

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: V. K. CHOPRA, WHOLE TIME MEMBER

ORDER

{Under Regulation 13(4) SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 against the broker, M/s Shilpa Stock Brokers Pvt. Ltd. in the matter of Sun Infoways Ltd.}

1.0 BACKGROUND

- 1.1 Sun Infoways Limited (hereinafter referred to as “SIL”) promoted by Shri Shrikant Vasant Joglekar and Shri Sujit Shrikant Joglekar was incorporated on June 29, 1994 as Best Mulyankan Consultants Pvt. Ltd. The main object of the company was to render consultancy services for valuation of assets such as land, building, machinery, agricultural land etc. This company was subsequently converted into public company on June 21, 1995. The name Sun Infoways Ltd. was adopted by the company after it changed its name with effect from May 11, 2000.
- 1.2 The company was listed on Bombay Stock Exchange Ltd (BSE) on May 16, 1996, after the public issue. Shri Joglekar and his family members sold their stake in SIL in the year 2000 to Shri Anil Pujari, Shri Rajan Tawate, Shri Tanvir Zaki, Shri Pravin Sonalkar, Ms Hafeza Vohra and Shri Kuldeep Handoo and all of them were introduced by Manish Marwah. Shri Hemant Damodar Mehta, a consultant, introduced Shri Manish Kumar Marwah to Shri Joglekar and his family members.
- 1.3 It was observed that on February 9, 2000, only one trade for 100 shares was executed in the SIL scrip at a price of Rs.10/- per share for Rs.1000/-. However, thereafter the price of the SIL scrip, continued to rise and reached a highest level of Rs 697/- on September 11, 2000 with volume going upto 24,800 shares.

- 1.4 SEBI initiated investigations into the alleged price manipulation in the trading of SIL shares between February 2000 and December 2000 (hereinafter referred to as “investigation period”). On analyzing the price/volume data of the SIL scrip during the investigation period, it was observed that the rise in the price of the SIL scrip was accompanied with increased trading volumes allegedly effected through large number of entities, associated with the new promoters, directors and associates of SIL as well as few brokers including the NSE and BSE broker Shilpa Stock Brokers Pvt. Ltd. (hereinafter referred to as ‘Noticee’) with SEBI registration number INB011057438.
- 1.5 In the light of above facts, the trading details of the various entities who had traded in SIL scrip were collected and analyzed along with the data of the volumes contributed by these entities. It was observed that the transactions of the Noticee in SIL scrip during the investigation period contributed to the creation of some trading activity in the said scrip and also influenced the price of the scrip.

2.0 ENQUIRY PROCEEDINGS.

- 2.1 After considering the Investigation Report, SEBI appointed an Enquiry Officer to enquire into the violations allegedly committed by the Noticee under SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, (hereinafter referred to in short as “PFUTP Regulations”) and SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to in short as “Stock brokers Regulations”) and by laws, rules and regulations of the exchange.
- 2.2 A show cause notice dated July 26, 2006 was issued to the Noticee under Regulation 6(1) of SEBI (Procedure for holding Enquiry by Enquiry Officer and imposing penalty) Regulations, 2002 (hereinafter referred to as “the Enquiry Regulations”) to show cause, as to why enquiry proceedings should not be initiated against them for the violations of Regulation 4(a) and (b) of PFUTP

Regulations 1995 and code of conduct as per schedule II read with Regulation 7 of Stock brokers Regulations, 1992.

2.3 The Noticee vide letter dated September 05, 2006 responded to the said show cause notice stating that an adjudication proceeding was initiated against them for alleged insider trading and non compliance of summons. It also indicated that upon conclusion of the said proceedings, the Adjudicating Officer had passed the order exonerating them from the charges. The Enquiry Officer had also given an opportunity of hearing on September 29, 2006 and it was attended by Shri Gopal Maliwal, Director of Noticee. The gist of the submissions made by him, as recorded by the Enquiry Officer are given hereunder:

2.3.1 In respect of the transactions in the scrip of SIL during the period February 2000 to December 2000, SEBI had initiated Adjudication Proceeding for nonappearance before the Investigating Authority and indulgence in insider trading in the scrip of SIL.

2.3.2 The Adjudicating Officer in his order dated August 26, 2005 held that no connection was established between the clients who traded in the scrip and the Noticee except broker-client relationship. The Noticee did not trade on its own account and no adequate evidence was available to establish the nexus between the clients and the Noticee. It could not be concluded that the Noticee had indulged in insider trading in the scrip of SIL.

2.3.3 None of the transactions were directly executed by them but were effected by their sub-brokers; M/s Bhansali Securities (Bhansali) and M/s Adhunik Finance Pvt. Ltd. (AFPL) through the BOLT installed at their office.

2.3.4 Mr. Nagendra Bhutra was their direct client, while M/s Adinath Propcorn Pvt. Ltd. (Adinath), M/s Apoorv Fincap Ltd. (Apoorva) and M/s Concept Institute Pvt. Ltd. were the clients of Bhansali.

2.3.5 AFPL had acted as a sub broker upto July 20, 2004 and thereafter had applied to the Board for cancellation of their registration and the same was rejected by SEBI.

- 2.3.6 They had no knowledge of the relationship existing between the said sub broker and their clients and that of the said sub brokers' clients with the promoters of SIL.
- 2.3.7 Their transactions appeared to them as genuine as there was no reason to doubt their genuineness and / or the bonafides of the said sub broker or its clients.
- 2.4 The Enquiry Officer, after conducting enquiry in accordance with the provisions of the Enquiry Regulations submitted a report dated June 08, 2007. The Enquiry Officer in her report recommended a penalty of "censure" against the Noticee for their failure to exercise due skill, care and diligence.

3.0 SHOW CAUSE NOTICE & REPLY

- 3.1 Pursuant to the receipt of the Enquiry Report, Show Cause Notice dated June 12, 2007 was issued to the Noticee along with copy of the Enquiry Report advising them to show cause as to why the action, as recommended by the Enquiry Officer should not be imposed on them. Noticee submitted its reply vide letter dated June 25, 2007. The reply of the Noticee is almost similar to their reply since filed before the Enquiry Officer and the relevant extracts of the reply have already been discussed in paragraph no. 2.3 above. The Noticee has not requested for an opportunity of personal hearing. They have however requested to consider their reply while deciding the matter.

4.0 CONSIDERATION OF ISSUES & FINDINGS

- 4.1 After examining findings of investigation, enquiry report, show cause notice and reply of the Noticee, I observe that consequent to a change in shareholding of SIL during January 2000, large scale volumes were witnessed in the trading of the SIL scrip. The price of SIL scrip had shot up from a low of Rs 10 as on February 9, 2000 to a high of Rs 654.90 as on September 4, 2000.

- 4.2 It is further observed that the trades in SIL shares were executed by certain connected entities as well as a few sub brokers and brokers, who indulged in artificial trades resulting in the manipulation of SIL scrip. The Noticee was one of the top buyer and seller broker who had a gross buy position of 77,300 shares and a gross sale position of 68,600 shares representing 2.82% and 2.50% of the total volume at the exchange in SIL scrip. The Noticee executed trades in SIL scrip during the investigation period, for Adinath Propcorn Pvt Ltd(Adinath), Apoorv Fincap (Apoorv), Concept Institute Pvt Ltd (Concept), Bhansali Securities (Bhansali) and Adhunik Finance Pvt Ltd (AFPL).
- 4.3 However, after examining the materials on record, the Enquiry Officer came to the conclusion that the Noticee had never transacted in the scrip of SIL on their own account and rather it was through their sub broker; AFPL and Bhansali through the BOLT terminal installed in their offices. It is observed that Bhansali and AFPL were their sub-brokers while Adinath, Apoorv and Concept were the clients of Bhansali.
- 4.4 The Noticee also stated that the Adjudicating Officer had already examined their involvement with the company and concluded that they have no relationship with the company or its promoters and directors and their relationship with their clients was only broker-client relationship. The Adjudicating Officer had also concluded that the Noticee had not indulged in insider trading in SIL. The Enquiry Officer had also examined the matter and found that there was no concrete evidence on record to suggest that the Noticee had any relationship with any of their clients or nexus with any of the promoters of SIL. In view of these facts, the Enquiry Officer suggested that the Noticee should be given the benefit of doubt as regards their alleged role in the manipulation in SIL scrip and exonerated the Noticee on the charges of PFUTP Regulations. In view of facts available as also what has been stated above, the findings/recommendations of the Enquiry Officer mentioned in the report, I have come to the conclusion that the Enquiry Officer has rightly concluded that the charges against the Noticee have not been

established with reasonably good evidence. Further, viewed from the relevant legal position, I feel that there is no sustainable evidence on record to prove the charges levelled against them under the provisions of PFUTP Regulations.

- 4.5 As regards the violations of code of conduct for stock brokers, Enquiry Officer observed that the sub brokers AFPL and Bhalnsali were not registered with SEBI during the period of investigation and they got registered only on January 03, 2001 and January 10, 2001 respectively. This goes to indicate that these entities were transacting either as clients of the Noticee or as an unregistered sub-broker. Further, the Enquiry Officer also observed that the trades executed through them were matched deals and the said transactions would have come to the knowledge of the Noticee if they had taken due care and diligence as also verified the trades at the end of the day and in such an eventuality they could even stop the trading. The Noticee should be fully responsible for the acts of the sub-broker and their clients since they have failed to exercise necessary due diligence. Considering the above, it is established that the Noticee did not take due care and diligence essentially required in conducting his business as a stock broker and has thus violated Regulation 7 read with the clause A (2) of Code of Conduct as specified in Schedule II of Stock Brokers Regulations, which provides that

A (2) EXERCISE OF DUE SKILL AND CARE: A stock-broker, shall act with due skill, care and diligence in the conduct of all his business.

- 4.6 Keeping in view all facts and circumstances of the matter, I am of the view that a minor penalty of 'censure' be issued to the Noticee. As such, I concur with the recommendation of the Enquiry Officer that the Noticee be censured for their failure to exercise due skill, care and diligence required to be maintained by a registered broker.

5.0 ORDER

- 5.1 Therefore, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992 read with Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby impose a minor penalty of 'censure' to the broker M/s Shilpa Stock Brokers Pvt. Ltd (SEBI registration no. INB011057438 and PAN No. AAEC9799R).

Place: Mumbai

Date: October 5, 2007

V. K. CHOPRA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA