

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM : V. K. CHOPRA, WHOLE TIME MEMBER

ORDER

Order No. WTM/VKC/ID6/102 /2007

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

1.0 BACKGROUND

- 1.1 The company 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. The acquirers were introduced as the old promoters 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 started rising 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 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 BSE broker M/s SMK Shares and Stock Broking Pvt. Ltd. with SEBI registration no. INB010986030 (hereinafter referred to as "Noticee").
- 1.5 In the light of above facts, the trading details of the various entities who had traded in the scrip of SIL were collected and analyzed along with the data of the volumes contributed by these entities. Most of the trades done through the Noticee were done by its sub broker Shreepati Holdings who had contributed substantially to both rise in price as also large volumes in the scrip of SIL. However, the trades done by the direct clients of Noticee were not significant.

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 the 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 bye laws, rules and regulations of the exchange.
- 2.2 The Enquiry Officer issued a show cause notice dated February 9, 2005 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") advising them to show cause, as to why enquiry proceedings should not be initiated against them.
- 2.3 The Noticee in its reply vide letter dated March 2, 2005 denied the allegations levelled against them and requested for a personal hearing to be granted to them. The Enquiry Officer granted an opportunity of hearing on January 30, 2006 which was adjourned to February 24, 2006. Shri Naresh Khemka, Director of the Noticee and Shri Dinesh Khemka, MD of the Noticee attended the hearing before the Enquiry Officer on February 24, 2006. The gist of the submissions made by the Noticee in response to the show cause notice issued by the Enquiry Officer (as recorded by the Enquiry Officer) are given hereunder:
 - 2.3.1 That they did not know anybody from the promoter group of SIL and were not even aware about the holding of the capital of SIL or the time when the management of SIL changed as brokers were not required to keep track of such events.
 - 2.3.2 That they did not know Anil Pujari and his associates personally.

- 2.3.3 That they were also not aware about any of the transactions entered into by the new promoters and directors of SIL or the entities through whom they had carried out such trades in the scrip of SIL.
- 2.3.4 That they did not indulge in any large scale trading volumes in the scrip of SIL nor had they entered into any artificial trades.
- 2.3.5 That M/s Adhunik Finance Private Limited (AFPL) and M/s Great Eastern Merchantile (Private) Limited (GEM) were not their direct clients. Similarly M/s Act React Holding Pvt Ltd (ARH) were not their direct client but the client of their sub-broker; M/s Shreepati Holdings and Finance Pvt Ltd (Shreepati) a member of the NSE.
- 2.3.6 That they had presumed that due care and diligence would be exercised by Shreepati while trading on behalf of the clients in their capacity as sub-brokers.
- 2.3.7 That they were not aware of any nexus between the clients of Shreepati and the promoters and associates of SIL.
- 2.3.8 That they did not know M/s. Nabera Associates or Sadhana Nabera or the relationship between them and were not aware of any of the facts of GEM as set out in the notice or their dealings in the shares of SIL. The same was true even in the case of ARH and they were not even aware as to whether any of these entities were dealing with M/s. TJ Stock Brokers.
- 2.3.9 That they had no access to the BOLT terminal online as the same was installed at the office of Shreepati. Further, it was not possible to see the buyer or seller of the counter party by looking at the screen of the terminal.
- 2.3.10 That the volume of Shreepati as a sub broker per day ran into Rs. 4 to Rs. 5 crores. However their own volume per day came to about Rs.50 crores.
- 2.3.11 That the impugned transactions were of miniscule percentage of the total volume. The transactions of such value are undertaken in thousands. As such it was virtually impossible to detect any irregularities in these transactions on the spot.
- 2.3.12 That Shreepati had always fulfilled their obligations towards purchase of shares and payment on time. Hence, there was no reason to have any grievance against them or doubt their bonafides since their transactions had not affected the market equilibrium at all.
- 2.3.13 That they had executed the necessary documentation with Shreepati and exercised due care and diligence in appointing them as their sub broker and had no personal knowledge of their transactions.
- 2.3.14 That they had no nexus between any of the entities and did not directly execute any of the impugned transactions.
- 2.3.15 That they were not part of any artificial trading or manipulation and had not violated the provisions of the Code of Conduct as alleged in the notice nor had they committed any of the irregularities as alleged against them.
- 2.3.16 That they were brokers since 1989 and had complied with all the rules, bye-laws and regulations of the BSE as well as of SEBI.
- 2.3.17 That they had seven sub brokers at the relevant and their client base was around 800 to 1000.
- 2.3.18 That they had client business as well as institutional business and did not have complaints pending against them from any of the clients or institutions or sub broker or the authorities. Hence, their position should be considered leniently and no enquiry should be initiated against them.
- 2.3.19 That they had not done any proprietary trades in the scrip of SIL and had merely earned minimum brokerage.
- 2.3.20 That there was no *mens rea* on their part. The impugned transactions were coincidental amongst thousands of transactions.

2.4 After conducting enquiry in accordance with the provisions of the Enquiry Regulations, the Enquiry Officer submitted a report dated February 28, 2006. The Enquiry Officer in her report recommended to issue "censure" to the Noticee for their failure to exercise due skill, care and diligence.

3.0 SHOW CAUSE NOTICE

3.1 Pursuant to the receipt of the Enquiry Report, Show Cause Notice dated April 26, 2006 was issued to the Noticee along with a copy of the Enquiry Report advising them to show cause as to why the action, as recommended by the Enquiry Officer or as deemed fit by the Board, should not be imposed on the Noticee.

4.0 REPLY TO THE SHOW CAUSE NOTICE

4.1 Noticee submitted its reply dated April 28, 2006 to the said show cause notice wherein the following submissions were made:

- "1. *We humbly submit that lenient view may be taken against us in the above matter. In future we shall exercise due skill care and diligence in all earnest. The facts of the case goes to show that we had exercised at least a reasonable care and we have not made any personal gains out of any impugned transactions.*
2. *Hence, we humbly request that we may not be censured as recommended, as we have already been put to sufficient notice for the same by the above enquiry and investigation. We assure total compliance of all the guidelines and regulations.*
3. *We humbly pray that no further action be taken against us as recommended."*

5.0 CONSIDERATION OF ISSUES & FINDINGS

5.1 I have carefully examined findings of investigation, enquiry report, show cause notice and reply of the Noticee and 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 shot up from a low of Rs 10 as on February 9, 2000 to a high of Rs 697/- as on September 11, 2000.

5.2 The trades in SIL shares were executed by certain connected entities as well as few sub-brokers and brokers, who indulged in artificial trades resulting in manipulation of the scrip. During the investigation period, the sub-broker of the Noticee, Shreepati had executed trades in SIL scrip for its various clients who were associated with the new directors / auditor of SIL.

5.3 The Noticee submitted that all the transactions in SIL scrip were executed by its sub-broker Shreepati on account of its clients only. They had also produced the signed copies of KYC agreements entered into by them with Shreepati, as also the sub-broker client agreements entered into with each of these clients. The Enquiry Officer examined the materials on record and found that the clients of Shreepati had executed the transactions and their trades had contributed substantially to the total quantity of SIL traded in the market, during the investigation period leading to the manipulation in the scrip. However, the Enquiry Officer held that there is no concrete evidence on record to suggest that Noticee had any relationship with any clients of Shreepati or nexus with any of the entities mentioned in the show cause notice or even any of the promoters of SIL or were aware of the holdings of the said entities in the capital of SIL. Hence, the Enquiry Officer has given benefit of doubt to the Noticee as regards its suspected role in the manipulation and creation of artificial market in the SIL scrip. On examination of the evidence available on record, I am also of the view that the charge of manipulation was not proved against the Noticee with reasonably good evidence.

5.4 As regards the violations of code of conduct for stock brokers, Enquiry Officer observed that the Noticee should have exercised a certain amount of skill, care and diligence, as required to be observed by a registered broker and the trades executed through them could have best been avoided. The Noticee submitted that they had presumed that due care and diligence would be exercised by the sub-broker Shreepati while trading on behalf of the clients in their capacity as sub-brokers. The fact is that although the aforesaid deals were executed on the BOLT system of the BSE, through the terminal installed in the office of Shreepati, the Noticee did have access to the said BOLT terminal online and at the end of the day, they could have been aware of the gross sell and buy positions and taken suitable measures to check any apparent irregularity noted in the deals executed by their sub-broker, irrespective of their being executed on the screen of the exchange. In fact the nature of the trades alone ought to have created an element of doubt or suspicion in a man of ordinary prudence, leave alone a market intermediary like the Noticee operating in the market for around 15 years. However the act of Noticee in failing to take note and concerned about the nature of the trades being routed through them is indicative of the manner in which they conducted their business activities. The Noticee even admitted before the Enquiry Officer that as a broker they were only concerned about the issues of pay in and pay out and ensuring that no default arose out of the said trades. However, the fact remains that a broker is also required to ensure due diligence in all his dealings. The exercise of such due diligence on his part was even more necessary on account of the inexplicable trading interest in the scrip of SIL, which was otherwise relatively illiquid. The Enquiry Officer observed that the Noticee violated the provisions of code of Conduct for Stock Brokers. In view of what has been stated above, I am inclined to uphold the findings of the Enquiry Officer and also observe that if the Noticee had taken due care and diligence as also verified the trades at the end of the day, they could have even stopped the trading. The Noticee is therefore responsible for the acts of the sub-broker and their clients for their failure to exercise the necessary due diligence in the conduct of their business and have 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.

5.5 Keeping in view all facts and circumstances of the matter, I agree 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 exercised by a registered broker.

6.0 ORDER

6.1 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 M/s SMK Shares and Stock Broking Pvt. Ltd. (SEBI registration no. INB010986030 and PAN No AABCS4531Q).

Place: Mumbai
Date: October 09, 2007

V. K. CHOPRA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA