

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

AGAINST M/s NEREYETH SECURITIES PRIVATE LIMITED, MEMBER BANGALORE STOCK EXCHANGE, SEBI REGISTRATION NO.INB 081009531 UNDER REGULATION 13(4) SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 IN THE SCRIP OF HOME TRADE LTD.

WTM/GA/34/ISD/11/05

1.0 BACK GROUND

- 1.1 M/s Nereyeth Securities Private Limited (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 having Registration Number INB 081009531.
- 1.2 The scrip of Home Trade Limited was listed in Bangalore Stock Exchange on 16.11.99 at Rs.275. The prices reached Rs.315 within two weeks i.e. by 6th December 1999. Thereafter, there was continuous sharp increase in the prices of the scrip as under:

Date	Price in Rupees
December 30,1999	525.00
January 31,2000	735.00
March 31, 2000	809.00
April 10, 2000	825.25
May 5, 2000	874.00

The maximum rise in the price of the scrip was between 16th Nov 1999 and 31st March 2000 when the price moved from Rs.275 to Rs.815/-.

- 1.3 Investigation was conducted by SEBI into the buying, selling and dealings in the scrip of Home Trade Limited (hereinafter referred as 'HTL') by the members of BgSE and it was alleged that the broker had resorted to circular trading and price manipulation thereby contravening the provisions of SEBI (Stock Broker and Sub Broker) Regulations, 1992. It was also alleged that the broker had little knowledge of his client viz. Shri Deepak Chhabria which was against the concept of 'Know Your Client' as per the SEBI guidelines.

2.0 APPOINTMENT OF ENQUIRY OFFICER

- 2.1 On completion of investigations, an Enquiry Officer was appointed vide Order dated 28.05.2003 under Regulation 5(1) of SEBI (Procedure for holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the said Regulations) to enquire into the alleged irregular transactions of the broker in the scrip of HTL.
- 2.2 A Show Cause Notice was issued to the Broker under Regulation 6 (1) of the said Regulations. The broker submitted his reply and appeared for personal hearing. The Enquiry Officer conducted the enquiry in terms of SEBI (Procedure for Holding enquiry by enquiry officer and imposing penalty) Regulations, 2002 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 vide his report dated 23.11.2004 concluded that the allegations as made out in the show cause notice are established and recommended a minor penalty of 'censure' under Regulation 13(1) (a) (i) of the SEBI (Procedure for holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.
- 2.4 The Enquiry Officer had found as under :

The scrip of HTL was listed on Bangalore Stock Exchange on 16.11.99 at Rs.275 and the prices reached Rs.315 by 6th December 1999.

The details of purchase and sale by the broker in the scrip of HTL are listed below:

Period	Gross Purchases	Gross Sales	% to the total buy volume at the Exchange	% to the total sell volume at the Exchange
01.04.01-31.12.01	46,550	45,950	15.08	15.77

- 2.5 The Broker's only client in the scrip of HTL was Deepak Chhabria who had been trading through the broker since 1997. The settlement wise trading details of the client are as under:

Settlement No	Buy Qty	Sell Qty	Net	Delivered on
12	400	200	200	23-Jun-01
13	2300	2300	0	
14	1900	1900	0	
15	1700	1700	0	
16	2600	2400	200	Adjusted against SN17
17	2000	2200	200	Adjusted against SN16
18	2300	2300	0	
19	2700	2700	0	
20	4000	3800	200	23-Aug-01
21	2800	2800	0	
22	1900	1900	0	
23	1500	1500	0	
24	1200	1200	0	
25	1150	1250	100	18-Sep-01
27	2500	2300	200	5-Oct-01
28	1200	1000	200	12-Oct-01

29	1400	1400	0	
30	1800	1800	0	
31	1000	1000	0	
32	1200	1200	0	
33	1100	100	0	
34	700	900	200	2-Nov-01
35	1400	1300	100	3-Dec-01
36	1000	1000	0	
37	1400	1400	0	
38	1300	1300	0	
39	1100	1100	0	
40	800	800	0	
188	400	400	0	
189	200	200	0	
190	200	200	0	
191	300	300	0	
192	300	300	0	

- 2.6 As is evident from the above table, most of the transactions were squared off and did not result in deliveries. The net deliverable position was found to be 9 deliveries out of 33 settlements. These transactions appear to be excessive speculation with intention to create artificial volumes in the scrip.

- 2.7 With regard to the allegation that the broker had failed to assess the financial worthiness of the client, the Enquiry Officer had found the following facts.

The income of the client for 3 years was shown to be Rs.1,00,000/-. Trades of the client which ran into crores of rupees was grossly disproportionate to his income as detailed in the table below:

Date Range	No of clients	No of scrips traded	No of the shares	Value(Rs)	No of Scrips trades (DC)	No Shares (DC)	Value Rs (DC)
1999-00	217	760	5538183	1182587138	12	22400	7365938
2000-01	297	407	3373834	1458225706	5	2000	1984745
2001-02	179	314	2530806	381438343	7	97040	12849405

- 2.8 The Enquiry Officer has recommended that a minor penalty of 'censure' be considered against M/s.Nereyeth Securities Pvt. Ltd.

3.0 **CONSIDERATION OF THE ENQUIRY REPORT**

- 3.1 Based upon the Enquiry report and recommendation of the Enquiry Officer, a Show Cause notice under regulation 13(2) SEBI (Procedure for holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 dated 25.11.2004 was issued to the Broker enclosing therewith a copy of the Enquiry Report. The broker submitted his reply to the Show Cause Notice vide letter dated 13.12.2004.

- 3.2 In his reply dated 13th December 2004 the broker had made the following submissions on the findings of the Enquiry Officer relating to lack of due diligence.

- Regarding the assessment of financial capability of the client, the broker had stated that assets and not income is the basis of financial capability. Even SEBI has permitted the Stock Exchanges to assess the financial capability of a broker by both his fund position and assets while assessing his net worth.
- The client had made payments for all his purchases and had also effected deliveries wherever required and hence had not defaulted. In the year 2001-02, the purchases of Shri Deepak Chhabria was to the tune of Rs.64,81,531/- and his sales was to the tune of Rs.63,67,874/-
- The maximum trade done by the client during the period under review in absolute monetary terms on a net daily position basis is less than Rs.50,000/- and the net amount receivable or payable in a settlement was less than Rs.35000/-. Hence, according to the broker they were satisfied about the client's ability to fulfill his commitments. The turnover of an individual is therefore, not an apt reflection of his over trading or over exposure in the light of the above data.

The broker has, therefore, claimed that it was incorrect to state that they had failed to assess the financial worthiness of the client. The broker had also claimed that they had undertaken continuous assessment of the client's financial capabilities. The broker has further stated that the transactions of the clients executed through the broker were generally 200 to 300 shares and the transactions executed through the broker was either squared off, or resulted in delivery which were fully settled and there was no default by the client. From trades of such meagre quantity unless there is information to the contrary or material on record it was impossible to decipher any pattern or design.

4.0 **CONSIDERATION OF THE ISSUES**

- 4.1 I have carefully considered the findings of investigation and enquiry as also the submissions of the broker. I now find as under :

- 4.2 As observed by the Hon'ble SAT in Madhukar Sheth Vs. SEBI (Appeal No.46/2002), "before executing series of transactions for the client, any prudent broker would have gone a bit far to ascertain the goings around and also would have to normally assess the financial capability of the person for whom he was trading". I do not agree with the contentions of the broker that assets and not income is the basis of financial capability. The reasons stated by the broker for his satisfaction on the client's ability to fulfill his commitments such as the client's child studying in a premium school, the client being a member of a prominent club etc. are more indicative of the life style with own or borrowed funds then having a direct bearing on the financial profile of the client. Further, the broker has failed to produce any proof to reinforce his submissions regarding the net worth and turn over of his client.

- 4.3 I further find that the average buy/ sell of the client was approximately 1268 shares per day during the total trading period of 37 days where as the total number of shares traded in the exchange during that period averaged at 3000 per day. These transaction therefore, appear to be excessive speculation with intention to create artificial volumes in the scrip.

Therefore, I find that the broker has not exercised due skill, care and diligence while trading in the scrip of HTL. The broker has thus violated the Code of Conduct for brokers as mandated under SEBI (Stock Broker & Sub Broker)

Regulations, 1992 which calls for imposition of penalty.

4.4 However, the following are considered as mitigating factors:

- 1) The broker traded during the period from 01.04.2001 which is outside the period of maximum price manipulation.
- 2) The broker has been trading for the client since 1997-98.
- 3) The client had traded in scrips other than HTL also.
- 4) The broker has not executed any proprietary trades in the scrip of HTL except 200 shares as is evident from the Investigation Report.

5.0 ORDER

5.1 Having regard to the gravity of the charges established and the mitigating factors as explained, I agree with the findings and recommendations of the enquiry officer. Now, therefore, in exercise of powers conferred upon me in terms of Section 19 of SEBI Act, 1992 and Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby impose a minor penalty of 'censure' in terms of Regulation 13(1) (a) (i) of the said Regulations on M/s. Nereyeth Securities Pvt Ltd (INB 081009531), Member, Bangalore Stock Exchange.

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

Place: Mumbai	G. ANANTHARAMAN
Date:30-11-2005	WHOLE TIME MEMBER
	SECURITIES AND EXCHANGE BOARD OF INDIA