

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR. K. M ABRAHAM, WHOLE TIME MEMBER

ORDER UNDER SECTION 11B OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 11 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 AGAINST PORTFOLIO EQUITY SERVICES IN THE MATTER OF SUN INFOWAYS LIMITED

1. Sun Infoways Limited was incorporated on June 29, 1994 as Best Mulyankan Consultants Private Limited and was originally promoted by one Shrikant Vasant Joglekar and Sujit Shrikant Joglekar. Best Mulyankan Consultants Private Limited was subsequently converted into a public company on June 21, 1995 and the shares of the company were listed at Bombay Stock Exchange Limited (hereinafter referred to as BSE) on May 16, 1996. Thereafter, the name of Best Mulyankan Consultants Private Limited was changed to Sun Infoways Limited (hereinafter referred to as the company) with effect from May 11, 2000. It was brought to the notice of Securities and Exchange Board of India (hereinafter referred to as SEBI) that there was unusual price increase in the shares of the company during the period February 2000 to September 2000. In view of the above mentioned unusual price rise, SEBI conducted an investigation into the buying, selling and dealing in the shares of the company for the period February 2000 to November 2000. The investigation conducted by SEBI *inter alia* observed that pursuant to a trade executed in the shares of the company for 100 shares @ Rs.10/- per share on February 09, 2000, its share price continued to rise and reached to a level of Rs 697/- on September

11, 2000 with a volume of 24,800 shares. It was found that that trades involving 30,07,937 shares of the company were executed during the period of investigation. The investigation conducted by SEBI *inter alia* observed that the original promoters of the company namely Mr. Joglekar and his family members sold their stake in the company (98% of the capital of company) in the month of January 2000 *inter alia* to Mr. Anil Pujari, Mr. Tanvir Zaki, Mr. Pravin Sonalkar and Mr. Hafeza Vohra for a total consideration of Rs.98,34,659/-. It was alleged that pursuant to the aforesaid acquisition, the above mentioned persons, namely Mr. Anil Pujari, Mr. Tanvir Zaki, Mr. Pravin Sonalkar and Mr. Hafeza Vohra acted in concert with various entities and had entered into large volume of trading in the shares of the company through various stock brokers and sub brokers during the period of investigation. Portfolio Equity Services (sub broker of T.J. Stock Broking Services Private Limited) is one such entity that had facilitated the said transactions in the shares of the company while acting as a sub broker. Portfolio Equity Services is hereinafter referred to as the noticee. It was observed that the noticee while dealing for its clients (related to the promoter/director of the company) had prima facie violated *inter alia* the provisions of Regulation 3, 4 (b), 4 (c) and 4 (d) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as FUTP Regulations) and Clauses A(1),A(2),D(4) and D(5) of Schedule II of the Code of Conduct for sub brokers specified in Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as the Broker Regulations). Accordingly, a notice dated February 21, 2008 was issued by SEBI to the noticee asking it to show cause as to why appropriate direction including debarring it from accessing the capital market should not be issued against it.

2. Smt. Savita Bhansali, proprietor of the noticee, vide letter dated March 08, 2008, *inter alia* stated that all the dealings of the noticee were in the normal course of business on behalf of its clients. She further stated that charging of brokerage of 0.5% to 1% was a routine practice. She contended that the only interest of the noticee in executing the trades was to earn brokerage. According to her, the transactions of the noticee were genuine. Thereafter, an opportunity of personal hearing was given to the noticee on January 02, 2009. The noticee, vide letter dated December 23, 2008, while reiterating its earlier submissions stated that, though, there was a match trade for 2500 shares of the company, it was not aware that its client was doing transaction with any other stock broker. The noticee further requested SEBI to consider the said letter as a personal hearing.

3. I have considered the show cause notice issued to the noticee, its submissions vide letters dated March 8, 2008 and December 23, 2008 and other materials available on record. The fact that the average share price of the company at BSE had increased from Rs.10- to Rs.697/- during the period of investigation is not disputed before me. The share price of the company continuously fluctuated from February 9, 2000 to November 10, 2000. The settlement wise trade details (maximum price rise period) of the company from Settlement No. 47/99-00 (February 07, 2000 to February 11, 2000) to Settlement No. 27/00-01 (September 25,2000 to September 29,2000) is given below:

Sr. No.	Sett. No /Dates	Sett Low (Rs.)	Sett High (Rs.)
1	47/99-00(7/2/00 to 11/2/00)	10	12.40
2	48/99-00 (14/2/00 to 18/2/00)	10.50	13.45
3	49/99-00 (21/2/00 to 25/2/00)	14.50	18.15
4	50/99-00 (28/2/00 to 3/3/00)	18.85	21.10
5	51/99-00 (6/3/00 to 10/3/00)	21.90	25.50
6	52/99-00 (13/3/00 to 16/3/00)	26.50	29.70

7	53/99-00 (21/3/00 to 24/3/00)	30.85	34.60
8	01/00-01(27/3/00 to 31/3/00)	35.95	41.90
9	02/00-01(03/04/00 to 7/4/00)	41.10	47.80
10	03/00-01 (10/4/00 to 13/4/00)	49.70	55.80
11	04/00-01 (17/4/00 to 20/4/00)	58.00	65.15
12	05/00-01 (24/4/00 to 28/4/00)	67.70	79.05
13	06/00-01 (2/5/00 to 5/5/00)	82.20	92.35
14	07/00-01(8/5/00 to 12/5/00)	96.00	112.15
15	08/00-01 (15/5/00 to 19/5/00)	116.60	136.25
16	09/00-01 (22/5/00 to 26/5/00)	140.00	164.70
17	10/00-01 (29/5/00 to 2/6/00)	158.00	191.65
18	11/00-01 (05/06/00 to 09/06/00)	199.30	233.05
19	12/00-01 (12/06/00 to 16/6/00)	242.35	283.35
20	13/00-01 (19/6/00 to 23/6/00)	294.65	338.90
21	14/00-01 (26/6/00 to 30/6/00)	310.00	358.50
22	15/00-01 (3/7/00 to 7/7/00)	269.70	317.40
23	16/00-01 (10/7/00 to 14/7/00)	275.00	328.35
24	17/00-01 (17/7/00 to 21/7/00)	341.45	399.25
25	18/00-01 (24/7/00 to 28/7/00)	398.60	485.60
26	19/00-01 (31/7/00 to 4/8/00)	490.00	590.60
27	20/00-01 (7/8/00 to 11/8/00)	457.85	575.00
28	21/00-01 (14/8/00 to 18/8/00)	452.00	537.00
29	22/00-01 (21/8/00 to 25/8/00)	423.50	600.00
30	23/00-01 (28/8/00 to 31/8/00)	481.45	606.40
31	24/00-01(4/9/00 to 8/9/00)	557.90	700.00
32	25/00-01 (11/9/00 to 15/9/00)	588.00	724.00
33	26/00-01(18/9/00 to 22/9/00)	474.00	592.00
34	27/00-01 (25/9/00 to 29/9/00)	358.35	512.75

4. The allegation against the noticee is that it had traded for certain clients who were connected to promoter related entities of the company and, thus facilitated transactions which were prima facie in violation *inter alia* of the provisions of Regulations 3,4(b),4(c) and (d) of FUTP Regulations, Clauses A(1),A(2),D(4) and D(5) of Schedule II of the Code of Conduct specified in the Broker Regulations, as mentioned in the show cause notice. Admittedly, the noticee had traded for the following entities/persons in the shares of the company:

- Act React Holdings Private Limited.
- Apoorva Fincap Limited. (Directors- Mr. Sunil Saxena, Mr. J.L. Raina, Mr. Anil Raina)
- Adinath Propcon Private Limited.
- Neha Fincap Limited.
- Concepts Institute Private Limited. (director – Mr. Sandeep Bohra)
- Mr. Ajay Bohra
- Mr. Sandeep Bohra
- Ms. Chitra Bohra
- Ms. Meena Bohra

5. I note that SEBI, vide order dated March 3, 2008 had already prohibited the company (including its directors) and various other entities/persons who were involved in the manipulation of the shares of the company during the period of investigation, from buying, selling or dealing or accessing the securities market in any manner for a period of two years. Majority of the clients of the noticee are covered under the aforesaid order of SEBI dated March 3, 2008. The trade details of the noticee on behalf of the aforesaid clients are explained in detail in the show cause notice. Besides, the noticee never disputed any of the trades executed by it. In the facts and circumstances, I do not consider it necessary to mention the details of all the trades executed by the noticee on behalf of the clients. However, at the cost of repetition, the trades of the noticee on behalf of one of its clients, namely Act React Holdings Private Limited is given below:

Sett. No.	Quantity Bought(shares)	Price(Rs.)	Quantity Sold (shares)	Price(Rs.)
05/2000-01	0	0	2000	72.64
06	0	0	1200	83.06
08	0	0	1000	124.79
09	700	163.47	0	0
12	0	0	4000	245.90
13	900	339.87	0	0

15	0	0	2200	269.64
18	0	0	1500	394.61
TOTAL	1600		11900	

6. Smt. Savita Bhansali (proprietor of the noticee), stated to SEBI that the orders pertaining to the above client were given mostly by Mr. Kuldeep Handoo (director of the company) and on some occasions by Mr. Sunil Saxena, director of Apoorva Fincap Limited (another entity traded in the shares of the company through the noticee). Mr. Kuldeep Handoo was also one of the directors of Act React Holdings Private Limited. Smt. Savita Bansali also stated that, the clients namely Neha Fincap Private Limited, Adinath Propcorn Private Limited were introduced by one Sunil Saxena. In her statement, she admitted that, since she had maintained a good relation with Mr. Sunil Saxena, she did not ask for anything other than signature verification of certain clients. She further added that, she stopped dealings for the clients when Mr. Sunil Saxena stopped placing orders for them. According to her, orders on behalf of its client viz. Apoorva Fincap Limited were also placed by Smt. Vimala Saxena, mother of Mr. Sunil Saxena. According to Smt. Savita Bhansali, Mr. Sunil Saxena was a professional colleague of Mr. Kuldeep Handoo. Besides, in the investigation conducted by SEBI, it was observed that the clients of the noticee namely, Apoorva Fincap Limited and Adinath Propcon Private Limited shared the same address at C-63-A, Sarojini Marg, C- Scheme, Jaipur - 302 001. Needless to say, it shows the close nexus between the said entities. I, further note that, Mr. J. L. Raina (Director - Adinath Propcon Private Limited) stated to SEBI that Mr. Kuldeep Handoo was residing with him at 106, Community Centre. He also stated that they were working together at Magnum Business Services, East of Kailash up to 1994. Thus, there was close nexus amongst the clients of the noticee. The gross buy of the clients was much more than their gross sale. The clients

were generally taking positions at the very beginning of the period under investigation, i.e. when the share price was very low compared to the latter stage of the period of investigation. The facts and circumstances of the case indicate the following:

- a. The trades of the noticee started from settlement no. 02/00-01 (April 03, 2000 to April 07, 2000), when the share price of the company was very low, to settlement no. 27/00-01 (September 25, 2000 to September 29, 2000). Admittedly, the noticee traded as a sub broker on behalf of various clients.
- b. Orders (on some occasions) on behalf of the client viz. Act React Holdings Private Limited were placed by one of the directors of the company (Mr. Kuldeep Handoo). He was also a director of the said client.
- c. Mr. Sunil Saxena, director of Apoorva Fincap Limited (one of the clients of the noticee) introduced certain other clients namely Neha Fincap Private Limited and Adinath Propcorn Private Limited.
- d. Admittedly, the noticee had verified only signatures of certain clients. The fact that the noticee stopped trading on behalf of the said clients, once Mr Sunil Saxena stopped placing orders establishes the manipulative intent of the noticee, while dealing in the shares of the company. Besides, the noticee could not produce any document to prove that Mr Sunil Saxena was authorized to place orders on behalf of the said clients.

7. The above instances indicate that the noticee traded in the shares of the company even without verifying the background of some of the clients. In respect of the said clients, the noticee had traded at the instructions of a third

party. It is not in dispute that during the period of noticee's trades, the share price of the company increased as against a low volume of trade. The noticee also did not dispute the allegation of structured deals executed in the shares of the company. Only submission in that regard was that it was not aware that its clients were doing transactions with any other stock brokers.

8. As I had stated earlier, it is an admitted case that one of the promoter/director of the company used to place orders on behalf of one of the clients of the noticee. The said person is also a director of the said client. Therefore, it cannot be said that the noticee was not aware that its clients were connected to the company at the time of trades. Reasonable inference is that the noticee had executed the trades knowing very well that its clients had some or the other connections with the company or its promoter group. Even the noticee was aware of the manipulation taking place in the trading of the shares of the company during the period of its trades. In her statement to SEBI, Smt. Savita Bhansali, proprietor of the noticee stated, "When I came to know of price manipulation, I gradually reduced my volume in the scrip in the beginning." This very statement would establish the manipulative intent of the noticee while dealing in the shares of the company. Admittedly, the noticee had verified only the signature of some of its clients and executed trades on behalf of the said clients as per the instructions of third party. The submission that the noticee was interested only in earning brokerage, further buttress my finding that it was a necessary party to the entire game plan evolved by the promoter group of the company through various entities/persons for the purpose of manipulating the shares of the company. In short, the noticee facilitated the manipulation by its active role in the execution of transactions for the clients connected to the promoter group of the company. It is noteworthy that the noticee continued the transaction even after the knowledge of manipulation taking place in the shares

of the company. In such case, as a prudent intermediary functioning in the securities market, the noticee, should have stopped trading at least on behalf of the entities connected to the promoter group of the company. I also find that the price and volumes in the shares of the company increased artificially. Transactions in the shares of the company, which created misleading appearance of trading in the securities market, were effected only to increase its market price artificially. Most of the trades in the shares of the company during the period of investigation were amongst the promoter group of the company. As I mentioned earlier in this order, the role of the company including its promoter directors and some of the entities (including the clients of the noticee) were considered by SEBI in a separate proceedings and the said entities/persons were prohibited from dealing in securities market for a period of two years, vide order dated March 3, 2008. Interestingly, most of the clients of the noticee started trading in the shares of the company since April 2000, when its share price was very low. For instance, the clients namely Neha Fincap Private Limited and Apoorva Fincap Limited bought 15400 shares and 15500 shares respectively, started buying in the initial period of investigation. Though, the details of its transactions including the details of relationship among clients who had traded in the shares of the company were provided to the noticee, no justifiable explanation was provided by it.

9. Considering the facts and circumstances as mentioned above in this order, it is established that the clients of the noticee were connected to the promoter related entities and contributed to the artificial volume and price of the shares of the company. The trades also created misleading appearance of trading in the securities market. In the facts and circumstances, it cannot be said that the trades of the noticee were genuine. Hon'ble Securities Appellate Tribunal (SAT) in the matter of Ketan Parekh Vs SEBI, wherein it was held that:

“... .. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available... ..” The attendant circumstances of this case would only show that the noticee was very much involved the entire transactions which were designed to manipulate the transactions in the shares of the company. One cannot forget the fact that the noticee was a registered intermediary at the time of the trades. In terms of Schedule II of the Code of Conduct for sub brokers {Clauses A1,A(2), D(4)and D(5)} specified in Securities and Exchange Board of India(Stock Brokers and Sub-Brokers) Regulations, 1992, it is the duty of a sub broker to maintain high standards of integrity, promptitude and fairness in the conduct of its business. He shall also act with due skill, care and diligence in the conduct of his business. Further, a sub broker shall not *inter alia* create false market or indulge in any act detrimental to the investors’ interest or which leads to the interference with the fair and smooth functioning of the securities market. In the present matter, it is already established that the noticee facilitated the trades in the shares of the company which created a misleading appearance of trading in the securities market. It is sufficiently obvious that the noticee had failed to comply with his duties, as expected of a SEBI registered intermediary (during the time of the trades) and as required under the Code of Conduct (as mentioned above) and instead became a party to the manipulation in the shares of the company to the detriment of genuine investors. Thus, the noticee violated the above mentioned clauses of the Code of Conduct, while dealing in the shares of the company. Further, Hon’ble SAT, vide order dated December 17, 2008 in a similar matter in Gaurav Shah Vs Whole Time Member, SEBI *inter alia* observed “When the promoters of a company through their own front entities

start manipulating their own scrip, the charge is more serious and those who act in concert with them are equally responsible” (underline supplied)

10. The above findings would sufficiently prove that the noticee was aware of the mischief and was also a party thereto. Thus, I do not have any hesitation in concluding that the noticee *inter alia* violated Regulation 4 (b), 4 (c) and 4 (d) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995. However, taking into account the totality of the facts and circumstances, the present proceedings against Portfolio Equity Services stands disposed of as ordered herein below.

11. In view of the foregoing, I, in exercise of the powers conferred on me in terms of Section 19 read with Section 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 11 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 censure Portfolio Equity Services (having its address at A-640, Govind Marg, Malviya Nagar, Jaipur – 302017) and direct it to be careful and cautious while dealing in securities market.

K. M. ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: January 27, 2009