

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER AGAINST M/S SHARAD B SHAH., MEMBER, PUNE STOCK EXCHANGE LTD., SEBI REGISTRATION NO. INB110239410, 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/90/ISD/09/06

1.0 BACKGROUND

- 1.1 M/s Sharad B Shah (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 INB110239410.
- 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	525.25
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 under 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) into the buying, selling and dealings in the scrip of HTL inter alia by the members of PSE including the Broker for their involvement in the alleged circular trading, price manipulation etc.
- 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, wherein the shares were traded amongst themselves and thereby created artificial volume by executing trades which were not genuine. The said transactions had contributed for more than 90% of the volumes of trading in the said scrip at PSE.
- 1.6 The transaction details of the Broker on behalf of his sole client, Shri Sheo Shankar Pandey in the scrip of HTL at PSE are as follows:

Period	Gross purchase (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	28,600	6.70%	24,900	5.83%

2.0 APPOINTMENT OF ENQUIRY OFFICER

- 2.1 On completion of investigations, 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 of 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) The client was not known to the broker and the orders on behalf of the client was placed by Shri Rajsinghi. This is in violation of SEBI Circular No. SMD/POLICY/IECG/1-97 dated 11.02.97.

- 2) The member client agreement was not obtained in violation of SEBI Circular No. SMD/POLICY/CIRCULAR/5-97 dated 11.04.1997.
- 3) Acknowledgement of the client on the counterfoil of the contract notes was not obtained which is in violation of Regulation 17(1)(i) of SEBI(SB & SB) Regulations, 1992.
- 4) 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 thereby contravening Regulation 4 (b) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and violated Clause A(3) 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 Enquiry Officer had granted a fair and reasonable opportunity to the Broker to make his submissions. The Broker submitted before the Enquiry Officer that his client had telephoned from a place called Hoogly, West Bengal and wanted to trade in the scrip of HTL, as the said scrip was listed only in PSE and BgSE. The Broker further stated that, though he did not meet his client, he had executed the member client agreement and collected Rs.50,000/- from his client, before he started trading on behalf of the said client. It was also stated by the Broker that as per the telephonic instruction received from his client, the securities were transferred to the demat account of the client maintained with his depository participant, Vedika Securities Pvt. Ltd. The Broker further submitted before the Enquiry Officer that the trades in the scrip of HTL were executed in good faith and with the bonafide belief and denied that he had indulged in circular trading as alleged.

2.4 The Enquiry Officer vide his report dated November 18, 2004 inter alia observed that the Broker had not verified the antecedents and the financial network of his client. The Enquiry Officer observed that it could not be said that the Broker had acted in good faith and without negligence and that he had exercised due care and diligence while trading in the scrip of HTL, for a relatively new client. The Enquiry Officer had also observed that the Broker had violated the provisions of regulation 17(1) (i) of the Broker Regulations. However, taking into account certain mitigating circumstances including the fact that the Broker had not executed proprietary trades in the scrip of HTL, the Enquiry Officer recommended for the imposition of a minor penalty of censure against the Broker, in terms of 2002 Regulations

3.0 CONSIDERATION OF ISSUES AND FINDINGS

3.1 Based upon the Enquiry report and the recommendation of the Enquiry Officer, a show cause notice dated November 25, 2004 was issued to the Broker under regulation 13(2) of 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. Sufficient time was given to the Broker to file his reply to the said show cause notice. But the Broker failed to submit any reply, till date. In the circumstances, it is observed that the Broker is not interested in filing the reply and in availing any personal hearing.

3.2 The fact that the Broker had traded in substantial quantity in the scrip of HTL from August 22, 2001 for his sole client is not disputed by him. While executing trades on behalf of his clients, a stock broker has to compulsorily ensure that his clients are personally known to him or has been introduced to him in order to satisfy that they are genuine. A stock broker has to evaluate his clients before he takes up trading on behalf of his clients. Further, in terms of SEBI Circular dated February 11, 1997, the stock brokers were advised to maintain a database [pertaining to 'Know Your Client' (KYC) norms/ guidelines] of their clients. SEBI, vide circular dated April 11, 1997, had advised the stock brokers to follow the circular dated February 11, 1997 and further advised that the brokers might seek additional information, if any, so as to satisfy themselves about the antecedents of the client and that it would be the responsibility of the stock brokers to provide for clients' details as and when need arose.

3.3 In this context, I note that, though the Broker had obtained client agreement form from his client, the same was not dated and further the details of the introducer were also not mentioned in the KYC form, as required in terms of the circulars specified above. The Broker had submitted that as the client himself had introduced himself over phone, there was no introducer. The Broker further submitted that he had obtained the margin money from his client before he started trading on behalf of the said client in the scrip of HTL during the period mentioned above. The annual income of his client was stated to be, as recorded in the KYC form, Rs.75,000/- . However, as per the income tax return (Form 2D) of the said client , his annual income was only Rs. 52,985/- which was in contrast to what was specified in the KYC form. The price of the scrip of HTL was about Rs.150/- (when the trades were made by the Broker). In this context, considering the substantial trades executed by the Broker, I note that the value of the transaction executed by the Broker on behalf of his client was also much higher than his annual income.

3.4 In view of the above and also considering the substantial trades executed {purchased 28,600 shares for the client} by the Broker in the scrip of HTL on behalf of the said client, he could have taken more care before the trades were executed by him on behalf of the said client. In these circumstances, it is established that the Broker had failed to assess the financial capacity of his client and thereby failed to exercise due care and diligence while trading in the scrip of HTL.

- 3.5 Therefore, it is established that the Broker did not act in good faith and without negligence and did not exercise proper caution and diligence while trading in the scrip of HTL by undertaking trade on behalf client without proper KYC verification and thereby, failed to comply with the norms and guidelines relating to the KYC norms as per the SEBI circulars dated February 11, 1997 and April 11, 1997.
- 3.6 I note that the Broker had failed to submit the copy of acknowledgment of counterfoils of contract notes. This has to be seen in the context of the fact that the Broker had traded substantially in the scrip of HTL on behalf his client. 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, has to maintain the counterfoils or duplicates of such contract notes. The Broker submitted that he had sent the contract notes to his client by post and the client did not return the acknowledgment to him. I note that the Broker had failed to obtain the acknowledgement copy of contract notes, through he had traded substantially on behalf of his client and it does not appear to be a simple omission. In view of the above, it is established that the Broker had failed to comply with the provision of regulation 17(1) (i) of the Broker Regulations by not maintaining the acknowledgement of the contract notes.
- 3.7 However, I note that the Broker had obtained the member client agreement (though undated) and the client registration form. I also note that its clients' signature has been verified by the Punjab National Bank, Kolkata and to this effect, the Broker had also filed the Signature Attestation form of the client. It is also noted that the Broker had started trading in the scrip of HTL on behalf of his client after obtaining the margin money of Rs.50,000/- and the said transactions were made at a time when the price of the said scrip was comparatively low. Further, the Broker had traded only on behalf of a single client in the scrip of HTL and not made any trades on his proprietary account. I also note that the Broker had transferred the securities to the demat account of the client maintained with Vedika Securities Pvt. Ltd., as advised by his client. Taking into account the mitigating circumstances as mentioned hereinabove, I am inclined to agree with the findings of the Enquiry Officer and I, consider that a penalty of censure would meet the ends of justice in the facts and circumstances of the matter.

4.0 ORDER

In view of the foregoing and taking into account the mitigating circumstances as stated above, I in exercise of powers conferred vide regulation 13(4) of (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations 2002, hereby impose a minor penalty of censure on the certificate of registration of M/s Sharad B Shah (SEBI Registration Certificate No. INB110239410), Member, Pune Stock Exchange Ltd., in terms of Regulation 13(1) (a) (i) thereof.

G. ANANTHARAMAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: 19/09/2006