

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

**IN THE MATTER OF M/s. EQUISEARCH BROKING PVT LTD.,
MEMEBR THE BOMBAY STOCK EXCHANGE LIMITED SEBI
REGISTRATION NO. INB 010992338 IN THE SCRIP OF M/s. OJAS
TECHNOCHEM PRODUCTS LIMITED.**

Date of hearing : July 29, 2008

Appearance

For Noticee : Shri Prakash Shah, Advocate
Ms. Chandanbala Jain, Practicing Company Secretary

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. It was alleged that Equisearch Broking Pvt. Ltd. (hereinafter referred to as "the Broker") had played a major role in facilitating offloading of shares by its client M/s. Coverage and Consultants Pvt. Ltd. and has aided and abetted its client in offloading the shares of OTPL. It was further alleged that the Broker has failed to do due diligence as required under clause A (2) of the Code of Conduct specified for Broker as prescribed under schedule II of Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulation, 1992 and have violated the Regulation 4 (b) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 1995 (hereinafter referred to as "PFUTP Regulations").
5. In view of the findings of investigation, an Enquiry Officer was appointed by SEBI vide order dated December 2005 under the then SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the "Enquiry Regulations") to enquire into the irregularities / violations committed by the Broker. The Enquiry Officer conducted enquiry in terms of the Enquiry Regulations and found that the Equisearch has violated provisions of Regulation 4 (b) and (d) of the PFUTP Regulations and Clause A (2) of the Code of Conduct specified under schedule II of Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulation, 1992. The Enquiry Officer submitted his report dated July 16, 2007 recommending a suspension of the certificate of registration of the Broker for a period of twenty 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 the Broker 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. However the broker did not reply to the said show cause notice.

7. An opportunity of personal hearing was granted to the Broker before me on June 6, 2008 wherein representatives of Equisearch attended the hearing and requested to provide a copy of show cause notice since there was a change in management of Equisearch and that the new management was unable to trace the show cause notice. Acceding to the request of the broker, a copy of show cause notice was forwarded to the broker with a direction to reply to the said show cause within a period of 30 days. The Broker vide letter dated June 27, 2008 replied to the show cause notice and interalia stated as under:

- i. *The transactions in Ojas Technochem Pvt Ltd.(OTPL) were carried out in the normal and ordinary course of broking business, on behalf of and as per instructions of their then client M/s Coverage & Consultants Limited (CCL) who were registered with them after complying with the statutory requirements and legal formalities of the stock exchange (BSE) and SEBI.*
- ii. *They had no relationship with the said client except that of broker and client privity. They have no connection with the OTPL company circle or any of its promoters /directors.*
- iii. *All the physical delivery of OTPL shares were routed through the clearing and "settlement mechanism" of the BSE towards 'pay-in' obligations of the clients' which were considered as good delivery in the market and no objection of any nature was raised either by BSE or the receiving clearing member (counter party broker) and pay-out of money was accordingly declared by BSE or the receiving clearing member (counter party broker) and pay-out of money was accordingly declared by BSE after taking into account the shares delivered as valid security. Hence the question of unlisted shares delivered by them alleged or otherwise does not arise.*
- iv. *They had issued contract notes/bills to their clients in respect of the trades in OTPL scrip at the relevant time. These were commercial transactions and contractual obligations inter se was fulfilled as required between the principal (client) and agent (broker). It is not open to initiate an enquiry on the cause of action (i.e. underlying trades) that was completed and buried and extinguished (as the trades were duly settled at the relevant time).*

- v. *They state and confirm that they had no knowledge and were neither aware that CCL was related to the management of OTPL nor any of their plan /scheme to sell the shares in the market.*
 - viii. *They have not done any proprietary business and any off market dealings in OTPL scrip.*
 - ix. *They have stopped doing business with their client CCL for last more than six years.*
8. I have carefully considered the Enquiry Report, the show cause notice issued to the Equisearch and its submissions and other material available on record. 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. The issue for consideration is whether the Broker had dealt in unlisted shares and has failed in due diligence while offloading the shares of promoters. My findings are as under:
- 9.1 I note that 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.
- 9.2 Equisearch has been charged for trading in the shares of OTPL, including unlisted shares for their client, M/s. Coverage Consultants Limited (hereinafter referred to as "CCL") who is alleged to be related to the management of OTPL. I note that Equisearch had traded for CCL in the shares of OTPL during the investigation period. During this period, the Broker had a gross trading of 2.95% and a net sell of 3.65% of the gross market sell.

- 9.3 I note that the Broker had sold 23,37,900 shares of OTPL for CCL which is substantial, keeping in view the total listed capital of the company, which is only 65,90,150 shares. Most of these shares were found to belong to the promoters, directors or the persons related to OTPL. I note that the Broker had introduced 7600 unlisted shares of OTPL in the market. It is pertinent to note that CCL was one of the main entities selling the shares of OTPL, whether listed or unlisted through various other brokers.
- 9.4 From the perusal of the details of trading of Equisearch for CCL, it is observed that the Broker had bought only 28,900 shares for CCL but sold for them 23,37,900 shares of OTPL. The Broker could have realized the quantum of trades being executed through them especially when this client had earlier never traded through them and had only started trading with them, in this scrip.
- 9.5 As regards the timing of these trades, it is clear that during the period of investigation, Equisearch had sold 19,43,500 shares of OTPL and after the said period, they had sold only 3,94,400 shares of OTPL. Most of the shares sold by them were registered in the name of CCL. In this regard, reference is drawn to SEBI circular no. SMD-1/23341 dated November 18, 1993 which mandates that Brokers and their registered sub brokers should exercise necessary care and caution while transacting and ensure that securities are to be received from /given to the selling client/ buying client and to none other. In effect, all brokers and their registered sub brokers are required to ensure receiving the securities from the selling client and transferring the said securities only to the respective beneficiary accounts and maintain proper records. In the instant case, I find that Equisearch has not adhered to the provisions of this circular. This does not speak much for their bonafides/due diligence, notwithstanding their claims in this regard.
- 9.6 During this process, Equisearch has introduced a total of 7600 unlisted shares of OTPL in the market through CCL. It would be pertinent to note that BSE had issued a notice No. 25810/99 dated 15th September, 1999 informing the members of the exchange that with effect from Thursday, the September, 16 1999, new securities of OTPL were 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.

- 9.7 The evidence on record clearly brings out the fact that Equisearch had sold a substantial amount of shares of OTPL for CCL during the period of investigation without suggesting whether the same were listed or unlisted. I find that there is a mere allegation against the Broker having introduced a total of 7600 unlisted shares of OTPL in the market through CCL. However there is no supportive evidence on this aspect. However considering the details of gross trading by Equisearch for CCL I find that the role of Equisearch was meant to facilitate an easy route to CCL, close to the promoters/directors and management of OTPL to offload the shares of OTPL into the market.
- 9.8 I note that Equisearch has denied any association with CCL beyond that of a broker-client relationship and contended that they were merely executing the orders for their client. Although there is no law, which prohibits a broker from executing large orders of buy/sell placed by a specific entity in a specific scrip (as stated by Equisearch) if the same affects the liquidity /volumes in the said scrip and happens not as a matter of chance but is contrived, then the same should if not prohibited, be condemned.
- 9.9 It is further noted that Equisearch was required to adhere to the code of conduct as prescribed in Clause A (2) of the Code of Conduct of Stock Brokers read with Schedule II of Regulation 7 of the Broker Regulations 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 Equisearch to maintain adequate standards of integrity, promptitude and fairness in the conduct of their business dealings and exercise the required 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.
- 9.10 From the above facts and circumstances, I find that broker was instrumental in off loading huge quantity of shares on behalf of its

clients. However there does not appear to be other relationship except the client broker relationship between the broker and the client. Moreover the broker has not been found dealing in any proprietary trades in the said scrip of OTPL. In view of the above, the 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. Equisearch Broking Pvt. Ltd.

10. Now, 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 Equisearch Broking Pvt Ltd. member of the Bombay Stock Exchange Limited, SEBI Registration No. INB 010992338 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 Equisearch Broking Pvt Ltd. 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