

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: SHRI. M.S. SAHOO, WHOLE TIME MEMBER**

**AGAINST M/s. ACTIVE FINSTOCK PVT. LTD. (INB 010849331), STOCK
BROKER OF BOMBAY STOCK EXCHANGE LTD. IN THE MATTER OF
GCCL INFRASTRUCTURE AND PROJECTS LTD.**

Date of Hearing: **September 30, 2008**

Appearances:

For AFPL: Mr. Joby Mathew, Advocate
Mr. Deepak Dhane, Advocate
Mr. Vimal P. Khandwala, Director of M/s. Active Finstock Pvt. Ltd.

For SEBI: Mrs. Barnali Mukherjee, Deputy General Manager
Mrs. Rajani Agadi, Manager
Mr. Mohamed Rahaz, Legal Officer
Mr. Kajio Mao, Legal Officer

ORDER

**[UNDER REGULATION 28(2) OF THE SECURITIES AND EXCHANGE
BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008]**

1. SEBI had conducted investigations into unusual behaviour in the prices of and the volumes in the shares of GCCL Infrastructure and Projects Ltd (GCCL) on the Bombay Stock Exchange (BSE) and the Ahmedabad Stock Exchange (ASE) during January - June 1996. The investigations *prima facie* revealed that several entities, including M/s. Active Finstock Pvt. Ltd. (AFPL), a broker of the BSE with SEBI Registration No. INB 010849331, had traded in a manner that contributed to the said unusual behaviour in the prices and the volumes, despite various surveillance measures in vogue. Accordingly, SEBI appointed an Enquiry Officer, vide order dated June 4, 2004, to enquire into the violations, if any, committed by AFPL, while dealing in the shares of GCCL. The Enquiry Officer, after considering the reply filed by AFPL and personal hearing, submitted the Enquiry Report dated August 24, 2007 and recommended a penalty of suspension of certificate of registration of AFPL for a period of 15 days. SEBI issued a notice dated September 3, 2007 under Regulation 13 (2) of the SEBI (Procedure

for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 along with a copy of the Enquiry Report, advising AFPL to show cause as to why the action, as recommended by the Enquiry Officer, should not be taken against it. AFPL, vide its letter dated February 19, 2008, replied to the show cause notice. An opportunity of personal hearing was granted to AFPL before me on September 30, 2008. Mr. Vimal P. Khandwala, Director of AFPL, along with its advocates, appeared before me and made submissions. AFPL, vide its letter dated October 3, 2008, has filed further written submissions.

2. I have carefully examined the Enquiry Report and the oral as well as written submissions of AFPL. The allegations, as made out in the Enquiry Report attached to the show cause notice, are as under:

- a. AFPL aided and abetted M/s. Khandwala Finstock Private Limited (hereinafter referred to as “KFPL”) and its four clients in manipulating the price and volume of the share of GCCL and thereby violated the provisions of Regulation 4 (a) and (b) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995;
- b. AFPL failed to exercise due care and diligence in transacting in the shares of GCCL and thereby violated the provisions of the Code of Conduct specified under Schedule II of Regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992; and
- c. AFPL permitted KFPL to trade on BSE as a sub-broker without SEBI registration and thereby violated Section 12(1) of the SEBI Act, 1992 and SEBI Circular No. SMD/3118 dated December 27, 1993.

3. The facts of the case, as made out in the enquiry report, are as under:

- a. AFPL is a broker of BSE. KFPL is a broker of ASE. These two entities belong to the same group.
- b. KFPL is not a sub-broker registered with SEBI. AFPL, however, allowed KFPL to act as its sub-broker.
- c. AFPL purchased and sold 10,43,400 and 6,61,000 shares respectively of GCCL during the investigation period, though various surveillance measures were in vogue, on behalf of its four clients through its unregistered sub-broker, KFPL.

- d. After following due procedure, SEBI, vide Order dated October 14, 2002, debarred all the four clients of KFPL from dealing in securities markets for one year.

4. The facts in Para 3 have not been disputed by the AFPL except that it has some disagreement with the volume of transactions. I find that it has furnished different figures relating to volumes on different occasions. For example, it stated on January 5, 2004 before the Investigation that it had made gross purchases of approx 8,00,000 shares and gross sale of approx 6,00,000 shares. However, it submitted on March 23, 2006 to the Enquiry Officer that it bought 9, 58,100 and sold 6, 20,100 shares on BSE. Further, it has claimed that it does not have records to prove or disprove the figures. It has argued that it is not required to preserve the records so long under the securities laws. I do not find much merit in this argument. The AFPL is aware since 1997 that the matter is under dispute and hence it should have preserved its records. In any case, SEBI has used the figures received from recognized stock exchanges. Further, the figures quoted by the AFPL are marginally different from those found in enquiry report and hence it does not alter the facts in substance.

5. AFPL has made two main submissions:

- a. AFPL traded in the shares of GCCL only upon and as per the instructions of the KFPL and its clients and in such circumstances cannot be held liable for the acts of the clients; and
- b. KFPL was not required to be registered as a sub-broker of AFPL with SEBI since they were already registered as broker with SEBI.

6. KFPL is a broker of ASE where the shares of GCCL were available for trading. It is intriguing that KFPL preferred to trade such huge volumes as an unregistered sub-broker through AFPL on another exchange (BSE). It is also equally intriguing that AFPL allowed KFPL, a broker of another exchange (ASE), to trade as an unregistered sub-broker. In normal circumstance, either of them would not have done so. This indicates the possibility of complicity among the AFPL, sub-broker and clients. However, there is no evidence to clearly establish that the AFPL added and abetted KFPL and clients in manipulation of the market.

7. The conduct of AFPL shifted huge volumes from one exchange to another. It contributed 12.56% to the total volume of GCCL on BSE. KFPL contributed 93.83% of the total volume of AFPL in GCCL on BSE. A SEBI regulated entity ought to have exercised due diligence when it became conduit to transfer such huge volumes through one unregistered sub-broker when it was fully aware that the share was under strict surveillance. This clearly proves failure on the part of AFPL to exercise due diligence expected of a broker.

8. I find it difficult to accept the argument that SEBI registration was not necessary to act as sub-broker if it is registered as a broker. Section 12(1) of the SEBI Act, 1992 clearly requires that no sub-broker shall buy, sell and deal in securities without a certificate of registration from SEBI. Section 13 of the Securities Contracts (Regulation) Act, 1956 prohibits trade among the members of exchanges. Therefore, I find it is sufficiently clear that a sub-broker is required to be registered with SEBI for doing business in securities as a sub-broker on a recognized stock exchange and find the submissions made by AFPL is unfounded.

9. AFPL has made two incidental arguments. First, it has not been provided with full investigation report. I find that entire enquiry report has been provided to the AFPL and the charges are not based on any document which has not been provided. Second, the proceedings have been unduly delayed. I find that the AFPL has partially contributed to the delay. In any case, there is no time limit on disposal of a proceeding of this nature nor the delay can justify exoneration.

10. I, therefore, find that AFPL permitted KFPL to trade as an unregistered sub-broker in the shares of GCCL on BSE during the investigation period in violation Section 12(1) of the SEBI Act, 1992. It also failed to transact in the shares of GCCL with due care and diligence as specified under the Code of Conduct for Stock Brokers as specified under Schedule II of Regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

11. Therefore, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992 read with Regulation 28(2) of SEBI (Intermediaries) Regulations,

2008, I hereby suspend the certificate of registration of the AFPL (INB 010849331, PAN:AAACA8798G) by 1 day.

12. A copy of this order shall also be served on the BSE of which AFPL is a broker.

13. This order shall come into force immediately on the expiry of 21 days from the date of this order.

Place: Mumbai
Date: January 6, 2009

M. S. SAHOO
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA