

- (i) Regarding the charge of dealing with unregistered sub broker, the broker submitted that in terms of Memorandum of Understanding entered into between BSE and ASE, members of one exchange were allowed to effect transaction through members of another exchange. Accordingly, one Kirtikumar Kantilal Shah, a member of ASE started effecting transactions through the broker with effect from August 6, 1999 and continued to effect the transactions through them upto March 31, 2002.
- (ii) To facilitate the said Kirtikumar Shah in effecting his transactions, a BOLT terminal was installed in his office wherefrom he used to execute all his transactions through the said BOLT terminal. In respect of the transactions effected by the said Kirtikumar Shah, he used to issue his confirmation note in the capacity as a member of the ASE. They were informed by BSE that as Kiritikumar Shah was registered with SEBI by virtue of being a member of ASE, there would not be any need for his separate registration as a sub broker. Therefore they did not consider it necessary to advise him to obtain a separate registration as their sub broker.
- (iii) Kiritikumar Shah had effected various transactions including the transactions in the scrip of Ojas Techno Chem Products Ltd. in the ordinary course of business. The said scrip at the relevant time was witnessing active trading and the broker did not find any irregularity in executing the transactions by Kiritikumar Shah in the said scrip even though when Kirtikumar Shah was prompt and regular in observing his pay-in obligations.
- (iv) The deliveries were from the said Kiritkumar Kantilal Shah on the last on the last day of pay in. As there was no adequate time

left for detailed verification of distinctive numbers before delivering them to clearing house, any wrong delivery could have automatically received as patavat objection. Next evening the broker received intimation that there were Patawat objection for 3,43,800 shares. When they came to know that certain unlisted shares had been wrongly delivered, they immediately approached the buyer party broker on the same day and called back the shares as Patavat objection and replaced the 309500 shares next day. The remaining 34300 shares were auctioned by the Exchange and we paid the money at the auction rate.

3.3 An opportunity of personal hearing was granted to the broker on August 17, 2007 where in Shri M P Vora, Managing Director attended the hearing and made submissions. Further written submissions were made vide letter dated August 17, 2007 which was reiteration of the submissions made earlier vide letter dated January 1, 2006. The broker interalia submitted as under:

- i. There was confusion as regards dealing with the members of BSE and ASE due to memorandum of understanding signed by both the exchanges. Moreover there was no clarification issued by the BSE in this regard.
- ii. With regard to dealing in unlisted shares and due diligence by the broker, it was submitted that the broker had replaced all the unlisted shares on the next day itself. Non listed shares have not gone to the investors and therefore the same had been taken care of by immediately replacing the listed shares.

4.1 I have carefully examined the facts and circumstances of the case, investigation report, enquiry report, show cause notices and the replies/ submission of the broker and other material on record.

4.2 The issues for consideration are :

- A. Whether the broker dealt with unregistered sub broker.
- B. Whether the broker dealt in unlisted shares of OTPL.
- C. Whether the broker was responsible for price manipulation.

A. Dealing with unregistered Sub broker

- i. It is an admitted fact that Kirtikumar Kantilal Shah, a member of ASE traded in the scrip through the broker as its sub broker. The broker contented that it relied on the Memorandum of Understanding (MoU) signed between ASE and BSE and accordingly dealt with the sub broker as a stock broker of ASE and not as their sub broker even though the transactions were effected through them. I note that SEBI Circular dated March 31, 1997 mandated that the members of one exchange have to necessarily be registered themselves as sub brokers.
- ii. I have carefully perused the circulars mentioned in the show cause notice which inter alia states that

“No broker shall deal with a person who is acting as a sub broker unless he is registered with SEBI. It shall be the responsibility of the broker to ensure that his clients are not acting in the capacity of a sub broker unless he is registered with SEBI as a sub broker or is recognized by the stock exchange as a remisier”.

- iii. Further circular dated January 16, 1998 inter alia states as under :

“It has been decided that the members of stock exchanges executing transactions of his client through the members of their Exchanges are to be treated as a “sub broker”. In terms of Rule 3 of SEBI (Stock Brokers and Sub broker) Rules, 1992 read with Section 12 of SEBI Act, no stock broker or sub broker shall buy, sell and deal in securities unless he holds a certificate granted by the Board under the regulations. Thus, it is necessary for any person who acts a sub broker to hold Certificate of Registration as a sub broker granted by SEBI and accordingly the members of the stock exchanges who also act as sub broker should hold a separate registration with SEBI as sub broker. However, presently some of the members of exchanges who are acting as sub brokers through the members of other exchanges have not obtained separate registration from SEBI to act as sub brokers.

In view of the above, it is advised that the members of the stock exchanges who are acting as sub brokers through the members of the other exchanges should obtain certificate of registration from SEBI to act as sub broker under SEBI (Stock Broker and Sub broker) Rules and Regulations, 1992".

- iv. From the perusal of the above two circulars, I find that whereas the first circular puts the onus on the broker to ensure that his clients are not acting as unregistered sub brokers, the second circular mandates that it is for the entities acting as sub broker to register themselves as sub broker, if they act through members of other stock exchanges for their clients.
- v. I further note that BSE vide notice no. 30715/99 notified procedure for installing terminals at other places which inter alia states as under :

"Members of the Exchange are hereby informed that the SEBI vide its circular dated 15.10.1999 had permitted every stock exchange to set up its trading terminals at any place in the country. As mentioned in the circular, this is in supercession of the circular dated October 30, 1996 under which certain restrictions were put on the exchanges to expand their terminals to these centres where Registered Stock Exchanges were located. As a result of this new circular, one exchange is now permitted to set up its BOLT terminal at any place in India".

The Exchange has, therefore, decided to allow its members to install its BOLT terminals in all metro cities and other areas having stock exchanges who have not signed MOU with one exchange and where stock exchange has not allowed its members to set up its trading terminals. Accordingly members are now permitted to install terminals in the following cities."

I note that the said the list of cities given in the said notice of the BSE includes Ahmedabad Stock Exchange.

- vi. Further Circular no. 54809/2000 dated July 1, 2000 inter alia states that
"Sub: Members of Stock Exchange acting as sub brokers.

Members are aware that SEBI has directed that no member of a stock exchange shall deal with person who is acting as sub broker unless he has obtained Certificate of Registration, SEBI to act as a sub broker under SEBI (Stock Brokers and Sub Brokers) Rules and Regulations, 1992. SEBI has put the onus on the member to ensure that his clients are not acting in the capacity of a sub broker without registration.

With the expansion of BOLT TWSs to centers outside Mumbai, many members of the exchange have allotted their BOLT TWSs to members of other exchanges.

SEBI has clarified that members of Exchanges executing transactions of their clients through the members of other Exchanges are to be treated as sub brokers. Accordingly, members of stock exchanges who also act as sub brokers should hold a separate registration from SEBI as sub broker.

Members are therefore advised that if they have allotted their BOLT TWSs to the members of other exchanges, they are required to get the members of the other exchanges registered as their sub brokers immediately".

- vii. After perusal of the above circulars and notices of BSE, I find that the broker has taken a recourse to the MOU entered into between the BSE and ASE and thereby allowed the sub broker to deal with them without registration. However, I note that several clarificatory circulars on the above issue have been issued by SEBI as well as the stock exchanges which the broker should have taken note of. I have also noted the submission of the broker to the enquiry officer that it had deactivated the terminal installed in the office of the sub broker w.e.f March 31, 2002. In spite of issuance of the various circulars, I note that the broker continued to deal with the unregistered sub broker for more than 2 years.
- viii. I note that the broker for sometime was dealing with an entity which was not a registered sub broker and hence has violated the above circulars. A prudent broker should be abreast with rules and

regulations and circulars issued from time to time in the capital market area. The broker cannot plead ignorance of issuance of the circulars or the change / amendments thereto and therefore, I hold the broker guilty of violating SEBI Circulars cited above.

B. Dealing with unlisted shares

As regards dealing in unlisted shares of the company, I find that a total of 343800 unlisted shares of OTPL were delivered in the market by the broker. Out of 343800 quantity of unlisted shares introduced by the broker 336000 were introduced by M/s Kirtikumar Kantilal Shah, 7600 quantity by M/s. Equisearch Broking Limited, 100 by SA Investment and 100 quantity by Prafulkumar Jain (Varanasi). These shares were not listed at BSE during the period November 1999 to March 2000. The broker contended that they had replaced all the unlisted shares immediately and wherever the shares could not be replaced they were auctioned. However, I am of the view that the broker should have exercised due skill, care and diligence while dealing in the shares of the company. In the instant case, it is understood that there are no investor complaints against the broker and hence, I am inclined to take a lenient view.

C. Charge of price manipulation

With regard to the finding of price manipulation in the scrip of OTPL, the Enquiry Officer found that the scrip was moderately illiquid from the period January 1999 to October 1999. However, the scrip witnessed heavy liquidity during November 1999 to February 2000 along with rise in price. Further I find that the broker had traded in the scrip during the

period from November 1999 to March 2000. The gross buy of the broker was 11,99,900 shares and gross sale was 16,60,000 shares, thereby affecting net sale of 4,60,100 shares. The broker replied that the total volume of the scrip on BSE from November 30, 1999 to February 31, 2000 was 5,69,78,600 whereas the volume of the broker was only around 16,00,000. The enquiry officer has found no material evidence to show that the broker was responsible for either the high volume or the price rise. I agree with the Enquiry Office in this regard.

- 4.3 After considering the facts and circumstances of the case, I find that the broker has dealt with an unregistered sub broker for sometime inspite of issuance of circulars and several notices by SEBI and BSE respectively. In view of the statutory provisions, I hold the broker guilty of violating the SEBI Circulars dated March 31, 1997 and January 16, 1998. As far as the issue of dealing in unlisted shares is considered from the above facts, it is not acceptable that the broker delivered the shares through oversight. As a stock broker, it should have exercised due skill, care and diligence while dealing in shares of any company. However, considering the reply of the broker that 99% of the unlisted shares were immediately replaced with good delivery and that no share is pending as bad delivery, a lenient view is taken. As regards, price manipulation the Enquiry Officer exonerated the broker stating that there is no material evidence to show that the broker was responsible for the high volume or such price rise. Therefore, considering the above circumstances, I am of the view that a penalty of 3 months suspension as recommended by the Enquiry Officer is excessive.

- 4.4 Considering that there are no other investor complaints against the broker, I direct M P Vora Shares & Securities Pvt Ltd to be cautious in future and an imposition of penalty of censure, would be adequate to meet the ends of justice.
- 5.1 Now, therefore, in exercise of powers conferred vide Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby “Censure” M.P.Vora Shares and Securities Pvt Ltd., Member of Bombay Stock Exchange (INB 011044139). I also direct M.P.Vora Shares & Securities Pvt. Ltd. to note that any instances of violations or non-compliance of the provisions of Securities and Exchange Board of India Act and the Rules and Regulations framed thereunder, in future, shall be dealt with stringently.

Date: 1.2.2008
Place: Mumbai

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