

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER AGAINST M/s SWAGATH SECURITIES PVT LTD., MEMBER BANGALORE STOCK EXCHANGE, SEBI REGISTRATION NO. INB081010335 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/30/ISD/11/05

1.0 **BACK GROUND**

- 1.1 M/s Swagath Securities Pvt 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 INB081010335.
- 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
April 31, 2000	825.25

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. November 1999 to March 2001 (hereinafter referred to as the period under consideration), three different periods of trading were identified as follows :

a. November 16, 1999 – March 31, 2000

Member Name	Total Purchase	Total Sales	Purchase % to the total buy volume at the exchange	% to the total sell volume at the exchange
Sakurthi Finvest	46,800	48,200	24.50	25.45
Swagath Sec.	34,300	34,100	17.96	17.85
Dagaliya Consultants	26,700	29,500	13.98	15.45
ICDS Sec	23,800	23,700	12.46	12.41
M's Sec.	16,800	16,200	8.8	8.48
First Sec.	15,800	15,700	8.27	8.22
Total	1,64,200	1,67,400	85.97	87.65

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

b. April 01, 2000 – March 31, 2001

Broker	Buy qty	% buy to total vol.at exchange	Sell qty	% Sell to total qty at exchange
M's Securities	161940	18.89	163450	19.07
Sakurthi Finvest	137200	17.31	132950	16.85
Harikrishna Stocks	119450	15.09	122250	15.36
Swagath Securities	119350	14.71	116250	14.32
Gayathri Securities	99600	13.01	99800	13.03
Dagaliya Consultants	77600	9.24	77850	9.25
Eco Stocks/Wyscare	33000	4.07	33000	4.13
Uday Stocks	30500	4.11	31400	4.17
Marlecha Securities	23300	2.72	23300	2.72
Total	849840	99.15%	847620	98.89%

During the above period, the above nine brokers contributed more than 99% trading volume in the scrip of HTL at BgSE.

c. April 01, 2001 – December 31, 2001

Broker	Buy qty	% buy to total vol.at exchange	Sell qty	% Sell to total qty at exchange
Ganesh Stocks	48120	16.52	47370	16.26
Nereyeth Securities	46550		45950	15.77
Prasidhi Marketing	37850	13.00	37950	13.03
Indavra Securities	34950	12.00	34851	11.96
Hexagon Capital	34850	11.96	34801	11.94
M's Securities	22900	7.86	23090	7.93
Dagaliya Consultants	18450	6.33	18700	6.42
Sakurthi Finves	16985	5.83	14650	5.03
Gayathri Securities	14600	5.01	14600	5.01
Swagath Securities	11900	4.08	11900	4.08
Total		98.57		97.43

During the period, the above ten brokers contributed more than 98% of the trading volume in the scrip of HTL at BgSE.

- 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 investigation, 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 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 10, 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. . Himmat Singh Porwal, Manish Shah, Kiran Shah, brother of Manish Shah, M/s Sun Securities, Shri Shailesh, Mrs. Meena Shailesh, wife of Shailesh and Shri Ashok Khandelwal, who were strangers and were introduced for the first time by Shri Veerkar, 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 three months under Regulation 13(1) (a) (iv) of SEBI (Procedure for Holding enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

3.0 CONSIDERATION OF THE ENQUIRY REPORT

- 3.1 After considering the Enquiry report, a Show Cause notice dated November 22, 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 March 16, 2005 and made oral submissions.
- 3.2 It is not in dispute that the broker had executed the following transactions in the scrip of HTL as under:

Period	Gross Purchases	% of the total buy volume at the exchange	Gross Sales	% of the total sell volume at the exchange
16.11.99 to 31.03.00	34,300	17.56	34,100	17.85
01.04.00 to 31.03.01	1,19,350	14.71	1,16,250	14.32
01.04.01 to 31.12.01	11,900	4.08	11,900	4.08

It was admitted by the broker that he executed trades on behalf of following clients, viz,

1. Himmat Singh Porwal
2. Manish Shah
3. Kiran Shah, brother of Manish Shah
4. M/s Sun Securities
5. Shri Shailesh
6. Mrs. Meena Shailesh, wife of Shailesh
7. Shri Ashok Khandelwal.

Trading details of the clients are as under;

Client	Gross Buy	% of the total buy to the total buy position of the broker	Gross Sale	% of the total buy to the total buy position of the broker
Kiran Shah	10,500	30.61	10,400	30.50
Manish Shah	7,500	21.87	7,500	21.99
Sun Securities	6,100	17.84	6,100	17.89
Meena Shailesh	4,100	11.95	4,100	12.02
Shailesh P	2,400	7.00	2,400	7.04

Ashok Kankdelwal.	3,000	8.75	3,000	8.80
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For the period 01.04.2000 to 31.03.2001

Name of the Client	Buy Quantity	Sell Quantity
Himmat Singh Porwal	72750	72750
Kiran Shah	16800	16400
Manish Shah	15600	15300
Sun Securities	14000	11800

For the period 01.04.2001 to 31.12.2001

Name of the Client	Buy Quantity	Sell Quantity
Himmat Singh Porwal	1400	1400
Kiran Shah	4300	4300
Manish Shah	4500	4500
Sun Securities	1700	1700

3.3 The broker vide his statements dated September 03, 2002 and September 23, 2002 made the following submissions;

1. The margin money in the form of DD of Rs.1,50,000 from Kiran Shah was received on 04.02.2000 but client registration form was obtained only on 15.08.2000
2. The margin money in the form of DD of Rs 50,000/- from Sri Manish Shah was received on 04.02.2000 but client introduction form was obtained on 12.06.2000.

3. Shri Sandeep (introduced by Kiran Shah) traded on behalf of Sun Securities from 01.02.2000 onwards but the client introduction form was obtained only on 21.04.2001.
4. Himmat Singh Porwal was a walk-in client who started trading in July 2000 but client introduction form was obtained only on August, 2000.
5. For Shri Shailesh and Meena Shailesh, KYC forms were obtained prior to the trading and margin money Rs.1, 00,000/- was received from Meena Shailesh.
6. Shri Ashok Khandelwal was a well known client of the broker and traded in other scrips also. He maintained running account with the broker. However, the broker did not submit the details of the trades done in other scrip for the said client.

3.4 The following deficiencies were noticed from the KYC forms in the Enquiry Report.

Client Name	Observations made from the KYC form
Ashok Khandelwal	Annual income Rs.1.lac per annum, no details of market value of portfolio. No introducer
Manish Shah	No annual income shown in last three years, no introducer, no market value of portfolio, date of entering into member client agreement is 12.06.00
Kiran Shah	No bank account number mentioned, no annual income shown in the last 3 years, no introducer, no market value of portfolio, date of entering into member client agreement is 15.08.2000
Sun Securities	No Bank Account number mentioned annual income shown is Rs.75000 per annum, no introducer; no market value of portfolio, date of entering into member client agreement is 21.04.2000.
Meena Shailesh	No bank account number mentioned, annual income shown is Rs.1 lac p.a three years, no introducer, no market value of portfolio

Shailesh P	No bank account number mentioned, annual income shown is Rs.1,25,000 p.a three years, no introducer, no market value of portfolio
Himmat Singh Porwal	Annual income shown as 75,000 pa, no introducer, date of entering into member client agreement is 19.08.00, no market value of portfolio

From the above table it is evident that the broker obtained the client introduction forms after the commencement of the trading i.e. from the clients namely; Kiran Shah, Manish Shah, Sandeep (Sun Securities) and Himmath Singh Porwal. It was further stated in the enquiry report that for majority of clients there were no proper client introduction and hence it does not appear that the broker had assessed the financial net worth of the clients. In view of these deficiencies, the enquiry officer concluded that the broker failed to exercise due diligence and care while trading for these clients in the scrip of HTL. I agree with the findings of the enquiry officer. Further, the broker vide his statement dated September 03, 2002 admitted that he had not verified the financial worthiness or credentials of his clients. It was not disputed by the broker that most of the clients were outstation clients and there is no evidence to suggest that the clients traded in any other scrip except in the case of Mr. Ashok Khandelwal.

- 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 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 healthy and non-manipulative basis."

- 3.6 From the materials on record, it emerges that all the clients were relatively new and hailed from far off place like Mumbai. Further, these clients traded significantly only in the scrip of HTL and contributed almost 18 % of the volume traded at BgSE 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 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 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 As regards obtaining acknowledgements on the counterfoils of contract notes it was found that the broker failed to file the same even in respect of local clients namely Shri Ashok Khandelwal and Laksmi Narayan Guptha, Therefore, the enquiry officer concluded that the broker has violated Regulation 17(1)(i) of SEBI(Stock broker and Sub-broker regulations,1992. It was also found by the Enquiry Officer that the broker had failed to deliver securities to his clients except in the case of Manish Shah, Kiran Shah and Sun Securities.

- 3.10 The broker had also traded for M/s Manifest Stocks, fellow broker of BgSE and also executed off the floor transactions for another broker, Dagliya Consultants. The following are the off market trades executed by the broker outside the exchange mechanism;

Date	Buyer	Seller	Quantity
18.01.00	Dagliya Consultants	Rajiah	100
31.01.00	Rajiah	Dagliya Consultants	200
01.02.00	Dagliya Consultants	Rajiah	200

07.02.00	Rajiah	Dagliya Consultants	100
08.02.00	Dagliya Consultants	Rajiah	100
14.02.00	Rajiah	Dagliya Consultants	100
14.02.00	Dagliya Consultants	Rajiah	100
21.02.00	Rajiah	Dagliya Consultants	100
22.02.00	Dagliya Consultants	Rajiah	100

‘Off the floor’ transactions taking place in the market do not impart transparency and fairness on such deals. The price formation in such transactions is not through the stock exchange price and order matching mechanism. Hence, SEBI had issued a circular dated September 14, 1999 prohibiting off the floor transactions and cross deals except on the screen of the stock exchange. The broker had admitted that the above mentioned transactions were carried out outside the trading system of stock exchange.

3.11 The broker vide his reply dated December 10, 2004 submitted as follows;

1. The finding of the enquiry officer that for majority of the clients there were no introduction and that it does not appear that the broker had assessed the financial network of the clients who appear to have traded beyond their means is incorrect.
2. The broker exercised due care and diligence as he traded within the margin and he did not enter into any proprietary trades. Hence, no adverse inference can be taken against the broker from the fact that the clients traded only in the scrip of HTL.
3. The broker submitted sufficient evidence to prove that Shri Ashok Khandelwal traded in other scrips also which was not taken into account.
4. The order of the Honourable SAT in Madhukar Seth v SEBI has no precedential value since in that case one person alone manipulated the market.
5. The finding of the Enquiry Officer that Shri Manish Shah is a relative of the Registrar of public issue of HTL was used to prejudice the broker since this information is beyond the scope of the broker’s knowledge.

6. During the relevant period there was an unusual price rise in all the scrips without change in the economic fundamentals of the company and in almost all scrips there is a price surge after listing. Hence price surge should not be attributed to the broker.
7. The broker had not violated Regulation 17(1)(i) of SEBI (Stock Brokers & Sub Brokers) Regulations, 1992 since the same does not stipulate acknowledgement from clients.
8. Squaring off transactions was a legitimate practice and no bias can be taken against the broker in this regard.
9. Off the floor transactions were done by one of the broker's ex-employees without his knowledge, broker relieved the ex-employee when the practice was discovered.

3.12 The Enquiry Officer had stated in his report that though it was claimed that Shri Ashok Khandelwal traded in other scrips, the broker failed to submit details of those trades. Hence, it was concluded by the Enquiry Officer that the client traded only in the scrip of HTL. Now, the broker has submitted trading details of Shri Ashok Khandelwal along with his reply. Out of eleven clients of the broker only one of them Shri Ashok Khandelwal had traded in other scrips and rest of them were trading exclusively in the scrip of HTL. Similarly blaming an ex-employee for off market trades will not absolve the broker from his responsibility and he is liable for such acts or omissions by his employee. It was contented that maintenance of acknowledged copies of counterfoils of contract notes is not a requirement under Regulation 17(1)(i) of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992. Regulation 17(1) reads as under;

“Every Stock Broker shall keep and maintain the following books of account, records and documents, namely:—

(a).....

(b).....

.....

(i) Counterfoils or duplicates of contract notes issued to Clients”.

In the absence of any complaints from the clients regarding non issuance of contract notes, a lenient view is taken.

3.13 During the personal hearing held on March 16, 2005 the broker admitted his mistakes and stated that such mistakes occurred due to his inexperience since he had started his business only in May 1999. The broker assured that such irregularities will not be repeated in future and requested for leniency.

3.14 I note that while recommending the minor penalty of suspension of certificate of registration for a period of three months, 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 18%, 14.3% and 4.8 % of volumes traded at BgSE respectively 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 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, besides, SEBI circular no. SMDRP/POLICY/Cir-32/99 dated 14.09.1999 whereby all the trades shall be routed through the screen of the exchange in the price and order matching mechanism.

4.0 **ORDER**

Now, therefore, in exercise of powers conferred under 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 three months under Regulation 13(1) (a) (iv) of the SEBI (Procedure for holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 on M/s Swagath Securities Pvt Ltd (INB081010335), member Bangalore Stock Exchange.

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

Place: Mumbai	G.Anantharaman
Date: 30-11-2005	Whole Time Member Securities and Exchange Board of India