

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER AGAINST M/s P L PUSHPALAKSHMI CREDIT & CAPITAL PVT. LTD., MEMBER, PUNE STOCK EXCHANGE LTD., SEBI REGISTRATION NO. INB111094331 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/81/ISD/08/06

1.0 BACKGROUND

1.1 M/s P L Pushpalakshmi Credit & Capital Pvt. Ltd (hereinafter referred to as the Broker) is a member of the Pune Stock Exchange Ltd. (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 Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the Act) with registration number INB111094331.

1.2 The scrip of Home Trade Ltd. (hereinafter referred to as HTL) was listed at PSE on November 15, 1999 at Rs 250/- and at Bangalore Stock Exchange Ltd. (hereinafter referred to as BgSE) on November 16, 1999 at Rs.275/-. There was very sharp price rise in the scrip of HTL both at PSE and BgSE. The price of scrip of HTL at PSE reached Rs.315/- within two weeks of its listing i.e. by December 06, 1999. The subsequent rise in the price of the scrip of HTL is as detailed below:

Date	Price (Rs.)
December 30, 1999	525.00
January 31, 2000	735.00
March 31, 2000	809.00
May 5, 2000	874.00

1.3 The maximum rise in the price of the scrip of HTL took place between November 16, 1999 and March 31, 2000, when it moved from Rs.275/- to Rs.815/-.

1.4 SEBI conducted an investigation into the buying, selling and dealings in the scrip of HTL inter alia by the members of PSE including the Broker for alleged circular trading and price manipulation thereby contravening the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade practices Relating to Securities Markets) Regulations, 1995 (hereinafter referred to as FUTP Regulations) and SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as the Broker Regulations).

1.5 Upon investigation, SEBI found that the Broker along with some other members of PSE had contributed for more than 90% of the volumes, in the trading in the scrip of HTL at PSE, which were not genuine and made only for the purpose of creating artificial price and volume. It was found that during the period April 01, 2001 to December 31, 2001, the Broker had purchased 13,200 shares (amounting to 3.09% to the total volume of the scrip of HTL at PSE) and sold 13,100 shares (amounting to 3.07% to the total volume of the scrip of HTL at PSE) of HTL on behalf his client, namely Shri Yogesh Adap.

1.5 The transaction details of the Broker in the scrip of HTL at PSE are given as under:

Period	Gross purchases (shares)	% to the total buy volume at PSE	Gross sales (shares)	% to the total sell volume at PSE
April 01, 2001 to December 31, 2001	13,200	3.09	13,100	3.07

1.6 It was observed that almost all the aforesaid transactions were squared off and did not result in deliveries. The investigation conducted by SEBI prima facie revealed that the Broker had rigged up the price of the scrip of HTL by trades which were not genuine and the same created artificial volumes and thereby the Broker had failed to exercise due care and diligence while trading in the scrip of HTL thereby contravening the provisions of the FUTP Regulations and the Broker Regulations. The Director of the Broker stated before the investigating officer that his client was introduced by one Shri Veerkar, who happened to be an employee of HTL and the orders were placed by the said Shri Veerkar on behalf of the said client.

2.0 APPOINTMENT OF ENQUIRY OFFICER

2.1 On completion of the investigation, SEBI appointed an Enquiry Officer, vide order dated May 28, 2003, under regulation 5(1) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the 2002 Regulations) to enquire into the alleged irregular transactions made by the Broker in the scrip of HTL.

2.2 A show cause notice was also issued to the Broker in which the following allegations were leveled against the Broker :

"1. The client was not known to the broker and the orders on behalf of the client were placed by third party. This is in violation of SEBI Circular No. SMD/POLICY/IECG/1-97 dated 11.02.97.

2. Broker did not enter into member client agreement with the client which is in violation of SEBI Circular NO. SMD/POLICY/CIRCULAR/5-97 dated 11.04.1997.

3. Broker did not obtain acknowledgement of clients on the counterfoils of the contract notes which is in violation of Regulation 17(1)(i) of SEBI(SB & SB) Regulations, 1992.

4. It is alleged that the broker had actively traded in the scrip of HTL and artificially created higher price and volumes in the scrip of HTL and entered into transactions that are not genuine trade transactions. It is alleged that the broker had contravened provisions

of the Regulation 4(a)(b)(c) of SEBI(Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and violated Clause A(3-4) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (SB&SB) Regulations 1992.

5. All the above mentioned are in violation of Rule 4(b) of SEBI (SB&SB) Rules 1992 and Clause A(1) (2) and A(5) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (SB&SB) Regulations 1992”

2.3 Pursuant to the said show cause notice, the Broker was also granted a fair and reasonable opportunity to make his submissions which included personal hearing also. However, the Broker neither submitted any reply nor appeared before the Enquiry Officer for hearing on July 15, 2004 and subsequently on November 08, 2004, as informed to the Broker by the Enquiry Officer. In view of the above, the proceedings were conducted ex- parte by the Enquiry Officer and after examining the documents/materials available on record, the Enquiry Officer submitted his report on November 19, 2004 and recommended for the imposition of a minor penalty of suspension of certificate of registration granted by SEBI to the Broker for a period of fifteen days, in terms of 2002 Regulations.

2.4 The Enquiry Officer in the said Report has observed that the Broker did not act in good faith and without negligence and also did not exercise due diligence and care when he traded for his client in the scrip of HTL who was unknown to him. The Enquiry Officer has also observed that the Broker has failed to submit the acknowledgments of the client on the counterfoils of the contract notes, at least in a single instance although he had traded for over 13,000 shares of HTL, which is in violation of regulation 17(1)(i) of the Broker Regulations.

3.0 CONSIDERATION OF ISSUES AND FINDINGS

3.1 Based upon recommendation of the Enquiry Officer, a show cause notice dated November 25, 2004 was issued to the Broker under regulation 13(2) of the 2002 Regulations asking him to show cause as to why the penalty as considered appropriate should not be imposed upon him. A copy of the Enquiry Report was also forwarded to the Broker with the said show cause notice. The said notice was served on the Broker through PSE. However, the Broker has failed to submit any reply to the said show cause notice till date.

3.2 As the Enquiry Officer has not recorded any specific findings in respect of the violation of the provisions of FUTP Regulations, I deal with the other alleged violations committed by the Broker. The fact that the Broker had executed various transactions in the scrip of HTL which had constituted a significant percentage of volumes at PSE during the period April 01, 2001 to December 31, 2001, on behalf of client namely, Shri Yogesh Adap is not disputed by the Broker. From the statement of the Broker made to the Investigating Officer on March 29, 2003, it is revealed that the client for whom the transaction was executed in the scrip of HTL was unknown to the Broker and that he had not met the said client. This is in clear violation of SEBI Circular No. SMD/POLICY/IECG/1-97 dated February 11, 1997, according to which the stock brokers to maintain a database of their clients. The Broker further admitted that one Shri Veerkar, an employee of HTL had expressed his desire to trade in the scrip of HTL in the name of the aforesaid client and he had further placed orders to the Broker to trade in the scrip of HTL on behalf of the said client.

3.3 The Broker has to specifically ensure that his client is personally known to him or has been introduced to him by a person known to him. The Broker has not made any such effort to find out whether his client was genuine or not. The very purpose of client registration form is to provide various details of the clients so as to enable the stock brokers to evaluate the client before the broker takes up trading for him. When a stock broker fails to perform these primary requirements and if he is transacting on behalf of such unknown clients without knowing their details and financial capacity, he is putting the entire system in jeopardy.

3.4 In the present matter, the Broker could not establish that he had verified the financial capacity of his client. This has to be seen with the admitted facts made by the Broker that no payments were made or received from his client except the margin money. When the Broker was executing various transactions on behalf of his clients, the clients should also be in a position to lift the deliveries. If the financial position of the clients are not sufficient to lift the delivery, it would ultimately affect the securities market. In view of the above, I hold that the Broker has failed to assess the financial capacity of his clients and thereby failed to exercise due care and skill and further failed to maintain high integrity while conducting his business, in terms of the Code of Conduct specified in the Broker Regulations.

3.5 The facts of the present matter, further, clearly indicates that the transactions in the scrip of HTL were made by the Broker for an unknown client and without his specific instructions. The fact that the Broker had extensively and exclusively traded for an unknown client at the behest of Shri Veerkar, an employee of HTL, who used to collect/make payments from /to the Broker shows that, the said transactions were not genuine and not in the interest of securities market. As the aforesaid transactions were squared off transactions, the Broker could have doubted the dealings of Shri Veerkar, especially when he was employed by HTL.

3.6 Coupled with all these facts that the client was unknown to him and the orders were placed/ payments were received from one of the employees of HTL will establish the Broker had not exercised due care, skill and diligence in the conduct of his investment business while transacting in the scrip of HTL. The Broker could not adduce any evidence that he had traded in any other scrip other than HTL. By executing transaction in the scrip of HTL for an unknown client without his specific authorization, the Broker failed to exercise fairness and high standards of integrity and that the transactions were made by the Broker with an intention to create false market in the scrip of HTL. While dealing in the securities market, in terms of Clause A(1) and (2) of the Code of Conduct prescribed under Schedule II of the Broker Regulations, a stock broker has to exercise due skill and care in the conduct of all his business and he has to maintain high standards of integrity and fairness in such business.

3.7 The relevance of due diligence in an ongoing transaction has been pointed out by the Hon'ble Securities Appellate Tribunal in Madhukar Sheth Vs SEBI (Appeal No.46 of 2002). The Hon'ble Tribunal in the said matter, vide order dated September 18, 2003 had observed that:

"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 health and non-manipulative basis."

3.8 In a situation where the client was new and traded only in the scrip of HTL, the evidence of connected circumstances and preponderance of probabilities, common course of natural events and a combination of facts creating network give rise to a reasonable inference that the Broker did not act in good faith and with due diligence when he traded for his client in the scrip of HTL, especially when the trading by the Broker constituted significant volumes at PSE.

3.9 From the nature of the transactions and the findings as detailed above, it is established that the Broker has failed to exercise due skill, care and diligence and failed to maintain high standards of integrity and fairness in the conduct of all his investment business as specified in clause A (1) and A(2) of Schedule II of the Broker Regulations in his transactions in the scrip of HTL made on behalf of his client.

3.10 In terms of the provisions of the Broker Regulations, a stock broker, without any delay shall issue the contract note to his client and in terms of regulation 17(1) (i) of the Broker Regulations, he has to maintain the counterfoils or duplicates of such contract notes.

3.11 In the present matter, the Broker had failed to submit even a single copy of acknowledgment of counterfoils of contract notes. It can be seen from the trading details, that the Broker had executed several transactions of significant volume in the scrip of HTL on behalf his client, without any specific authorization. Despite of executing large transactions, the Broker had failed to obtain the acknowledgement copy of contract notes of even a single transactions. It does not appear to be a simple omission and gains significance in the background of the allegations that the orders were placed by a third party (Shri Veerkar, employee of HTL).

3.12 In view of the above, as the Broker has failed to obtain the acknowledgement of his client on the counterfoil of the contract notes, as required under regulation 17(1)(i) of the Broker Regulations, it is established that the Broker has acted in contravention of the regulation 17(1)(i) of the Broker Regulations.

3.13 Considering that the Broker had traded in huge volumes at PSE for unknown client without his specific authorization, has failed to verify the financial worth of the said client before commencing trading exclusively in the scrip of HTL on his behalf, placing orders at the instance of Shri Veerkar, employee of HTL and his failure to obtain an acknowledgment on the counterfoils of the contract notes, establishes that the Broker has failed to exercise due diligence while trading in the scrip of HTL in terms of Clause A(1), A(2) of the Code of Conduct specified under Schedule II of the Broker Regulations and regulation 17(1)(i) of the Broker Regulations. As the Broker has failed to comply with the regulation 17(1)(i) of the Broker Regulations, it is established that the Broker has violated Clause A(5) of the Code of Conduct specified under Schedule II of the Broker Regulations, according to which all the stock brokers are advised to comply inter alia with the regulatory requirements issued by SEBI or the Central Government, as the case may be, from time to time.

3.14 In view of the above established findings, I find that the Broker has violated the provisions of regulation 17(1)(i) of the Broker Regulations and Clause A(1), A(2) and A(5) of the Code of Conduct prescribed under Schedule II of the Broker Regulations and the same calls for penalty.

4.0 ORDER

Having regard to the charges established, admitted facts and in the absence of any mitigating factors, I agree with the findings and recommendations of the Enquiry Officer. Having held so, I, in exercise of powers conferred vide regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, hereby impose a minor penalty of suspension on the certificate of registration (granted by SEBI) of Pushpalaksmi Credit & Capital Pvt. Ltd (INB111094331), Member, Pune Stock Exchange Ltd. for a period of fifteen days, in terms of Regulation 13(1)(a)(iv) thereof.

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

G.ANANTHARAMAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: 24-08-2006