

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER AGAINST M/s FIRST SECURITIES PVT LTD., MEMBER BANGALORE STOCK EXCHANGE, SEBI REGISTRATION NO. INB080631931 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/31/ISD/11/05

1.0 **BACK GROUND**

1.1 M/s First 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 INB 080631931.

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
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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
- b. April 01, 2000 – March 31, 2001
- c. April 01, 2001 – December 31, 2001

The broker traded only in the first period i.e. between November 16, 1999 to March 31, 2000 as under;

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/-.

- 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 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 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 on his own account and for clients viz. Rambhabha Holdings, Ranjit Holdings, Kanna Investments etc, who were strangers and were introduced for the first time by Mr Subhodh, 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 ENQUIRYREPORT

- 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 10, 2004 and further appeared for personal hearing on February 11, 2005 and made oral submissions.
- 3.2 Between November 16, 1999 and March 31, 2000, the gross purchase and sales of the broker in the scrip contributed 8.27 % 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:

Client	Gross buy	%gross buy to the total buy position of the broker	Gross sell	% gross sell to the total sell position of the broker
Own account	11,000	69.62%	11,200	70.89%
Rambhabha Holdings	4,400	25.95%	4100	25.95%
Ranjit Holdings	700	4.43%	700	4.43%
Kanna Investments	400	2.53%	0	0

It was admitted by the broker that the trading in HTL was done for proprietary account and also for clients as stated above. From the above table it is evident that in proprietary account the broker had traded for 11,000 shares between November 16, 1999 and March 31, 2000 and for the client Rambhaba Holdings 4400 shares between January 11, 2000 to February 10, 2000. Together, the trades of the broker during the aforesaid period constituted 8.27% of the total trades in the scrip of HTL. It was stated by the broker that the said trades for the client are in the price range of 629/- to Rs. 730/- per share and the volumes traded would have incurred a cost on the client anywhere between 24-30 lacs. There is no material to suggest that the broker had verified the financial capabilities, networth, etc. of the client before he undertook transactions.

3.3 Discrepancies observed in the client registration form of the Rambabha Holdings filed by the broker as per the enquiry report are as follows

- 1) The introducer's column was left blank. However, as per the statement of Shri Hemang Chapia dated September 3, 2002 the client was introduced by Mr Subodh, an employee of HTL (which was earlier known as Euro Asian Securities and also as Lloyds Brokerage prior to that). Similar submission was also made in the enquiry proceedings.
- 2) No Board Resolution was obtained permitting the client to trade in securities.
- 3) No details of persons authorized to represent the client for the dealings on behalf of the company.

- 4) Photo of the person authorized to trade was missing.
 - 5) Financial statements such as Balance sheet, P & L accounts were not obtained to assess the financial capability of the client to trade.
 - 6) No MOA and AOA were obtained from the client.
- 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 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.”

- 3.5 As per the statement of Shri Hemang Chapia dated September 03, 2002, Shri Rajneesh used to place orders on behalf of Rambhabha Holdings and that the broker did not meet any of the Directors and employees of Rambhabha Holdings. Shri Rajneesh used to come to Bangalore to collect the deliveries. It was also admitted that Mr Rajneesh/Mr Veerkar used to place orders on behalf of Rambhabha Holdings.

There was no material to suggest that the client had given written standing instructions to the broker authorizing him to receive orders and make deliveries to Mr Rajneesh/Mr Veerkar. It is also significant to note that the broker vide his letter dated May 25, 2002 addressed to SEBI has given the address of Rambhabha Holdings to be 143, 14th Floor, Nariman Point, Mumbai-21 and the contact persons as Shri Nimish and Shri Subodh (of HTL). This interestingly was the address of Home Trade Ltd. However, in the client introduction form the address of Rambhabha Holdings was different.

- 3.6 Taking into consideration that Rambhabha Holdings was introduced by Mr Subhodh, an employee of HTL and the fact that the client traded only in the scrip of HTL which appears to be disproportionate to its financial capabilities, it cannot be said that the broker had exercised due skill and diligence in the trades for the clients. However, it was submitted that the broker had voluntarily stopped dealing with the client as he had become suspicious in view of the client's trades only in

the HTL scrip. The broker had traded in the scrip for 30 days out of total period of 94 trading days i.e. he traded for about a month from 11.1.00 to 10.2.00 before cessation of operations by the broker. This is considered as a mitigating factor having regard to the fact that the period of steep price rise was between 16.11.99 and 31.3.2000.

- 3.7 It was not disputed that acknowledgements of the clients on the counterfoils of the contract notes were not obtained. It was submitted that there was difficulty in obtaining the same since the outstation client was not returning the acknowledgement copy of the contract note. Non-obtaining of contract notes is not in conformity with Regulation 17(1)(i) of SEBI (SB & SB) Regulations, 1992.
- 3.8 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 8.2 % 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.
- 3.9 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.

- 3.10 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.

3.11 The broker vide his reply dated November 10, 2004 submitted as follows:

- a) Though there had been some procedural errors on the part of the broker there had been no malafide intentions
- b) Due diligence and care were exercised by the broker, since when it was noticed that the client is trading in singular scrip the broker severed the relationship with the client..
- c) Client came to Bangalore to access the market of Bangalore based shares, hence the circumstance that they were from far off Mumbai has no relevance.
- d) The number of shares traded was very less though being a very liquid scrip the percentage appears large and would appear misleading
- e) The broker had taken a hard decision to discontinue the transactions with the client before the Regulator could identify the irregularity

3.12 During personal hearing held on February 11, 2005, the broker submitted that when he became suspicious about the client Rambhabha Holdings that this client is dealing only in the scrip of HTL, he terminated transactions with the client. He further stated that the transactions were terminated within a period of one month i.e. after February 28 there had been no trades in the scrip of HTL whereas the trades in shares of HTL in the exchange continued in the following years. The broker further submitted that they have an unblemished record for the past 12 years and the recommended suspension for a period of 15 days is too harsh and hence prayed for leniency.

3.13 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 8.2 % 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 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 (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 First Securities Pvt Ltd (INB080631931), member Bangalore 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