

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: Dr. T.C.NAIR, WHOLE TIME MEMBER

**IN THE MATTER OF PROFIN CAPITAL SERVICES LTD., MEMBER, THE
NATIONAL STOCK EXCHANGE OF INDIA, SEBI REGN NO. INB
230645632 IN THE SCRIP OF EIDER INFOTECH LTD.**

Date of hearing: August 24, 2007

Appearances:

For Noticees: Shri Rajesh Sehgal, Managing Director

For SEBI : Shri P.K.Bindlish, Chief General Manager
Shri Siva Govindo Patra, Manager
Ms. Kshama Chavan, Legal Officer

ORDER

**UNDER THE REGULATION 28(2) OF SEBI (INTERMEDIARIES)
REGULATION 2008.**

1.1 Eider Infotech Ltd. (hereinafter referred to as "EIL") was incorporated in 1990. The shares of EIL were listed for trading at National Stock Exchange of India Limited (hereinafter referred to as "NSE"), The Bombay Stock Exchange Ltd (hereinafter referred to as "BSE"), Ludhiana Stock Exchange (Regional) (hereinafter referred to as "LSE"), Ahmedabad Stock Exchange (hereinafter referred to as "ASE"), Delhi Stock Exchange (hereinafter referred to as "DSE") and Calcutta Stock Exchange (hereinafter referred to as "CSE") at the time of investigation.

- 1.2 Securities and Exchange Board of India (hereinafter referred to as “SEBI”) had conducted an investigation for the period December 1999 to March 2000 (“Period I”) and April 2000 to August 2000 (“Period II”) [both the periods hereinafter referred to as “the relevant period”] into the buying /selling/dealing in the scrip of EIL. Investigation revealed that trading in the scrip of EIL was not very active at both BSE and NSE during the relevant period. It was found that only 200 shares at BSE and 1,800 shares at NSE were traded during the period January 1998 to August 1999. During September 1999 to March 2000, 6,500 shares and 3,04,200 shares were traded at BSE and NSE respectively. During September 2000 and March 2001 the trading at BSE was nil whereas 26,295 shares were traded at NSE.
- 1.3 Investigation further revealed that during period I, on November 24, 1999, the closing price of EIL at NSE was Rs.32, which touched a high of Rs.292 by the end of the first week of January 2000 and came down to Rs. 228 by second week of January 2000. By 11th February 2000, the price reached its highest of Rs.800. Correspondingly volumes had gone up in November 1999 from average volume of 490 shares to 4,030 shares in January 2000. Volumes started to decrease in March 2000. Further, during investigation period II, around 12th April 2000 when the scrip was trading at about Rs. 500, the scrip was suspended by NSE till 26th April 2000 due to non compliance of listing agreement.
- 1.4 It was further found that during period I, EIL and their associates/group companies played a major role in the price movement. From the trading records and bank records, it was found that EIL and its group companies

directly funded the brokers and other entities who had significantly traded in the scrip during the first period. The bank records, revealed the flow of funds on a continuous basis from group or associate company of EIL to the accounts of brokers/sub-brokers etc.

1.5 It was alleged that Profin Capital Services Ltd. (hereinafter referred to as “Profin”) member of NSE traded with its client without obtaining client registration form and also accepted payments from third parties towards the trades done by its client in the scrip of EIL. It was further alleged that the entities which made payment to Profin for the trades by its clients were associates of EIL. Further, Profin had carried out transactions in which both the buyer and seller in the scrip of EIL were his clients viz., Saran Investments and Kuldeep Singh. It was also alleged that Profin had received funds from the associates of EIL and executed trades for its client Saran Investments. Profin had colluded with its client Saran Investment in execution of the trades to rig up the prices.

2.1 In view of the findings of investigation, SEBI vide order dated July 2, 2002 appointed an enquiry officer to enquire into the alleged violations/contraventions by Profin. The Enquiry Officer conducted the enquiry in terms of the then SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulation 2002 (hereinafter referred to as “Enquiry Regulations”) and found that Profin had dealt in the shares of EIL and was involved in the price manipulation by executing trades on behalf of dummy client who was a facade for the company. The Enquiry Officer found Profin guilty of violating the provisions of Regulation 4(a), (b) and (d) of SEBI(Prohibition of

Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and also provisions of Clause A(1) to A(4) of Code of Conduct prescribed under Schedule II of SEBI (Stock Broker and Sub Broker) Regulations, 1992. The Enquiry Officer submitted his report dated November 3, 2003 recommending a penalty of suspension of certificate of registration for a period of four months.

3.1 Based on the recommendations of the Enquiry Officer, a show cause notice dated November 11, 2003 was issued to Profin under Regulation 13(2) of the Enquiry Regulations asking it to show cause as to why appropriate action including penalty as recommended by Enquiry Officer should not be imposed upon it.

3.2 Profin vide letter dated December 12, 2003 inter alia replied to the said show cause notice as under :

- (i) *The Enquiry Officer has failed to note that the client did not honor his commitments timely and the member acted promptly in the interest of conduct of his business by discontinuing dealings with the client whose conduct was not satisfactory.*
- (ii) *Profin had received three third party cheques from the client, two of which were received from City Wide Communications which Profin had no means of knowing that it was a group company of EIL. There is no evidence to show that Profin was aware of this fact and had knowingly entered into the transactions with this client. The third cheque was received from EFSL, the dealings with the client were terminated on account of unsatisfactory conduct on his account i.e dishonoring of cheque, non submission of member/client agreement.*

- (iii) *The Enquiry Officer has totally failed to prove any charge of price manipulation in the shares of EIL by the act of Profin.*
- (iv) *No reasons are given by the Enquiry Officer as to how receipt of third party cheques resulted to manipulating the price especially when the transaction was delivery based by the client.*
- (v) *The Enquiry Officer has not appreciated that Profin was not aware that City Wide and Communications was a group company of EIL and there is no evidence to show that Profin was aware of the fact and knowingly entered into these trades. The Enquiry Officer failed to recognize that Profin was not connected or concerned with any arrangement arrived at/or related to the management of EIL.*
- (vi) *The charge that the member did not exercise due diligence in accepting the cheque from Eider Financial Services Ltd. (hereinafter referred to as EFSL) does not hold good as the charge of the price manipulation rests with the transactions and not with the payment mechanism. The Enquiry Officer has not appreciated that this payment was received much after the dealings with the client were discontinued. The Enquiry Officer has failed to note that the dealings were terminated on March 16, 2000 and the cheque from EFSL was received on March 24, 2000, which was only to complete his obligations. Thus, the charge of violation of clause 7A (2) of Code of Conduct for Stock Brokers does not hold good.*
- (vii) *Profin has not been charged for making personal gain or spreading rumors to distort market equilibrium. Therefore the question of violation of Regulation 7A (3) of Code of Conduct for Stock Brokers does not arise.*

3.3 Due to change in competent authorities, the matter was put afresh before me. Accordingly, an opportunity of personal hearing was granted on August 24, 2007 wherein Rajesh Sehgal, Managing Director, attended the hearing and made the following submissions vide letter dated October 23, 2007 which are as under:

- (i) *Profin had practically the lowest trade in the scrip of EIL for the period December 1999 to March 2000. All the trades were delivery based and Profin merely acted on the instructions of the client.*
- (ii) *The most significant of the trades pertaining to the scrip of EIL for the relevant period has been carried out by NAM Securities after SEBI suspended NAM, it preferred an appeal against the said order before the Hon'ble Securities and Appellate Tribunal (SAT). The SAT after careful consideration of facts while reducing the penalty of suspension of certificate of registration from six months to mere two days has taken inter alia the following into consideration :*
 - (a) *The scrip of an EIL was an active scrip during the relevant period.*
 - (b) *The trade for EIL rose sharply and the trading increased substantially,*
 - (c) *Even though NAM was the top trader for the scrip the total volume of trade was not significant.*
 - (d) *The price movement could be due to boom in technology stocks prevalent at the relevant time.*
- (iii) *As compared to NAM Securities the trades by Profin were bare minimum and delivery based purchase transactions only.*
- (iv) *Profin nor his directors have made any monetary gain while dealing with the client. A suspension of four months considering the fact that Profin charged only a brokerage of Rs. 30,264 for the trades in EIL for its one*

time client Saran Investments is oppressive. Profin had made a net loss in its dealing with the client for an amount of Rs. 69,599.70 which could not be recovered from the client. In absence of any profit, it is clear that the trade in the scrip of EIL by Profin by merely based on the instructions of the client.

- (v) Profin has not carried out any active business since 2004, the brokerage income of last year is as low as 2.02 lakh out of which brokerage on the trades of non family clients amounted to only 78,000.*
- (vi) As regards the allegation that the company has failed to exercise due diligence in receiving cheques from third parties, it is submitted that SEBI Circular no. SEBI/MRD/SE/CIR-33/2003/27/08 relating to acceptance of third party cheque came into effect only in year 2003 which is much later to the actual receipt of the cheques.*
- (vii) Further, SEBI Circular no. SMD/1/23341 dated November 18, 1993 which lays down the "Precautions to be exercised by member Brokers of recognised Stock Exchange while selling shares on behalf of clients, entertaining new clients etc. does not prohibit the acceptance of the third party cheques. Similarly SMD/POLICY/ECG/1-97 dated February 11, 1997, SMD/DRP/POLICY/CIR/5-97 dated April 11, 1997 and Clause Appellants (1-4) of the Code of Conduct as specified in Schedule II read with Regulation 7 of the SEBI(Stock Broker and Sub Broker) Regulations, 1992 does not prohibit acceptance of third party cheques. In the light of the above, it is clear that the imposition of any penalty much less a major penalty as sought to be imposed cannot be imposed in the aforesaid circumstances.*

4.0 I have carefully considered the investigation report, the enquiry report, the show cause notice issued to Profin and the submissions made by Profin. I note that though the Enquiry Regulations were repealed with effect from the notification of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, anything done and any action taken under the said enquiry regulations shall be deemed to have been done or taken or commenced under the corresponding provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008. My findings are as under:

4.1 I note that Profin had transacted during the period between December 1999 and August 2000 for its client Saran Investments as under :

Name of the member	Buy	Sell	Net	Gross
Profin Capital Service Ltd	5,400	900	4,500	6,300

4.2 During the aforesaid period of investigation, it was observed that Profin who transacted on behalf of its client had common address with the registered office of EIL at SCO 147-148, Sector 8C, Chandigarh. It is pertinent to note that the contact person of Saran Investments is Shri NK Jain who is also Vice President, Corporate Finance, EIL. Profin had received funds from the associates of EIL and executed trades for its clients on the instructions of Shri N K Jain, Officer of EIL. Thus it is noted that Shri N K Jain who was giving instructions on behalf of the client was infact the executive of the company.

- 4.3 I note that Profin had dealt with the scrip only for 7 trading days in the month of March 2000 whereas the period of price manipulation was between December 1999 and August 2000. These payments were made to Profin for trades done by Saran Investments in the scrip of EIL details of which are as under:

Instrument No.	Amount	Date	Issued By
331067	5,00,000	07.03.00	City Wide & Communications Ltd. (now known as Eider E-commerce)
331608	5,00,000	07.03.00	City Wide & Communications I Ltd
88530	3,39,684	24.03.00	Eider Financial Services Ltd.

- 4.4 From the above table, it is evident that the payments made to Profin show the connection between EIL and Saran Investments. When queried about it, Profin stated that it was not aware of the common address. Profin further stated that since Saran Investments had not given details in the client introduction form, it was not aware of the common address and due to their default in meeting their pay in obligation, Profin had stopped trading on behalf of Saran Investments.
- 4.5 I note that Profin had admitted the trading on behalf of Saran Investments, however, denied of having knowledge that Saran Investments was connected with EIL. Profin submitted that since Saran Investments had not completed the formality of filing client registration form, it did not know that Saran Investments had same address as that of EIL. Further Profin had contended that it was not expected to know about the client beyond the client registration form. I am of the view that

Profin cannot claim ignorance about the details of Saran Investments just because Saran Investments had not submitted the client registration form and introduction form. Profin should not have traded on behalf of Saran Investments unless required formalities like completing client registration form, introduction form and entering into broker-client agreement with Saran Investments as required by Stock Brokers Regulations were completed. Profin, however, had started trading on behalf of Saran Investments before completing the required formalities. Had Profin completed the required formalities and obtained details about Saran Investments the question of Profin not knowing the details of Saran Investments would not arise. Profin had stated that it had dealt of Saran Investments only for a short period hence could not have known the motive of Saran Investments. The concept of know your client was prescribed by SEBI precisely to avoid these kind of problems.

- 4.6 With regard to the allegation that Profin had received third party cheques from the group associate companies of EIL, the Enquiry Officer found that irrespective of the fact whether Profin knew about the alleged link between the parties who issued the cheques and the company i.e. EIL whose shares were being traded, Profin should not have accepted the third party cheques. Profin should have suspected the client in one instance when a cheque of Rs.3,39,684 came from EFSL which is an associate company of EIL. Further, I also note that Profin had also accepted payments from third parties for trades done on behalf of Saran Investments under the pretext that even those payments were obtained after follow up and great difficulty hence it could not have refused the payment. Profin without obtaining client registration form from Saran

Investments had not only traded but also accepted payments from third parties towards trades done by Saran Investments in the scrip of EIL. From the above, it can be concluded that Profin had not exercised proper due diligence. I am of the view that Profin should have exercised caution when his client was placing huge orders immediately on the opening of the account in an illiquid scrip. It is clear that the allegation encompasses both charges of not obtaining client registration form and accepting payments from third parties.

- 4.7 Profin has contended that there is no evidence to show its involvement in the price manipulation. I note that the main allegation against Profin was that its client Saran Investment shares a common address with the registered office of EIL and was dealing in the scrip of EIL and also received the third party cheques from the associates of EIL. Shri N. K. Jain who gave instructions on behalf of the clients was the executive of the company EIL. Profin had dealt in the scrip for seven days in the month of March 2000, whereas the period of price manipulation was between December 1999 and August 2000. Out of the total number of 6,300 shares dealt by Profin, 3,300 shares were dealt with on March 7, 2000 which was second day of the clients dealing with them. The trading by Profin between March 8, 2000 and March 16, 2000 was in small quantities totaling to 700 shares. The Enquiry Officer has observed that merely because the client had an address which was same as that of the registered office of the company cannot lead to an inference that the broker knew about the alleged link between the client and company. However, I find that there is too much of co-incidence that the client had an address which matched with the address of the registered office of the

company. Moreover, it is pertinent to note that the person placing order on behalf of the client is none other than the Vice President of the Company on whose behalf the shares have been traded. Further, the fact that the funds for these transactions were provided by the group associate companies of EIL cannot be ignored. From the above, I find that it cannot be a mere coincidence that Saran Investments has a common address with EIL, VP of EIL. Placing orders on behalf of Saran Investments and more importantly Profin accepting payment from third parties, group companies of EIL, for the trades done by Saran Investments, the plea of Profin that there is no evidence to show its involvement in the price manipulation is not tenable.

4.8 Profin has contended that they were not provided with the copy of investigation report to reply to the show cause notice dated November 11, 2003. This contention of Profin is not acceptable as Profin was provided with extracts of investigation report which was relevant to Profin. Therefore question of providing a full investigation report does not arise and it is not relevant for Profin to know as what other entities are charged with or not.

4.9 I observe that the broker traded only on behalf of its client namely Saran Investments for a total buy quantity of 5400 which constituted only 1.98% of the total buying in the scrip and for a total sell quantity of 900 shares constituting only 0.33% of the total selling in the scrip during the period of investigation. In all, Profin was involved in only 2.31% of the total trading in the scrip. I also observe that the broker had not dealt on its own account and had traded on behalf of the client. Also, the broker was

in no way related to the client. From the facts of the case, I do not find enough evidence that the broker had aided and abetted the client in the manipulation of the scrip.

4.10 However, I also observe that Saran Investments was newly introduced to Profin who immediately started dealing only in the scrip of EIL which otherwise was an illiquid scrip and there is no material on record to suggest that Saran Investments was dealing in any other scrip. In view of the above circumstances, any prudent broker should doubt the intentions of the clients and stop trading on his behalf. In the instant case, Profin continued trading for number of settlements which resulted in building up of artificial volumes and price in the scrip of EIL. Unsuspected innocent investors would be trapped by such false appearance of trading in securities. This is detrimental to the investors and the orderly development of the securities market. Profin being a registered market intermediary has failed towards the additional responsibility of showing due skill care warranted under Code of Conduct as given under schedule II of the Broker Regulations and therefore has violated Clause A(2) to (5) of the Code of Conduct as given in schedule II read with Regulation 7 of Stock Brokers Regulation. Taking into account the facts of the case and nature of violation, I observe that the penalty recommended by the Enquiry Officer is not commensurate with the violations by the broker. I am of the view that a penalty of warning is sufficient to have a deterrent effect on the broker.

5. Therefore, 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, I hereby warn M/s Profin Capital Services Ltd. member NSE having SEBI registration no. INB23 06456 32 to the effect that the broker should be careful in future and exercise due skill, care and diligence in the conduct of its affairs as a capital market intermediary. I also direct Profin Capital Services Ltd. to note that any instances of violation or non-compliance of the SEBI Act and Rules and Regulations in future shall be dealt with stringently.

DATE 15.1.2009

PLACE: MUMBAI

**T.C.NAIR
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**