

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

IN THE MATTER OF M/s. V & U SECURITIES PVT. LTD. (ERSTWHILE M/s. KIRTIKUMAR KANTILAL SHAH) MEMBER OF AHMEDABAD STOCK EXCHANGE SEBI REGISTRATION NO. INB 021105730 IN THE SCRIP OF M/s. OJAS TECHNOCHEM PRODUCTS LIMITED.

Date of hearing : July 25, 2008

Appearance

For Noticee : Mayukh Pandya, Consultant

For SEBI : Shri P K Bindlish, CGM
Shri Atul Agarwal, Manager
Ms. Kshama Chavan, Legal Officer

UNDER REGULATION 28(2) OF THE SEBI (INTERMEDIARIES) REGULATIONS, 2008.

1. Ojas Technochem Products Limited (hereinafter referred to as "OTPL") is registered with the Registrar of companies, Gujarat at Ahmedabad. 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").
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 February 2000 (hereinafter referred to as "investigation period") upon an investigation report forwarded by BSE to SEBI which hinted on the possibility of price manipulation.
3. Investigation revealed that OTPL had made a preferential allotment for 60,00,000 equity shares of Rs.10 each on January 13, 2000. The allotment was made. The shares issued in the preferential allotment were not listed at BSE. The preferential allotment of 60,00,000 shares was however, listed on VSE on January 17, 2000.

4. M/s. Kirtikumar Kantilal Shah (hereinafter referred to as “KKS”), member of ASE was alleged to have acted as a unregistered sub broker of M P Vora Shares & Securities Pvt. Ltd., member, BSE. It was further alleged that KKS while trading in the shares of OTPL on behalf of Coverage and Consultants Ltd. (CCL) aided and abetted in offloading unlisted shares of OTPL, thereby violating the provisions of Regulation 4(b) and (d) of SEBI(Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995. It was also alleged that the broker had violated the provisions of Clause A(2) of Code of Conduct of Stock Brokers read with Schedule II of Regulation 7 of the SEBI(Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as “Broker Regulations”).
5. In view of the above findings of investigation, enquiry proceedings were initiated for enquiring into the alleged violations/contraventions of KKS. The enquiry officer conducted enquiry in terms of the then SEBI (Procedure for Holding Enquiry by the Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the “Enquiry Regulations”) and submitted the enquiry report dated July 16, 2007 recommending a penalty of suspension of certificate of registration of KKS for a period of 20 days.
6. In terms of Regulation 13(2) of the Enquiry Regulations, a copy of the enquiry report along with show cause notice dated July 18, 2007 was forwarded to KKS advising it to show cause as to why the appropriate penalty including penalty as recommended by the Enquiry Officer should not be imposed upon it. Vide letter dated August 3, 2007, KKS sought time for submitting the reply to the said show cause notice. However, I observe that no reply was filed by KKS.
7. An opportunity of hearing was granted before me to KKS on June 6, 2008. Vide letter dated May 28, 2008, KKS requested for a future date of hearing due to his inability to represent himself on the scheduled date of hearing due to unforeseeable circumstances. Acceding to the request of KKS, another opportunity of hearing was granted to KKS on July 18, 2008. However, KKS once again requested for adjournment of hearing on one pretext or the other. Adhering to the principle of natural justice, another opportunity of hearing was granted to KKS on July 26, 2008 wherein Shri Mayukh Pandya, authorised representative of KKS

attended the hearing and made submissions. Since KKS had not replied to the show cause notice, seven days time was given to KKS to submit his reply to the show cause notice. Accordingly, vide letter dated July 31, 2008, KKS submitted its reply to the show cause notice. It is noted that the reply was received from V & U Securities Pvt. Ltd. with the signature of KKS as the Chairman & Managing Director. When confirmed about this fact, it was found that KKS was registered as a member of ASE on December 2, 1992 as an individual trading member. Later he converted his membership to corporate entity in the name of V & U Securities Pvt. Ltd. on May 31, 2000. The reply of the KKS is an under:

- (i) *They are registered broker of ASE and have not transacted as unregistered sub broker. Their volume compared to the total market volume was very negligible.*
- (ii) *They are not aware that the client CCL was related to the management of OTPL. They have done the transactions for their client CCL not only in OTPL but also in other scrips.*
- (iii) *With reference to the circular issued by SEBI on October 30, 1996, no where it is mentioned that the registered stock broker has to register as a sub broker when they were dealing with the members of the other stock exchange.*
- (iv) *They have given the complete details regarding their clients, their KYC and the member client agreement to the Enquiry Officer and list of securities traded by one of their client. No utilised shares had been delivered in the market.*
- (v) *They deny that they have traded in the scrip of OTPL on the proprietary basis and traded in OTPL through and on behalf of their clients and they have not given any facility to their client of offloading the shares of OTPL.*
- (vi) *It is denied that they don't have any direct or indirect relation with OTPL.*
- (vii) *It is denied that they facilitated an easy route to their client CCL to sell the alleged shares of OTPL. Assuming without admitting that if we had sold the shares of promoters/directors then there is no law which prevents them for doing such transactions on behalf of their client and if the client is promoter or director of the company then he or she should comply with the relevant regulation and guidelines issued by the regulating authorities. They categorically mentioned that they have*

delivered the listed shares of OTPL and not a single unlisted share of OTPL has been introduced by them in the market.

- 8.0 I have carefully considered the findings of investigation, the Enquiry report, the show cause notice and the reply / submissions of KKS. I note that though the Enquiry Regulations were repealed with effect from the notification of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, anything done and any action taken under the said enquiry regulations shall be deemed to have been done or taken or commenced under the corresponding provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.
- 8.1 I note that the scrip of OTPL was moderately illiquid during January 1999 to October 1999, except for the few occasions when occasional liquidity was noted. However, during November 1999 to February 2000, heavy liquidity was witnessed accompanied with a rise in the price of the scrip. On February 9, 2000, the number of shares traded had reached 3313100 and the price had gone upto Rs 23.60 (closing price) from the volume of 27500 shares and the closing price of Rs 3.55 on November 1, 1999.
- 8.2 I note that KKS is alleged to be guilty of the following charges:
- a) Acting as an unregistered sub broker of M P Vora during the period of investigation;
 - b) Purchasing 3,22,300 shares and selling 7,29,000 shares of OTPL, for CCL, who is alleged to be related to the management of OTPL and aiding in offloading unlisted shares of OTPL.

Now, I shall deal with the above charges as under:

- 8.3 With regard to the charge of acting as an unregistered sub broker of M P Vora, member, BSE, KKS submitted that being a member of ASE, they were not required to register themselves separately as a sub broker while dealing with the members of other stock exchanges. Further they relied upon the MOU dated June 26, 1997 entered into between BSE and ASE for granting of the BOLT Terminal to the members of ASE. In this regard, reference is drawn to SEBI Circular no. SMD/OPG/AA/1020/96 dated March 14, 1996 which deals with the issue of unregistered sub brokers. Subsequently vide various circulars

viz., SMD/POLICY/CIRCULAR/3-97 dated March 31, 1997, SMD/Policy/Cir-11/97 dated May 21, 1997 and SMD/Policy/Cir/3-98 dated January 16, 1998, SEBI had clarified this stand and mandated dealing only with registered brokers/sub-brokers. It is thus clear that sufficient instructions had been issued by SEBI from time to time in keeping all the brokers and unregistered brokers/sub-brokers aware of the requirements of applying for a certificate of registration. These circulars were issued much prior to the period of investigation. Thus in terms of the above circular, every sub broker is required to obtain a separate certificate of registration for trading through the members of other stock exchanges. KKS admittedly did not register themselves separately as a sub broker and thus failed to comply with both the provisions of the Broker Regulations and the circulars quoted above. I note that the sub broker in spite of being aware of the provisions of SEBI Act acted as an unregistered sub broker which would be prejudicial to the interest of the investors who deal with such unregistered sub brokers.

8.4 As regards the MOU relied upon by KKS, I note that the said agreement contemplates the extension of the trading terminals of BSE i.e. BOLT terminals to ASE members. Clause 8(1) of the said MOU states that ASE members who were desirous of taking up such an arrangement with the trading members of BSE were required to obtain a no objection certificate (NOC) from the ASE. This MOU was arrived at on the basis of the terms of SEBI Circular No. SMD/POLICY/5325/96 dated October 30, 1996, which inter alia permitted BSE to expand BOLT terminals to cities other than Mumbai. In the said circular, it was also stated that any proposal of any other Stock Exchanges for expansion of their On-line Screen Based trading to locations outside the city where such stock exchanges are located, would be allowed/considered by SEBI subject to various conditions. One such condition was that the stock exchanges proposing to install the terminals to those cities, where other stock exchanges are located, were required to arrive at an understanding with other exchanges, permitting it to install its terminals in their jurisdictional areas. In pursuance of the said circular, many such agreements were entered into between the exchanges.

8.5 Thus while KKS has relied upon this circular and the MOU, they have not submitted any such NOC issued by ASE towards their arrangement

stated to have been entered into with M P Vora. Instead, they have only submitted a letter dated November 12, 1997 issued by ASE in the form of NOC pertaining to the installation of the BOLT Trader Work Station which permitted Libord Securities Ltd. to extend the BOLT TWS to KKS. In the absence of any supporting documents evidencing a NOC provided by KKS in terms of M. P. Vora, with whom KKS is alleged to have traded substantially in the scrip of OTPL as an unregistered entity, the arrangement as agreed upon between BSE and ASE in terms of the MOU will not apply to the arrangement arrived at between M P Vora, member BSE and KKS, member ASE. I find that KKS is guilty of violating the provisions of Section 12 of the SEBI Act, 1992 and the SEBI Circulars dated March 31, 1997 and January 16, 1998.

- 8.6 As regards the charge of aiding and abetting CCL in offloading the shares of OTPL, I note that the main client of KKS was CCL whose trades were executed by KKS through the broker M P Vora, member of BSE. KKS had bought and sold shares of OTPL respectively for CCL while acting as an unregistered entity through M P Vora.
- 8.7 The Enquiry Officer found that the total bought and sold quantity of shares of OTPL by CCL through KKS as stated in the notice to show cause was mentioned as 322300 and 729000 shares of OTPL respectively. However the total buy transaction for CCL through M P Vora have taken place from February 9, 2000 is shown as 443400 shares accounting for Rs.1,08,51,645. I have however noted another transaction that took place on January 28, 2000 between KKS and CCL as submitted by KKS which is a total buy transaction by CCL to the tune of 327300 quantity of shares of OTPL at an average price of Rs. 12.68. On that basis, the total buy by CCL could be taken as 77,07,000 shares (443400 + 327300) of OTPL for a total consideration of Rs.15003195/- which is different from the figures given in the report. Similarly as regards the sell volumes, the total sell volume is 1147000 shares of OTPL for a total consideration of Rs.22817780.
- 8.8 I note that the trade details of CCL with KKS before January 28, 2000 are not available on record. I find that the act of KKS in submitting the details of investment relating to CCL only from February 18, 2000 onwards was deliberate and meant to avoid disclosing the fact that they had executed trades for CCL in the scrip of OTPL in and around the

period of investigation and the fact that these trades were off market deals.

- 8.9 At this juncture, it would be pertinent to note that BSE had issued a notice No. 25810/99 dated September 15, 1999 informing the members of the exchange that with effect from September 16, 1999, new securities of OTPL are listed on the exchange. BSE also stated that these shares would not be transferable upto July 16, 2001 and would not be good delivery till then. These equity shares amounting to 8,40,150 in number with distinctive numbers 5750501 to 6590650 were allotted to promoters.
- 8.10 During this process, KKS introduced a total of 336000 unlisted shares of OTPL in the market which is corroborated from the entries made in the inward and outward register of their broker M P Vora, who in turn was found to have introduced a total of 343800 unlisted shares of OTPL.
- 8.11 CCL was related to the management of OTPL and was given preferential treatment by way of allotment of shares on a preferential basis, albeit after the period of investigation. Several subsequent preferential allotments were also allegedly not notified to the BSE. In other words, OTPL introduced many such unlisted shares in the market through unfair means and this was done with the assistance of several other brokers/clients/entities close to the management of OTPL including CCL, through KKS.
- 8.12 A brief perusal of the trades executed by KKS for CCL in the scrip of OTPL clearly indicates marked price variation in the said scrip and a demand being created by the placement of orders at higher prices and also highlights the element of deceit in all the transactions. However, I find that there is only business relationship between the client and KKS and no other relationship except client-broker relationship is established. Therefore, KKS is not a part of the collusive activities of the client and the company, OTPL.
- 8.13 I am of the view that all persons operating in the market are mandated to maintain high standards of integrity, promptitude and fairness in the conduct of their business dealings and the necessary skill and care in terms of the code of conduct as prescribed for them under Clause A (2) of the Code of Conduct of Stock brokers read with Schedule II of

Regulation 7 of the Broker Regulations which inter alia mandates a stock-broker, to act with due skill, care and diligence in the conduct of all his business. The failure on the part of KKS to maintain adequate standards of integrity, promptitude and fairness in the conduct of their business dealings and exercise, skill, care and diligence required of that of a broker while executing the transactions for CCL in the scrip of OTPL, makes them liable for violating the code of conduct as prescribed for brokers read with Schedule II of Regulation 7 of the Broker Regulations.

- 8.14 From the above facts and circumstances of the case, I am of the view that penalty of suspension of certificate of registration for a period of twenty days as recommended by the Enquiry Officer is excessive. Taking into consideration the nature of violation, a penalty of Censure is sufficient to have a deterrent effect on the M/s. Kirtikumar Kantilal Shah. However I find M/s. Kirtikumar Kantilal Shah has been incorporated as M/s V & U Securities Pvt. Ltd. w.e.f. May 31, 2000 and Shri Kirtikumar Kantilal Shah is the Chairman and Managing Director of the newly incorporated entity.
9. In view of the above, I, therefore, in exercise of powers conferred upon me in terms of section 19 of SEBI Act, 1992 read with Regulation 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, I hereby Censure M/s. V & U Securities Pvt. Ltd. (erstwhile M/s. Kirtikumar Kantilal Shah), member of Ahmedabad Stock Exchange SEBI registration no. INB 021105730 to the effect that the broker should be careful in future and exercise due skill, care and diligence in the conduct of its affairs as a capital market intermediary. I also direct V & U Securities Pvt. Ltd. (erstwhile M/s. Kirtikumar Kantilal Shah) to note that any instances of violation or non-compliance of the SEBI Act and Rules and Regulations in future shall be dealt with stringently.

DATE: 09.01.2009
PLACE: MUMBAI

T. C. NAIR
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA