

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER AGAINST M/s ICDS SECURITIES LTD, MEMBER BANGALORE STOCK EXCHANGE, SEBI REGISTRATION NO. INB080763733 UNDER REGULATION 13(4) SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 FOR THE IRREGULAR TRANSACTIONS IN THE SCRIP OF HOME TRADE LTD.

ORDER NO. : WTM/GA/9/IVD/9/05

1.0 **BACK GROUND**

1.1. M/s ICDS Securities Ltd (hereinafter referred to as the 'broker') is a member of the Bangalore Stock Exchange (hereinafter referred to as 'BgSE') and is registered with the Securities and Exchange Board of India (hereinafter referred to as 'SEBI') as a Stock broker under Section 12 of SEBI Act, 1992 with Registration Number INB080763733.

1.2. The scrip of Home Trade Ltd.(HTL) was listed at Pune Stock Exchange(PSE) and Bangalore Stock Exchange(BgSE). The scrip was listed at Pune Stock Exchange on November 15, 1999 at Rs 250/- and at BgSE on November 16, 1999 at Rs.275. There was very sharp price rise in the scrip both at PSE and BgSE. The prices reached Rs.315 within two weeks i.e. by December 06, 1999. Thereafter, there was continuous sharp increase in the prices of the scrip as under:

Date	Price in Rupees	
December 30, 1999	525.00	The maximum rise in the price of the scrip took place between November 16, 1999 and March 31, 2000 (hereinafter mentioned as "during the period under consideration")
January 31, 2000	735.00	
March 31, 2000	809.00	
April 31, 2000	825.25	

when the price moved from Rs.275 to Rs.815/-.

1.3 The total volume in the scrip of HTL at BgSE during the period under consideration was 1,91,000. Investigations revealed that during the period under consideration, only a set of six brokers of the BgSE contributed about 86% of the total buy volume and 88% of the total sell volume in the scrip of HTL at BgSE. The gross purchase and sales figures of these brokers are as follows:

Member Name	Gross Purchase	Gross Sales	% to the total buy volume at the Exchange	% to the total sell volume at the Exchange
Sakruthi Finvest	46,800	48,200	24.50	25.24
Swagath Sec	34,300	34,100	17.96	17.85
Dagaliya Consultants	26,700	29,500	13.98	15.45
ICDS Securities	23,800	23,700	12.46	12.41
M's Securities	16,800	16,200	8.80	8.48
First Securities	15,800	15,700	8.27	8.22
Total	1,64,200	1,67,400	85.97	87.65

Thus the above six brokers contributed more than 85% of the total volume in the scrip of HTL during the period under consideration when there was maximum rise in the price of the scrip from Rs. 275/- to Rs. 815/-.

1.4 Investigation was conducted by SEBI into the affairs of buying, selling and dealings in the scrip of HTL by the members of PSE and BgSE including the said broker under the provisions of SEBI Act and its regulations. Investigations revealed that a set of brokers at PSE and BgSE including the said broker were involved in creation of abnormally high volumes, circular trading, price manipulation and false markets thereby contravening the provisions of SEBI Act and regulations including SEBI (Stock Brokers and Sub-brokers) Regulations, 1992. Investigation brought out the role played by these brokers including the said broker in price rise during the period of investigation through a phalanx of clients introduced by the itinerant and trusted employees of HTL. It was also alleged that the broker failed to observe the 'Know Your Client' norms.

2.0 **APPOINTMENT OF ENQUIRY OFFICER**

2.1 On completion of investigations, enquiry officer was appointed vide order dated November 27, 2002 under Regulation 5(1) of SEBI (Procedure for Holding enquiry by enquiry officer and imposing penalty) Regulations, 2002 (hereinafter referred to as 'the regulation') to enquire into the alleged irregular transactions of the broker in the scrip of HTL.

2.2 I have noted that a Show Cause Notice encompassing alleged violation of Clause A(2), B(1) of Schedule II under Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations 1992; Clauses (a), (b), and (d) of Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair trade Practices relating to Securities Market) Regulations 1995 was issued to the Broker under Regulation 6 (1) of the regulation, by the enquiry officer and that the broker submitted his reply and appeared for personal hearing. The enquiry officer conducted the enquiry in terms of the regulation and the broker was given a fair and reasonable opportunity to make his submissions.

2.3 After considering the reply and the submissions made, the Enquiry officer submitted his report dated October 20, 2004. The Enquiry Officer observed that the broker contributed significantly to the traded volumes during the period under consideration in the scrip of HTL for clients belonging to the Modi family from Mumbai, who were strangers and were introduced for the first time by Mr. Rajneesh an employee of HTL. Further, the broker did not assess their financial capabilities and network and lacked in exercise of due diligence in admitting the clients. The Enquiry Officer inferred that Mr. Rajneesh and Mr. Veerkar, both employees of HTL, were receiving delivery of shares for the trades done for Modi family. The Enquiry Officer recommended a minor penalty of 'suspension of Certificate of Registration for a period of one month' under regulation 13(1) (a) (iv) of the regulation.

3.0 **CONSIDERATION OF THE ENQUIRY REPORT**

3.1 After considering the Enquiry report, a Show Cause notice dated October 29, 2004 under regulation 13(2) of the regulation was issued to the Broker enclosing therewith a copy of the Enquiry Report. The broker submitted his reply and comments on the

enquiry report vide letter dated November 14, 2004 and further appeared for personal hearing on February 11, 2005 and made oral submissions.

3.2 The details of purchase and sale by the broker are as under:

Gross Purchases	Gross Sales	% to the total buy volume at the Exchange	% to the total sell volume at the Exchange
23,800	23,700	12.46	12.41

There was no dispute that the broker executed trades for the following clients in the scrip of Home Trade Ltd. viz,

- 1) Mr C R Modi
- 2) Mr Mehul Modi
- 3) Mr Rahul Modi
- 4) Mr Arun Modi and Ms Sudha Modi

It was admitted by the broker that Mr Rajneesh had introduced the above clients belonging to Modi family. All these clients were outstation clients (namely Mumbai) and started trading only in the scrip of HTL.

3.3 Although KYC forms and member client agreement were obtained from Mrs Sudha Modi and Mr Arun Modi, the broker did not obtain separate member client agreements from other members of the Modi family as they were treated as one belonging to the same family. The broker has accepted the error on its part for not obtaining separate client registration forms from all the clients as each of them had traded separately. But obtaining client registration form, in itself, is not a sufficient proof to suggest that the broker had acted diligently. Before executing series of transactions for his clients, any prudent broker would have ascertained the credentials and antecedents including the circumstances of their coming to trade at BgSE and further would have assessed the financial capabilities for whom he is trading. Further, before giving exposure to the client, a broker is bound to ensure the capacity of his client through parameters such as financial network etc.

3.4 In this connection, it would be relevant to refer to the order of the Hon'ble SAT in Madhukar Sheth Vs SEBI (Appeal No.46 of 2002). The following is extracted from the said order dated 18th September 2003:

"Before executing series of transactions for his client, any prudent broker would have gone a bit far to ascertain the goings around and also would have normally assessed the financial capability of the person for whom he was trading....."

.....The Appellant's submission that he had taken client registration form, entered into agreement etc .by itself was not sufficient. Exercise of due diligence in ongoing transactions is a continuous process and it is not a one time measure to be adhered to while taking up the first transaction. The appellant's submission that it was B's dishonesty that created the problem did not absolve him of his failure to discharge his duties as a prudent broker....."

.....On the basis of the material available on record, it was difficult to conclude that the appellant had exercised due skill and care in dealing with 'B'. It was not that the appellant had carried on only few trade transactions for 'B' for a short period. He had transacted in huge volumes for 'B' and the association dated back to August 2000. If the appellant could not see any design or pattern in the transactions which 'B' was executing through the appellant during the period, then the appellant certainly deserved to be blamed for being indifferent and unconcerned and for that reason he was at fault for the failure to exercise due skill and diligence....."

.....It is true that a broker cannot act of his own against the instructions of the client. But no one can compel him to be a party to manipulate the market. No doubt a broker is supposed to protect the interest of his client, but he is also expected to protect the interest of the securities market in which he operates. It is his duty to ensure not to be a party to any market manipulation and that the market in which he operates is run on a health and non-manipulative basis."

3.5 From the materials on record, the following position emerges,

- 1) The clients were introduced by Mr Rajneesh, an employee of HTL. It is pertinent to note that Mr Rajneesh had enquired with the broker as to whether he would be interested in doing business for some of the persons from Mumbai in the scrip of HTL. A perusal of the client registration forms of Mr Arun Modi and Ms Sudha Modi does not reveal that the broker had assessed the financial capabilities of the clients. It later on turned out that these clients had indulged in significant number of transactions with the broker as detailed in the show cause notice in a short span in the scrip of HTL.
- 2) They wanted to deal only in the scrip of HTL, although they traded insignificantly in few other scrips also.
- 3) The broker did not obtain the client introduction forms from the clients namely, Mr C R Modi, Mr Mehul Modi and Mr Rahul Modi.

It was not disputed that all these clients were outstation clients (Mumbai) and they started trading only in the scrip of HTL. Although they traded in other scrips also, the volume in HTL is considered significant when compared with other scrips. Between 16.11.99 and 31.3.2000, when there was a maximum rise in the price of the scrip of HTL which went up from Rs 275/- To Rs 809/-, the trades of the broker constituted 12.4% of the total volume of the Exchange in the scrip. Thus, the trades executed by the broker for its clients (Modi family) are exorbitant and appear to me not innocuous transactions but one meant to rig the market as would be evident from the concentrated volume and sharp movement of price. It, therefore, cannot be said that the broker had acted in good faith and with due diligence before commencement of trading for these clients.

3.6 Considering the materiality of circumstances in their pith and essence and also in the context of what was happening in the market contemporaneously in relation to the scrip of HTL, the plea of innocence is not open to the broker, as he was fully aware of the goings on in the market and the manner in which the clients from a far away Mumbai were planted by the itinerant and the trusted employees of HTL in a manifest bid to jack up the price of HTL shares at Bangalore Stock Exchange. The sequence of material happenings as adumbrated supra clearly establishes that the broker was part of the tout ensemble operating in the market to create a

make believe volume and equally ensnaring price rise in the scrip. The factual matrix of the present case has to be appraised in the back drop of what was happening in the market in its murky dynamics as captured above and not in isolation, in as much as the named brokers allowed themselves to be used as a cat's paw by the wily employees of HTL for obvious market manipulation and this thread runs through and underpins the entire gamut of transactions that took place in Bangalore Stock Exchange in the course of creating artificial market for HTL shares. In the brood of such material circumstances with their insightful portents as to the conduct of the market intermediaries playing the game at the behest of HTL employees, giving a short shrift to the time-tested and mandated requirements of KYC norms, due diligence, verification of financial capabilities and net worth of clients and a host of other reality checks meant to impart transparency and integrity to the market operations against any manipulative assemblage, the inexorable downside cannot be conjured away on the specious plea that the trade executed by the broker during 53 trading days constituted a small proportion of the total trade. Any truncated view in such an extraordinary situation detracts a great deal from the gravity of irregularity, when the entire crafty and deceptive exercise of creating artificial market is seen as a whole, in all its manifestations, and with all the attendant consequences.

3.7 The trades by the broker constituted a significant percentage of the volumes at the exchange immediately after listing and during the period when there was unusual price rise in the scrip without change in economic fundamentals of the company.

The standard of proof required in a proceeding of this nature is at variance with the standard of proof required in criminal cases. It is sufficient if the preponderance of probabilities suggests towards the indulgence of the delinquent in the misconduct. The strict rules of Evidence Act and proof beyond reasonable doubt are not applicable to a proceeding of this nature. The Supreme Court's decision in Gulabchand vs Kudilal AIR, 1966, SC 1734 and the decision of the Special Court for trial of offences relating to transactions in securities in the matter of National Housing Bank versus ANZ Grindlays Bank, 1998 (2) LJ 153 is relied upon in this regard.

3.8 The broker vide his reply dated December 14, 2004 submitted as follows;

- a. Before executing the trades, broker's Mumbai office verified the addresses and phone numbers of the clients and also made discreet enquires with ANZ Grindlays Bank regarding the bank accounts held by clients.
- b. It was admitted that the clients belonging to the same family were included in the same registration form erroneously.
- c. Securities were not handed over to the clients as the clients were stationed outside Bangalore and they were kept at broker's end as margin for future sales.
- d. There were no proprietary trades.
- e. The percentage of sales executed by the broker were miniscule and the broker had traded only during 53 days as against 94 trading days during the period between listing of HTL on BgSE and March 31, 2000.
- f. Apart from HTL the Modi Family traded in many other scrips also which made the broker believe that they were genuinely into arbitrage only and the total value of such trades were Rs. 6,84,335.50/-.
- g. The trading in HTL of the clients was stopped in March 2000.

I note that all the above submissions were considered by the Enquiry Officer while arriving at the findings. I agree with the findings of the Enquiry Officer.

3.9 During the personal hearing held on February 11, 2005 the broker reiterated the above submissions and pleaded for leniency, as punishment recommended by the enquiry officer is very severe compared to the violations.

3.10 I note that while recommending the minor penalty of suspension of certificate of registration for a period of one month, the enquiry officer has considered the mitigating factors as submitted by the broker during the course of hearing. Therefore, I agree with the recommendations of the Enquiry Officer that the trades executed by the broker for the clients, who were introduced by employee of HTL, resulted in abnormally high volumes of over 12% traded at BgSE during the period under consideration. This led to the creation of false market in the scrip of HTL coupled with surge in price of HTL. Further, failure of the broker to exercise due care and skill in his dealings with the clients, who were not only introduced by the employees of HTL who in turn received the shares on delivery, allowed excessive speculation and creation of false market in the scrip of HTL. Thus broker has violated the provisions of Clause A(2), B(1) of Schedule II under Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations 1992; Clauses (a), (b), and (d) of Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair trade Practices relating to Securities Market) Regulations 1995.

4.0 **ORDER**

Now, therefore, in exercise of powers conferred vide Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby impose a minor penalty of suspension of the certificate of registration for a period of 30 days in terms of Regulation 13(1)(a)(iv) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 on M/s ICDS Securities Ltd (INB080763733), member Bangalore Stock Exchange.

This order shall come into effect on expiry of 21 days from the date of receipt of the order.

Place: Mumbai
Date: 01/09/2005

G. Anantharaman
Whole Time Member

Securities and Exchange Board of India