

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER AGAINST M/S TRIMITY INVESTMENTS & FINANCIAL SERVICES PVT. LTD., MEMBER, PUNE STOCK EXCHANGE LTD., SEBI REGISTRATION NO. INB110910534 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/82/ISD/08/06

1.0 BACKGROUND

1.1 M/s Trimity Investments & Financial Services 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 INB110910534.

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 a very sharp rise in the price of the scrip of HTL both at PSE and BgSE. The price of the 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 inter alia found that the Broker along with some other members of PSE had executed substantial trades in the scrip of HTL which had contributed for significant volume for more than 90% of the volumes of trading in the said scrip of HTL at PSE. The said transactions were not genuine and made only for the purpose of creating artificial price and volume. The Broker had purchased and sold 75,200 shares of HTL (amounting to 10.78% to the total volume in the said scrip at PSE) during the period April 01, 2000 to March 31, 2001. During the period April 01, 2001 to December 31, 2001, the Broker had purchased and sold 41,100 shares of HTL (amounting to 9.63 % to the total volume in the said scrip at PSE) on behalf his clients.

1.6 The transaction details of the Broker in the scrip of HTL at PSE are as follows:

Period	Clients	Buy (shares)	Sell (shares)
April 01, 2000 to March 31, 2001	SIMPS Developers	21,200	21,200
	Latha K B,	46,500	46,500
	Anand Kshirsagar	7,500	7,500
April 01, 2001 to December 31, 2001	SIMPS Developers	23,100	23,100
	Latha K B.	5,000	5,000
	Rambhabha Holdings	8,000	8,000
	Vishal N Shah	3,800	3,800

1.7 Shri Dhaval Shah, Director of the Broker vide his statement dated March 29, 2003 submitted before the investigating officer that the aforesaid clients were introduced by one Shri Rajendra Veerkar. It was also stated that Shri Rajendra Veerkar placed orders on behalf of the said clients and collected the contract notes on behalf of those clients. Shri Rajendra Veerkar, in his statement made on March 31, 2003 admitted that the orders on behalf of clients, namely, Shri Anand Kshirsagar and Ms Latha K B were placed by himself, whereas the orders on behalf of other clients, namely, SIMPS Developers and Rambhabha Holdings were placed by one R&D Consultants and the contract notes were also received by the said R&D Consultants.

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 issued to the Broker in which the following allegations were leveled against him:

"1) All the clients were not known to the member and the orders on behalf of the clients were placed by either Shri Veerkar or R&D Consultants (third parties) which is in violation of SEBI Circular No. SMD/POLICY/IECG/1-97 dated 11.02.97.

2) The member had not obtained acknowledgement of clients on the counterfoil of the contract notes which is in violation of Regulation 17(1)(i) of SEBI(SB & SB) Regulations, 1992.

3) It is alleged that the member 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 member 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”.

2.3 A reply to the aforesaid show cause notice was submitted by the Broker. Pursuant to this, the Broker was also granted a fair and reasonable opportunity to make his submissions. The Broker admitted before the Enquiry Officer that the antecedents of the clients were not known to him and the said clients were introduced by Shri Veerkar, an employee of HTL and that the orders on behalf of the said clients were also placed by the said Shri Veerkar. The Broker further admitted that and the trades on behalf of the clients in the scrip of HTL were executed for earning the brokerage. As regards non obtaining the counterfoils of the contract notes, the Broker stated that Shri Veerkar used to collect the contract notes and some of the contract notes were duly acknowledged by the clients.

2.4 The Enquiry Officer vide his report dated November 30, 2004 recommended for a minor penalty of suspension of the certificate of registration granted by SEBI to the Broker for a period of fifteen days under regulation 13(1)(a)(iv) of the 2002 Regulations. The Enquiry Officer, inter alia observed in his report, that the Broker has violated the provisions of regulation 17(1)(i) of the Broker Regulations and failed to exercise due diligence while trading in the scrip of HTL. The Enquiry Officer has also observed that the Broker had traded in huge volumes in the scrip of HTL at PSE for relatively new clients without verifying the financial worthiness of the said clients before commencing trades on their behalf.

3.0 CONSIDERATION OF ISSUES AND FINDINGS.

3.1 Based upon the recommendation of the Enquiry Officer, a show cause notice dated December 20, 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 show cause 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 substantial transactions in the scrip of HTL which had constituted a significant percentage of volumes at PSE i.e. 10.78% (for the period April 01, 2000 to March 31, 2001) and 9.63% (for the period April 01, 2001 to December 31, 2001) is not disputed by the Broker. I note that the Broker had admitted before the Investigating Officer that he had not met his clients and never spoken to them.

3.3 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. It is also an admitted fact that the transactions in the scrip of HTL were made by the Broker at the instance of Shri Veerkar, an employee of HTL, who placed orders on behalf of the aforesaid clients. The Broker has further admitted that the payments for the transactions conducted on behalf of his clients were made by said Shri Veerkar and the contract notes were further collected by the Shri Veerkar from the office of the Broker.

3.4 The fact of the present matter clearly indicates that the transactions in the scrip of HTL were made by the Broker for unknown clients and without their specific instructions. SEBI by its circular dated February 11, 1997 advised the stock brokers to maintain a database of their clients. The Broker could not establish that he had obtained the details of his clients and therefore, it can be seen that the Broker had failed to comply with the aforesaid circular.

3.5 The fact that the Broker had extensively and exclusively traded for some unknown clients at the behest of Shri Veerkar (employee of HTL), who used to collect/make payments from /to the Broker establishes that, the said transactions were not genuine and not in the interest of securities market.

3.6 It is the primary requirement of a stock broker to compulsorily ensure and satisfy that his clients are genuine. 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. A stock broker has to further verify the financial capacity of his client before executing the trades on his behalf. Such assessment of financial capacity of the client is necessary in order to avoid the risk. 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.

3.7 In the present matter, the broker could not establish that he had verified the financial capacity of his clients. This has to be seen in the context of the number of transactions made by the Broker in the scrip of HTL on behalf of his clients. When a client is trading in a scrip, he would also be in a position to lift the deliveries of his trading. 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.

3.8 Further, I note that the Broker had submitted before the Enquiry Officer that the transactions executed by him in the scrip of HTL were for the purpose of earning brokerage, as there was no business for the last three years at PSE and HTL was only listed at PSE and BgSE. The said act of the Broker is not in the interest of the securities market and in violation of the Code of Conduct specified in Clause B(4) (a) of Schedule II of the Broker Regulations, according to which the stock brokers are advised not to encourage sales or purchase of securities with the sole object of generating brokerage or commission. Though the Enquiry Officer has not recorded any specific findings with respect to the said act of the Broker, in view of the admission made by the Broker, I hold that the Broker has violated Clause B(4) (a) of the Code of Conduct specified in Schedule II of the Broker Regulations.

3.9 In a situation where the clients were 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 the clients in the scrip of HTL, especially when the trading by the Broker constituted significant volumes in the scrip of HTL at PSE.

3.10 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."

3.11 Coupled with the admitted facts that his clients were unknown to him and the orders were placed/payments were received from one of the employees' of HTL, the transactions were executed for earning brokerage, no trades in any other scrip other than HTL will establish the Broker had not exercised due care, skill and diligence in his transactions in the scrip of HTL.

3.12 While dealing in the securities market, 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. In terms of Clause A(1) and (2) of the Code of Conduct prescribed under Schedule II of the Broker Regulations, a stock broker shall inter alia act with due skill, care and diligence in the conduct of all his business. In view of the findings made hereinabove, the acts of the Broker, will prove that he had violated Clause A (1) and (2), of the Code of Conduct prescribed under Schedule II of the Broker Regulations.

3.13 Further, the Broker could not adduce any material to suggest that the clients had authorized Shri Veerkar to trade on their behalf with the Broker in the scrip of HTL. It is the case of the Broker that the payments were collected from Shri Veerkar and the contract notes were also given to him. 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,

3.14 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 clients, without any specific authorization from them. Despite of executing large transactions, the Broker had failed to obtain the acknowledgement copy of contract notes of even on 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).

3.15 In view of the above, as the Broker has failed to obtain the acknowledgement of clients 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.

3.16 In view of the above, I find that the Broker has violated the provisions of regulation 17(1)(i) of the Broker Regulations and failed to exercise due skill, care and diligence in the conduct of his investment business as required in Clause A(1) and (2) , B(4) (a) of Schedule II of the Broker Regulations and the SEBI circular dated February 11, 1997 . The above violations 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 Trimity Investments & Financial Services Pvt. Ltd (INB110910534), Member, Pune Stock Exchange Ltd. for a period of fifteen days. 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