

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11 AND 11B OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF HOME TRADE LIMITED AGAINST

|   |                             |
|---|-----------------------------|
| 1 | Mr. RUSSEL BOEKENKROEGER    |
| 2 | MR.DILIP JAIN               |
| 3 | Mr. VIJENDRA KUMAR SURANA   |
| 4 | Mr. SALIL DINAKARLAL GANDHI |
| 5 | Mr. VIJAY H MODI            |
| 6 | Mr. SHASHANK RANADE         |
| 7 | Mr. MANOJ SHAH              |

WTM/GA/ 54 /ISD/ 02 /06

**1.0 Background**

- 1.1 Home Trade Limited (erstwhile Euro Asian Securities Ltd.)(hereinafter referred to as 'HTL') came out with an offer for sale of 59,90,250 equity shares of Rs. 10/- each for cash at a price of Rs. 50/- per share aggregating to Rs. 29.95 crores during October, 1999. The offer for sale opened on October 27, 1999 and closed on October 30, 1999. The registered office of HTL was shown in the prospectus for offer for sale during October 1999 as 124 A, Sohrab Hall, 21, Sasoon road, Pune 411001, while the administrative office was shown to have been located at 143, Mittal Court, A Wing, Nariman Point, Mumbai 400021. HTL also reportedly had office at International Infotech Park, Vashi, Navi Mumbai. As per the said prospectus, the main object of HTL were to carry on business as share and stock brokers, finance brokers, underwriters, sub-underwriters, agents and brokers for taking hold, dealing in, converting stocks, shares and securities of all kinds, brokers for units of Unit Trust of India, brokers for debenture, bonds, Government Securities, National Savings Certificates, Small Savings Schemes and generally for securities of all kinds and to carry on the business in India or abroad.
- 1.2 Subsequently, the shares of HTL was listed on Pune Stock Exchange and Bangalore Stock Exchange and trading started on November 15, 1999. Paid up capital of HTL constituted 2,39,61,000 shares of Rs.10 each amounting to Rs. 23.96 crores. During September 2000, the HTL sub-divided each share having face value of Rs. 10/- into 5 shares of face value of Rs. 2/- each. It was seen that the promoters were holding 75% of the post-issue capital of HTL under the category promoter's holding. From the details submitted by stock exchange and registrar to the offer for sale, it was observed that certain individuals made applications for large quantity of shares in the offer for sale of shares of HTL.
- 1.3 An investigation was conducted into the offer for sale, subsequent listing in BgSE and PSE and trading in the shares of HTL, by Securities and Exchange Board of India (SEBI). Investigations inter alia, revealed as follows;
- 1.4 Shri Ketan Sheth, promoter and director of HTL and his associates/family members and associate/connected firms were large share holders in HTL. On perusal of the prospectus for the Offer for Sale, it was seen that Shri Ketan Sheth was a director, promoter and offeror of Euro Offshore Investments Ltd and its subsidiaries. The subsidiaries of Euro Offshore Investments Ltd were WAYS Inc., Euro Allied Ltd. and Euro Discover Ltd. respectively. From the annual report of HTL, it was found that Shri Ketan Sheth was inducted as an additional director on the Board of Directors of HTL during the financial year 1999-2000 and continued to be a Director till May 2001. On perusal of the details obtained from the Registrar to the Offer for Sale, it was observed that Shri Ketan Sheth and associate persons/family members (hereinafter referred to Ketan Sheth group) made large applications for the shares of HTL in the said offer.
- 1.5 Ketan Sheth group made applications for 24,30,000 shares (out of the total offer for sale of 59,90,250 shares) constituting 40.56% of the total offer for sale and 24,17,850 shares were allotted in respect of the applications. Perusal of the bank details revealed that the subscription money received from these applicants was paid back to them by HTL out of the public issue proceeds. The said amount was transferred to other associate entities in a circuitous route and the same was utilized for further purchase of shares of HTL.
- 1.6 Ketan Sheth group were allotted about 40.35% shares of the total Offer for Sale and about 10.14% of the post-issue equity share capital of HTL. The shares allotted to the applications in the name of Ketan Sheth group were beneficially owned by HTL. This is clear from the fact the entire application amount was paid back to Ketan Sheth group and, as confirmed by the Registrar to the Offer for Sale, the shares allotted to Ketan Sheth group were hand delivered by the Registrar to HTL, the company and not to the allottees. Thus, the above applications of Ketan Sheth group were not genuine. This led to cornering of a substantial portion of the floating stock in the scrip in the hands of HTL and its promoters/directors/associate persons of the company.

1.7 HTL and its directors/promoters purchased back shares allotted in the Offer for Sale during October 1999, through its associate/connected companies namely, Parakh Shares, (4,64,300 shares amounting to Rs. 2.34 crores), AGS Financial Services Ltd. (3,04,600 shares amounting to Rs. 1.43 crores) and through Maniram Consultants Ltd. (462400 shares amounting to Rs. 2.31 Crores) totaling to 12,31,300 shares. The purchase was immediately after listing and trading at the exchanges was permitted at the rate of Rs.50/- per share and the payment was out of proceeds of public issue. The money has been credited in the account of the seller around November 19, 1999. It is pertinent to mention that the market price at the exchange was Rs.270/- per share when it was allowed to be traded. The sale price thus had no bearing with the market price. These purchases constituted around 20.76% of the total offer for sale and around 5.13% of the post-issue paid-up equity share capital of the company. This led to cornering a large portion of the floating stock in the scrip with HTL and its associates. Thus the offer for sale of shares of HTL during October 27-30, 1999 did not receive genuine public subscription and over 89 % of the subscription was arranged by company/associates / directors/ promoters.

1.8 Thus, out of a total offer of 59,90,250 shares allotted, over 53,45,650 shares were purchased back by HTL associated/connected companies namely, Parakh Shares, AGS Financial services and Maniram Consultants Ltd. through the aforesaid arrangements of HTL and its promoters/directors and associates who acquired about 89 % of the shares offered through offer for sale. In other words, 22% of the post-issue equity paid-up capital was acquired in addition to 75% of the holding already being with the promoters. Thus, HTL's directors/ promoters/ associates had cornered 97% of the floating stock in the scrip of HTL, immediately after listing.

## 2.0 Trading in the scrip of HTL

2.1 The scrip of HTL was listed at Pune and Bangalore Stock Exchanges. An analysis of price volume data revealed that the scrip was listed at the rate of Rs.250/- to Rs.270/- on November 15, 1999 and reached to Rs.310/- by November 30, 1999 within a span of nine trading days. Thereafter, the price continued to move up and reached to Rs.527/- by December 30, 1999 and Rs.736/- by January 31, 2000. Subsequently price continued to move up to Rs.800/- by March 31, 2000. The scrip continued to move in the price range of around Rs.700/- to Rs.850/- during April 2000 to September 2000. The price of the scrip came down to Rs.605/- by October 6, 2000 and thereafter the sub-divided shares of Rs.2/- were traded in the exchange. The price of the share with face value of Rs.2/- went upto Rs.160/- during February 2001 and the scrip continued to trade at around Rs.150/- till September 2001. Since October 2001 the scrip started moving downwards, settling at a price range of Rs.60/- - Rs.70/- during November 2001. Thereafter the scrip was traded in the range of Rs.60/- to Rs.70/- till March 2002.

2.2 HTL and its promoters/directors/associates had got the offer for sale fraudulently subscribed. The applicants were planted by the HTL's promoters/directors and the allotted shares were purchased back from these applicants using the proceeds of the offer for sale. For majority of the applicants the funds were provided by HTL itself through its front/fictitious entities and for those applicants who had used their own funds in the offer for sale, considerable amount of return were assured and given by HTL. The public share holding was less than 25% as required under Section 19 (2) (b) of SCRA during the relevant period .

2.3 Subsequently, when the shares were listed in Pune and Bangalore Stock Exchanges, the price of the scrip was jacked up artificially to unrealistic levels. To that end, the company/associates including the Promoters/Directors introduced a crop of putative clients in whose name the trading was done. The said parties used the employees of HTL viz.. Shri.Rajneesh and Shri.Veerkar to bring in more such clients in whose names trading were done at Pune and Bangalore in the scrip of HTL. The orders, on behalf of most of the clients were placed by Shri Ketan Sheth/Sh.Rajneesh Karanpuria/Shri.Rajendra Veerkar. The transactions done in the name of most of these clients were funded by HTL, mostly through Maniram Consultancy. Similarly deliveries were arranged by HTL on behalf of these clients. The price of the scrip was taken up to unrealistically high levels by placing orders at high levels by HTL in the names of these clients. It was, inter alia, alleged that directors of HTL including Shri. Russell H. Boekenkroger Jr, Shri. Vijendra Kumar Surana , Shri. Shashank G. Ranade, Shri. Dilip Jain, Shri. Salil D Gandhi, Shri. Vijay H Modi and Shri. Manoj (Mike) A Shah were also liable for the violations found in the public offer, listing and subsequent trading in the scrip of HTL. The aforesaid directors held the office in the Board of HTL as under;

| SI No | Name of the Director   | From       | To             |
|-------|------------------------|------------|----------------|
| 1     | Russell Boekenkroeger  | 23/03/2000 | 26/04/2002     |
| 2     | Dilip Jain             | 25/05/1999 | December 1999  |
| 3     | Vijendra Kumar Surana  | 1999       | September 1999 |
| 4     | Salil Dinkarlal Gandhi | 15/05/2001 | 29/09/2001     |
| 5     | Vijay H Modi           | 15/05/2001 | 29/09/2001     |
| 6     | Shashank G. Ranade     | 15/05/2001 | 29/09/2001     |
| 7     | Manoj (Mike) Shah      | 23/03/2000 | 24/04/2002     |

2.4 Thus, it has been alleged that HTL including the Promoters/Directors of HTL violated Regulation 3, 4(a), (b), (c), (d), (e) and 6(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995.

### 3.0 Show Cause Notice and Reply

- 3.1 In view of the prima facie findings of the investigation, a show cause notice dated April 1, 2004 was issued to HTL its associates, promoters and directors. Out of them directors, namely Shri. Russell H. Boekenkroger, Shri. Vijendra Kumar Surana, Shri. Shashank G. Ranade, Shri. Dilip Jain, Shri. Salil D Gandhi, Shri. Vijay H Modi, Shri. Manoj (Mike) A Shah replied to the said show cause notice.
- 3.2 Reply of Shri Russell H. Boekenkroger – Vide his letters dated July 2, 2004, February 2005 and August 30, 2005 Shri Russell submitted that he was introduced to HTL by one of his old business acquaintance in India named Mike Shah who was also a director of HTL. Shri Mike Shah invited Shri Russell to be a part of the Board of Directors of HTL vide an email dated January 7, 2000. Shri Russell agreed to fill the slot as a Non-Indian national Non –executive Director in the BoD of HTL. Pursuant to the same, Shri Russell met Shri Sanjay Agarwal in the lobby of Leela Kempenski in Mumbai for about 30 to 45 minutes en route to USA on February 18, 2000. It was further submitted that vide letter dated March 23, 2000, the Executive Director & Secretary, Shri N.S.Trivedi of HTL inter alia informed Shri Russell that he was replacing an Indian national Shri Manoj Chandak who resigned from the BoD of HTL on the said date.
- 3.3 Thereafter, there had been a few communications from Shri Mike Shah who thanked Russell for joining the BoD and informed him about the approval of HTL website by Bombay Stock Exchange. In June 2001 Shri Mike requested him to send passport size photos for documentation for membership in the BoD of HTL. After almost one year, Shri Mike advised Russell to resign from the BoD of HTL since the company was going through financial difficulties. Accordingly Shri Russell resigned from the board on April 26, 2002 and his attorney in India completed the formalities with the ROC. Shri Russell further submitted that he had no contacts apart from what was narrated above, with the company that he never attended any of the Board meetings of the company and never received any emoluments from HTL for holding the post of Non-Executive Director.
- 3.4 Reply of Shri Dilip Jain- Vide letter dated May 7, 2004, Shri Dilip Jain submitted that he was approached by one of his acquaintances to become a Non-Executive Director on the Board of Euro Asian Securities Limited. On good faith he accepted the offer and was appointed as a director on May 25, 1999. It was further submitted that he had never attended any Board meeting of the said company and had never met the other directors of the company professionally or socially and around December 1999, he resigned from the Board of the company.
- 3.5 Shri Dilip Jain has stated that he never owned shares in Euro Asian Securities Limited and was never remunerated or paid any sitting fees or fees in any other form by the said company. It was further stated by Shri Dilip Jain that that he had never been on the Board of any other company and he had never been prosecuted or any action had been taken against him by a statutory authority for violation of any law including dealing in securities.
- 3.6 Reply of Shri Vijendra Kumar Surana-It was submitted by Mr Surana that he was a businessman dealing in hardware and related articles at Kolkata. In the year 1999, an acquaintance approached him for becoming a Non-Executive Director on the Board of Euro Asian Securities Limited and in good faith he accepted the offer. Immediately on hearing about the offer for sale, he had written to the company to exclude his name from the Board of Directors, as he was not the working director and only a non executive director and during the same month (September 1999) he had given his resignation letter to the company.
- 3.7 He stated that he had never attended any Board meeting, never drew any remuneration or perks from the above company. He was in no way associated or in the knowledge of any day to day activities of the company. He had no knowledge that the company had changed its name to Home Trade Limited. He further submitted that he was not connected with the capital market and that he had not dealt in the shares of HTL. He had no knowledge of the transaction or frauds committed by the company.
- 3.8 Reply of Salil Dinkarlal Gandhi- Vide letter dated April 16, 2004 it was submitted by Shri Salil Dinkarlal Gandhi that he was appointed as an additional director with effect from May 15, 2001. It was submitted that he ceased to be a director after the AGM held on September 29, 2001 as the said appointment was not regularized as per Section 260 of the Companies Act, 1965. He stated that he had not signed form No 29 or giving consent for regularizing the appointment in the aforesaid AGM. He further submitted that his resignation was motivated on account of lack of time to assist HTL by virtue of his other professional commitments. He never attended the Board meetings of HTL and did not receive any remuneration for holding the post. Shri Gandhi stated that he was not involved in the conduct of business or day today affairs of HTL. He further stated that majority of the impugned transactions started even before his appointment as a director and he was not in custody or in possession of any of the books of accounts and statutory registers of HTL or any other papers or documents etc.
- 3.9 Reply of Vijay H Modi- Vide letter dated April 13, 2004 it was submitted by Shri Vijay H Modi that he was appointed as an additional director with effect from May 15, 2001. It was submitted that he ceased to be a director after the AGM held on September 29, 2001 as the said appointment was not regularized as per Section 260 of the Companies Act, 1965. He stated that he had not signed form No 29 or giving consent for regularizing the appointment in the aforesaid AGM. He had never

attended the Board meetings of HTL and received no remuneration for holding the post. He was not involved in the conduct of business or day to day affairs of HTL. He further stated that majority of the impugned transactions started even before his appointment as a director and he was not in custody or in possession of any of the books of accounts and statutory registers of HTL or any other papers or documents etc.

- 3.10 Reply of Shashank G. Ranade- Vide letter dated April 22, 2004, it was submitted by Shri Shashank G. Ranade that he was appointed as an additional director with effect from May 15, 2001. It was submitted that he ceased to be a director after the AGM held on September 29, 2001 as the said appointment was not regularized as per Section 260 of the Companies Act, 1965. He stated that he had not signed form No 29 or giving consent for regularizing the appointment in the aforesaid AGM. He had never attended the Board meetings of HTL and received no remuneration for holding the post. He was not involved in the conduct of business or day today affairs of HTL. He further stated that majority of the impugned transactions started even before his appointment as a director and he was not in custody or in possession of any of the books of accounts and statutory registers of HTL or any other papers or documents etc.
- 3.11. Reply of Shri Manoj Shah- Vide letter dated April 21, 2004 submitted that he was an IT professional by education with more than 35 years of experience of service to IT industry and was part of time Non Executive director of HTL, advising on technology matters only and that also from January 2000 onwards, whereas most of the deals mentioned in the show cause notice occurred between October to December 1999. He further submitted that there was no direct or specific allegation against him in the show cause notice as to his involvement for having violated any of the provisions of the SEBI Act, 1992 or any of the regulations made thereunder.
- 3.12 He stated that HTL had approached him in September and outlined their vision to create a large scale internet technology driven online infrastructure on a similar basis to USA's e-Trade company and requested him to provide support in the company's technology based projects including specific responsibilities of creating global partnership for implementation of its projects. Being impressed with the opportunity to create a world class technology based infrastructure for the first time in India, he agreed to provide advisory service to set up the required technological infrastructure; hence he was associated as a Technology Consultant with HTL since 1999. He was assigned with the work of finding the right technology implementer for company's projects and to find the right type of technology partner with whom company can tie up for different area related to the projects. He has submitted further that at no point of time he was involved in the company's operational management or day-to-day administration. As a technology consultant, his role and the role of his consultancy firm was restricted to providing consultancy service to HTL for setting up the IT infrastructure. During the course of implementation there were more than hundred very bright technology professionals and consultants working on the project.
- 3.13 He further submitted that he was co opted by HTL on the BoD in his professional capacity as a Non Executive Director and he had accepted the offer in January 2000. As a Non Executive Director, he had never attended a single meeting of Board of Directors of HTL and was not involved in the decision making process. Further he had not received any remuneration in the said capacity. It is further claimed that he had ceased to be a Director of HTL by operation of law in terms of section 283(g) of Companies Act, 1956. Further, it was stated that he had resigned from the Board of Directors of HTL in terms of 303(2) of the Companies Act, 1956.

#### **4.0 Oral Hearing.**

- 4.1 Further, an opportunity for personal hearing was granted to the noticees. Some of the noticees appeared before the then Whole Time Member and made their submissions and Shri Russell. H. Boekenkroger appeared before me through his Counsel Vinay Chouhan, Advocate on February 1, 2006. The counsel submitted that Mr. Russell was not involved in the decision making process of HTL, though he was a Non Executive Director in the company for a brief period. The counsel explained the circumstances in which Mr. Russell came to be introduced to the company which was followed with a namesake relationship with the company as described in Para 3.2 above. It was also submitted that his client never traded in Indian shares, he had no beneficial interest in the company and never received any pecuniary benefits for holding the said post of Non Executive Director. The counsel relied on the Supreme Court judgment in S.M.S. Pharmaceuticals, AIR (2005) SC 3512 and the Order of SAT in Rahul H Shah v SEBI (Appeal No.133/2003).
- 4.2 Shri Dilip Jain failed to appear for the oral hearing though the notice of hearing was served on him. Shri Shashank G. Ranade informed vide letter dated January 31, 2006 that he was unable to appear for oral hearing and sought to excuse his presence on medical grounds and did not seek afresh date for oral hearing. Shri Shasha Shri Vijendra Kumar Surana, Shri Salil Dinkarlal Gandhi, Shri Vijay H Modi and Shri Manoj (Mike) Shah stated that they had appeared for personal hearing before the then Whole Time Member on August 9, 2004 and reiterated their submissions made in their replies to the show cause notices.

#### **5.0 Findings**

- 5.1 I have carefully considered the findings of the investigation, the replies and the submissions made by the noticees.

5.2 From the nature of the transactions, it is noticed that there had been two relevant phases in the market manipulations in the scrip of HTL. The first phase started with the offer for sale and ended on the date of listing of shares (hereinafter referred as the 'first phase'). The second phase started from the date of listing and continued till the Preliminary Order of SEBI against HTL dated April 29, 2002 (hereinafter referred to as 'second phase') The offer for sale by Home Trade Limited for 59, 90,250 shares at the rate of Rs.50/- each during the period October 27-30, 1999. Subsequent to the said open offer, the shares of HTL were listed on the Pune Stock Exchange (PSE) and Bangalore Stock Exchange (BgSE). Shri Ketan Sheth, the promoter director of HTL and his associates who held large shareholding in HTL made applications for 24,30,000 shares (around 40.56% of the open offer) and were allotted 24,17,850 shares. The entire transactions relating to the cornering of shares by the company/directors/promoters and associates took place between the October 27, 1999 and November 15, 1999 i.e. during the first phase. It is observed that only Dilip Jain was present in the Board of Directors during the relevant period who resigned from the Board in December 1999. As far as the rest of the directors are concerned, it is found that none of them were present in the Board of Directors during the first phase. Hence, they cannot be held responsible for the cornering of shares using the proceeds of offer of sale of the HTL shares.

5.3 The second phase of manipulations started when the scrip of HTL was traded in PSE and BgSE. After listing on the PSE, the price of the scrip showed a sharp increase from November 1999 to March 2000, rising from Rs.250/- to Rs.800/-. Similarly, there had been sharp increase in the price of the scrip in BgSE where the price went up from Rs.275/- to Rs.825/-between December 1999 and April 2000. It was revealed that the sharp rise in the price of the scrip was attributed to circular trading in the shares of HTL amongst members of PSE and BgSE. It was further exposed that the manipulation of the price was done through the employees of HTL who had a vicious nexus with the brokers of the concerned stock exchanges. From the statements of the said employees, it is learnt that some of the directors of the company devised the plan and they were behind the move of the employees who recruited brokers for the fraudulent trades. On an analysis of the submissions of the Directors as stated above, it is noted that all of them were present in the Board of Directors of HTL during the second phase of manipulations when the price of the scrip was taken from Rs.50/- to Rs.800/ by synchronized and scheming trades and the fact was not disputed by any of them.

5.4 In this context, it is relevant to note that the following directors were Non Executive Directors

- a) Russell Boekenkroeger
- b) Dilip Jain
- c) Vijendra Kumar Surana
- d) Manoj (Mike) Shah

Similarly, Shri Vijay H Modi, Salil Dinkarlal Gandhi and Shashank G. Ranade were appointed as additional Directors under Section 260 of the companies Act, 1956. It is seen that none among these directors were involved in the decision making process or the day-to-day administration of the company. It is also noted that none of the said directors had attended any of the meetings of the Board of Directors of HTL and received any remuneration from HTL. Further, it is found that none of these directors except Mr Manoj Shah had shares of HTL. It was claimed by the Shri Ranade that he had ceased to be a Director in HTL subsequent to the Annual General Meeting dated September 29, 2001 by the operation of law since he had not consented for regularizing the appointment in the aforesaid AGM. Rest of the Additional Directors had also claimed that they ceased to be Directors due to the operation of law as per Section 283(g) of the Companies Act, 1956, though, they have not disputed their directorship in HTL during the second phase of manipulations. Though Mr Dilip Jain was director in both the phases, Manoj Shah had shares of the company and all of them were directors in the second phase, there is nothing either in the show cause notice or in the Investigation Report to link them with the manipulations in both the phases. Also in terms of their replies, they did not participate in the affairs of the company. Also the records suggest that the entire manipulation was done by the promoter entities.

5.5 As regard the vicarious liability of the Directors of the HTL for the market manipulations, it has to be satisfied that the persons were (at the time of the contravention) was in charge of and responsible to the company for the conduct of the business. Section 27 of the SEBI Act, 1992 states that a person would be deemed to be guilty of offence only when he was in charge and was responsible to the company during the relevant period. In this regard, Honourable SAT in Rahul H Shah's case (2004) 55 SCL 416 (SAT) has observed that no hard and fast rule exists whereby by it could be said as to when a director will be vicariously responsible for the acts of directors in charge of day to day affairs of company. However, even non-executive directors shall be made liable where Non-executive directors are commonly appointed so as to watch and keep a check on the whole time directors, to provide a view of an impartial outsider to bring the benefit of their experience to the company, to act as a figure head (particularly in the case of a non-executive chairman), to add credibility to the company with the public and shareholders, though the inference has to be drawn from the facts and circumstances surrounding each case. Thus, the vicarious liability turns on the merits of each case and has to be determined accordingly and the case cited is in the context of prosecution proceedings against the company. In any event, there has to be a modicum of evidence linking the said directors with the manipulation and in its absence, complicity cannot be presumed.

- 5.6 Similarly, in *Sate of Haryana v Bril Lal Mittal* (1998) 5 SCC 343, Supreme Court has observed as follows; "It is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if at the material time he was in charge of and was also responsible to the company for the conduct of its business. Simply because a person is a director of the company it does not necessarily mean that he fulfills both the above requirements so as to make him liable. Conversely, without being a director, a person can be in charge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a bald statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in charge of the company and also responsible to the company for the conduct of its business."
- 5.7 The above judgment was adhered by Supreme Court in its recent judgment in *S.M.S. Pharmaceuticals* (AIR 2005 SC 3512) where it was held that merely being a director in a company is not sufficient to make a person liable under section 141 of Negotiable Instruments Act, 1881. Director in a company cannot be deemed to be in charge and responsible for conduct of its business at the relevant time, requirement of section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant period.

## **6.0 Conclusion**

- 6.1 It is, therefore, concluded that there is no specific evidence against any of these directors that they were in control of the affairs of HTL during the first or second phase of manipulations. On the basis of the allegations in the show cause notice, it is clear that no such case has been made out and further there is no evidence to suggest that there is abdication of their duties and obligations or collusion and therefore these directors cannot be held liable for acts of the HTL or acts of the Director Ketan Sheth and other Executive Directors acting for and on behalf of the company.
- 6.2 In the absence of corroborative evidence for their involvement in the manipulation in the scrip of HTL, I am inclined to give them a benefit of doubt and therefore no directions are required. Accordingly, in exercise of the powers delegated to me under Section 19 of the SEBI Act, 1992 read with section 11 and 11B, I hereby dispose off the case against the aforesaid directors without any direction.

This order shall come into force with immediate effect.

Place: Mumbai

Date: 16<sup>th</sup> February 2006

**G ANANTHARAMAN**

WHOLE-TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA