

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

ORDER UNDER REGULATION 13 (4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS), 2002 AGAINST M/s TRUSTED SHARES & INVESTMENTS LTD. MEMBER OF THE STOCK EXCHANGE, MUMBAI

CO/209/MRD/03/2004

1. M/s Trusted Shares & Investments Ltd (hereinafter referred to as 'the broker') is a member of the Stock Exchange, Mumbai (hereinafter referred to as 'the BSE') is registered with SEBI bearing registration number INB 010633337.
2. SEBI received a letter dated March 26, 1997 from Mr. Suresh Kabra and Dilip Kabra (hereinafter referred to as 'the complainants') addressed to the BSE with a copy endorsed to SEBI. In the said letter it was alleged that the complainants have delivered 5,00,000 shares of M/s Rhutu Bearings Ltd. against sale, however, the said broker was avoiding payment of the sale proceeds of the said shares. The complaint was forwarded to the BSE vide SEBI letter dated SMD/BR/1409/785/97 dated April 09, 1997. BSE was also advised to examine the matter and take appropriate steps to redress the grievance of the complainants. The BSE vide letter dated January 10, 1998 informed that the matter was examined by their Investor Grievance Redressal Committee on October 03, 1997 and that the said Committee was of the opinion that the matter was under dispute therefore, advised the complainants should be advised to refer the matter for arbitration under the Rules, Bye-Laws and Regulations of the

Exchange. Thereafter, BSE advised the complainants vide its letter dated December 19, 1997 to file arbitration in the matter.

3. Vide SEBI letter no. SMD/BR/1409/458/98 dated January 20, 1998, the broker was advised to redress the grievances of the complainants. The said broker vide its letter dated February 2, 1998, denied that the shares were delivered to it and that the transaction was done through/by it. It also submitted that the matter had been disposed of by the Investor Grievance Redressal Committee of BSE by an award. BSE vide its letter dated February 14, 1998 addressed to the complainant with a copy endorsed to SEBI informed that appropriate steps were taken to redress the complaint of the complainants in view of the decision taken by the Investor Redressal Committee, wherein the committee found that both the parties materially differed with regard to facts of the case. The complainant was advised by the committee, if he considered necessary to go in for arbitration. BSE, in the said letter further stated that even though it had not submitted any copy of the contract for the alleged transaction despite repeatedly being pointed out by the Investor Grievance Redressal Committee, the Investor Service Cell has gone through the records of the broker and also of the Stock Exchange but found no transactions having been put through the stock exchange. Vide SEBI's letter dated March 9, 1998, the BSE was advised to have the arbitration proceedings completed at the earliest, if the complainants chose to file arbitration. The BSE was further advised to look into the role of the said broker in affixing the broker stamps on the reverse of the transfer deeds, raising bill, filing arbitration etc.

4. A joint meeting of the complainants and the said broker was called at SEBI office on February 26, 1998. Mr. Suresh Kabra representing himself and the other complainant and Mr. Mahavir Meghavat representing the said broker were present during the meeting. It was alleged, *inter-alia*, by the complainant that they had sold and delivered 5 lac shares of M/s Ruthu Bearings and Estates (India) Limited through the said broker and they had never issued any contract notes and the transactions were done on mutual trust. It was also alleged that they had delivered the said shares to the broker and the said broker had issued a delivery bill against one Shri. Mahesh Kothari, another broker member of the BSE. It was stated that this was the only transaction with the said broker. Mr. Suresh Kabra stated that the transaction was between Mr. Mahesh Kothari and the said broker and the same was not reported to the Exchange. It was submitted by the said broker that the complainant is a member of the National Stock Exchange and had been dealing with them in an account in the name of M/s Jaico Investments. Regarding alleged transactions, it was submitted by the said broker that the transaction was not done through it and as such it had not issued any contract note for the same. He stated that the complainant had not raised this issue even after 8 months and therefore the complaint is an after thought. He contended that it was a deal directly between the complainants and Shri Mahesh Kothari. He further submitted that the said broker had good relations with the complainants and that he had affixed its broker stamps on the transfer deeds on the request of the complainants since Shri Mahesh Kothari had insisted for BSE brokers' stamp on the transfer deed to guarantee the genuineness of the shares. He stated that the delivery bill was also issued at the request of the complainants to help them to

get their payment from Shri Mahesh Kothari. He stated that this was done under a trust and the said broker never expected that the complainants would misuse the trust. It also submitted that as per his knowledge the transaction was a financial deal between the complainants and Shri. Mahesh Kothari under which the complainants were to deliver 37.5 lac shares of Ruthu Bearings. On failure of complainants to deliver remaining 32.5 lac shares to Shri. Mahesh Kothari, the deal failed.

5. In view of the above different versions, it was considered to conduct an enquiry against the said broker into the contravention if any of Rule 4 (b) and Rule 4 (e) of SEBI (Stock Brokers and Sub Brokers) Rules, and Code of Conduct as specified in Schedule II read with Regulation 7 of the said Regulations and Bye Laws 356 (ii), 356(iii), 356(x), 357(iii) and 357(v) of the BSE by the said broker in pursuance of the complaint filed by the complainants. Accordingly vide order dated April 17, 1998, Shri. P. Sri Sai Ram was appointed as an enquiry officer to conduct an enquiry into the contraventions, if any of the above provisions by the said broker.
6. The enquiry officer after issuing a show cause notice and granting an opportunity of personal hearing to the said broker considered the submissions of the said broker and recorded his findings and recommendations in the enquiry report dated November 5, 1998.
7. During the enquiry the said broker had submitted that M/s Jaico Investments owned by the complainants started dealing through it in Ruthu Bearing on July 9, 1996 and had been buying the shares in every settlement. They bought a total of 9700 shares

between July 9, 1996 and July 19, 1996, which were delivered to them in Settlement no. 96-09 and payment was received for the same between 23rd July 96 and 1st August 96. They further bought a net of 200 shares on August 5, 96 and 51500 shares on August 7, 1996 from it in Settlement no. 96-11. These shares were delivered to them and payment was received from them on September 10, 1996 (Rs. 3,50,000/-) and on September 12, 1996 (Rs. 4,00,000/-). Further they bought 1400 shares on August 30, 1996 in Settlement no. 96-12 through it. These shares were also delivered to them and their A/c was debited for the same. They have yet to clear the balance in their A/c.

8. The broker had further stated that M/s Jaico Investments had been a net buyer of Rhutu shares in every settlement and they had never sold shares through them (broker) on a net basis. It also submitted that on August 2, 1996, Mr. Dilip Kabra approached it and requested to help him in settling a deal he had done with Mr. Mahesh Kothari. Since the complainants were doing some business with the broker, the broker decided to help them settle the deal which they had done with Mr. Mahesh Kothari. Mr. Dilip Kabra told the broker that Mr. Mahesh Kothari was insisting on the shares to be introduced by a BSE member for their deal. It accepted to help him by agreeing to affix its stamp at the back of the transfer deed. It has also submitted that on August 2, 1996, M/s Jaico Investments sent the said 5 lac shares to Mahesh Kothari's office and asked it to send some staff from its office to affix its stamp at the back of the transfer deed. It also enclosed a copy of the delivery list prepared by Jaico Investments on August 1, 1996 for delivery of shares to Mahesh Kothari showing acknowledgement of shares by Mahesh Kothari on August 2,

1996. On August 24, 1996, Mr. Suresh Kabra asked it to send a reminder to Mahesh Kothari about the funds. At the request of the complainants it filed the arbitration against Mr. Mahesh Kothari which was rejected on November 29, 1996. On August 26, 1996, a meeting was held between Mr. Mahesh Kothari, the complainants and the said broker. In the said meeting it was agreed by the complainants that they will take the shares back from Mr. Mahesh Kothari. The complainants requested it to collect the shares with assurance that they will collect the shares from it later. It had further submitted that on August 27, 1996, Mr. Mahesh Kothari returned 3,73,400 shares to it. For the remaining shares not being returned by Mr. Mahesh Kothari, it filed an FIR, at the request of the complainants. It had submitted that it had acted in good faith and under trust with the complainants in a deal they had done with Mr. Mahesh Kothari directly. The complainants have gone back on their commitments to take the shares back from it. The complaint of complainants to BSE is false that they had sold the shares to us on August 2, 1996. The said broker had submitted that the Jaico Investments had paid money on September 10, 1996 and September 12, 1996 for the shares bought on August 7, 1996. The broker stated that it clearly shows that the allegation is false and is an after thought to harass it when the deal of the complainants with Mr. Mahesh Kothari had failed. It had stated that no client will make payment when he has to receive money from it. It has also stated that the transaction had not gone through its BOLT Terminal. In fact, all its deals done for its clients including deals done by Jaico Investments with it have always been through BOLT Terminals ever since it started business in the market in September 1994. Instead of filing the arbitration as observed by the Investor Grievance Redressal

Committee of the BSE which is the procedure for a client to get redressal of the grievance, the complainant have filed the complaint with *mala fide* intentions taking undue advantage of its good faith. It had submitted that it has not violated any BSE Byelaws, SEBI Regulations. In fact on independent enquiry, the BSE considered not to take any action against it. It had further stated that there were no complaints against it by any member or client. It had also stated that since there was no deal with the said broker in respect of the said 5 lac shares, it had not issued any contract note for the alleged transaction. Regarding other transaction with Jaico Investment, the deals were properly settled by giving/taking shares and by getting or making payments except for Rs. 4,30,727.50 which is still outstanding from them. During the hearing before the enquiry officer it had reiterated its submissions made through its reply and had stated that it had been regularly issuing contract notes for all the transactions done by the complainant under the client account - Jaico Investments and the complainant's person used to collect the contract notes on daily basis. It had also stated that during the joint meeting held between complainant the said broker and Mr, Mahesh Kothari, it could learn that the impugned deal was a financial deal between the complainant and Mr. Mahesh Kothari wherein the complainant had to deliver 37.5 lac shares of Rhutu Bearing to Mr. Mahesh Kothari. On failure to deliver the remaining 32.5 lac shares by the complainant the deal had failed.

9. After considering the submissions of the said broker, the enquiry officer recorded his findings inter alia that matter under consideration in enquiry proceedings is only the conduct of the said brokers regarding the violations of the provisions of the

rules, regulations etc. The enquiry cannot find the facts regarding the merits of the claims of the complainant. SEBI is not the forum to adjudge the merits of the claims between the client and the broker. The enquiry officer has further recorded that no conclusion could be arrived at to establish that the said broker has violated the provisions of the bye laws 356(ii), 356(iii), 356(x), 357(iii) and 357(v). However, the enquiry officer found that the said broker had not issued contract notes to the clients, since the said broker did not have proof of delivery of contract notes to the clients. Enquiry officer vide his report recommended that the certificate of registration of the said broker be suspended for a period of two months.

10. On receipt of the enquiry report, in terms of sub regulation (7) of Regulation 28 of the said Regulations, a show cause notice no. SMD/DBA-I/Enq/AM/899/98 dated November 11, 1998 was issued to the said broker enclosing therewith a copy of the enquiry report and calling upon the said broker to submit its reply on the enquiry report together with the documents which it may choose to rely upon within 21 days of the receipt of the said show cause notice.

11. The said broker vide its letter dated December 4, 1998 submitted its reply reiterating that the complainants were dealing through the said broker in the name of Jaico Investments and in respect of the transactions, the contract notes and bills have been regularly issued to them. However, it had not issued the contract notes in respect of the impugned shares because it was transaction done by Mr. Kabra directly with Mr. Mahesh Kothari on spot basis outside the stock exchange system (BOLT) and the transaction did not go through

it. It further submitted that a contract note could be issued by a stock broker only when a transaction has gone through him. Its involvement in transaction in question was only limited to facilitate the direct deal between Mr. Kabra and Mr. Mahesh Kothari. It reiterated that the complainants have subsequently paid it the amount payable by them on September 10, 1996 and September 12, 1996 i.e subsequent to the alleged transactions of shares of 5 lac shares of Ruthu Bearings and that how can an investor pay to a member of an exchange when he has to receive such a large amount from him. It has also submitted that the shares in question were directly delivered by complainants to Mr. Mahesh Kothari and enclosed a copy of the delivery note made by Jaico Investments to Mr Mahesh kothari having acknowledgement of Mr Mahesh Kothari. The said broker has contended that the complainants are not investors in the matter since the quantity involved appears to be beyond the means and resources of an ordinary investor. It has also contended that the complainants may be asked as to whether the complainants had issued contract notes or bills to the seller on whose behalf they sold these shares in the market. It had further submitted that there had never been any complaint or arbitration against it by any investor at BSE or at SEBI. It had always taken prompt action and had been careful towards its clients. It submitted that it had not issued the contract notes in this matter, since the transaction had not gone through it. The said broker also requested for a personal hearing in the matter before the final decision is taken in the matter.

12. In observance of principals of natural justice, the matter was fixed for personal hearing on December 24, 1998, and at the request of said broker the hearing postponed for January 11,

1999. Mr. Meghavat and Mr. Vinod Vasa appeared for personal hearing on January 11, 1999 and reiterated their submissions made by way of their letters as mentioned hereinabove. They submitted that they had records of their dealings with their clients and can produce the same for verification. They submitted that for the alleged transactions the said broker had not issued the contract notes since the said transaction was not done through the said broker. They reiterated that the alleged transaction was not routed through the BOLT system of the BSE. They also sought adjournment of the personal hearing in the matter. As assured by the said broker it submitted and produced on February 2, 1999 the following documents,

1. Statement of Account of M/s Jaico Investments
2. Bank Statement showing receipts of payments from Jaico Investments in support of Statement of Accounts of M/s Jaico Investments
3. Copy of Bills with reference to the above statements of accounts,
4. Copy of contract notes with reference to each bill referred to above.
5. Copy of delivery memo for shares covered under the above bills.

13. Accordingly, the said broker was further advised to appear for personal hearing on March 17, 1999. The above mentioned representatives of the said broker appeared for the personal hearing on the said date. They reiterated that that they had been dealing with M/s Jaico Investments, a firm of the complainants in the shares of M/s Ruthu Bearings and in respect of all the transactions entered by it on behalf of M/s Jaico Investments, the contract notes and bills have been regularly issued. They reiterated the submissions in the reply

to the show cause notice and stated that Mr. Dilip Kabra requested it to put its stamp on the transfer deed since Mr. Mahesh Kothari wanted a BSE member to stamp the transfer deed. This was done in good faith to help the complainants, since the said broker had been regularly doing business through the complainants, thereafter, since the said deal failed, the complainants had tried to take undue advantage of the good faith put by the said broker in helping the complainants. They reiterated that M/s Jaico Investments, the firm of the complainants had made payments to the said broker on September 10, 1996 and September 12, 1996 towards the subsequent purchases of the shares of M/s Ruthu Bearings done through the said broker. They submitted that if the alleged transactions were genuine transactions then no client would make payment to a broker if the broker owes money to the client.

14. From the findings of the enquiry officer and submissions of the said broker it could not be concluded beyond doubt that the alleged transactions were genuine transactions between an investor and a stock broker when the stock broker is required to issue contract notes to the client. During the continuance of the enquiry, the complainants had been writing several letters to SEBI and the other authorities making allegations that SEBI was not taking any action on their complaint and SEBI was trying to help the broker. It was observed that the fact of enquiry was communicated to the complainants also vide letter no. SMD/DBA-I/BComp/1409/780/98 dated September 29, 1998. By the said letter the complainants were advised that under the bye laws of the stock exchange there was provision for resorting for arbitration in case of dispute between the broker and the

investor. The complainants were also reminded of the fact that the stock exchange had advised them to go for arbitration proceedings and that SEBI had also informed the stock exchange that in case the complainants avail of the arbitration proceedings the same should be expedited. The complainants vide letter dated September 30, 1998, refuted the contents of the said letter of SEBI and sought clarification as to the time to be taken by SEBI in completing the enquiry and stated that no justice will be rendered under the Arbitration Bye Laws of the BSE. Further, the complainant sent a telegram dated November 17, 1998 stating therein that SEBI was deliberately delaying the proceedings and therefore it should take adequate precaution and make sure that the amount be asked to deposit by the broker with SEBI and any lenient view adopted towards the broker will be at the cost and consequences of SEBI.

15. Therefore, in order to give logical conclusions to the enquiry, it was decided during hearing on March 17, 1999, to grant an opportunity to the complainants to present and substantiate their case. Accordingly the matter was adjourned to May 7, 1999 and vide letter no. SMD/DBA-I/ENQ/AM/351/99 dated April 29, 1999, the same was communicated to the complainants. The complainants were also advised to bring the records and documents in support of their complaint. The said broker was also advised vide letter no. SMD/DBA-I/ENQ/AM/349/99 dated April 29, 1999 to be present on the said date. On the said date the above mentioned representatives appeared on behalf of the broker and Mr. Suresh Kabra for the complainants. It was the submission of the broker that the complainants were not its clients for the alleged transactions. It was reiterated that the said broker had been issuing contract notes regularly.

However, in the instant case, in respect of the alleged transactions no contract note was issued since the said transaction was not done through the said broker by the complainants as its clients. Looking to the previous dealings with M/s Jaico Investment a firm of the complainant it had put its stamp on the transfer deed in good faith to help the deal of the complainants directly done with Mr. Mahesh Kothari outside the stock exchange. Mr. Suresh Kabra submitted that it was a sale /purchase transaction wherein they had delivered the impugned 5 lac shares to the said broker as their clients and the said shares were delivered onward by the said brokers. From the oral arguments and counter arguments between the complainants and the said broker, it could not be concluded as to whether the transaction was genuine transaction done between the complainant and the said broker under a client broker relationship. The complainants did not submit any document in support of its contentions as required vide the above mentioned notice dated April 29, 1999. The complainant was directed to submit the details of his holdings in M/s Ruthu Bearing with supporting documents and the mode and manner of acquiring the title to the alleged shares. It was decided on the said date that the said broker and the complainant shall file their versions contained in an affidavit along with the supporting documents. The said broker vide its letter dated June 28, 1999 submitted its affidavit but no written reply was received from the complainants and therefore vide letter no. SMD/DBA-I/ENQ/AM/588 /99 dated July 20, 1999, a reminder was sent to the complainants directing them to submit the details as required during the hearing on May 7, 1999 within 7 days from the receipt of the letter. Shri Kabra, the complainant vide his letter dated July 30, 1999 submitted that he had sent a letter on

May 14, 1999, wherein he had communicated about the queries raised by SEBI. In the said letter he had denied that he had presented his case on May 7, 1999. In this letter dated July 30, 1999 the complainant had submitted that the said broker failed to issue contract notes/bills and payments, the said broker is creating artificial dispute to avoid payment, the said broker has violated the rules, regulations and bye laws of the stock exchange and SEBI Guidelines and the BSE has failed to redress the grievances of the complainants. He had also submitted that he had sent copies of certain documents as mentioned in the said letter. However, from the record it was observed that no such document has been received. It was observed that the complainant did not submit the information as directed on May 7, 1999 and sought by letter dated July 20, 1999. Rather the complainant filed a writ petition no. 1899/ 99 before the Hon'ble High Court of Mumbai alleging that despite informing the complainant on September 29, 1998 about the enquiry, they could not hear anything further in respect of the said enquiry despite further follow up and that SEBI has failed to take any action in the matter. The petition was filed praying for direction to SEBI to conduct an enquiry in the matter and to proceed further with the enquiry if it is initiated.

16. In order to conclude the enquiry in the matter it was decided to give another opportunity to the complainants to submit the information as desired so as to enable them to establish their title to the impugned shares. Accordingly vide letter no. SMD/DBA-I/AM/16713/99 dated August 24, 1999, the complainants were given last opportunity to submit the information and the documents for presenting their case. By the said letter an opportunity of personal hearing was granted to

the complainants on August 26, 1999, and the said broker was also advised to be present on the said date vide letter dated August 19, 1999. The complainants vide their letter dated August 26, 1999, submitted that SEBI had failed to take any action against the said broker having sufficient documentary evidence to penalise the broker and the Stock Exchange. By the said letter they did not submit the desired information. They submitted that by granting another opportunity on August 26, 1999 SEBI was trying to give favourable award to the broker and that SEBI should restrain from making allegations as per the letter dated August 24, 1999. Along with the said letter they had enclosed a letter dated May 14, 1999, wherein they had submitted that they were making efforts to procure the information desired by SEBI and would submit the same as soon as they collect the information. Regarding the details of the contract notes they submitted that this was not applicable in this case as the shares were not bought by them from the Stock Exchange. Despite this assurance the complainant vide letter dated August 26, 1999, contended that the information sought has nothing to do with enquiry. They also submitted that in view of the writ petition filed before the Mumbai High Court which might reach on Board on the date and time of the hearing before SEBI, they be granted permission accordingly. Therefore, as requested by the complainants the matter was postponed for September 21, 1999 and the said decision was communicated to the said broker and the complainants vide letters no. SMD/DBA/ENQ/AM/17532/99 and SMD/DBA/ENQ/AM/17534/99 dated September 8, 1999, respectively. By a letter of even date Mr. Mahesh Kothari was also advised to be present on September 21, 1999 along with the documents regarding his dealings with the complainants and

the said broker pertaining to the shares of M/s Ruthu Bearings. The complainants were again advised to submit the information as desired. They were also advised to inspect the affidavit filed by the said brokers during office hours on September 17, 1999. They were also advised that no further request for postponement of personal hearing shall be entertained. On September 17, 1999, Mr. Suresh Kabra inspected the affidavit filed by the said broker and on the same date he wrote a letter seeking postponement of the personal hearing after October 15, 1999 either before 10.30 a.m. or after 5.00 p.m. However, on scheduled date that is September 21, 1999, Mr. Suresh Kabra and the said broker presented themselves for personal hearing and sought adjournment with consent. Mr. Mahesh Kothari vide his letter dated September 21, 1999 also sought adjournment in the matter. Therefore, the matter was adjourned for October 15, 1999 and the complainant, the said broker and Mr. Mahesh Kothari were advised to be present for personal hearing on the said date, vide letters dated September 28, 1999. The complainant vide their letter dated October 1, 1999, further made allegations on the enquiry proceedings without submitting any information as required. On October 15, 1999, Mr. M Meghavat and Mr. Vinod J Vasa appeared for the said broker, Mr. Suresh Kabra for the complainants and Mr., Mahesh Pandey for Mr. Mahesh Kothari appeared. The said broker reiterated their submissions made earlier and Mr. Suresh Kabra assured to submit the information by October 18, 1999, Mr. Mahendra Pandey submitted that as per his personal knowledge, the impugned shares in part have been delivered to the said brokers. He could not submit any details of the dealings nor did he submit any documents. However, he submitted that the said transactions were not through the Stock

Exchange. This was a financial deal whereby Mahesh Kothari was to receive the impugned shares, through the said broker. Vide letter dated October 15, 1999, duly acknowledged by the complainant, the complainants were finally advised to submit the information regarding their holdings and dealings in M/s Ruthu Bearings Limited with supporting documents, the mode/manner of acquiring the alleged 5 lac shares and his dealings with the said broker in the shares of M/s Ruthu Bearings eg. quantity bought, sold and contract notes etc. However, despite the assurance, the complainants did not submit the said information.

17. Vide telegram dated October 27, 1999, the complainants informed that due to delay in filing the reply by the said broker to an arbitration proceedings filed by the complainant before the BSE, the complainants were to re-draft their letter to be delivered to SEBI and that they will be out of Mumbai from November 15 to December 2, 1999 and December 20, 1999 to January 5, 2000.

18. The above mentioned petition was disposed off by the Hon'ble High Court of Mumbai vide order dated December 7, 1999 wherein the Hon'ble High Court has recorded the submission of SEBI that SEBI will complete the enquiry within 12 weeks provided the petitioners co operate with the enquiry and produce all the necessary documents and information as called by SEBI including their source of title to the shares of Ruthu Bearings Limited. The Hon'ble High Court directed the petitioner to appear before SEBI on December 20, 1999.

19. In compliance of the said order of the Hon'ble High Court vide SEBI's letter no. SMD/DBA-I/Bcomp/AM/22555/99 dated December 15, 1999; the complainants were advised to appear before the then Chairman for a personal hearing on December 20, 1999 at the time and place mentioned in the said letter. The complainants were again advised to bring all documents and information as required from them and any other information which they may choose to rely upon. Vide letter dated December 17, 1999 the complainants again sent a letter making various allegations against SEBI and its officials. Regarding the information as required, he submitted that :

- 1 a) There is no holding in Rhutu Bearing & Estate (India) Ltd
 b) There is no dealing in Rhutu Bearing & Estate (India) Ltd except 5 lac shares in complaint)
2. The said 5 lac shares have been acquired under an understanding from Shri. Charbhuj Investment
3. Except the 5 lacs shares they had no other dealing with Trusted Shares & Investments in Rhutu Bearings & Estate (India) Ltd (RBEL).
4. That M/s Jaico Investments where the complainant was Director had dealt with Trusted Shares & Investments in the script of Rhutu Bearings & Estate (India) Ltd . Total Shares traded with them are : bought 82200 approx shares of RBEL and sold 25200 approx shares of RBEL".

20. On the scheduled date Mr. Suresh Kabra appeared. It was clarified that the information submitted in his letter dated December 17, 1999 was not sufficient to conclude towards his title to the impugned shares, he was directed to submit the details of his holdings in the company. He submitted that there

was no dealing in Rhutu Bearings and Estates Limited except 5 lac shares and the said 5 lac shares had been acquired under an understanding from Shri. Charbujha Investments. The information is not clear as to what understanding he had with said Charbujha Investments to confer title of the impugned shares on him. Further the information that except these 5 lac shares he had no other dealing with the said broker in Rhutu Bearings and Estates Limited and that M/s Jaico Investments where he is a director has dealt with the said broker in the shares of Rhutu Bearings and Estates India Limited is not satisfactory since it is not clarifying as to in what capacity he had been holding the impugned shares and under what authority he had allegedly sold the said shares. On the said date Mr. Suresh Kabra assured to submit the detailed information and accordingly vide SEBI's letter dated December 28, 1999, the complainants were advised to submit the complete details of the transactions and the mode and manner of the acquisition of the same. However, the complainants have not submitted the information till date. Therefore, it was observed that the matter be concluded on the basis of the facts available on record.

21. The facts as detailed above and the findings of the enquiry officer that SEBI is not the forum to decide on the merits of claim between the parties and that for claim of money, if any, whatsoever, from the said broker, the complainant has to approach the proper forum in accordance with law were considered. The findings of the enquiry officer were agreed upon. Further, it was found that the complainants have failed to submit the information as desired to establish their title on the impugned shares and their authority to sell them under a genuine transaction. Further, it was found that they had been

delaying the proceedings by seeking various adjournments and avoiding submissions of the details on flimsy grounds and making extraneous submissions. It was observed that the complainant being registered stock broker and as an intermediary in the stock market should observe high standards of integrity and fairness. Under the provisions of the said Regulations penal action can be taken against a stock broker if he fails to furnish any information related to his transactions in securities as required by the Board and does not co operate in any enquiry conducted by the Board. It was found that the complainants had been defying the instructions of SEBI in submitting required information and details. The complainants alleged that SEBI was not taking any action on their complaint and had been trying to help the said broker. It was observed that the complainants have been duly informed of enquiry proceedings and have been given sufficient opportunities and ample time to submit and explain their case. However, instead of submitting the desired details they have been leveling serious allegations against SEBI and its officials in an intemperate language. It was observed that such submissions on the part of the complainants were frivolous, vexatious and without any reasoning. The complainants have also not complied with the directions of the Hon'ble High Court. It was noted with surprise as to how a complainant can direct SEBI without giving adequate information, to decide on his complaint and necessarily in his favour. It was observed that the complainants were not complying with the instructions to submit the required information. Therefore, it was observed that the complainant should desist from such behaviour in further dealings with SEBI or the stock exchange.

22. As regards the misconduct of the said broker, it was found that it was not proved beyond doubt for want of information required to be supplied by the complainants to establish that the transactions were sale/purchase transactions between the complainants and the said broker. Further, the BSE vide its letter dated February 14, 1998 informed the complainants that since they had not enclosed the relevant documents namely contract notes, bills etc in support of their claims against the said broker, the Investors Grievance Redressal Committee had advised them to go in for arbitration. It was further advised that the transactions have not been put through the stock exchange. They were also advised that unless it is established that there existed a contract between a broker member and the complainants, that such a contract came into existence through a transaction put through a stock exchange system and there is a breach of a contract, the stock exchange will be on a very unsure ground if it takes any action merely because a client of a broker member has made an unsubstantiated complaint against him. Further it was brought to record in the arbitration filed by the said broker that the Arbitration Committee of the BSE has recorded in its award dated April 21, 1997 that the deal was not reported in the BOLT.

23. Further, it was noted that the complainants had not substantiated their complaint by submitting the details of the transactions between them and the said brokers for the impugned shares. It was also observed that the complainants did not file the arbitration as advised by the Investor Grievance Redressal Committee of the BSE till July 1999. It was brought on record that now the complainants have filed arbitration

before the Arbitration Committee of the BSE which is pending and kept in abeyance pending these enquiry proceedings.

24. It is further noted that the enquiry officer in his report found that the said broker violated the requirements of issuing contract notes to the clients on the basis of an isolated statement made by the said broker during hearing. It had not been found in the enquiry that it could be concluded that the transactions were genuine transactions wherein the said broker was mandatorily required to issue contract notes in respect of the alleged transactions. It was submitted by the said broker during enquiry and also during the course of personal hearings that he had been issuing contract notes in respect of all the transactions done with M/s Jaico Investments, a firm of the complainants. The complainants also admitted that they were directors of M/s Jaico Investment and the said M/s Jaico Investments had been dealing with the said brokers in the scrip of M/s Ruthu Bearings and Estate (India) Limited. Further, it was observed that the complainants being a registered stock broker were expected to know their rights and obligations better than any other person. They were aware of the requirements of the contract notes, its importance and the consequences of the failure in this regard. It was also not clear as to how the complainants being a stock broker could deliver a huge quantity of 5 lac shares to the said brokers without insisting upon the issuance of the contract notes, bills etc. Further, it was observed by the then SEBI Chairman that nothing substantial was brought before him to conclude that the transactions were genuine transaction and that the said broker had failed to issue contract notes in respect of the impugned shares. Therefore, in absence of any proof or substance to substantiate the genuineness of the transaction,

the findings of the enquiry officer that the said broker failed to issue contract notes to the complainant in respect of the impugned shares were not accepted.

25. Regarding the conduct of the said broker in putting his stamp on the transfer deed in good faith, it was observed that this submission is not maintainable since in terms of clause A(2) of the Code of Conduct as specified in Schedule II read with Regulation 7 of the said Regulations, a stock broker is under obligation to exercise due skill, care and diligence in the conduct of all his business. Further, it was found that it is not proper on the part of the said broker to be involved in transactions which are not as per the established market practice and which may lead to interference with the fair and smooth functioning of the market. Further it was observed that the said broker not only affixed its stamp on the transfer deed but had been actively extending its co operation in helping the interest of the complainants by filing arbitration proceedings against Mr. Mahesh Kothari and subsequently an FIR for non receipt of the remaining shares and that a part of the impugned shares are still with the said broker. It was found that such conduct in course of its dealings, suggest that the said broker had not only been helping the complainants to settle their deal with Mr. Mahesh Kothari but also had been actively co operating in the deal, which raises suspicion as to the conduct of the said broker in respect of the dealing. It was concluded that since the complainant had not substantiated the genuineness of the transaction in respect of the defaults of the said broker in issuing the contract notes imposing the penalty as recommended by the enquiry officer would not be justifiable. However, as was observed hereinabove, it was found that the

conduct of the said broker in respect of the impugned transactions had not been business like and its indulgence of this nature might lead to interference in the fair and smooth functioning of the market. Therefore, it was found that a warning to the broker would suffice. SEBI vide order dated 25.02.2000 issued a warning, in terms of regulation 29(3) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992, to M/s Trusted Shares and Investments Limited (SEBI Regn no. INB 010633337) member of BSE to be careful in future and to refrain from involving in any activity which is unbusiness like and might lead to interference with the smooth functioning of the market and to strictly abide by the provisions of the said Rules, said Regulations and Circulars of SEBI and Rules, Regulations and Bye Laws of BSE and Securities and Exchange Board of India, Act, 1992, Securities Contracts (Regulation) Act, 1956 and Securities Contracts (Regulation) Rules, 1957 and directives issued by SEBI from time to time and further it was stated that violation of any of these provisions by the said broker, in future shall be viewed seriously and shall attract stringent action against it.

26. Further, vide the said order it was directed that the BSE shall also look into the role of the said broker in affixing its stamps on the reverse of the transfer deeds and raising bills etc. and submit the report on the same.

27. It was stated in the order that the said order was passed without prejudice to the rights and obligations of any person inter se in respect of any claim or relief sought before any forum in accordance with law and that the said order is as a result of an independent enquiry proceedings and shall have no bearing

on any proceedings regarding any claim in the matter before any forum.

28. BSE vide letter dated 12.08.2003 submitted its report. Having reiterated the facts and circumstances as they are found in the order dated 22.05.2000, I proceed further to lay out the aftermath developments in the matter, which include the reasons for passing this order, the submissions of Shri Suresh Kabra and my findings in the matter.

29. I find that the complainant preferred an appeal against the SEBI Order dated 25.02.2000 before the Securities Appellate Tribunal. During SAT proceedings, I find that SEBI had submitted that eventhough SEBI was anxious to examine the grievance and was acting in the matter quickly, the complainant was delaying the proceedings on various grounds. The complainant was more keen in creating false records by entering into avoidable and unnecessary correspondence. It was submitted that the complainant was also found suppressing facts before the authorities, although the complainant knew very well that SEBI had taken cognizance of the complaint and had initiated enquiry, the complainant rushed to the Bombay High Court with a Writ Petition that SEBI had not acted upon his complaint. It was submitted before the Hon'ble SAT that the purpose of filing such a Writ Petition by the complainant was only for delaying the enquiry proceedings. It was submitted that the fact of pending enquiry proceedings before SEBI was suppressed in the Writ Petition. Further, it was submitted that in spite of High Court order dated December 07, 1999, directing the complainant to cooperate with the enquiry and produce all the necessary documents and information called for, the

complainant did not cooperate but opted to question the need and relevance for asking such details. It was submitted by SEBI that the complainant was assuming the role of the super regulatory authority, commanding and guiding the course of enquiry and demanding clarifications and explanations instead of furnishing the same to SEBI so as to enable SEBI to examine the grievance.

30. I find that Hon'ble SAT vide its order dated October 06, 2000 also made certain adverse observations on the role of the complainant and observed that the conduct of the complainant particularly the complainants questioning the wisdom of SEBI for asking for information and the tenor of the correspondence cannot be appreciated. Further, SAT observed that the complainant cannot and should not assume the role of super regulatory authority and dictate terms to SEBI, which is a statutory authority mandated with the onerous task of protecting interests of investors. The Tribunal observed that SEBI had not completed the enquiry and the order was made without considering the full facts, as the report from BSE was yet to be received. SAT, therefore, remanded the matter to SEBI. Further SAT observed that as BSE has stated that the report is under preparation for submission, hence BSE should submit the report to SEBI without any undue delay. It was observed that if BSE feels that the outcome of the arbitration would enable them to furnish more useful information, BSE is at liberty to wait for the disposal of the arbitration as the whole purpose of SEBI calling for the report is to reach a correct conclusion. SAT also observed that if the complainant does not furnish the information called for/or fails to cooperate in the enquiry conducted by SEBI or the report from the exchange is unduly delayed, SEBI is at

liberty to make such orders as is deemed fit in the light of the facts and circumstances of the case.

31. In light of the said order of Hon'ble SAT, I find that SEBI is required to pass a fresh order after considering the BSE Report and information submitted by Shri Suresh Kabra. BSE vide letter dated 12.08.2003 submitted its report. I have perused the BSE report. It is observed therefore that the arbitration proceedings has been concluded vide an Award dated March 21, 2001 and Appeal Award dated January 31, 2002. I find that BSE report while commenting on the practice adopted by the broker states that the conduct of the broker while putting their rubber stamp was inappropriate and technically irregular. The report states that the broker was not aware of the full implication of such an act and was misled and manipulated by the complainant for his own aggrandisement. Further, the report states that the complainant should not be allowed at this stage to take advantage of the technical irregularities especially when the said transaction was done at the behest of the complainant. The appeal was challenged in the Bombay High Court by Shri Suresh Kabra vide an arbitration petition no. 246/2002, which was dismissed by an order dated January 08, 2003. Shri Kabra also appealed against the said order and the said appeal was dismissed by the Division Bench of the Bombay High Court too on July 28, 2003, *in limine*.

32. I find that the Hon'ble High Court, while disposing the appeal filed by the complainant challenging the award/appellate order, vide order dated 08.01.2003 observed about the conduct of Mr. Kabra thus: "*the case of the petitioners is anything but bona fide and honest and I am of the view that apart from the reasons*

which have weighed with the authorities below, this court would be slow to intervene in favour of the petitioners who have neither been candid, nor fair in their dealings". The Division Bench has also quoted and relied upon this passage in its order dated 28.07.2003, whereby Mr. Kabra's appeal was dismissed. Further, I find that BSE has concluded its report by stating that in view of SEBI's warning to the broker vide order dated 25.02.2000, no further action needs to be taken by the exchange against the broker.

33. Subsequently, I find that Mr. Suresh Kabra vide letter dated 03.10.2003 through his Advocate alleged that SEBI and BSE are both in violation of SAT order dated 06.10.2000. Further, the complainant alleged that BSE enabled the broker to manufacture false reports and also that the BSE Appeal Bench was illegally constituted. Mr. Kabra called upon SEBI to furnish him a copy of the BSE report within 48 hours. Further to his letter Mr. Kabra sent an e-mail dated 05.11.2003, Mr. Kabra emphasized the necessity of his being provided with a copy of the BSE report. His allegations against the BSE arbitration/appeal process have been reiterated. He has also added that SEBI is guilty of contempt of court and is obstructing his filing of SLP before Supreme Court.

34. In response to Shri Kabra's letter and e-mail dated 03.10.2003 and 05.11.2003, respectively, I find that SEBI replied vide letter dated 08.12.2003. In the said reply, it was stated that the proceedings before SEBI for misconduct of a broker etc. are not adversarial proceedings and complaints do not have any role in such proceedings. In a show cause notice to a broker, no other party other than a broker can have a right of hearing. The order

dated October 06, 2000 of the Securities Appellate Tribunal requires SEBI to pass a fresh order after considering the BSE report, (which has since been received) and information to be furnished by him. Further, it was stated in the SEBI's reply that if Mr. Kabra desired to have a copy of BSE report, he might consider approaching BSE for the purpose.

35. I find the allegations of Mr. Kabra against SEBI are frivolous. I find that till date Shri Kabra had not furnished to SEBI any documentary proof in support of his claim. I find that as far as the complaint regarding non-receipt of sale proceeds is concerned, the matter has already been adjudicated by the Arbitration Panel and the Appeal Bench. Further, the appeals filed by Shri Kabra have also been dismissed by the Single Judge and the Division Bench of the High Court with adverse remarks about the conduct of Shri Kabra. The Division Bench's order does not envisage anything further to the done by SEBI.

36. I have perused the report submitted by BSE as also the submissions made by Shri Suresh Kabra, the complainant. I have in particular noted orders as also the remarks against the complainant passed by Ld. Single Judge and Division Bench of Bombay High Court. The complainant have not furnished any new information. On the other hand, BSE report and above mentioned orders passed by the Ld. Single Judge and Division Bench of the Hon'ble Bombay High Court demolished the case of the complainants. In view of this, I do not find any grounds to interfere with the order dated 22.05.2000 passed by SEBI warning the broker. Therefore, in exercise of powers conferred by sub-section (3) of section 4 of the SEBI Act, 1992 read with regulation 13 (4) of SEBI (Procedure of Holding Enquiry by

Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby confirm the earlier order dated 22.05.2000 passed by SEBI whereby M/s Trusted Shares and Investments Ltd. member, BSE was given warning.

PLACE : MUMBAI

G N BAJPAI

DATE : 23rd March 2004

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA