

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: V. K. CHOPRA, WHOLE TIME MEMBER

In the matter of Sun Infoways Ltd

Against the broker, NCJ Share & Stock Brokers Ltd.

DATES OF HEARING: 16.10.2007 and 31.10.2007

APPEARANCES:

FOR THE NOTICEE:

1. Shri N C Jain, Director of NCJ Share & Stock Brokers Ltd
2. Shri Prakash Shah, Advocate

FOR SEBI

1. Mrs Barnali Mukherjee, DGM.
2. Shri Deepesh M.U, Manager
3. Shri Mohamed Rahaz. P.M, Legal Officer.

ORDER

**Under Regulation 13(4) SEBI (Procedure for Holding Enquiry
by Enquiry Officer and Imposing Penalty) Regulations, 2002**

1. Securities and Exchange Board of India conducted investigations in the scrip of Sun Infoways Limited (hereinafter referred to as "SIL") on observing sudden spurt in price and volumes in the scrip of SIL at BSE during February 2000 and December 2000. 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 SIL shares continued to rise and reached a highest level of Rs 697/- on September 11, 2000 with volume going upto 24,800 shares.

2. On analyzing the price/volume data of the SIL scrip during the investigation period (between February 2000 and December 2000), it was observed that the related entities traded through certain brokers including the broker N C Jain and their large volume of trades resulted in rise in price and volume in SIL scrip. The proprietary concern of NC Jain (SEBI Registration No. INB117315) was later corporatized and changed its name to NCJ Share & Stock Brokers Ltd with SEBI Registration No. INB11192037 (hereinafter referred to as 'Noticee').

3. In the light of above facts, the trading details of the various entities who had traded in SIL were collected and analyzed along with the data of the volumes contributed by them. It was observed that the transactions of the Noticee in the 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.

4. 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 bye laws, rules and regulations of the exchange.

5. A show cause notice dated December 20, 2004 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.

6. The Noticee sought some additional documents from the Enquiry Officer and the relevant documents were provided to them. An opportunity of personal hearing was given to the Noticee which was not availed by him. In lieu of the personal hearing, they filed written submissions vide letter dated July 9, 2006 and the gist of the contents thereof were recorded by the Enquiry Officer in her report. After conducting enquiry in accordance with the provisions of the Enquiry Regulations, the Enquiry Officer submitted report dated June 20, 2007 and recommended a minor penalty of suspension of registration of the Noticee for a period of ten days.

7. Pursuant to the receipt of the Enquiry Report, Show Cause Notice dated June 22, 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.

8. In response to the said show cause notice, Noticee vide letter dated August 18, 2007 stated that the alleged trades in SIL scrip were carried out by the erstwhile proprietary firm of N C Jain whose firm was corporatized in the name of NCJ Share & Stock Brokers Ltd and this reply is filed by them in their representative capacity. The main submissions of their reply are given hereunder:

8.1 The documents and opportunity to cross examine the witness whose statements were relied upon to conclude the findings against them were not provided.

8.2 The show cause notice was issued only after the expiry of 7 ½ years from the date of investigation period and on the ground of this delay itself, the proceedings against them is to be dropped.

8.3 All trades were executed by N C Jain in the normal course of business on behalf of the clients/sub brokers and he had no relationship with them except that of a broker client/sub broker relationship and he had no relationship with the counter party brokers or their ultimate clients.

8.4 The trades were executed through the automated computerized BOLT terminals of BSE and the counter parties to the trades were unknown.

8.5 The trades executed by the clients viz P P Investment and Keshav & Co were in the nature of intra-day trading/jobbing. The other clients JV Stock Broking Pvt. Ltd. and Smart Growth whose dealing in the scrip as unregistered sub-brokers was not aware to N C Jain and this fact was brought to his knowledge only when BSE inspected their books of account and other records and the dealing with them was discontinued in the year 2000 itself. Further, BSE imposed a fine of Rs 25000/- on NC Jain for dealing with the said unregistered sub brokers.

8.6 The documents sought by the Investigation Authority were provided in the year 2001 itself.

8.7 Shri NC Jain was not aware about the clients of the sub-broker Growing Securities and the relationship if any with SIL.

8.8 Trading volume of N C Jain was insignificant compared to the total market volume in SIL scrip.

8.9 There is no proprietary trading in SIL scrip and only gain was from brokerage income. N C Jain exercised due care and caution while dealing in SIL scrip and did not involve in any of the manipulative, fraudulent or deceptive transactions or scheme and denied the violations of the provisions of the Code of Conduct as prescribed under clause A(1),(2),(3), (4) and (5) of Schedule II of Stock Brokers Regulations.

9. An opportunity of personal hearing was given to the Noticee before me at SEBI's Head office at Mumbai on October 16, 2007. The Noticee requested adjournment of the hearing and accordingly the date of personal hearing was fixed on October 31, 2007. Shri N. C Jain, director of the Noticee with the Advocate Shri Prakash Shah attended the hearing.

10. I have carefully examined the findings of investigation, enquiry report, show cause notice and reply of the Noticee and 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 Rs 697/- on September 11, 2000. It is further observed that the trades in SIL shares were executed by certain connected entities as well as few sub brokers and brokers, who indulged in artificial trades causing manipulation in the scrip.

11. The Noticee was one of the top buying and selling broker who had a gross buy position of 2,24,925 shares and a gross sale position of 2,23,100 shares. The sub-brokers who traded in SIL scrip through the Noticee were J.V Stock Broking Pvt Ltd, Smart Growth, Growing Securities, P.P Investments and Keshav and Company. According to N.C Jain, Keshav & Co and Growing Securities were registered sub-brokers whereas Smart Growth and J V Stock Broking were not registered with SEBI.

12. The Enquiry Officer had examined the charges levelled against the Noticee such as their execution of manipulative synchronised trades, trading with clients related to the promoters of SIL and dealing with unregistered sub brokers. As regards the charge of trades having been executed by the Noticee on behalf of the promoter related entities, the Noticee stated that they executed trades for their sub-brokers and were not aware about the clients of the sub brokers and the relationship of the clients with SIL. The Enquiry Officer brought out the nexus of sub-brokers and their clients and SIL and observed that the sub-brokers/clients of the Noticee executed synchronised and reversed transactions. At the same time, the Enquiry Officer found that the Noticee had no direct relationship either with the promoters or any directors of SIL and the clients who executed all the impugned transactions were not their direct clients. Hence, the Enquiry Officer suggested to give benefit of doubt to the Noticee as against the charge of manipulation and further found that they are not guilty of the violation of the provisions of PFUTP Regulations. While considering these findings/recommendations of the Enquiry Officer and the relevant provisions of law governing the case, I have come to the conclusion that the instant matter is not a fit case to levy any penalty as the charges levelled under PFUTP Regulations against the Noticee have not been established with reasonably good evidence.

13. As regard the charge of dealing with unregistered sub-brokers J.V stock Broking Pvt Ltd and Smart Growth, the Noticee admitted that these sub – brokers were introduced by Shri Rakesh Kumar Jain who is the son of N. C Jain. Adjudication proceedings were initiated against Smart Growth for acting as an unregistered sub broker and the Adjudicating Officer had also imposed a penalty of Rs 10,000/- vide order dated September 29, 2005. The Noticee has taken a stand that they were not aware that R.S Investment had executed trades as a sub-broker. The Noticee further stated that J.V stock Broking Pvt Ltd and Smart Growth were acting as an unregistered sub broker and this fact was brought to their knowledge during the inspection of Books of Accounts and other records by BSE. The explanation given by the Noticee does not appear convincing particularly since they did not stop trading immediately after receipt of the information that J.V stock Broking Pvt Ltd and Smart Growth acted as unregistered sub-brokers. Shri N. C Jain while giving statement to the Investigating Authority on November 15, 2001 admitted the dealing with unregistered sub brokers and continued dealings with Smart Growth because of 'business interest'. Shri N.C Jain further submitted before the Investigating Authority that Smart Growth did not follow up on their request to send the requisite documents to SEBI. The onus to check as to whether the sub broker is registered with SEBI lies upon the main broker. This issue has been clearly brought out in the SEBI Circular No. SMD/Policy/Circular/3-97 dated March 31, 1997 and has clearly not been complied with by the Noticee. The Noticee is responsible for the wrongdoing of unregistered sub-brokers as the Noticee had facilitated their sub brokers to execute synchronised and reversed transactions for the connected entities and created false market in the scrip.

14. In view of the above, the Noticee failed to monitor the trades of their registered and unregistered sub-brokers. The Noticee is responsible for the acts of the sub-brokers and their clients when they fail to exercise necessary due diligence essentially required in conducting the business of a stock broker. The Noticee 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.

15. However, at the same time, in the absence of any evidence linking the Noticee, their sub-brokers and the ultimate clients, as also since the charges levelled under the provisions of PFUTP Regulation are not established against the Noticee, I am of the view that a minor penalty of 'censure' against the Noticee is sufficient for the violation of code conduct as stated in paragraph No. 15 above.

16. Taking into consideration of all facts and circumstances in the case and 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 Noticee, NCJ Share & Stock Brokers Ltd. (erstwhile proprietary concern of N C Jain) with SEBI registration no. INB11192037 and PAN No. AABCN3702G.

Place: Mumbai

Date : February 08, 2008

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