

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: M. S. SAHOO, WHOLE TIME MEMBER**

In the matter of Show Cause Notice No. IVD/ID7/SG/JK/166059, 166060 and 166063/2009 dated June 10, 2009 issued to: (a) Parsoli Corporation Limited, (b) Mr. Zafar Yunus Sareshwala, and (c) Mr. Uves Yunus Sareshwala

Date of Hearing: May 24, 2010

Appearances:

For Noticees: 1) Mr. Zafar Yunus Sareshwala, Managing Director & CEO, Parsoli
2) Mr. J. B. Chinai, Senior Advocate, and
3) Ms. Sonal, Advocate.

For SEBI: 1) Ms. Geetha G., Dy. Legal Adviser (Presenting Officer)
2) Ms. Kshama P. Wagherkar, Asstt. Legal Adviser
3) Mr. Rajesh Gujjar, Asstt. General Manager, and
4) Mr. Nikhil Bhiwapurkar, Manager.

ORDER

Under Sections 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

1. Based on an investigation into fraudulent transfer of shares of Parsoli Corporation Limited (Parsoli), SEBI issued a common show cause notice dated June 10, 2009 to the noticees alleging violations of the provisions of:

- (a) Sections 11C(2) and 11C(3) of the SEBI Act, 1992,
- (b) Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e) and 4(2)(h) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (PFUTP Regulations),
- (c) Regulations 53A and 54 (5) of the SEBI (Depositories and Participants) Regulations, 1996, and SEBI Circular No. D&CC/FITTC/Cir-15/2002 dated December 27, 2002, and
- (d) Clauses A(1), A(2), A(3), A(4) and A(5) of the Code of Conduct for Stock Brokers read with Regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

The SCN called upon the noticees to show cause as to why directions in terms of Section 11(4) and 11B of the SEBI Act, 1992, including debarment for an appropriate period, should not be issued.

2. Parsoli is a stock broker of NSE and BSE. It is also a depository participant of CDSL. Its shares are listed on BSE. Mr. Zafar Yunus Sareshwala and Mr. Uves Yunus Sareshwala are its Managing Director and Joint Managing Director respectively. Pinnacle Shares Registry Private Ltd. (Pinnacle) is its Registrar and Share Transfer Agent (RTA). There was no reply to the SCN. The noticees, however, appeared for personal hearing on May 24, 2010 when they made an unsigned written submission. I have carefully considered the SCN, oral as well as unsigned written submissions and other material available on records, and accordingly proceed to dispose of the proceedings.

3. The SCN makes the following allegations:
- a. The noticees introduced, transferred and dematerialised 80,800 fake shares in favour of 22 promoter / front entities by adopting an elaborate strategy. As per the strategy, they, and not the RTA, retained the specimen signature cards of shareholders, verified signatures of transferors and scrutinised the genuineness/correctness of share certificates, and approved transfers based on which RTA formally effected transfers. They assured and undertook full responsibility, vide letter dated August 16, 2005 to Pinnacle, to compensate transferee / holder / RTA, as the case may be, if any complaint about any transfer is received. Accordingly, they introduced 80,800 fake shares and forged the signatures on transfer documents. They verified fake share certificates and forged signatures of shareholders of corresponding genuine shares on transfer documents and approved transfer in favour of 22 promoter/front entities despite severe deficiencies on transfer documents. They dematerialised those fake shares soon after. When 252 shareholders of the corresponding 80,800 genuine shares requested Parsoli for dematerialisation, Parsoli rejected their requests on the ground that duplicate shares had already been issued / dematerialised. In compliance with the undertaking to the RTA, Parsoli compensated them by arranging off-market transfer of shares to them from four promoter / front entities who were beneficiaries of fake shares.
 - b. The noticees failed to ensure all matters relating to transfer of securities at a single point.
 - c. The noticees failed to provide critical information needed by the investigation. They provided misleading and contradictory information on occasions.
4. A summary of oral and unsigned written submissions of the noticees at the hearing is as under:
- a. They did not hand over the specimen signature cards to RTA as they were in a torn state and this could at most be an inadvertent error.
 - b. They did not have any motive as the shares, which have been allegedly transferred fraudulently, formed a miniscule part of the total shares of Parsoli and would not make any difference to the shareholding / voting power of the promoters.
 - c. They compensated 252 shareholders to avoid lengthy and expensive legal process.
 - d. After being satisfied in appropriate cases, they transferred the shares even if there was substantial difference between the signatures on transfer documents and those on the specimen signature cards.
 - e. The alleged fraudulent transfers took place in 2005. Till date no shareholder of Parsoli, including the shareholders mentioned in the SCN, has ever made any complaint to Parsoli, SEBI, police or any judicial forum about any fraudulent transfer.

- f. Parsoli is concerned with fake shares. It is aware that 80 people are holding fake shares and it has sent legal notices to them vide letters dated December 30, 2008 and June 16, 2009. It has lodged a police complaint on September 8, 2008.
- g. The alleged fraudulent transfers mentioned in the SCN do not pertain to the activities of Parsoli as a Broker or DP.

5. The noticees have not disputed the transactions. The undisputed fact is that the noticees verified transfer documents and approved transfers of 80,800 shares, belonging to 252 shareholders, in favour of 22 promoter / front entities even though there were severe deficiencies in transfer documents. Based on this fact and the evidences on record, the SCN alleges that the noticees introduced 80,800 fake shares and fraudulently transferred these. The issues that require determination in this regard are:

- a. Are the 80,800 shares transferred to 22 promoter / front entities fake?,
- b. If so, who introduced these fake shares?,
- c. Were 80,800 shares transferred fraudulently?, and
- d. If so, who transferred these shares fraudulently?

5.1 It is undisputed that 252 shareholders tendered 80,800 genuine shares for demat. On receipt of their requests for demat, Parsoli confirmed to them that they were genuine shareholders and credited their demat accounts with 80,800 shares by off-market transfers from the accounts of four promoter / front entities. It is also undisputed that Parsoli has not issued duplicate shares other than a total of 1,100 shares issued to Mr. Kasam Khan and Ms. Nafisa Memon. This has been confirmed by Pinnacle vide letter dated February 18, 2009. If these 252 persons were genuine shareholders and they tendered genuine share certificates for demat, and no duplicate shares had been issued by Parsoli, the shares tendered for transfer in favour of 22 promoter / front entities were clearly fake. Further, vide letter dated August 11, 2008, Parsoli stated that the company or promoters had not bought any shares in off-market. If promoters did not buy any shares and still tendered 80,800 shares for transfer in their favour, these shares could only be fake. This is the reason why the noticees did not clarify which set of shares – the set transferred to 22 promoter / front entities or the set tendered by 252 shareholders for demat – was genuine. The silence of the noticees in this regard confirms that the shares transferred to 22 promoter / front entities were fake.

5.2 It is undisputed that the DPs had received fake share certificates along with request for demat from 22 promoter / front entities. This makes it clear that the fake shares were introduced before request for demat was made. I find from Annexure III to the SCN that 10 out of 22 transferees are family members (brothers, children and mother) of promoter-brothers and they tendered 21,200 fake shares for transfer. Further, three promoter-brothers (Mr. Zafar Yunus Sareshwala, Mr. Uves Yunus

Sareshwala and Mr. Talha Yunus Sareswala) tendered 13,400 fake shares and signed the transfer documents on behalf of their eight minor children. In fact, Mr. Talha Yunus Sareswala, one of the promoters, alone tendered 7,500 fake shares for transfer in his favour. This means that the noticees only introduced and tendered fake shares for transfer in favour of 22 promoter / front entities. If they were not to introduce fake shares, there was no need for them to assume the responsibility to scrutinise the genuineness of share certificates and to undertake to indemnify the persons aggrieved by transfer of shares. Further, I find from numerous instances cited in the SCN that the noticees transferred and dematted fake shares when they had in possession the genuine shares. For example, Parsoli received request for demat of 1500 genuine shares from Mr. Arab Ahmed Bharuchi on July 14, 2005. While this demat request was kept pending, the fake shares corresponding to the said 1500 genuine shares of Mr. Bharuchi were transferred to promoter, Mr. Talha Yunus Sareswala on July 19, 2005 and these fake shares were dematted on August 13, 2005. After fake shares were dematted, the request for demat of genuine shares was rejected on August 17, 2005 on the ground of 'signature mismatch'. The noticees would not transfer fake shares when they had genuine shares in possession unless such fake shares were introduced by them.

5.3 It is now clear that fake shares were introduced and these were used to transfer shares to 22 promoter / front entities. Transfer of shares through the medium of fake shares amounts to fraudulent transfer of shares. The example cited in Para 5.2 above also proves that the shares were transferred fraudulently. In the said example, the noticees transferred fake shares to promoter / front entities when they had in possession the genuine shares which were received for demat. The transfers were fraudulent in view of the following:

- a. All the 22 transferees of fake shares are promoter / front entities. In fact, 10 of them are members of promoter (Sareshwala) family.
- b. Transfers in favour of promoter / front entities were approved even though there were serious glaring deficiencies in transfer documents. Demat of corresponding genuine shares of 252 shareholders were rejected even though there was no deficiency in demat documents.
- c. Parsoli considered the 252 shareholders as genuine shareholders of the corresponding genuine 80,800 shares and, therefore, compensated them.
- d. Parsoli arranged compensation by debiting demat accounts of four promoter / front entities who were beneficiaries of fake shares. Had these four entities been genuine purchasers of the shares, they would not forego these shares at the request of Parsoli.

5.4 The noticees, and not the RTA, was in possession of specimen signature cards. They did not provide these cards despite being asked for by the RTA. They scrutinised fake shares for genuineness and forged signatures, and approved transfers in favour of promoter / front entities even though

there were serious deficiencies in transfer documents. They had undertaken to indemnify genuine investors if they suffered in the process. In fact, they arranged compensation for 252 genuine shareholders. Thus, it is clear that the noticees transferred 80,800 fake shares fraudulently.

5.5 The above facts make it clear that the noticees introduced 80,800 fake shares and transferred these 80,800 fake shares corresponding to 80,800 genuine shares belonging to 252 shareholders in favour of 22 promoter / front entities fraudulently and thereby violated provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(h) of PFUTP Regulations.

6. It is undisputed that Parsoli did not part with the specimen signature cards. It was verifying signature for transfer of shares and scrutinising the shares certificates received for transfer for their genuineness. It did not hand over the specimen signature cards to its RTA, which had asked for the same. It refused to provide the same as they were in a torn condition. I, however, find from the records that SEBI officials visited the company and found these cards in good condition. Thus, the reason given by the noticees is not valid. In any case, if the law requires certain things to be done in a particular manner, it has to be done in that manner only. The noticees cannot carve out any exception on their own. Further, it is difficult to accept that the noticees could take better care of the torn documents than a SEBI registered RTA would. Therefore, I find that the noticees, by retaining the specimen signature cards with themselves, failed to consolidate all the matters and records related to share transfers at single point, which enabled them to undertake fraudulent transfer of shares as concluded in Para 5 above. Thus, the noticees violated the provisions of Regulations 53A of the SEBI (Depositories and Participants) Regulations, 1996, and SEBI Circular No. D&CC/FITTC/Cir-15/2002 dated December 27, 2002.

7. The following are examples where the noticees provided misleading / contradictory information to shareholders and to investigation and failed to provide critical information to investigation:

7.1 Parsoli introduced and transferred 80,800 fake shares. The corresponding genuine shares were held by 252 shareholders. When these 252 shareholders approached for dematerialization, the RTA rejected demat requests with the reason: *“Original certificates present are those for which the duplicates have already been issued”*. However, Parsoli responded: *“Above referred DRN has been rejected by our RNT under Code-13-Misc- certificate received is already stands dematted We have taken necessary steps to compensate you considering that your request seems to be genuine...”*. Further, as stated in the example in Para 5.2 above, Parsoli transferred and dematted fake shares while keeping the request for demat of corresponding genuine shares on hold. After demat of fake shares, it rejected request for demat of genuine shares on the ground ‘signature mismatch’. Thus, Parsoli provided false and misleading information to its shareholders. Parsoli was asked by investigation to clarify why different reasons were cited for a given rejection, it did not provide any clarification.

7.2 When the noticees were asked to comment on the rejection of demat requests of some shareholders and subsequent compensation to them by their front entities, they submitted: *“..... all these shares were purchased by the promoter family and our associates by way of off-market transaction and were submitted to Parsoli for transfer. While processing the transfer of these shares these got stolen..... These shares reached back to the respective parties. Since our own internal staff was involved in this stolen activity, they reached back to the original shareholder whose name was in the register.”* Vide its letter dated August 11, 2008, Parsoli submitted: *“...the company or promoters have not bought any shares off market, as we have not purchased there is no seller involved.”*

7.3 Vide letter dated July 19, 2008, Parsoli submitted that four persons *viz.* Mr. Mukhtar Kothawala, Mr. Yunus Lokhandwala, Mr. Ashfaq Sareshwala and Mr. Abdul Kader Sareshwala helped the company in compensating shareholders by providing their own shares. Vide its letter dated August 11, 2008, however, it submitted: *“Mr. Mukhtar Kothawala, Mr. Yunus Lokhandwala, Mr. Ashfaq Sareshwala and Mr. Abdul Kader Sareshwala were never involved in any compensation. They have only helped us during riot face of 2003-04.”* However, the fact is that the accounts of four promoter / front entities, namely, Mr. Gulamrasul Mohiuddin Bombaywala, Mr. Talha Yunus Sareshwala, Mr. Mohammed Alibhai Kothawala and Mr. Iftekhar Mohammadyusuf Mansuri, were debited to compensate the 252 genuine investors.

7.4 Pinnacle had asked for specimen signature cards from Parsoli. However, vide letter dated August 16, 2005, Parsoli declined to provide the same stating: *“Signature record is with the company and as it is on torne condition and not properly maintained and as such it is difficult/problematic to hand over the same to R&T”*. Parsoli has reiterated this before me at the time of hearing. However, vide letter dated August 11, 2008, Parsoli stated that it has no record of any letter received from Pinnacle asking for specimen signature cards.

7.5 The noticees did not provide information pertaining to number of transfer/ demat requests rejected by the company since 2003, instances of signature mismatch, details of share transfer process, names and other details of compensators, reasons for fraudulent transfer and dematerialization of shares and subsequent compensation to the investors, details of off-market transactions by the promoters/ directors, details of stolen shares, reason as to why FIRs were lodged only after initiation of investigation, details of shares pledged by the promoters/directors since 2003, etc. By denying these critical inputs for investigation, the noticees demonstrated utter disregard to and non-cooperation with the regulator and prevented unearthing of the game plan of the noticees fully.

7.6 Thus, the noticees provided misleading information and refused to provide critical information necessary to arrive at the truth and thereby violated provisions of Sections 11C(2) and 11C(3) of the

SEBI Act, 1992. I note that in the matter of *DKG Buildcon Pvt. Ltd. vs. SEBI*¹, the Hon'ble SAT had observed: “....It is of utmost importance that every person from whom information is sought should fully co-operate with the investigating officer and promptly produce all documents, records, information as may be necessary for the investigations. If persons are allowed to flout the summons issued to them during the course of the investigations, the Board as the watchdog of the securities market will not be able to perform its duties in protecting the interests of the investors and safeguarding the integrity of the securities market.” Similarly, in the matter of *Vikas Gourihar Narnavar vs SEBI*², the Hon'ble SAT had observed: “....It must be understood that the respondent Board as a market regulator cannot perform its statutory duties and obligations if the market players, like the appellant, refuse to cooperate when the former undertakes investigations. We do not know what would have been unearthed if the appellant had responded to the summons and furnished the information asked from him. Not responding to the summons is, indeed, a serious irregularity/illegality which cannot be viewed lightly.”

8. The defence arguments by the noticees do not really counter the charges made against them. Nevertheless, I have examined the same in this paragraph.

8.1 The noticees have stated that they did not part with signature cards as those were in torn condition and it was at most an inadvertent error. I, however, find that neither the signature cards were in torn condition nor was it an inadvertent error. The investigation has found that these cards were not in torn condition. It was not an inadvertent error as Parsoli clearly refused to part with these cards even though it was asked to do so by the RTA and it undertook to compensate if any person suffers in the process of share transfers.

8.2 The noticees have submitted that there are no complaints from investors. I, however, find that the investigation was initiated based on complaints received from the shareholders of Parsoli regarding rejection of dematerialisation / share transfer requests by the company. As on May 15, 2010, there were 13 complaints each pending with CDSL and NSDL. Further, as per the information provided by Pinnacle in respect of the said 252 shareholders, 176 shareholders did not get the dividend that was declared on May 15, 2007 and November 14, 2007. In any case, the absence of large number of complaints merely indicates that the genuine, unsuspecting investors were not aware of the fraudulent transfer and hence they had not lodged any complaint with any authority. Moreover, Parsoli was compensating the investors, who had applied for dematerialization of their shares, to silence them.

8.3 The noticees have stated that they have lodged complaints about fake shares. I note that Parsoli filed a police complaint on September 8, 2008, that is, only after SEBI initiated the investigation. This was clearly an afterthought reactive action.

¹ Appeal No. 106 of 2006, date of decision January 7, 2009

² Misc. Application No. 32 and Appeal No. 57 of 2010, date of decision April 20, 2010

8.4 The noticees have submitted at the time of hearing: “...*promoters of Parsoli did not and could not have had any motive to fraudulently transfer its shares to themselves or to any of the alleged front entities....*”. The noticees would not be transferring fake shares when they have in possession genuine shares unless they have some motive. There can be many motives. The economic interests in 80,800 shares could be the motive. In any case, the presence of motive is not essential for a civil proceeding of this nature, when it is amply evident that the noticees engaged in fraudulent transfers of shares to its promoters/ front entities. I note that the Hon’ble SAT in *Pyramid Saimira Theatre Ltd vs. SEBI*³ has held: “*There is no denying the fact that the present proceedings were initiated against the appellant company under Section 11B of the Act for imposing civil penalties and the enquiry that was conducted by the Board is of a civil nature. It is by now well settled that civil action could be taken against a delinquent even for a criminal act. It is trite law that proceedings initiated by the Board against a delinquent under the provisions of the Act are civil in nature and mens rea or criminal intent is not an essential element for imposing penalties for breach of civil obligations.*” Also, in the matter of *SEBI vs. Cabot International Capital Corporation*⁴, the division bench of the Hon’ble Bombay High Court has held: “*.. The SEBI Act and the Regulations, are intended to regulate the Security Market and the related aspects, the imposition of penalty, in the given facts and circumstances of the case, cannot be tested on the ground of “no mens rea, no penalty”. For breaches of provisions of SEBI Act and Regulations, according to us, which are civil in nature, mens rea is not essential. On particular facts and circumstances of the case, proper exercise of judicial discretion is a must, but not on a foundation that mens rea is an essential to impose penalty in each and every breach of provisions of the SEBI Act.*”

8.5 The noticees have submitted that they compensated 252 shareholders to avoid lengthy and expensive legal process. I, however, find from records, which has not been disputed by the noticees, that they compensated the 252 shareholders only after satisfying themselves that they were genuine shareholders. I also find from records, which has not been disputed by the noticees, that they had undertaken to indemnify anybody who suffers loss on account of transfers made by Parsoli. Further, I note that the noticees did not compensate the genuine shareholders; they only arranged compensation from four entities. Why should these four entities oblige the noticees to enable the latter to avoid expensive legal process? They did so because they were beneficiaries of fake shares introduced and fraudulently transferred by the promoters.

8.6 The noticees have submitted that on being satisfied after application of mind in appropriate cases, they transferred the shares even if there was substantial difference between the signatures on transfer documents and those on the specimen signature cards. At the time of hearing they were granted seven days to produce, by way of example, records of transfer in favour of Ms. Dipika Hasmukh Gandhi and Mr. Bhavin H. Khamar, to indicate application of mind. Vide its letter dated

³ Appeal No. 242 of 2009, date of decision April 7, 2010

⁴ (2004) 51 SCL 307

May 28, 2010, Parsoli provided a proforma of a letter that it used to send to investors when signature difference / mismatch was found. They failed to produce the records indicating application of mind in particular sample cases. I further note that in the example given in Para 5.2 above, Parsoli did not write any such letter; it simply rejected demat request on the ground of 'signature mismatch'.

9. The noticees have submitted that the alleged fraudulent transfers do not pertain to the activities of Parsoli as DP or broker. I find that the activities alleged pertain to Parsoli as a listed company. I agree with Parsoli and hence the charge that Parsoli violated the provisions of Clauses A(1), A(2), A(3), A(4) and A(5) of the Code of Conduct for Stock Brokers read with Regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 is not established.

10. In light of the above findings, I find that the noticees:

- 10.1 By not providing information to SEBI and giving misleading and contradictory information, have violated the provisions of Sections 11C(2) and 11C(3) of SEBI Act, 1992;
- 10.2 By not handling and maintaining the share transfer related work at a single point, violated Regulations 53A of the SEBI (Depositories and Participants) Regulations, 1996 and SEBI Circular no. D&CC/FITTC/Cir-15/2002 dated December 27, 2002; and
- 10.3 By engaging in issuance of 80,800 fake share certificates, forging signatures of genuine investors on the transfer documents, verifying those fake share certificates and forged signatures, approving fraudulent transfer and dematerialization of those fake share certificates in favour of 22 promoters/front entities, violated Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(h) of the PFUTP Regulations.

11. The introduction of fake shares is the worst kind of fraud that can be perpetrated in securities market as it converts the securities market to a market for fake shares. The fraudulent transfer of shares to promoter / front entities, that too, by a listed company, which is a registered intermediary, and its Managing Director and Joint Managing Director, who are promoters of the company, by a carefully crafted strategy, is the worst damage to the integrity of securities market and the confidence of investors. Equally damaging is the deliberate non-cooperation and submission of false and misleading information by a listed company, which is a registered intermediary. The continued participation of the noticees poses a serious threat to orderly securities market and safety of investors. The ends of justice would be met if the noticees are restrained from causing any further damage to securities market and investors as well as the existing shareholders are given an opportunity by the promoters to exit the company.

12. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(4) and 11B thereof, hereby

- (a) restrain Parsoli Corporation Ltd. (Permanent Account Number: AABCP9030F), Mr. Zafar Yunus Sareshwala (Permanent Account Number: ANYPS8494D) and Mr. Uves Yunus Sareshwala (Permanent Account Number: AOFPS5856M) from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market directly or indirectly for a period of seven years from the date of this Order (except for complying with directions mentioned at (c) below);
- (b) restrain Mr. Zafar Yunus Sareshwala and Mr. Uves Yunus Sareshwala from holding the position of Director in any listed company for a period of seven years from the date of this Order;
- (c) direct Mr. Zafar Yunus Sareshwala and Mr. Uves Yunus Sareshwala to make a public offer through a merchant banker to acquire shares from public shareholders by paying them the value determined by the valuer in the manner prescribed in Regulation 23 of the SEBI (Delisting of Equity Shares) Regulations, 2009 and acquire the shares offered in response to the public offer, within three months from the date of this Order;
- (d) direct BSE to facilitate valuation of shares to be purchased as at (c) above, and compulsorily delist Parsoli Corporation Ltd., if the public shareholding reduces below the minimum level in view of aforesaid purchase.

13. A copy of this Order shall be served on all recognized stock exchanges and depositories to ensure that the directions given in Para 12 above are strictly complied with. A copy of this Order shall also be served on NSE, BSE, and CDSL of which Parsoli Corporation Ltd. is a member or depository participant or where Parsoli is listed, as the case may be.

14. This Order shall come into force with immediate effect.

DATE: July 27, 2010
PLACE: MUMBAI

M. S. SAHOO
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA