

Sebi Vs. Prosoft Systems Ltd.

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Court : SEBI Securities and Exchange Board of India or Securities Appellate Tribunal SAT

Decided On : Dec-12-2002

Judge : G Bajpai

Appellant : Sebi

Respondent : Prosoft Systems Ltd.

Judgement :

1. Prosoft Systems Ltd. (hereinafter called Prosoft) was incorporated as private Limited Company on July 28, 1993. It was converted in to a public limited company on January 19, 2000. It has its registered office at 186, Datta Complex, Main Road, Gandhi Bajar, Basavanna Gudi, Bangalore, 004. Mr. Mohan Kumar was the main Promoter and Managing Director of the Prosoft.

2. During October 2000, the company came out with a public issue of 61.60 lakh shares at par aggregating to Rs. 616 lakhs (Rs. 2.50 on application and 7.50 on allotment). The issue was closed on October 23, 2000 and BGSE granted permission for listing on November 17, 2000. The last date for payment of allotment money was December 15, 2000.

Bangalore Stock Exchange had permitted trading in the scrip to commence on December 27, 2000. Trading was permitted in compulsory demat mode.

3. However, Prosoft had not credited shares to the demat account of any shareholder as on that date. Being the Managing Director of the Company, Mr. Mohan Kumar failed to discharge his responsibility. The first credit was given only on January 12, 2001. Prosoft had given credit of 3.00 lakh shares to the demat account of Shri Panwar on January 12, 2001 and the remaining shareholders accounts were credited only after January 22, 2001. This created artificial scarcity of deliverable securities in the market. Thus, the company had failed to give demat credit to its shareholders before commencement of trading in compulsory demat mode. This was apparently done with the active support of Shri Mohan Kumar.

4. It was stated in the prospectus for the said public issue that the post-issue paid up capital of the company will be Rs. 1026 Lakhs whereas the audited annual report of the company for the year ended March 31, 2001 revealed that the paid-up capital was Rs. 575.83 lakhs and Rs. 450-19 lakhs were calls in arrears.

5. As per the public issue prospectus of the company dated September 27, 2000, the scrip of the company was proposed to be listed on Bangalore, Hyderabad and Ahmedabad Stock Exchanges. Mohan Kumar K N Managing Director, Kishore Kumar K N Technical Director, Avinash Jodhawat Director, Kamal Kishore Kasat Director, Pravin M Shah Company Secretary.

7. The price volume data of the scrip on Bg SE for the period from December 27, 2000 to March 2002 is as under:

Date	Avg.
27/12/2000	20.29
28/12/2000	25.28
29/12/2000	25.54
29/12/2000	23.89
31/12/2000	23.89
01/01/2001	23.89
02/01/2001	23.89
03/01/2001	23.89
04/01/2001	23.89
05/01/2001	23.89
06/01/2001	23.89
07/01/2001	23.89
08/01/2001	23.89
09/01/2001	23.89
10/01/2001	23.89
11/01/2001	23.89
12/01/2001	23.89
13/01/2001	23.89
14/01/2001	23.89
15/01/2001	23.89
16/01/2001	23.89
17/01/2001	23.89
18/01/2001	23.89
19/01/2001	23.89

High	Low	Close	No. of	Volume	Value of	Rate	Trades	Traded	Trading
20.29	28	14	25.15	37	8252	173429	28/12/2000	25.28	27.15
23.15	25.45	132	59207	143270	929/12/2000	25.54	27.5	23.45	23.7
88	36107	87772	81/1/2001	23.89	25.6	21.85	25.6	32	8506
21027	12/1/2001	27.38	27.6	26.7	27.6	29	19104	52214	53/1/2001
28.03	29.8	25.45	29.25	76	45610	124175	34/1/2001	30.96	31.45
29.5	31.45	12	5001	154416	5/1/2001	31.33	33	29.3	33
8	3552	11412	98/1/2001	33.86	35.5	32.5	34.95	36	30058
10137	279/1/2001	35.2	37.7	32.5	36.6	14	2850	97970	10/1/2001
36	36	36	36	5	1200	43200	11/1/2001	35	36
34	34	3	710	24560	12/1/2001	35.35	36.7	34	36.7
16	4000	141900	15/01/2001	38.75	39.5	38	39.5	6	2740
107130	16/01/2001	36.4	36.4	36.4	36.4	2	500	18200	17/01/2001
36	36	1	500	18000	19/01/2001	36.08	38.4	33.5	34
9	3610	135185	22/01/2001						

31.85	33	31.4	31.5	17	5332	16797524/01/2001	29	29	29	29	1	1	2925/01/2001
27.28	26.7	26.7	26.7	1	5	13429/01/2001	25.13	24.6	24.6	24.6	2	11	27130/01/2001
22.65	22.65	22.65	22.65	2	30	68031/01/2001	20.85	20.85	20.85	20.85	1	15	3137/2/2001
19.2	19.2	19.2	19.2	1	10	19221/02/2001	17.7	17.7	17.7	17.7	1	1	1823/02/2001
16.65	16.3	16.3	16.3	1	2	3312/3/2001	15	15	15	15	2	2	3021/03/2001
13.8	13.8	13.8	13.8	1	1	1430/03/2001	12.45	12.45	12.45	12.45	1	1	60074702/4/2001
12.35	12.35	12.35	12.35	1	699	863322/06/2001	10.5	10.5	10.5	10.5	1	1	11

8. Based on the above data, it is noted that the total number of trades in the scrip on Bg SE over a period of 6 months i.e. from December 27, 2000 to June 22, 2001 was only 539. During the period 2,38,217 shares were traded and the total value of shares traded was Rs. 65,12,251/- only. Bg SE has informed to us that there has been no trade in the scrip subsequent to June 22, 2001 till March 2002.

9. The details of trading in the scrip of Prosoft on Hyderabad Stock Exchange during the period from December 27, 2000 to March 31, 2002 is as under:

Date	Open	High	Low	Close	No. of	Vol.
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10. The scrip was not traded on Ahmedabad Stock Exchange during the period from December 27, 2000 to April 4, 2002. Therefore it is found that the scrip was traded in significant volumes only on the Bangalore Stock Exchange.

11. It was further found that there were no major corporate announcements during the period under enquiry. There was variation in the price of the scrip of Prosoft listed on Bangalore Stock Exchange (Bg SE), between Rs. 25.15 and Rs. 36.40 between December 27, 2000 and January 16, 2001 i.e. an increase of about 45% in 15 trading days. In view of this SEBI conducted investigations into the dealings in the shares of Prosoft for alleged market manipulation. Investigations revealed several irregularities in the trading done by Shri Pravin Panwar in the shares of the company, such as creation of artificial volumes & false market in the shares and price rigging. This was prima-facie found to have been done with active support of Shri. Mohan Kumar.

12. Shri. Mohan Kumar saw to it that as soon as the Bg SE permitted trading in the scrip, Shri Pravin Panwar, who is associated with Prosoft and who had marketed the entire public issue, executed substantial trades in the scrip acting through two different brokers, namely, Sunil Investments and Index Finlease Services Ltd. In many of the trades, Sri Panwar acted as both buyer and seller.

13. In view of the above a show cause notice was issued to Mohan Kumar bearing no IES/ ID7/ 901/ 13141/ 2002 dated 17-07-02 for violating SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 1995 asking them to show cause why suitable direction under regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 read with Section 11 and 11B of the SEBI Act, 1992 including a direction to prohibit them from accessing the securities market for a particular duration should not be passed against them.

14. The said show cause notice was not replied to by Mr. Mohan Kumar.

An opportunity of personal hearing was also accorded to him on 29-10-02 which he did not avail either. An ex-parte order therefore is passed based on the available material looking into the gravity of the charges and it is considered that no purpose will serve if another opportunity of hearing is given except further delay in proceedings.

15. It is found that there were no fully paid up shares in demat form on December 27, 2000 i.e. when Bg SE permitted the trading in the scrip.

It is apparent that Mr. Mohan Kumar knew of his fact being the MD of the company. In fact, the first demat credit of fully paid up shares was given by NSDL only on January 12, 2001. The said credit was given to Shri Pravin Panwar for 3,00,000 shares. This was apparently done at the instance of Sri Mohan Kumar. The first demat credit of shares was given by CDSL on January 22, 2001. Therefore, as on the date when commencement of trading was permitted in compulsory demat mode i.e.

December 27, 2000, there was not even a single share in demat form available with the shareholders. It may therefore be seen that the company did not credit the fully paid up shares after the closing date for payment of allotment money i.e. December 15, 2000.

16. It was further observed that during the first two settlements, the members who traded in the scrip had not delivered against their sale position. Even if it was delivered it was partly paid shares in which case the exchange has rejected the deliveries and settled the open position at highest rate in first settlement and during second settlement it was auctioned day close plus 20%. During the third settlement, the exchange had initiated the auction for non-delivery of shares against sale position. In auction settlement, one of the members namely; M/s. Sunil Investments had participated and gave delivery of shares which was received from Shri Pravin Panwar, who is the main trader in the scrip. It is observed that Pravin Panwar was the only person who was allotted shares in demat form.

17. In the light of what has been stated in the foregoing paragraphs, it is apparent that during the first two settlements, delivery could not take place because no fully paid up shares were available with the public. During the third settlement, Shri Pravin Panwar, who was the only person to have received demat credit of shares, has offered the shares in auction. This was deliberately done with a view to see that the prices of the scrip were appreciated unnaturally in defiance of the price discovery mechanism of the Exchange. It was found that Sri Mohan Kumar facilitated the same being the Managing Director. The motive behind this was apparently to get wind fall profit from the sale of the securities.

18. It further came to light in the investigation that the Shri Pravin Panwar had made multiple applications in the public issue of Prosoft, furnishing different addresses. He had made 13 such applications for allotment of 2600 shares on cumulative basis. Similarly, such multiple applications were received from various relatives of his like Shri D.B. Panwar, Smt. Savita Panwar, Shri Kamal Kishore, Smt. Kamaladevi etc.

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Road Bangalore 200 500 Savitha Pawar Vithal Pawar 35 GC-I Krishna K R Road Bangalore 19. Shri Pravin Panwar explained in his statement that he had marketed the entire public issue. He stated that when his agents asked him to give an address to be filled in the various applications collected by them from the investors, he had asked them to put his address in the application forms. The above reply of Shri Panwar makes it very clear that the Prosoft accepted the multiple applications in various names in violation of DIP Guidelines and Companies Act.

20. Sri Mohan Kumar, sated under oath that the multiple applications received during the public issue did not come to the notice of the Company. However, Sri Modi, COO of Intime Spectrum, contradicted this statement. Sri Modi stated that they had taken up the matter with the company even before finalizing the basis of allotment and that the company requested them not to reject the multiple applications since the issue was only marginally oversubscribed. Sri Modi also furnished copy of the Board resolution passed by the Company. This could not have been done without the active support of Sri Mohan Kumar. Hence Kumar is responsible for the acts of the Company.

21. It was found that the scrip was traded by the said Pravin Panwar from the day the trading permission was granted by Bg SE. The details of the individual trades executed by the said Pravin Panwar on December 27, 2000 are as under:

Name of the Broker	Bought Rate	Sold Rate	Traded value* (In rupees)
Sunil Investments	200 14.00	-2800.00	200 16.00 3200.00
	500 17.25	-8625.00	300 17.50 -5250.00
	100 23.60	-2360.00	100 23.90 -2390.00
	150 24.90	-4980.00	150 23.95 -3592.50
	200 24.90	-4980.00	200 24.00 -4800.00
	1500 27.00	-2700.00	1 26.50 -26.50
	98 27.44	-2744.00	1 27.00 -27.00
	2 28.00	-56.00	98 28.00 -2744.00
	48 28.00	-1344.00	2 28.00 -56.00
Index	200 14.00	-2800.00	50 28.00 -1400.00
Finlease	200 16.00	-3200.00	2 28.00 -56.00
Services	200 18.75	-3770.00	200 19.00 -3820.00
	200 14.00	-2800.00	200 19.00 -3820.00

22. The above table clearly revealed that Pravin Panwar purchased 4902 shares of Prosoft and sold 4700 shares, acting through two brokers. Out of the above, the bulk of the trades i.e. purchase of 4302 shares and sales of 3700 shares have been executed through Sunil Investments.

23. Pravin Panwar also got executed 35 transactions (both bought and sold) through Sunil Investments. Based on the Price Volume data furnished by Bg SE, it is noticed that there were only 37 transactions in that scrip for a total traded volume of 8252 shares on December 27, 2000.

24. Thus, he had done almost the entire transactions in the scrip on December 27, 2000. It is also seen that, acting through Sunil Investments, Sri Pravin Panwar got executed these trades at successively increasing prices starting from Rs. 14.00 and closing at Rs. 28.00. It was noted that Rs. 28.00 was the highest traded price on that date. Out of the above transactions done on his behalf on December 27, 2000, he had acted as both buyer and seller in the case of six transactions aggregating to 1150 shares. This resulted in the artificial rise in the price of the scrip. It is therefore found that Sri Pravin Panwar had constituted the single largest trading client on December 27, 2000 (both on buy and sell sides).

25. It was further found that the trades done by Sri Pravin Panwar constituted 42% of the total traded volume in the scrip of Prosoft for the period December 27, 2000 to January 16, 2001. He dealt in the scrip during the above period through two different brokers namely, M/s.

Sunil Investments and Index Finlease Services Ltd. His daily trading details, are as under:

27-12-00	4302	3700	60228-12-00	21793	22944	-115129-12-00	12401																												
11752	64901-01-01	2302	1901	40102-01-01	3299	3301	-203-01-01	8100	7100																										
100004-01-01	200	0	20005-01-01	500	501	-108-01-01	10703	11900	-119709-01-01	1750	400	135010-01-01	0	1200	-120011-01-01	500	210.00	29012-01-01	1600																
200	140015-01-01	0	1840	-184016-01-01	0	500	-50027-12-00	600	1000	-40028-12-00	7300	8200	-90029-12-00	5100	4300	80001-01-01	1500	1000	50002-01-01	6301	6301	003-01-01	6300	5200	110004-01-01	0	1100	-110009-01-01	200	100	10012-01-01	900	1000	-100	26.

It is evident from the above tables that during the period from December 27, 2000 to January 16, 2001, he had purchased 95,651 shares and sold 95,650 shares, on gross basis. In many of the above trades, he was found to have acted both as a buyer and a seller with a view to influence the market price of the scrip.

27. Sri Pravin Panwar in the statement under oath given to the investigating authority, which was recorded on April 4, 2002 had confirmed that he tried to create volume / trading interest in the scrip to dispose off his holdings. In the aforementioned statement he had further confirmed that there were no circuit filters for the first three days (after commencement of trading). This was intentionally and deliberately done with the active support from Prosoft and its managing Director who had ensured that nobody else in the market had the shares with them to trade in the market. This creation of artificial scarcity of shares of prosoft was a fraud committed on the investors.

28. Because of this artificial scarcity created by Prosoft, its Managing Director Mohan Kumar and Pravin Panwar, being the lone allottee of demat shares, the price discovery mechanism of the exchange was influenced artificially by putting transactions at successively increasing rates and acting as both buyer and seller in various transactions.

29. It was noticed that two applicants namely; M/s. Mardia Sons Holdings Ltd. and M/s. ASL Holdings Pvt. Ltd. had applied for 54,40,000 shares amounting to Rs. 136 lakhs, out of the total of 61,60,100 shares amounting to Rs. 153,92,555/- (Rupees one crore fifty three lakhs ninety two thousand five hundred and fifty five only) received in the public issue. Thus, the above mentioned two applicants constituted about 88% of the total number of shares applied for/allotted in the public issue.

This fact was known to Mr. Mohan Kumar personally being the Managing Director.

30. It is evident from the statement of bank account of Prosoft (CA No.980 with Vijaya Bank, Vani Vilas Road Branch, Bangalore) that the public issue proceeds of Rs. 153,92,555 (Rupees One crore Fifty Three Lakhs Ninety Two Thousand Five Hundred Fifty Five Only) was transferred from the public issue collection account on November 28, 2000. The same day a sum of Rs. 220 lakhs was transferred to M/s. Touchwood Interiors from the company account.

31. Touchwood Interiors transferred this amount to Ananya Publications Pvt. Ltd. (Rs. 170 lakhs), Shri Mohan Kumar (Rs. 30 lakhs) and Shri Pravin Panwar (Rs. 20

lakhs). M/s. Ananya Publications and Shri Mohan Kumar transferred the same amount i.e. Rs. 170 lakhs and Rs. 30 lakhs back to the company's account on the same day. Shri Pravin Panwar transferred Rs. 18.68 lakhs back to the company on the same day. This clearly manifests the role of Mohan Kumar in artificial creation of market and creating also of a facade of full subscription.

32. On November 28, 2000, the company transferred Rs. 140 lakhs to Kamal Investments, a firm belonging to Shri Pravin Panwar. M/s. Kamal Investments used this money to issue two DDs for Rs. 100 lakhs and Rs. 36 lakhs respectively. Kamal Investments did not respond to the summons seeking clarifications regarding the beneficiaries of these DDs.

However, based on the bank statement of Mardia Sons and the statement made by the representative of Mardia Sons, it was found that Kamal Investments had issued the DD for Rs. 100 lakhs to Mardia Sons and was drawn in favour of ASL Holdings, Rs. 36 lakhs.

33. This flow of funds from the company to Kamal Investments and thereafter to the applicants indicates the financing of the public issue for the purpose of full-subscription. Mohan Kumar stated that the money paid by the company to Kamal Investments was paid towards reimbursement of public issue expenditure. Since the total money collected from the public issue is only Rs. 153.93 lakhs, and the amount paid to Kamal investments was Rs. 140 lakhs it is clear that this statement is far from truth. This is a clear proof of the fact that Mr. Mohan Kumar acted only to facilitate the manipulation of the public issue by the said Pravin Panwar.

34. As to the reason behind Mardia Sons applying for more than 60% of the shares offered in IPO, it was stated that since the market for IT industry was poor they thought it would be a good time to make investment in company engaged in IT related services. Mardia Sons stated that later they sold these shares to Kamal Investments.

35. Shri Ravikant, Managing Director, ASL Capital Holdings Pvt. Ltd., stated that ASL had applied for 14, 40,000 shares of Rs. 2.50 each and was allotted 14, 34,100 shares. According to him at the time of the IPO of Prosoft, many IPOs'

were getting oversubscribed by 20-25 times.

Hence, in order to ensure allotment of shares, they applied for a large quantity. He denied that it was a financing transaction and stated that since they were allotted large quantity of shares of Prosoft, they were not in a position to dispose it off in the market. He further stated that Kamal Investments offered to buy the shares allotted to them for a consideration of Rs. 36.57 lakhs and they agreed to it.

36. It is therefore clear that the two applicants are in fact arranged applicants to bailout the public issue. It is also found from the above facts that the public issue was not fully subscribed but for the applications of these two entities. It is further found that the consideration of the shares by way of application money was paid back to the applicants from the public issue proceeds.

37. This creation of illusion of subscription of public issue is a fraud committed on the unsuspecting small investors who invested their hard earned monies in the public issue. Sri Mohan Kumar who acted as Managing Director of the Company and its main promoter, instead of serving the investors community, acted hand in glove with the manipulators with an ulterior motive of illegal gains by manipulating the prices of the scrip. This has to be dealt with very seriously.

38. The violations found to have been committed by Prosoft are very serious in nature and they erode the confidence of the investors in the market mechanism. The transactions undertaken by Sri Panwar in concert with the Company and its managing Director are very heinous and if left unchecked will leave the very securities market in great chaos as they made use of the depository system also for their ulterior purposes.

Therefore the Company was debarred from accessing the capital market for a period of two years.

39. It is found that the Managing Director of the Company Sri Mohan Kumar, being the main promoter and the Managing Director of the company is equally responsible for these commissions and omissions. A corporate entity acts through its Directors who are natural persons. It is these kinds of persons who will create

havoc on market by their illicit actions by duping the small investors. I am therefore of the opinion that it is a fit case for piercing the corporate veil finding that the natural person who promoted the company and acted as its Managing Director as guilty of market manipulation.

The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people.

Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. In Delhi Development Authority V. Skipper Construction Pvt Ltd., 1997 (089)- COMPCAS-0362-SC., the Supreme Court has referred to the above discussion on the topic of Corporate veil and held as follows :- "Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned.

The aforesaid decision of Supreme Court was followed by Bombay High Court in Securities and Exchange Board of India v. Libra Plantations Ltd. 1999-(033)-CLA-0256-BOM.40. I am therefore convinced that it is a fit case to lift the corporate veil and hold Mohan Kumar guilty of market manipulation and for creating fae of subscription in the public issue.

41. It is this kind of persons who indulged in such actions which tend to lower the integrity of the securities market and affect the interest of investors by creating unhealthy market situation as stated above.

These actions would result in creating an atmosphere which is not conducive to the development of securities market. It is also necessary to see that these kinds of actions should not be repeated. The need of the hour is to create and enhance the confidence of the investors in the market mechanism.

42. I, therefore, hold Mr. Mohan Kumar guilty for violation of regulation 4(a), 4(b), 4(c) and 4(d) of the SEBI (Prohibition of Fraudulent Trade Practices relating to the securities market) Regulations, 1995. In these circumstances, as a measure of investor protection and maintaining high standards of integrity of the Securities market the persons like Mr. Mohan Kumar be required to be restrained from dealing in securities and accessing the capital market.

Therefore, in order to restore the confidence of the investors in the Securities Market and to see that this kind of actions are not repeated by the said company, in exercise of powers under Regulation 11 read with regulation 12 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 read with sections 4 (3), 11 and 11B of SEBI Act, 1992, I hereby direct that Mr.

Mohan Kumar be debarred from accessing the capital market and also from dealing in securities for a period of two years. This order shall come into force with immediate effect.

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