WTM/PS/77/IVD/ID-06/MARCH/2012

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

IN THE MATTER OF ORIENT TRADE LINK LTD
In respect of M/s Kansal Brothers
(SEBI Registration No. INS011411019/01-07944)

ORDER

Under Regulation 28(2) read with Regulation 38(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), conducted investigation into the buying, selling and dealing in the scrip of M/s Orient Trade Link Ltd (hereinafter referred to as 'Orient'/ 'OTL') for the period July 01, 2002 to October 28, 2002 (hereinafter referred to as the 'investigation period') to ascertain the possible violations of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, upon receiving a complaint from one Mr. M.S. Malhotra, Director of IKM Investor Services Ltd. (hereinafter referred to as 'IKM'), a registered stock-broker, regarding manipulation and circular trading in the scrip of Orient which was forwarded by the Bombay Stock Exchange (hereinafter referred to as 'BSE'). During the relevant period, the shares of Orient were listed at BSE and Ahmedabad Stock Exchange (hereinafter referred to as 'ASE').

2. Investigations revealed that the price of the scrip at BSE fell from Rs. 13.00 on July 01, 2002 to Rs. 3.45 on October 28, 2002. Large volumes were noticed in the scrip from

August 30, 2002 to September 26, 2002 and October 16, 2002 to October 28, 2002. The unusual rise in volume was found to have not been accompanied by any corporate announcement or development made by the company. Investigations further revealed that there was large scale trading carried out in the scrip of Orient by Shri. Aushim Khetrapal (hereinafter referred to as 'Aushim'), who was the Managing Director of Orient and another company namely, M/s Denim Enterprises Ltd (now known as 'M/s Divine Entertainment Ltd', hereinafter referred to as 'Divine'), on his own account as well as on behalf of his front company viz., M/s Vincomp Marketing Pvt. Ltd (hereinafter referred to as 'Vincomp').

3. Investigations *inter alia* revealed that between August 30, 2002 and September 26, 2002, the member TCP Stock Brokers Ltd. (hereinafter referred to as 'TCP') and IKM had a combined concentration of 53.46% in gross purchases and 65.92% in gross sales in the scrip. IKM had a concentration of 93% in gross purchases and IKM and TCP had a concentration of 38.29% and 36.75% respectively in gross sales in the scrip, between October 16, 2002 and October 28, 2002.

4. Based on the findings of investigation, SEBI initiated enquiry proceedings against **M/s Kansal Brothers (hereinafter referred to as the 'noticee'), a sub-broker of IKM**, in terms of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'Enquiry Regulations'), by appointing an Enquiry Officer under Regulation 5(1) of Enquiry Regulations vide order dated July 18, 2008, read with subsequent order dated July 31, 2008. SEBI appointed the Enquiry Officer, to enquire into the alleged violation of the provisions of :

i. Regulations 4(b) and 4(c) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 read with provisions of Regulation 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

ii. Clauses A(1), A(2), D(4) and D(5) of the Code of Conduct prescribed for Sub Brokers in Schedule II under Regulation 15 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

5. As the Enquiry Regulations were repealed with effect from the notification of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as the 'Intermediaries Regulations'), the Enquiry Officer/ Designated Authority (hereinafter referred to as the 'Enquiry Officer') submitted his Report dated November 29, 2010, in terms of Regulation 27 of the Intermediaries Regulations, recommending warning for the violation of the provisions of Clause A(2) the Code of Conduct prescribed for Sub Brokers in Schedule II under Regulation 15 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

6. Subsequently, a show cause notice dated May 30, 2011 (hereinafter referred as 'SCN'), was issued by SEBI to the noticee under Regulation 28 of the Intermediaries Regulations, asking it to show cause as to why action should not be taken against it as recommended by the Enquiry Officer or a higher penalty should not be imposed as deemed fit by the Competent Authority. The noticee was advised to reply to the SCN within twenty one days from the date of receipt thereof. It was also informed that in case of failure to reply, it would be presumed that it had no explanation to offer and that SEBI shall be free to take

such action in the manner as it deemed fit. A copy of the Enquiry Report was also forwarded to the noticee along with the SCN.

7. The noticee replied to the SCN vide its letter dated June 20, 2011.

8. I have carefully considered the SCN, the reply of the noticee and the material available on record. The submissions of the noticee in brief are:

   - The cheques were dishonored for the first time vide memo dated October 19, 2002. The noticee was intimated of the same on October 22, 2002 by the client, Aushim Khetrapal, along with an explanation of the reasons therefor, as well as a pay order and a letter from the bankers of the client. Since the client had approached the noticee in such a manner, the noticee did not doubt the clients and was reasonably satisfied in the circumstances of the case.
   - Though the volume of the Aushim and Vincomp was always more than the other clients of the noticee in the same period, the noticee received the payments in time for the same from these clients.
   - Since the noticee received the pay orders before they came to know about the dishonor of cheques, they withdrew action under section 138 of the Negotiable Instrument Act.
   - The noticee lodged a complaint with BSE when it learned about the fraudulent activity of the clients regarding the manipulations.
   - The noticee is no longer a sub-broker of IKM. At present it is a registered sub broker of SMC Global Securities Ltd.

9. I note from the Enquiry Report that Aushim had raised money from certain individuals/entities, namely Shri Gajinder Paul Dhody, Shri Ved Prakash and M/s.GKK Capital Markets, a stock-broker registered with the Calcutta Stock Exchange. Aushim transferred shares of Orient to the aforementioned creditors, as well as to M/s Pramukh Securities Pvt. Ltd. (hereinafter referred to as "Pramukh"), of which Shri Dhody is a director, as he was unable to repay these amounts. In order to recover their dues, the creditors sold shares of Orient on the market. It was seen that Aushim and Vincomp were placing large buy orders (on market) for the shares of Orient simultaneously.

10. Now, the issues under consideration, based on the allegations levelled against the noticee in the SCN are stated below:

    a. Whether the noticee maintained separate accounts for Vincomp and Aushim and also if the noticee gave delivery and received payments from third parties in respect of its dealings with Aushim in violation of Clause A(1), D(4) and D(5) of the Code Of Conduct prescribed for Sub Brokers in Schedule II under Regulation 15 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992?

    b. Whether self trades were executed between Aushim, dealing through the noticee, and Pramukh, dealing through Exponential Financial Services Ltd, also a sub-broker of IKM in violation of Regulation 4(b) and 4(c) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 read with provisions of Regulation 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 and Clause A(1), D(4) and D(5) of the Code Of Conduct prescribed for Sub Brokers

in Schedule II under Regulation 15 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992?

c. Whether the noticee failed to exercise due care and diligence while trading in the scrip of Orient in violation of Clause A(2) of the Code of Conduct for Sub Brokers specified under Schedule II of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992?

11. **Whether the noticee maintained separate accounts for Vincomp and Aushim and also if the noticee gave delivery and received payments from third parties in respect of its dealings with Aushim?**

i. I observe that IKM, the stock-broker for the noticee had mainly dealt/traded on behalf of Aushim, Vincomp and Pramukh. From a perusal of the KYC form of the clients, I observe that Aushim got registered with the noticee on October 12, 2002. Vincomp, a front company of Aushim, also was registered as a client with the noticee on the same date.

ii. I note that the noticee has submitted details of the different client codes allotted to Aushim and Vincomp. The noticee has also submitted the details of the separate accounts maintained for the two (2) clients, Aushim and Vincomp, which clearly indicate the number of shares bought by these two as well. In view of the same, I agree with the finding of the Enquiry Officer, that allegation that the noticee did not maintain separate accounts for the 2 aforementioned clients, does **not** stand established.

iii. Further, it was alleged that the noticee received payments from Vincomp for purchases made by Aushim and also transferred 5,49,513 shares to a demat account held by Vincomp against purchases made by Aushim. I note from the statement of account of Vincomp in the books of the noticee as stated in the Enquiry Report that, in fact, Vincomp had purchased 5,49,513 shares, and hence those shares were transferred to the demat account held by Vincomp. There is nothing on record to prove that the noticee gave third party delivery on behalf of Vincomp.

12. **Whether self trades were executed between Aushim, dealing through the noticee, and Pramukh, dealing through Exponential Financial Services Ltd, also a sub-broker of IKM ?**

I note that it has been alleged that the noticee executed self trades on behalf of its client, Aushim. I note that there were two instances of alleged self trades on the said date. However, the counterparty client in these trades was Pramukh, who was dealing through Exponential Financial Services Ltd, who is also a sub-broker of IKM. Self trades are those in which the counterparty trades are executed by the same entity, which is not the case. Hence, I agree with the finding of the Enquiry Officer that this charge against the noticee is not established.

13. In view of the foregoing, I find that the violation of Regulation 4(b) and 4(c) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, read with provisions of Regulation 13 of SEBI (Prohibition of

Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 and Clause A(1), D(4) and D(5) of the Code Of Conduct prescribed for Sub Brokers in Schedule II under Regulation 15 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 does not stand established.

14. **Whether the noticee failed to exercise due care and diligence while trading in the scrip of Orient?**

I note that a number of cheques received by the noticee from the aforementioned clients, namely Aushim and Vincomp, were dishonoured. Whereas cheques amounting to Rs.67,63,196 received from Vincomp were dishonoured on October 10, 2002 and October 30, 2002, two (2) cheques of Rs.2,00,000 each received from Vincomp were dishonoured on October 19, 2002. Despite the fact that the cheques were getting dishonoured, I note that the noticee continued to place orders on behalf of the aforementioned clients. Considering that Aushim and Vincomp, were newly registered with the noticee as clients, the noticee ought to have been more cautious and should have exercised due care and diligence in its dealings with these clients. Having failed to do so, I agreewith the findings of the Enquiry Officer that the noticee violated the provisions of Regulation 15 read with Clause A(2) of the Code of Conduct for Sub Brokers specified under Schedule II of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

15. Therefore, taking into consideration, the facts and circumstances of the case, I, in exercise of the powers conferred upon me in terms of Section 19 of the Securities and Exchange

Board of India Act, 1992 read with Regulation 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby warn **Kansal Brothers** to be cautious in its future dealings and exercise due care and diligence in the conduct of its affairs as a securities market participant. Further, any future instance of violation or non-compliance by it with the SEBI Act and Rules and Regulations framed there under shall be dealt with stringently.

DATE : MARCH 12, 2012
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA