

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

**AGAINST M/s. KHANDWALA FINSTOCK PVT. LTD. (INB 020723638),
STOCK BROKER OF AHMEDABAD STOCK EXCHANGE LTD. IN THE
MATTER OF GCCL INFRASTRUCTURE AND PROJECTS LTD.**

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

Appearances:

For KFPL: Mr. Joby Mathew, Advocate
Mr. Deepak Dhane, Advocate
Mr. Vimal P. Khandwala, Director of M/s. Khandwala 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. Khandwala Finstock Pvt. Ltd. (KFPL), a broker of the ASE with SEBI Registration No. INB 020723638, 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 KFPL, while dealing in the shares of GCCL. The Enquiry Officer, after considering the reply filed by KFPL and personal hearing, submitted the Enquiry Report dated August 24, 2007 and recommended a penalty of suspension of certificate of registration of KFPL 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 KFPL to show cause as to why the action, as

recommended by the Enquiry Officer, should not be taken against it. KFPL, vide letter March 3, 2008, replied to the show cause notice. An opportunity of personal hearing was granted to KFPL before me on September 30, 2008. Mr. Vimal P. Khandwala, Director of KFPL, along with its advocates, appeared before me and made submissions. KFPL, vide 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 KFPL. The allegations, as made out in the Enquiry Report attached to the show cause notice, are as under:

- a. KFPL, in association with its four clients and Active Finstock Pvt. Ltd. (AFPL), manipulated the price and volume of the shares 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. KFPL, as broker of ASE, 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. KFPL traded on BSE as a sub-broker of AFPL 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. It, however, traded as a sub-broker through AFPL on BSE.
- c. KFPL, through AFPL, purchased 10,43,400 shares and sold 6,61,000 shares respectively of GCCL on BSE on behalf of its four clients, though various surveillance measures were in vogue. Besides, it made a net purchase of 5,61,300 shares as a broker on ASE.
- 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 KFPL. It has, however, made two main submissions:

- a. KFPL traded in the shares of GCCL only upon and as per the instructions of the 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 it was already registered as broker of ASE with SEBI.

5. KFPL is a broker of ASE where the shares of GCCL were also 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 not enough evidence to clearly establish that the KFPL traded with an intent to manipulate the price and volume in the shares of GCCL.

6. The conduct of KFPL shifted huge volumes from one exchange to another. It contributed 93.83% of the total volume of AFPL which amounted to 11.78% to the total volume of GCCL on BSE. It had also a net buy volume of 5,61,300 shares on ASE. A SEBI regulated entity ought to have exercised due diligence while acting a conduit to transfer such huge volumes from one exchange to another when it was fully aware that the share was under strict surveillance. This clearly proves failure on the part of KFPL to exercise due diligence expected of a broker.

7. 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 KFPL is unfounded.

8. KFPL 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 KFPL 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 KFPL 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.

9. I, therefore, find that KFPL traded 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.

10. 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 Khandwala Finstock Pvt Ltd. (INB 020723638 and PAN AAACK6129R) by 7 days.

11. A copy of this order shall also be served on the ASE of which KFPL is a broker.

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

Place: Mumbai
Date: January 14, 2009

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