

SECURITIES AND EXCHANGE BOARD OF INDIA**ORDER****UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY AND IMPOSING PENALTY) REGULATIONS, 2002.**

AGAINST M/S SUNIL INVESTMENTS, MEMBER, **BANGALORE STOCK EXCHANGE, (SEBI REGN NO INB081029119), IN THE MATTER OF PROSOFT SYSTEMS LTD.**

BACKGROUND

1. Prosoft Systems Ltd. (hereinafter referred to as "Prosoft") came out with a public issue of 61.60 lac equity shares at par, aggregating to Rs.6,16,00,000 (Rs.2.50 on application and Rs.7.50 on allotment). The issue closed on October 23, 2000 and the shares got listed at Bangalore Stock Exchange (hereinafter referred to as "BgSE") on November 17, 2000. BgSE permitted trading in this scrip to commence on December 27, 2000, in compulsory demat mode i.e. the settlement was to be done only in dematerialized form.

2. It was observed that the share price of Prosoft increased from Rs.25.15 to Rs.36.40, between December 27, 2000 and January 16, 2001 i.e., an increase of about 45% in 15 trading days. On receipt of Investor complaints, SEBI had asked BgSE to carry out an investigation. BgSE observed inter alia that one Shri Praveen Panwar, a client of M/s Sunil Investments, member, BgSE, (hereinafter referred to as "said broker") had contributed significantly to the total volume during the period, by executing trades both as buyer and seller, through different brokers of the exchange.

INVESTIGATION AND ENQUIRY

3. In view of the above observations of BgSE, SEBI conducted detailed investigation into the alleged market manipulation in the scrip of Prosoft. Shri Pravin Panwar, associated with Prosoft, was found to have executed substantial trades in the scrip, acting through two different brokers namely, M/s Sunil Investments and M/s Index Finlease Services Ltd., at increasing rates, thus, rigging up the price of the scrip.

4. Pursuant to the investigation, an Enquiry Officer (hereinafter referred to as 'E.O.') was appointed by SEBI, vide order dated June 20, 2002, to inquire into the dealings of M/s Sunil Investments, , a Member of Bangalore Stock Exchange, in the shares of Prosoft.

5. The E.O. conducted the enquiry in accordance with the procedure laid down under SEBI (Procedure For Holding Enquiry And Imposing Penalty) Regulations, 2002 (hereinafter referred to as "Enquiry Regulations") and submitted his report on August 29, 2003, with the recommendation that the certificate of registration granted to the said broker be suspended for a period of four months. The findings of the E.O. are summarized as follows:

i. Sufficient margin was not collected by the said broker from the client when he allowed the client to build up huge positions. The same was in violation of SEBI Circular SMD/SED/Cir/93/23321 dated 18th November, 1993, SMD/POLICY/CIR-35-98 dated 4th December, 1998 and SMDRP/POLICY/CIR/07/99 dated 4th February, 2000.

ii. The broker did not exercise due diligence and care when he permitted a new client to trade heavily in the scrip without paying adequate margins.

iii. The broker has received payments in cash from the client which is in violation of SEBI Circular dated 18th November, 1993, as per which all receipts should be in the form of crossed cheques only.

iv. Time of placement of order by the client was not captured by the broker. As per SEBI circular dated 11/2/1997, the broker should maintain record of time when the client has placed the order and reflect the same in contract notes. The said broker was not maintaining record of the time when the client had placed the order. Therefore, there is non compliance of Circular dated 11/2/1997.

SHOW CAUSE NOTICE AND REPLY

6. On consideration of the Enquiry Report, a show cause notice was issued to the said broker under Regulation 13(2) of the Enquiry Regulations, vide letter dated September 09, 2003. A copy of the Enquiry Report was also enclosed therewith. The said broker was called upon to show cause as to why the penalty as recommended by the E.O. should not be imposed on it.

7. A reply dated September 25, 2003 was received from the said broker, asking for more time since he was suffering from Heart and BP problem. Subsequently, vide letter dated February 20, 2004, a reminder was sent to the said broker by Registered Post (for which acknowledgement has been received). The member was required to make his submissions in this matter within ten days' time from the date of receipt of the reminder. In the said letter, the said broker was also asked to indicate whether he required an opportunity of personal hearing before me. It was also mentioned therein that if he failed to give a reply, it would be presumed that he had nothing further to say in the matter and that SEBI would be free to take such action as it deemed fit. No reply has been received till date. Under the circumstances, I proceed to consider the findings of investigation, report of Enquiry Officer, and submissions of the said broker before E.O.

FINDINGS

8. I note that before the E.O. Shri Juharmal, proprietor, Sunil Investments, had appeared and denied the charges. He had submitted that the client, Shri Panwar was properly introduced and that they had obtained all necessary introduction forms in this

regard. I also note that he had enclosed copy of client registration form in his reply dated 26.04.03 to the E.O., although he had not produced the same before the investigating officer. I also find that Shri Juharmal has denied any knowledge of his client dealing in the shares of Prosoft through other brokers. He had also submitted before the E.O. that the dealings with the client were done in good faith and purely for consideration to earn brokerage, that margins were collected and that there was no negligence on his part.

9. I also note that the E.O had asked the said broker as to whether the trading pattern of his client did not arouse suspicion in his mind, considering that 87% of the trades in Prosoft were carried out through him on one particular day and also that in the subsequent auction, the client had delivered shares of Prosoft. The said broker had replied that the auction was at the end of the settlement and therefore he did not have prior knowledge about the trading pattern of the client vis-à-vis the market. Regarding taking money from the client by cash and not cheque, the broker had said that this was on account of some urgent requirement of cash. I also note that the said broker admitted that there was no record for the time of placement of order by the client, Shri Panwar.

10. I note that trading in the shares of Prosoft began on 27.12.2000, in compulsory demat mode. However, as per the information received from the depositories (NSDL and CDSL) there were no fully paid up shares in demat form on the said date. The first demat credit of fully paid up shares was given by NSDL only on 12.01. 2001, to Shri Panwar, for 3,00,000 shares. CDSL gave the first demat credit much later on 22.01.2001. The demat credits to the other shareholders were given only after 22nd January, 2001, with the result that for the period 12.01.2000 till 22.01.2001, Shri Panwar was the only person who could deliver shares of Prosoft in the exchange.

11. I find that Shri Panwar had traded heavily in the scrip of Prosoft between 27.12.2000 and 16.01.2001, when the share price had spurted from Rs.14 to Rs.28 immediately after listing.

12. I note that taking advantage of the shortage of the scrip due to non credit of demat accounts, Mr. Praveen Panwar has created artificial volumes and contributed to price rise of the shares, through his trading with the said broker. Almost the entire trading in the scrip on 27th December 2000, in the Bangalore Stock Exchange, was done by Shri Panwar, of which 8002 shares constituting 84% of the volume in the share was done through the said broker. Even after this date, the trades done by the Member on behalf of Mr. Praveen Panwar were significantly high and constituted major percentage of the total trades done in the Exchange in the scrip, as under.

Date	Volumes Traded in the Exchange	Trades done by the Member on behalf of Mr. Praveen Panwar	% concentration
28/12/2000	59207	44737	76%
29/12/2000	36107	24153	67%
03/01/2001	45610	15200	33%
08/01/2001	30058	22603	75%
09/01/2001	2850	2150	75%
10/01/2001	1200	1200	100%
11/01/2001	710	710	100%
12/01/2001	4000	1800	45%
15/01/2001	2740	1840	67%
16/01/2001	500	500	100 %

13. I have also noted that the other brokers who had traded in the shares of Prosoft were unable to deliver the shares and in the third settlement after the commencement of trading, the Member has tendered Prosoft shares on behalf of Mr. Panwar in auction for delivery.

14. I find that the trading by the said broker, on behalf of his client Shri Panwar, constituted a significant portion of the total trades in the scrip in the Exchange, ranging between 33% and 100% of the trades, a fact that had contributed to the rapid price rise in the scrip, particularly in view of the fact that he alone had the liquidity in the scrip, having received demat credits much ahead of other investors.

15. The said broker had admitted that Shri Panwar was a new client for him and had dealt only in the scrip of Prosoft. Considering this fact, the Member was duty bound to exercise due diligence in respect of the transactions entered into by the client, especially since the trading volumes of Mr. Praveen Panwar in the scrip of Prosoft through him constituted significant portion of the total trades in the scrip. I agree with the E.O that the Member should have questioned the motives of the client who was a stranger to him and was dealing in the scrip heavily. Instead of exercising due diligence in this regard, I find that the Member had allowed his client to build up positions and trade heavily in a recently listed scrip. In the auction that followed, conducted by the Exchange, I note, that the Member had delivered the shares on behalf of Mr. Praveen Panwar.

16. I also find that adequate margins were not collected from the client although the member claimed that margins were collected. I note that only a rough sheet was filed before the E.O. claiming to be extract of accounts of Kamal Investments in which there was an entry of Rs.25,000 towards margin money on 02.01.01. I note that the E.O. has observed that the same was not an extract of the margin deposit book which is statutorily required to be maintained under Regulation 17(1) (k) of SEBI(Stock Brokers and Sub Brokers) Regulations, 1992. The Client Register extract was also not filed before the E.O. I also note that the E.O. has concluded that even if benefit of doubt were to be given for the alleged receipt of Rs.25,000 towards margins money on 02.01.01, despite the observations as aforesaid, it would still mean that no upfront margin was collected from the client, as the trading had commenced on 27.12.2000 itself. The same is in violation of SEBI

Circulars SMD/SED/Cir/93/23321 dated 18th November, 1993, SMD/POLICY/CIR-35-98 dated 4th December, 1998 and SMDRP/POLICY/CIR/07/99 dated 4th February, 2000.

17. I have also noted that the Member had received payments in cash from the client, which is in violation of SEBI Circular dated 18th November, 1993, as per which all receipts should be in the form of crossed cheques only. Further, the member has also violated the provisions of SEBI circular dated 11.02.1997, according to which the member-broker should maintain record of time when the client has placed the order and reflect the same in contract notes. The member, I find, was not maintaining record of time when the client had placed the order.
18. Therefore, under the above circumstances, I have no hesitation to concur with the findings of the Enquiry Officer and conclude that the member has violated the provisions of circulars dated 18th November, 1993, 11th February 1997, 4th December, 1998 and 4th February, 2000 and clause A (2) of Schedule II to SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992. However, in my considered view, imposition of a penalty of suspension of registration for a period of three months will meet the ends of justice adequately.

ORDER

19. Therefore, I, in exercise of the powers conferred upon me in terms of Section 19 of SEBI Act, 1992 read with Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and imposing penalty) Regulations, 2002, hereby impose a minor penalty of suspension of the certificate of registration of M/s Sunil Investments (SEBI Regn. No. INB 081029119) for a period of three (3) months.

20. This order shall come into force immediately upon the expiry of three weeks from the date of this order.

A.K.BATRA

PLACE: MUMBAI

WHOLE TIME MEMBER

DATE: AUGUST 19th, 2004

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