

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

Coram: Dr. T. C. Nair, Whole Time Member

In the matter of M/s. C. Mackertich Ltd.

In the scrip of South East Asia Marine Engineering & Constructions Ltd.

Date of hearing: 29.09.06

Appearances:

For Noticees: Shri Sudipto Datta

Shri Varghese Joseph, Advocate

For SEBI: Shri P. K. Nagpal, ED

Shri Jerome K A, Manager

Ms. Kshama Chavan, Legal Officer

ORDER

UNDER REGULATION 28 (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.

1. Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted investigation into the trading in the scrip of South East Asia Marine Engineering and Constructions Limited (SEAMECL), which was formerly known as M/s Peerless Shipping and Oilfields Limited, for the period June 01, 1999 to May 31, 2000 (hereinafter referred to as "investigation period").

2. The scrip of SEAMECL was traded on the Bombay Stock Exchange Ltd. (BSE), National Stock Exchange (NSE) and Calcutta Stock Exchange (CSE). The price volume data of the scrip at the aforesaid three exchanges during the investigation period shows that the price of the scrip moved from Rs.15 to Rs.389 within a short period of about 8 months. The total traded quantity during the relevant period at these exchanges was 5,24,52,600 shares.
3. The investigation revealed that during the investigation period C Mackertich Ltd. (hereinafter referred to as "CML"), a stock broker having the membership of NSE, BSE, CSE and OTCEI, had traded in the scrip of SEAMECL on behalf of its clients, associates/group companies and its own trading account. It was found that the total traded quantity at BSE, NSE and CSE was 10,49,05,200 shares and CML traded 2,21,06,700 shares (21.07%) of the total traded quantity of all the exchanges. CML had bought 1,14,35,000 and sold 1,06,71,700 shares of SEAMECL at all the three exchanges. It was noted that the directors of CML were Shri Ajay Kumar Kayan, Shri Santosh Kumar Mukherjee, Shri M. G. Khanna, Shri Vijay Kumar Kothari and Shri Lalita Kayan. It was further revealed that CML's associate/ group companies were M/s SMIFS Capital Market Limited, M/s Mackertich Consultancy Services Limited (MCSPL), M/s Pinnacle trades and Investments Private Limited (Pinnacle), M/s Vatican Commercials Limited (Vatican) and M/s Satellite Intercontinental Private Limited (Satellite).
4. On the basis of investigation, it was found that CML was actively involved in the trading to distort its market equilibrium and that CML indulged into non genuine transactions in its own trading account and on behalf of its group companies. From the trade log of BSE and NSE, it was found that CML was interested in maintaining the price of the scrip as it was executing the buy trades at a higher

price than the last traded price of the scrip. CML was thus alleged to have created artificial volume and influenced the price of the scrip of SEAMECL thereby violating Regulations 4 (a), (b), (c) and (d) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995. Further, it had allegedly failed to exercise due diligence in the trades conducted on behalf of its group companies and allowed those entities to create artificial volumes by buying and selling without transferring any beneficial ownership and thus violated provisions of Regulation 7 read with Schedule II of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

5. From the trading details provided by CML and CSFB (India) Securities Pvt. Ltd. (hereinafter referred to as "CSFB"), a stock broker having membership of NSE and BSE, it was also found that CML had traded at BSE and NSE through CSFB (India) Securities Pvt. Ltd. in spite of having its membership at both the exchanges during that period. It was therefore alleged that CML by acting as a sub-broker to CSFB without signing any agreement violated the SEBI (Stock-Brokers and Sub-Brokers) Rules and Regulations, 1992 and SEBI Circular No.SMD/Policy/Cir/98 dated January 16, 1998 by trading with the other members of the same exchange i.e CSFB.
6. Based on the aforesaid findings, Vide order dated April 12, 2004 an Enquiry was ordered and an Enquiry Officer (hereinafter referred to as "EO") was therefore appointed by SEBI under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the Enquiry Regulations) to enquire into contravention, if any, into the dealings of SEAMECL by CML.

7. The EO after conducting the Enquiry in terms of the Enquiry Regulations found that CML had influenced the price of the scrip of SEAMECL and therefore violated Regulation 4(a) of SEBI (PFUTP) Regulations, 1995. The EO also found that CML had also violated the provisions of Section 12 of SEBI Act read with Rule 3 of SEBI (Stock Broker and Sub Broker) Rules, 1992 and also SEBI Circular no. SMD/Policy/Cir/98 dated January 16, 1998 by not entering any agreement while dealing with CSFB without registration with SEBI. The EO in his report recommended the suspension of the certificate of registration of CML for a period of three months.
8. Pursuant to the Enquiry Report, a notice dated January 12, 2005 under the provisions of the Enquiry Regulations was issued to CML asking it to show cause as to why appropriate action should not be taken against it, as recommended by the EO. CML vide its letter dated May 12, 2005 submitted its reply. Opportunities of hearing were granted to CML and on September 29, 2006 Shri Sudipto Datta, Head Operations, CML and Varghese Joseph, Advocate appeared and availed the opportunity of personal hearing and made oral as well as written submission.
9. The epitome of its replies may be stated as under:
 - i) It was submitted that the total volume of 2,21,06,700 shares has been arrived at by taking into account the volume of trades of all its clients as well as volume of its own trading account. Actually, the trades executed on behalf of its client for whom it had acted as broker, should not be taken into account while calculating its total traded volume.

- ii) It has been observed in the enquiry report that the trading portion of its own account and its “group companies” constituted 65% of the total traded quantity by its company and the rest 35% quantity has been traded for different clients. It was submitted that no basis or details of such calculations have been disclosed in the said report and therefore the observations made by the EO appears to be arbitrary and hypothetical in nature and are not backed by facts or records. Any inference drawn or assertion made on the basis of such hypothetical and arbitrary observations is not sustainable.
- iii) Regarding dealing with CSFB without entering into any agreement with them and violation of SEBI’s circular dated January 16, 1998, it was submitted that the said matter was raised by NSE and NSE was satisfied by its clarification that there was no malafide intention behind the same. However, since it had in the process, violated the provisions of the NSE Regulations which stipulated that member of NSE shall not deal with another member of NSE without the specific permission of the exchange, they imposed a penalty of Rs.10,000/- which was duly paid. It was reiterated that there were no malafides in the transactions and no intent to create an artificial market or to influence the price of the scrip. It was further submitted that the contract notes were issued by CSFB in the name of CML as a client and not as a sub-broker. It was submitted that trades were bonafide and were duly backed by delivery and payment. It was further submitted that no penal action may be initiated against it on the basis of the allegation for which it had already been penalized by NSE.

- iv) It was submitted that it was executing trades in the capacity of broker for its various clients as per the orders and instructions of its clients. Therefore the trades executed on behalf of its clients for whom CML had merely acted as brokers, should not be combined with its own volume in respect of its own proprietary trades while making any such observation. Further its trades cannot be said to have influenced the price and volume of the scrip.
- v) It was submitted that SMIFS Securities Limited is neither a group company nor an associate concern of its company and hence the trading volume of SMIFS Securities Limited should not be considered while computing the volume of its transactions and the transactions of group/associates concerns.
- vi) The EO has failed to elaborate the manner in which these entities have acted in a concerted manner. There is no material on record or finding during the investigation to reveal that these entities had acted in a concerted manner to influence the price and volume in the scrip. It was submitted that the mere factor that transactions by these entities in the scrip of SEAMECL or their combined volume constituted a substantial percentage of the total traded volume cannot indicate any wrong doing. It is mere assumption that since the volume was substantial, the equilibrium of the scrip was distorted. Such observation is merely hypothetical and arbitrary in nature and not backed by any material or evidence of any wrong doing. In this regard reference of the Sterlite case is also given stating that a charge of manipulation require adequate evidence to be adduced establishing *mens rea* or an element of guilty or wrongful conduct. In the entire enquiry report, there is no allegation

and/or material produced which even remotely established the wrongful conduct on its part in executing transactions in the scrip of SEAMECL.

vii) The finding of the EO that it acted in concert with MCSPL, Pinnacle, Vatican, SMIFS Capital Market Ltd. and with SMIFS Securities Ltd. is erroneous and totally devoid of merits.

viii) It was submitted that the penalty proposed by the EO is not justified and is not based on facts or legally tenable findings.

10. I have carefully considered the findings of the investigation, enquiry report, oral as well as written submissions and other relevant material available on records.

11. I note that during the period of investigation CML traded in the scrip of SEAMECL on behalf of its client, its associates or group companies which included M/s SMIFS Capital Market Limited, M/s Mackertich Consultancy Services Limited (MCSPL), M/s Pinnacle trades and Investments Private Limited (Pinnacle), M/s Vatican Commercials Limited (Vatican) and in its own trading account. The details of trading done by CML in the scrip of SEAMECL during the period of investigation are given below:

S. No.	Name of the client	Quantity bought	Quantity sold	Introducer
1.	M/s Mackertich Consultancy Services Private Limited	1886400	583600	Group Company
2.	M/s Pinnacle Trades & Investments Private Limited	1094600	954100	Group Company
3.	M/s Tendril Financial Services	100000	100900	Mr. M G Khanna

4.	M/s Vatican Commercials Limited	100000	96700	Group Company
5.	M/s Advantage Advisor	125000	0	Mr. Anirban Roy
6.	M/s AGF Funds	180000	0	Mr. M G Khanna
7.	M/s Arkay Stocks	50000	0	Mr. M G Khanna
8.	M/s B N P South Asia	250000	0	Mr. M G Khanna
9.	Own Trading Account	3617300	4843300	Self
10.	M/s Chariot Exim Limited	400000	400000	Self
11.	CML through M/s CSFB (India) Securities Private Limited	1571700	1618600	Mr. M G Khanna
12.	M/s Empire International	950000	0	Mr. M G Khanna
13.	M/s Field Investment Limited	0	400000	Jyoti Prakash
14.	M/s GMO Emerging	135000	0	Mr. M G Khanna
15.	M/s Intertech International	300000	0	Mr. Shakti Mehra
16.	M/s Khaitan Overseas	0	400000	Jyoti Prakash
17.	M/s Magnus Capital Corporation	400000	0	Mr. M G Khanna
18.	M/s Reliance Capital Trust	100000	0	Mr. M G Khanna
19.	M/s SMIFS Capital Markets Limited	0	400000	Group Company
	Others	175000	874500	
	Total	11435000	10671700	

12. I note that CML was sharing common address with SMIFS Securities Ltd.i.e. Commonwealth Building, 82, Nagindas Master Road, Fort, Mumbai-400 001. M/s SMIFS Securities Limited, CML and MCSPL were connected to each other as they were having their Kolkata office in the same premises i.e. Vaibhav Plaza, 4 Lee Road, 5th Floor, Kolkata-700 020. Further, M/s SMIFS Securities Limited as it is an associate concern of M/s SMIFS Capital Markets Limited which is amongst CML's group/associate companies. The entities Vatican and Pinnacle were group companies of CML, MCSPL and M/s SMIFS Capital Markets Limited. Therefore, I agree with the findings of the investigations that M/s SMIFS Capital Markets Limited, CML, MCSPL, Vatican and Pinnacle were connected to each other and to SMIFS Securities Ltd. These facts

were further corroborated by Shri Pawan Saraf, director of CML while giving statement on February 19, 2004 on behalf of CML.

13. The charge of their connection is further corroborated from the fact that Shri Ajay Kayan who is a director in M/s SMIFS Capital Markets Limited was also a director in CML and MCSPL. Further, from the statement of Shri Madan Gopal Khanna made on behalf of MCSPL, it is observed that its directors namely Ms. Lalita Kayan and Shri Ajay Kayan were also the directors of CML. Further, Shri Ajay Kayan was also director in M/s SMIFS Capital Markets Limited which was an associate concern of M/s SMIFS Securities Limited (Member BSE, NSE and OTCEI) and CML.
14. I note that during the relevant period CML bought 1,14,35,000 and sold 1,06,71,700 shares of SEAMECL at all the three exchanges viz. BSE, NSE and CSE. The total traded quantity at BSE, NSE and CSE was 10,49,05,200 shares, out of which CML traded 2,21,06,700 shares (21.07%). The above trading reveals that CML has traded substantially in its own account and on behalf of its group companies and clients. The trading portion of CML's own account and CML's group companies constitute 65% of the total traded quantity by CML and the remaining 35% CML had traded for different clients. CML had bought 36,17,300 and sold 48,43,300 shares in CML's own proprietary account. CML's group companies namely MCSPL, Pinnacle and Vatican had traded substantially and bought 30,81,1000 shares and sold 16,34,400 shares.
15. Further, CML along with its group/associate companies viz. MCSPL, M/s SMIFS Capital Markets Ltd., M/s. SMIFS Securities Ltd., Pinnacle and Vatican acted in concerted manner and influenced the price and volume in the scrip of SEAMECL. The details of trading

done by CML and its associates and group companies through other brokers are given as below:

S.No.	Name of entity	Quantity Bought	Quantity Sold	Gross Traded Quantity
1.	M/s. Mackertich Consultancy Services Pvt. Ltd.	3579900	2237900	5817800
2.	CML alongwith its clients	11435000	10671700	22106700
3	M/s. SMIFS Capital Markets Ltd.	400000	700000	1100000
4	M/s. Pinnacle Trades & Investments Pvt. Ltd.	1094600	958300	2052900
5	M/s. Vatican Commercials Ltd.	204900	167700	372600
6	M/s. SMIFS Securities Ltd	1841900	376800	2218700
	Total	18556300	15112400	33668700

It is observed from the table above that the total gross traded quantity at all the 3 exchanges viz. NSE, BSE and CSE was 10,49,05,200 shares, out of which, the gross quantity traded by CML and the abovementioned entities connected to CML, in the whole market through several brokers was 3,36,68,700 shares,

constituting 32.09 % of the total traded quantity which is major/substantial quantity to distort the equilibrium of the scrip.

16. Further, it is also observed from the trade log of BSE and NSE that CML was interested in maintaining the price of the scrip as it was executing the buy trades at a higher price than the last traded price of the scrip. The trade log of the BSE and NSE is mentioned in the tables below: -

BSE Trade Log

Scrip	Trade No.	Order No.	Member	Quantity	Price	Price Difference from the Previous Trade	B/S	Trade Date	Time	Counter Member	Client
26807	736	33010146	D0033	100	305	1	B	4-Jan-00	2:49:43 PM	D0085	MCS
26807	751	33010147	D0033	100	306.5	1.5	B	4-Jan-00	2:51:24 PM	D0549	MCS
26807	320	33020004	D0033	100	242.9	1.89999	B	25-Jan-00	1:39:07 PM	D0234	TEND
26807	372	33020014	D0033	200	233.9	1.89999	B	25-Jan-00	2:02:19 PM	D0329	TEND
26807	395	33020015	D0033	500	232.5	1.5	B	25-Jan-00	2:18:15 PM	D0758	TEND
26807	412	33020016	D0033	500	237	1	B	25-Jan-00	2:19:07 PM	D0329	TEND
26807	415	33020016	D0033	500	239.9	2.04998	B	25-Jan-00	2:19:07 PM	D0444	TEND
26807	426	33020017	D0033	500	241	1	B	25-Jan-00	2:20:01 PM	D0329	TEND
26807	436	33020017	D0033	500	244	1	B	25-Jan-00	2:20:01 PM	D0662	TEND
26807	440	33020018	D0033	500	244	1	B	25-Jan-00	2:20:15 PM	D0320	TEND
26807	444	33020020	D0033	100	236	2	B	25-Jan-00	2:28:07 PM	D0549	TEND
26807	445	33020020	D0033	900	237	1	B	25-Jan-00	2:28:07 PM	D0320	TEND
26807	528	33010065	D0033	2000	238	1.95	B	27-Jan-00	10:19:25 AM	D0794	PIN
26807	594	33010069	D0033	200	240	1.85001	B	27-Jan-00	11:00:07 AM	D0443	PIN
26807	862	33010191	D0033	900	332	1	S	25-Feb-00	11:41:44 AM	D0498	PKS
26807	274	33010122	D0033	100	330	3	B	29-Feb-00	5:14:16 PM	D0444	GOL
26807	447	33010148	D0033	500	342.5	2.5	B	1-Mar-00	2:53:13 PM	D0036	SKG
26807	501	33010157	D0033	100	363.9	8.89999	B	2-Mar-00	10:12:40 AM	D0019	SKG
26807	508	33010157	D0033	200	365	1	B	2-Mar-00	10:12:40 AM	D0344	SKG
26807	509	33010158	D0033	500	367	2	B	2-Mar-00	10:13:10 AM	D0036	SKG
26807	529	33010165	D0033	500	369	2	B	2-Mar-00	10:27:18 AM	D0036	SKG
26807	360	33010068	D0033	100	339.5	1.5	B	7-Mar-00	2:30:44 PM	D0499	T03
26807	94	33030008	D0033	100	280	4.60001	B	13-Mar-00	2:50:36 PM	D0612	VNT
26807	435	33040054	D0033	500	189.5	4.5	B	31-Mar-00	10:13:22 AM	D0033	MCS

NSE Trade Log

Trade Date	Trade Time	Trade No	Trade Price	Price Difference from the previous trade	Traded Quantity	Buy Member Name	Buy Client
9/2/1999	10:54:38	199909020068669.00	74.85	1.1	300	C MACKERTICH LTD	CLI
10/12/1999	10:39:51	199910120070925.00	153	1	200	C MACKERTICH LTD	SARLAACHAR
10/12/1999	10:41:39	199910120073681.00	153	1	100	C MACKERTICH LTD	GAUTAMDALM
10/15/1999	11:19:39	199910150095493.00	179.45	1.45	500	C MACKERTICH LTD	CLI
10/22/1999	13:20:41	199910220247225.00	154	1.2	100	C MACKERTICH LTD	CLI
10/22/1999	13:27:51	199910220253517.00	172	1	200	C MACKERTICH LTD	CLI
10/26/1999	10:23:38	199910260044862.00	168.05	1.05	100	C MACKERTICH LTD	RPD
10/27/1999	12:45:55	199910270242517.00	165	1	100	C MACKERTICH LTD	CLI
10/27/1999	12:46:18	199910270242890.00	166	1	200	C MACKERTICH LTD	CLI
10/27/1999	12:46:18	199910270242911.00	169	1	100	C MACKERTICH LTD	CLI
11/5/1999	15:09:32	199911050343837.00	134.45	1.45	200	C MACKERTICH LTD	PIN
11/9/1999	15:16:45	199911090350420.00	130	1.1	400	C MACKERTICH LTD	PIN
11/12/1999	13:51:43	199911120232159.00	139.5	1.45	100	C MACKERTICH LTD	PIN
11/15/1999	11:13:31	199911150086021.00	154	1.45	100	C MACKERTICH LTD	SKJ
11/25/1999	15:05:47	199911250341969.00	151	1	700	C MACKERTICH LTD	PIN
11/25/1999	15:07:47	199911250344554.00	154.9	1.65	100	C MACKERTICH LTD	PIN
12/1/1999	15:22:33	199912010500456.00	189.9	2	100	C MACKERTICH LTD	PIN
12/1/1999	15:22:33	199912010500465.00	192	1	100	C MACKERTICH LTD	PIN
12/1/1999	15:22:59	199912010501183.00	198	1	200	C MACKERTICH LTD	PIN
12/1/1999	15:28:11	199912010512966.00	193.5	3.6	100	C MACKERTICH LTD	PIN
12/1/1999	15:29:34	199912010516955.00	192	2	500	C MACKERTICH LTD	CLI
12/1/1999	15:29:34	199912010516956.00	193.5	1.5	100	C MACKERTICH LTD	CLI
12/2/1999	14:14:40	199912020326582.00	205.5	1	500	C MACKERTICH LTD	R
12/3/1999	10:52:39	199912030103307.00	206.5	1.5	100	C MACKERTICH LTD	DALMIA

17. The trading pattern of CML and its associate/group companies suggests that all of them were interested in the creation of volume and in the increase of the price of the scrip of SEAMECL and all of them were buying and selling large quantities of shares in their proprietary accounts without transferring any beneficial ownership. The analysis of the trade log also suggests that CML has executed several trades to influence the price of the scrip. Therefore, I agree with the findings of the EO that CML was actively involved in the trading of the scrip to distort its equilibrium, and it indulged into non genuine transactions by trading in own account and on behalf of its

group companies and created artificial volume and influenced the price of the scrip of SEAMECL.

18. Thus, I hold that by trading in such pattern CML violated the Regulation 4 (a) Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 which inter-alia provides as follows;

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;

19. I also note from the trading details provided by CML and CSFB that CML also acted as a sub-broker to CSFB where CML bought 15,71,700 and sold 16,18,600 shares. CML had traded at BSE and NSE through CSFB despite having its own membership at both the exchanges during that period. This fact is further corroborated from the statement of Shri Pawan Saraf, director of CML that M/s. CSFB and CML did not enter into agreement to trade. I note that CML had executed transactions for its director Shri Ajay Kayan through CSFB as a sub- broker without valid registration. Therefore, it is observed that CML had acted as an intermediary without getting registered with SEBI and did not undertake either signed client agreement or member constituent agreement with CSFB for trading through CSFB. CML thus violated Section 12 of SEBI Act, 1992 read with Rule 3 of SEBI (Stock-Brokers and Sub-Brokers) Rules, 1992 and SEBI circular no. SMD/Policy/CIR/98 dated January 16,

1998 for dealing as a sub-broker through CSFB without registration with SEBI. SEBI circular no.SMD/Policy/CIR/98 dated January 16, 1998 clearly states that “it is necessary for any person who acts as sub-broker to hold Certificate of Registration as a sub-broker granted by SEBI and accordingly the members of Stock Exchanges who also act as sub-brokers should hold a separate registration with SEBI as a sub-broker.”

20. The trading details submitted by the group company MCSPL indicates that it had traded through several members of BSE, NSE and CSE including CML in the scrip of SEAMECL and created artificial volume and influenced the price of the scrip. During the investigation, Shri Pawan Saraf also stated in the statement that CML did not exercise any special precaution to trade on behalf of MCSPL. Therefore, it is evident that CML and its group companies viz. M/s Mackertich Consultancy Services Private Limited, M/s Vatican Commercials Limited and M/s Pinnacle Trades & Investment Private Limited traded in a concerted manner to create the artificial volume in the scrip and to influence the price and CML did not exercise due diligence and enough precaution to trade on behalf of these clients. Therefore, as per code of conduct prescribed for Stock Broker, CML failed to exercise due skill and care in its dealings, and violated provisions of Regulations 7 read with clause A (2) of Schedule II of SEBI (Stock Broker and Sub brokers) Regulations, 1992.
21. In view of the aforesaid and in the facts and circumstances of the matter, I find that CML has violated Regulation 4(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, Section 12 of SEBI Act, 1992 read with Rule 3 of SEBI (Stock-Brokers and Sub-Brokers) Rules,

1992 and SEBI circular no. SMD/Policy/CIR/98 dated 16.01.1998 and Clause A (2) of the Code of Conduct as specified in Schedule II of the Regulation 7 of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992. The aforesaid violations committed by the Broker calls for appropriate penalty and considering the facts and circumstances of the case, I, find that imposing the penalty of suspension of certificate of registration would be appropriate.

22. In view of the foregoing and in exercise of the powers conferred under upon me under Section 19 of SEBI Act, 1992 read with Regulation 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, I hereby impose a penalty of suspension of the certificate of registration of CML having SEBI Registration No. INB230769433 for a period of one month.
23. This order shall come into force on the expiry of 21 days from the date of passing of this order.

DATE: 12.12.08

T. C. NAIR

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA