

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER AGAINST M/s JAGANNATH VINOD KUMAR., (PROPRIETOR:VINOD J GUPTA) MEMBER PUNE STOCK EXCHANGE, SEBI REGISTRATION NO. INB 110241310 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.

WTM/GA/32/ISD/11/05

1.0 **BACK GROUND**

- 1.1 M/s Jagannath Vinod Kumar (hereinafter referred to as the 'broker') is a member of the Pune Stock Exchange (hereinafter referred to as 'PSE') 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 INB 110241310.
- 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 a 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 has been a burgeoning 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
May 05, 2000	874.00

The maximum rise in the price of the scrip took place between November 16, 1999 and March 31, 2000 when the price moved from Rs.275 to Rs.815/-. Thereafter the price fell to Rs. 640/- in September 25, 2000. Subsequently, the face value of the shares changed to Rs. 2/- and the price went up from a level of Rs. 123/- on September 26, 2000 to Rs.171/- during February 2001. The scrip continued to trade at around Rs. 150/- till September 14, 2001 and thereafter in the range of Rs. 170/- till January 2002.

1.3 Thus during the period of investigation i.e. April 1, 2000 to December 2001 (hereinafter referred to as the period under consideration), two different periods of trading were identified as follows :

a) 1st April 2000 to 31st March 2001

Name of the Broker	Buy qty	% to the total vol. at exchange	Sell qty	% to the total vol. at exchange
Shrine Investments	153900	22.05	154400	22.12
Shoba Investments	143200	20.52	139500	19.99
Yatin Shah & Co.	122100	17.50	102300	14.66
Kabu Invest.Services	105900	15.17	105900	15.17
Trimty Invest.	75200	10.78	75200	10.78
Vinod Kumar Jaggnath	62100	8.90	62100	8.90
Amin Mulani	24600	3.52	44100	6.32
Total	687000	98.44	683500	97.44

From the above it is clear that these 7 brokers mentioned above have constituted about 98% of the total volume in this scrip at Pune Exchange.

b) 1st April of 2001 to 31st December 2001

Name of the Broker	Buy qty	% to the total vol. at exchange	Sell qty	% to the total vol. at exchange
Shoba Investments	75100	17.59	75100	17.59
Yatin Shah & Co.	60300	14.13	56100	13.14
Kabu Invest.Services	47500	11.13	47500	11.13
Trimty Invest.	41100	9.63	41100	9.63
Shrine Investments	37400	8.76	39700	9.30
Kanchan Investments	34500	8.08	32400	7.59
Sharad B Shah	28600	6.70	24900	5.83
Clever Investments	21300	4.99	21300	4.99
Chirag Investments	19600	4.59	16400	3.84
CR Kulkarni	16700	3.91	16300	3.82
Ramesh G Shah	12300	2.88	13000	3.05
PL Pushpalakshmi C&C	13200	3.09	13100	3.07
Jagannath Vinod Kumar	5300	1.24	6300	1.48
Total	412900	96.72	401400	94.45

From the above it is clear that these 12 brokers mentioned above have constituted more than 90% of the total volume in this scrip at Pune Exchange.

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 May 28, 2003 under Regulation 5(1) of SEBI (Procedure for Holding enquiry by enquiry officer and imposing penalty) Regulations, 2002 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), A (3-4) and B(1) of Schedule II under Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations 1992; Clauses (a), (b), and (c) 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, payment not being made and received by the clients, 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 November 18, 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 viz. Chinmoy Andhare, Nand Vijay Patil, Porwal & Co., Anand Kshirsagar and Subhash Tulsiyan, who were strangers and were introduced for the first time by Shri Veerkaar, an employee of HTL.

Further, the broker did not assess their financial capabilities and networth while failing to exercise due diligence in admitting the clients. The Enquiry Officer recommended a minor penalty of ‘suspension of Certificate of Registration for a period fifteen days 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 November 25, 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 December 10, 2004 and further appeared for personal hearing on February 10, 2005 and made oral submissions.
- 3.2 Between April 1, 2000 and March 31, 2001, the gross purchase and sales of the broker in the scrip contributed 8.9 % of the total volume in the scrip in the exchange .The details of purchase and sale by the broker in the scrip of HTL are given as under:

Period	Gross purchases	% to the total buy volume at the exchange	Gross sales	% to the total sell volume at the exchange
01.04.00 to 31.03.01	62100	8.90	62100	8.90
01.04.01 to 31.12.01	5300	1.24	6300	1.48

It was admitted during the course of enquiry proceedings that the broker executed trades for the clients namely: Shri Chinmoy Andhare, Shri Nand Vijay Patil,

Porwal & Company, Shri Anand Kshirsagar and Shri Subhash Tulsian in the scrip of Home Trade Ltd.

The broker had executed following trades on behalf of the clients:

For the period from **01.04.2000** to **31.03.2001**

Client	Buy	Sell
Chinmoy Andhare	24,600	24,600
Nand Vijay Patil	26,000	26,000
Porwal & Company	10,800	10,800
Anand Kshirsagar	700	700

For the period from **01.04.2001** to **31.12.2001**

Client	Buy	Sell
Subhash Tulsian	0	1000
Nand Vijay Patil	5,300	5,300

All the transactions were squared off and did not result in deliveries except for the transaction of Shri Subhash Tulsian which resulted in delivery of 1000 shares to the broker. These transactions appear to be excessive speculation with intention to create artificial volumes in the scrip of HTL by relatively new clients.

3.3 The broker had furnished following documents during the enquiry proceedings

- a) Statements of accounts of Shri Chinmoy Andhare, Hemant Rangole, Anand Kshirsagar and Nand Vijay Patil.
- b) Client Registration form and member client agreement of Porwal & Co.

It was observed that the broker had failed to obtain client registration forms and member client agreements with respect to other clients. From the KYC form obtained from Porwal and Co., the following observations are made:

- 1) The occupation was shown as Share broker

- 2) Annual Income was shown as Rs.70, 000/- for last three years.
- 3) Market value of Portfolio was shown as Rs.25, 000/- as on 31.03.2000.
- 4) No details of the introducer.

The annual income of last three years for Porwal & Co. was shown as Rs.70,000/- only, which do not support the volumes of trades executed by the client. Though it was seen that all the trades were squared off, the broker should have assessed the financial capability of the client before executing the trades on his behalf. The broker should have ensured that the client who placed the buy order was financially capable of lifting the delivery; otherwise the liability would devolve to the broker. Therefore, assessing the financial capability of the client becomes material although the trades are squared off. The antecedents of the clients were not verified. The trading pattern of these clients who dealt only in scrip of HTL as well as the nature of transactions where all trades were squared off are pointing to excessive speculation beyond the means. In the absence of any material to suggest that the broker had assessed the financial capabilities of these clients it goes to show that the broker had not exercised due diligence while trading for these clients in the scrip of HTL.

3.4 The broker made following submissions during the enquiry proceedings:

- 1) Except for Shri Subhash Tulsian all the clients were introduced by Shri Veerkar.
- 2) Exposure for clients, namely Shri Hemnat Rangole, Shri Anand Kshirsagar and Shri Anand Vijay Patil did not exceed Rs.5,00,000/- and regarding Shri Chinmay Andhare the exposure exceeded Rs.5,00,000/- in April and May 2000 when the broker had a credit balance of more than Rs.75,000/- for the said client.
- 3) That he had not executed any proprietary trades and the period of trades as mentioned was characterized by high volatility and that the broker had no reason to suspect that the trades were not genuine.

- 4) That the last transaction by him was on April 03, 2001 and the period of alleged artificial trades continued till December 31, 2001 as alleged in the show cause notice. However, there were stray trades of delivery of 1000 shares of Shri Subhash Tulsian on May 08, 2001 and May 10, 2001.

It was submitted by the broker to the Investigating Officer vide his statement dated April 04, 2003 that the clients used to place the orders over telephone and that no other steps were taken to verify the identity of the client. Broker vide letter dated April 08, 2003 informed that the contract notes relating to Shri Hemant Rangole, Chinmoy Andhare, Porwal & Co., Anand Kshirsagar and Shri Anand Vijay Patil were sent to the address of Porwal & Co. and payments relating to Shri Hemant Rangole, Chinmoy Andhare and Porwal & Co. were also sent to the address of Porwal & Co. Therefore, from the broker's own admission the contract notes and payments were not sent to the clients directly.

- 3.5 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 September 18, 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 healthy and non-manipulative basis.”

3.6 From the materials on record, it emerges that all the clients were relatively new and they traded significantly only in the scrip of HTL and contributed almost 8.9 % of the volume traded at PSE accompanied with a huge surge in price. Thus the trades executed by the broker for his clients are exorbitant and appear to be 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 acted in good faith and with due diligence before considering of trading for these clients.

3.7 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 PSE. 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 Pune 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 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.

- 3.8 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.

3.9 Regarding broker's failure in obtaining the acknowledgements on the counterfoils of the contract notes, it was submitted that the contract notes were sent by post to the address of Porwal and Co. at Mumbai, hence acknowledgement could not be obtained and none could be been filed before the investigating authority. As observed from the trading details, the number of transactions and volume of transactions for the clients are quite significant. In this context, it is difficult to believe that there was not even a single instance where the broker could collect the acknowledged copy of the contract notes. This is in violation of Regulation 17(1) (i) of SEBI (Stock Brokers & Sub-Brokers) Regulations, 1992.

3.10 The broker vide his reply dated December 10, 2004 has made the following submissions:

- a) Enquiry was initiated on the basis of Shri Rajendra Veerkar's Statement dated March 31, 2003. In the said statement Question 8 pertains to the broker, Veerkar's answer to this question pertains to some other broker. Broker has submitted that his statement was recorded on April 4, 2003 while Virkaar's statement was recorded on March 31, 2003, hence the broker has claimed that certain submissions attributed to him vide the said statement of Shri Veerkar were not made by him. He further claimed that the Enquiry Officer had not

properly analyzed the evidence against him before framing the charges where Mr Veerkarr's statement is silent on him.

- b) The volumes traded by the broker are not excessive, since in the year 2001-02 the total volume of trade of the broker was 62100 i.e. average daily volumes of 250 shares and in the year 2001-2002 total volume was only 6300 shares
- c) Neither Pune Exchange nor SEBI Inspection in August 2000 found out any irregularities in the trades of the broker in the scrip of HTL.
- d) The broker stated that as regards client Porwal & Co, the broker had collected upfront margins before trading for the client and the broker has also produced ledger extract to prove the same.
- e) The client traded only in the scrip of HTL through the broker because it was listed in Pune Stock Exchange and not in BSE or NSE.
- f) The broker stopped trading for the client from April 2001 onwards except the Subhash Tulsyan's sale of 1000 shares in May 2001.

The broker has submitted that Mr Veerkar's statement cannot be relied upon in his case. In this regard, SEBI had relied on the evidence obtained from investigation against the broker. Trading data obtained by investigation as referred in Para 1.3 above was sufficient to arouse reasonable suspicion on the conduct of the broker. Apart from this there are no fresh grounds in the broker's reply. However, all the above points were elaborately considered by the Enquiry Officer and I agree with his findings.

- 3.11 During the personal hearing held on February 10, 2005 the broker submitted that he had already undergone suspension for a period of 6 months vide SEBI Order dated August 19, 2002 for irregularities in the member client agreement and in KYC forms which corresponds to the period in which the new charges are alleged to be committed. The said Order pertains to the findings of inspection of

books of accounts and records of the broker by SEBI between August 07, 2000 and August 9, 2000. It was then stated by the broker vide his letter dated 26th June 2002 that the irregularities in the member client agreement and KYC forms had already been rectified. Therefore, the deficiencies found out during this investigation are new and the same cannot be correlated to the earlier penalty. On the contrary, the fresh irregularities noticed in the course of investigation into the scrip of HTL lend support to the view that the said broker's conduct leaves much to be desired, despite the earlier punishment. It is also found that the broker had not appealed against the said Order dated 19 August 2002. He also submitted that there had been only nominal trading during April 2001 to December 2001. However, this defense cannot be accepted since the broker had traded in the period when there was maximum price rise.

- 3.12 I note that while recommending the minor penalty of suspension of certificate of registration for a period of fifteen days, the enquiry officer has considered the submissions made 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 an employee of HTL, resulted in abnormally high volumes of over 8.9 % and 1.4 % traded at PSE respectively during the periods 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 diligence in his dealings with the clients, who were introduced by the employees of HTL, allowed excessive speculation and creation of false market in the scrip of HTL. Thus broker has violated the provisions of Clause A(2), A (3-4), B(1) of Schedule II under Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations 1992; Clauses (a), (b), and (c) 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 certificate of registration for a period of fifteen 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 Jagannath Vinod Kumar (INB 110241310), member Pune Stock Exchange.

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