

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

IN THE MATTER OF CONSORTEX KARL DOELITZSCH (INDIA) LTD.

In respect of Mr. Nitin C. Vora, Ms. Jyoti Vora, Mr. Bharat Kanakia, Ms. Sonal B. Kanakia, Ms. Meena A. Kanakia, Mr. Yogesh Parekh, Ms. Trupti Parekh, Ms. Chetana R. Valia and Ms. Shilpa C. Timbadia

Date of Hearing: September 23, 2009

Appearances:

For Noticees: Mr. Umesh B. Lakhani, authorized representative for Mr. Nitin Vora and Ms. Jyoti Vora
Mr. Mahesh S. Londhe, Advocate for Ms. Chetna Valia
Mr. Yogesh Parekh (for himself and Ms. Trupti Parekh)

For SEBI: Mr. Shashi Kant, Presenting Officer
Ms. Medha Sonparote, Deputy General Manager
Mr. Naveen Kumar, Manager, and
Ms. Kshama Wagherkar, Legal Officer.

ORDER

Under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigations into the irregularities in the public issue of Consortex Karl Doelitzsch (I) Ltd. formerly known as Andhra Pradesh Power Tools Ltd. (hereinafter referred to as 'Consortex' or 'the company'). Consortex came out with a public issue of 1,68,80,500 equity shares of Rs.10/- each for cash at par aggregating to Rs. 1,688.05 lacs, of this Rs.5/- was payable on application and Rs.5/- was payable on allotment. The issue opened for subscription on January 22, 1996 and closed on February 01, 1996.

2. Investigations revealed that about 97.5% of the subscription amount in the public issue of Consortex i.e. Rs.7,24,70,000 was met through Stock Invests (hereinafter referred to as 'Sis') out of the total subscription of Rs.7,43,34,000. It was found that a group of nine applicants namely Mr. Nitin C. Vora, Ms. Jyoti Vora, Mr. Bharat Kanakia, Ms. Sonal B. Kanakia, Ms. Meena A. Kanakia, Mr. Yogesh Parekh, Ms. Trupti Parekh, Ms. Chetana R. Valia and Ms. Shilpa C. Timbadia (hereinafter collectively referred to as 'noticees') had entered into a Memorandum of Understanding (hereinafter referred to as 'MoU') with Volkskas Merchantile Ltd. (hereinafter referred to as 'VML'), an associate company of Consortex promoted by Mr. V.P. Rao and Mr. K.K. Prabhakaran Pillai, for making applications in their individual names and agreeing to hand over the share certificates on allotment and receiving the money back. Pursuant to this, noticees had applied for the shares of Consortex through SIs for 10 lakh shares each.
3. On completion of investigation, SEBI *inter alia* issued show cause notices (hereinafter referred to as 'SCN') dated January 17, 2007, to the noticees under Section 11, 11B and 11(4) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with the Regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation, 2003. The SCN alleged that out of the total public offer of 1,68,80,500 shares, the noticees had received 90 lakh shares amounting to 53% of the total offer. Upon allotment the share certificates were handed over to the representative of VML as per the agreed terms of MoU. It was also alleged that if these 53% shares were excluded from the public issue of Consortex, the issue would have deemed to be under subscribed and the entire subscription money was required to have been refunded by Consortex to the investors. The SCN therefore alleged that the acts of the noticees were in violation of the Regulation 6 (a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation, 1995 (hereinafter referred to as 'PFUTP Regulations') read with corresponding Regulation 3(d) of SEBI (Prohibition of Fraudulent

and Unfair Trade Practices relating to Securities Market) Regulation, 2003. Accordingly, the noticees were asked to show cause as to why suitable directions under Section 11, 11B and 11(4) of SEBI Act, including restraining them from accessing the capital market and prohibiting them from buying, selling or dealing in securities in any manner for a particular period or any other actions as considered appropriate should not be initiated against them.

4. Noticees vide their respective replies as detailed below replied to the SCNs. I note that all the notices had requested for inspection of documents in their replies. Therefore, an opportunity of inspection of documents was provided to the noticees, the details thereof has been brought out as under:

	Noticee	Reply dated	Opportunity of inspection	Status of inspection
1.	Chetna Valia	20/02/2007	04/09/2007	Not Attended
2.	S.C. Timbadia	20/02/2007	04/09/2007	Not Attended
3.	Yogesh Parekh	24/02/2007	04/09/2007	Attended
4.	Trupti Parekh	24/02/2007	04/09/2007	Attended
5.	Nitin Vora	02/03/2007	04/09/2007	Attended
6.	Jyoti Vora	02/03/2007	04/09/2007	Attended
7.	Bharat Kanakia	22/03/2007	04/09/2007	Not Attended
8.	Mina Kanakia	22/03/2007	04/09/2007	Not Attended
9.	Sonal B. Kanakia	22/03/2007	04/09/2007	Not Attended

Another opportunity of inspection of documents was granted to the noticees who had not turned up for inspection on September 04, 2007. But this time again no one turned up to avail the opportunity, hence the matter was proceeded further.

5. Pursuant to this, an opportunity of personal hearing was granted to the noticees on July 07, 2009, before me. The hearing was attended by Mr. Nitin Vora, Ms. Jyoti Vora and Ms. Chetna Valia through their authorized representative and sought adjournment. The request of these was considered and another opportunity of personal hearing was granted to all the noticees on September 23, 2009. Vide letters dated September 21, 2009, Mr. Bharat Kanakia, Ms. Meena Kanakia and Ms. Sonal Kanakia requested SEBI to take on record their reply to the SCN.

6. On the date fixed for personal hearing Mr. Umesh Lakhani, Advocate appeared on behalf of Mr. Nitin Vora and Ms. Jyoti Vora. He made oral submissions and also filed written submissions dated September 23, 2009. Mr. Yogesh Parekh appeared on behalf of himself and his wife Ms. Trupti Parekh and also filed written submissions dated September 19, 2009. Mr. Mahesh S. Londhe, Advocate appeared on behalf of Ms. Chetna Valia and made oral submission. Ms. Shilpa C. Timbadia failed to turn up for the personal hearing inspite of due intimation, hence the matter was proceeded *ex-parte* as against her.
7. I note that the replies as received from the noticees herein are almost same though sent separately. The submissions of the noticees vide their replies in brief are:
- i. Denied of acting as a part of group while applying for the public issue of Consortex.
 - ii. Not aware that VML was an associate company of Consortex.
 - iii. Not aware that the money received into the account of VML from the account of Consortex.
 - iv. Sole intention of investing in the shares of Consortex was to earn interest.
 - v. As the issue was fully underwritten, even if the public issue was subscribed for less than the statutory minimum subscription requirement (excluding the application made by the noticees), the question of refund of the entire money to the investors would not have came, since underwriters would have subscribed to the extent of amount devolved upon them.
 - vi. If the SIs were issued by the Bank of Madura, Matunga Branch after the closure of the issue, the registrar to issue, lead managers to issue, bankers to issue and SEBI nominated representatives should have rejected their applications at the time of finalization of allotment.
 - vii. Had not done any act which would operate as a fraud.
 - viii. Do not come under the purview of Section 11B of SEBI Act.

- ix. Proceedings are without any proper evidence and in violation of natural justice.

The written submission made by Mr. Nitin Vora, Ms. Jyoti Vora, Mr. Yogesh Parekh and Ms. Trupti Parekh filed after personal hearing in brief are:

- i. SEBI vide its order dated April 26, 1996 had condoned the delay of 1 day on the part of the company in securing the minimum subscription amount in connection with its public issue.
- ii. Once SEBI accepts the position that the applications were made in fulfillment of the underwriting obligations and has waived the delay of one day, then the applications made by them were valid in law.
- iii. Applications in the public offer of Consortex were made by them on the request of Mr. Kishan Modi. The applications were sought from them for securing the minimum subscription required in the public issue either in exercise of underwriting obligation or the obligation of the company.

8. I have carefully considered the investigation report, the show cause notice, replies, oral and written submissions of noticees. It is not in dispute that the noticees had applied in the public offer of Consortex, after one Mr. Kishan Modi, (while acting as representative of VML), arranged them for subscribing in the public offer of Consortex. I note that the noticees had not denied of entering in an MOU with VML. I have seen the copy of MoU and note that the same appears to have been entered into before the opening of the public issue. From these facts an inference can be drawn that the noticees were well aware about the public offer of Consortex and also about its opening and closing dates.

9. Considering this, the issue arises for my consideration is: Whether the noticees acted in unison and hereby aided and abetted Consortex in making the subscription successful?

10. Whether the noticees acted in unison and thereby aided and abetted Consortex in making the subscription successful?

- a. I note that the noticees herein had applied for 10 lakh shares through SIs dated April 4, 1996, i.e. on the 60th day of closure of the issue. The application amount was Rs.50 lakh by each of the noticees amounting to Rs.4.50 crore. From the details obtained from Bank of Madura, Matunga Branch, Mumbai (now ICICI Bank Ltd.), it is observed that the SIs number were allotted to the noticees were in continuation and were taken on the same day, as can be seen from the table below:

SI nos.	Amount	Application form no.	Applicant	Shares applied	Shares allotted
217890	Rs. 50 Lakh	4488767	Jyoti Vora	10 Lakh	10 Lakh
217891	Rs. 50 Lakh	4488759	Bharat Kanakia	10 Lakh	10 Lakh
217892	Rs. 50 Lakh	4488758	Shilpa Timbadia	10 Lakh	10 Lakh
217893	Rs. 50 Lakh	4488761	Yogesh Parekh	10 Lakh	10 Lakh
217894	Rs. 50 Lakh	4488757	Mina Kanakia	10 Lakh	10 Lakh
217895	Rs. 50 Lakh	4488763	Nitin Vora	10 Lakh	10 Lakh
217896	Rs. 50 Lakh	4488788	Chetna Valia	10 Lakh	10 Lakh
217897	Rs. 50 Lakh	4488762	Trupti Parekh	10 Lakh	10 Lakh
217898	Rs. 50 Lakh	4488760	Sonal Kanakia	10 Lakh	10 Lakh

- b. All the noticees had separately entered into MoU with VML, for applying in the public issue of Consortex. The loan for the same was taken from Virtuous Finance Ltd. I note the argument of the noticees that they had applied in the public issue of Consortex for earning differential interest on the finance provided by a finance company.
- c. From above, it appears that the noticees had acted in unison in many aspects viz.:
- Noticees used the same bank for SIs.
 - The SIs numbers of the noticees were in continuation and in a series.
 - All had applied in the public offer after the last date of closure of issue and for earning differential interest.

- iv. All the noticees came into contact with an intermediary, Mr. Kishan Modi (also a representative of VML). Upon allotment of shares, the share certificates were handed over by all the noticees to Mr. Kishan Modi.
 - v. All the nine applicants had entered into an MOU with VML, signed by Mr. K.K. Prabhakaran Pillai on behalf of VML separately to give back the share certificates and get the amount invested.
- d. Before proceeding further, it is necessary to discuss about the public issue of Consortex wherein the minimum subscription of 90% was not received by the company on the closing date of issue. I note that pursuant to the closing date, the issue got devolved on the underwriters. It is not in doubt that pursuant to the date of closure of issue only underwriters can subscribe to the issue by underwriting it. Any application other than from the underwriters received after the closure of the issue must have been rejected summarily. Considering this, I note that the noticees had applied in the public issue of Consortex during the devolvment period. In view of this, one can conclude that these were invalid applications.
- e. However, in the present matter, these applications of the noticees were considered and the shares as applied for were allotted and the issue was considered successful. I note that as the applications made by the noticees were invalid application, excluding these from the total subscription, the level of under subscription works out approximately at 53%. This goes on to show that in absence of this the issue would have been subscribed only to the extent of about 47%, which is less than the statutory minimum subscription of 90%. Considering this, the fact remains that had the noticees not applied for the shares, the issue of Consortex would have failed.
- f. I note the argument of the noticees that SEBI vide its order dated April 26, 1996, had condoned the delay of one day on the part of the company in securing the minimum subscription amount in connection with its public issue. Further, it has been argued that once SEBI has accepted the position that the

applications were made in fulfillment of the underwriting obligations and has waived the delay of one day, the applications made by the noticees were valid in law. I have seen the said SEBI order dated April 26, 1996 and note that the matter had come to SEBI just for condonation of one day's delay in receipt of application money i.e. after 60 days of closure of the issue. SEBI, in its order has condoned the delay of one day in receiving the subscriptions from underwriters subject to other applicants having no objection. This condonation by SEBI, no way regularizes the applications which were made by entities who were not underwriters and who made applications with a MoU that would ensure their safe exit after making a pre-determined profit and thereby making an otherwise failed issue a success.

- g.** Now, consideration may be given to the MoU entered between the noticees and VML. It is noted that one of the signatories on the MoU was Mr. K.K. Prabhakaran Pillai (one of the directors of Consortex at the relevant point of time) on behalf of VML. I have seen the contents of the MoUs signed by the noticees and note that the MoU clearly states that VML was interested in applying shares worth Rs.50 lakh in the issue of Consortex and requested the applicant to manage for applying in the public issue of Consortex. Interest @ 36% was agreed to be paid for a minimum period of 15 days. It further mentioned that the applicant would handover the shares allotted, within seven days from the allotment intimation date. Further, the MoU also states that capital gains or any other tax would be borne by VML and any expenses incurred would be reimbursed by VML. It is a fact that upon allotment of shares, the noticees had handed over all the shares to VML. After this, VML received a credit of Rs.4.50 crore from the account of Consortex bearing no. 12051 held with Bank of Madura Ltd., Matunga Branch (now ICICI Bank Ltd). This amount was paid vide cheque nos. 554301 and 554302 dated June 7, 1996, signed by Mr. V.P. Rao, Director and CEO of Consortex as its authorised signatory. Subsequently, as per the terms of MoU entered between VML and the nine applicants this amount was paid to all of the noticees herein. Considering this, it is clear that the promoters of Consortex

had received back all the shares allotted to the noticees herein and thereby achieved the aim of successful public issue of Consortex.

- h.** In view of the above discussion, it can be concluded that the noticees were not genuine investors willing to invest in the shares of Consortex. These 9 applicants in connivance with the promoters of Consortex and to the detriment of other applicants had operated under a common *modus operandi*. By doing this they had played fraud on the investor by intentionally lending their names for making the subscription successful in the scrip of Consortex. They created circumstances in which the retail investors got trapped. Had the issue failed, the innocent retail investors at least would have got the refund of their subscription. I note that the noticees had later on handed over the shares so received in the public offer to VML as per the terms of MoU, thereby exiting the company with a profit leaving behind other investors who got trapped.

These acts of noticees are in clear violation of the provisions of Regulation 6 (a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation, 1995 read with corresponding Regulation 3(d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation, 2003.

- 10.** Now, I will deal with the technical submission made by the noticees that they do not come under the purview of Section 11B of SEBI Act. I note that none of the noticees had denied of applying in the public offer of Consortex. Therefore, these are persons associated with the securities market and subject to enforcement actions under the securities laws. In this regard, reference may be given to the judgment of the Hon'ble High Court of Gujarat in the matter of *Karnavati Fincap Vs. SEBI* [(1996) 10 SCL 5 (GUJ)] which has held -

*"..... In ordinary meaning, the persons associated with the securities market would include **all and sundry** who have*

something to do with the securities market. The words "persons associated with the securities market" are of much wider import than intermediaries.It is inconceivable to think that a buyer or seller of a scrip is not a person associated with securities market, where or through which he transacts his business, whether as trader or as investor, of selling or buying the required scrip."

The words "**all and sundry**" above would include the noticees who had applied for the shares of Consortex. After co-relating the facts of the case with the above judgment, it is very clear that the noticees are persons associated with the securities market, as stated under Section 11B of the SEBI Act.

11. I note the argument of noticees that the issue was fully underwritten and question of refund of entire money to the investors would not have arisen, since the underwriters would have subscribed to the extent of amount devolved upon them. I find no merit in this argument of the noticees as the devolvement period had ended on the day when these 9 applicants had applied for the shares of Consortex.
12. Another argument of noticees is as once SEBI had accepted the position about the applications made in fulfillment of the underwriting obligations and waived the delay, then the applications made by them were valid in law. As stated above, SEBI had waived the delay for fulfilling underwriting obligations and did not approve the connivance of the noticees with the promoters to make the public issue appear as successful. Further, the noticees cannot function as underwriters until they get registered with SEBI in terms of Section 12(1) of SEBI Act. In view of this the argument of the noticees is without any merit and finds no consideration.
13. Therefore, taking into consideration the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 19 of the SEBI Act read with Sections 11, 11B and 11(4) of SEBI Act, 1992 read with

Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, do hereby restrain noticees, Mr. Nitin C. Vora [PAN: AAPV 5475G], Ms. Jyoti Vora [PAN: AACPV 2737M], Mr. Bharat Kanakia [PAN: AGPPK 5224R], Ms. Sonal B. Kanakia [PAN: AAPPK 5842D], Ms. Meena A. Kanakia, Mr. Yogesh Parekh [PAN: AABPP 6994K], Ms. Trupti Parekh [PAN: AABPP 6990P], Ms. Chetana R. Valia and Ms. Shilpa C. Timbadia [PAN: AABPT 3923C] from buying, selling or dealing in securities market whatsoever or accessing the securities market, directly or indirectly, for a period of one year from the date of this order.

14. The stock exchanges are hereby directed to permit the respective members dealing for the noticees to square off their existing open positions, if any, at the earliest in Futures and Options segment. They must strictly ensure that no fresh positions are created for them.
15. This order shall be served on all recognized stock exchanges and depositories to ensure that the noticees are not allowed to undertake transactions as prohibited in Para 13 above.
16. This order shall come into force with immediate effect.

DATE : 10/MAY/2010
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA