

ORDER AGAINST M/S WYSCARE SECURITIES PVT. LTD. MEMBER, BANGALORE STOCK EXCHANGE LTD., UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 FOR THE IRREGULAR TRANSACTIONS IN THE SHARES OF HOME TRADE LTD.

WTM/GA/94/ISD/10/06

1.0 BACKGROUND

- 1.1 M/s Wyscare Securities Pvt. Ltd. (hereinafter referred to as the Broker) is a member of the Bangalore Stock Exchange Ltd. (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 Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the said Act) with registration number INB 080810031.
- 1.2 The shares of Home Trade Ltd. (hereinafter referred to as HTL) were listed at Pune Stock Exchange Ltd. (hereinafter referred to as PSE) on November 15, 1999 at Rs 250/- and at BgSE on November 16, 1999 at Rs.275/-. There was a very sharp rise in the price of the shares of HTL both at PSE and BgSE. The price of the shares of HTL reached Rs.315/- within two weeks of its listing, i.e. by December 06, 1999. Thereafter, the price of the shares reached Rs.874/- on May 05, 2000. The maximum rise in the price of the shares of HTL took place between November 16, 1999 and March 31, 2000, when it moved from Rs.275/- to Rs.815/-.
- 1.3 SEBI conducted an investigation into the buying, selling and dealings in the shares of HTL inter alia by the members of BgSE 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).
- 1.4 The investigation conducted by SEBI revealed that the Broker had transacted for his only client, Shri Uday Narayan Shetty and his transaction details in the shares of HTL on behalf of the said client are mentioned below:

Period	Gross Purchase (shares)	% to the total buy volume at BgSE	Gross Sales (shares)	% to the total sell volume at BgSE
April 01, 2000 to March 31, 2001	33,000	4.07%	33,000	4.13%

- 1.5 The investigation conducted by SEBI inter alia revealed that the members of BgSE including the Broker were involved in creation of abnormally high volumes in the shares of HTL and had resorted to circular trading, wherein the shares of HTL were traded amongst themselves, thereby rigging up the price of the shares of HTL by executing a number of trades, which appeared to be not genuine, for various clients introduced by the employees of HTL.

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 of the Broker in the shares of HTL.
- 2.2 A show cause notice was also issued to the Broker in which the following allegations were leveled against the Broker.
- The client was not known to broker and the orders were placed by third party Shri Rajneesh Karanpuria on client's behalf which is in violation of SEBI Circular No. SMD/POLICY/IECG/1-97 dated 11.02.97.
 - Broker had not obtained acknowledgement of the client on the counterfoils of the contract notes issued to them and was in violation of Regulation 17(1)(i) of SEBI (SB&SB) Regulations, 1992.
 - Broker had not obtained member-client agreement which was in violation of SEBI Circular No. SMD/POLICY/CIRCULAR/5-97 dated 11.04.1997.
 - It was alleged that broker had actively traded in the scrip of HTL and artificially created higher prices and volumes in the scrip. Broker had entered into transactions that were not genuine trade transactions. It was alleged that 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.
 - Broker did not receive any margin money as security deposit on the purchase and sale transactions done on behalf of the client. This was in violation of SEBI Circular No. SMD/SED/CIR/93/23321 dated 18.11.1993.
 - All the above mentioned acts are in violation of Rule 4(b) of SEBI (SB & SB) Rules, 1992 and Clause A(1), A(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 The Broker had failed to submit any reply to the aforesaid show cause notice and the Enquiry Officer concluded the enquiry in terms of the 2002 Regulations and inter alia had observed that the Broker had not met the client and that the Broker had not entered into the member client agreement with his client. The above facts were admitted by the Broker before the investigating authority of SEBI. The Enquiry Officer had further observed that there was no material to suggest that the Broker had verified the financial worthiness of his client while trading in the shares of HTL. It was also stated in the Enquiry Report that the Broker had violated provisions of regulation 17(1) (i) of the Broker Regulations. The Enquiry Officer, after taking into account certain mitigating circumstances, vide his report dated November 23, 2004 recommended to impose a minor penalty of censure against the Broker.

3.0 CONSIDERATION OF ISSUES AND FINDINGS

- 3.1 Based upon the 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. Though sufficient time was given to the Broker to file his reply, the Broker had failed to submit any reply to the said show cause notice. While considering the Enquiry Report, I observed that the Broker had prima facie violated the allegations specified at 1,2,3 & 5 mentioned in para 2.2 at page 3 and 4 hereinabove, calls for a penalty higher than that recommended by the Enquiry Officer. Accordingly, a notice dated August 31, 2006 was issued to the Broker to show cause as to why a penalty of suspension of registration certificate for a period of 15 days should not be imposed upon him. The Broker was also advised to file his reply within 7 days of the receipt of the said notice, which was served through BgSE and the same was confirmed by the said exchange, vide its letter dated September 08, 2006. The Broker failed to file any reply to the said show cause notice, till date. It is observed that the Broker is not interested in filing any reply to the said show cause notice and in availing the opportunity of hearing before SEBI.
- 3.2 As the Enquiry Officer had not recorded any specific findings in respect of the violation of the provisions of FUTP Regulations, I deal with the other alleged violations attributed to the Broker. I also note that the Enquiry Officer has inter alia observed that in the absence of certain details, it would be difficult to conclude that he had transacted for the clients without collecting margin. I further note that the Broker submitted before the investigating authority that he had not obtained the margin money from his client. However, it is seen that he had retained the first transaction credit as a security deposit. Therefore, in the absence of sufficient evidence, it is difficult to conclude that the Broker had failed to comply with margin requirements.

- 3.3 I note that the Broker had executed significant trades in the shares of HTL during the period April 01, 2000 to March 31, 2001 on behalf of a single client. I note that the Broker had stated before the investigating authority of SEBI that his client was introduced by his friend, Shri Chakravarthy. The Broker further stated that he had not met his client and that no member client agreement was entered into by him with his client, as he was not aware of the procedure at that point of time. In this context, I note that SEBI vide circular dated February 11, 1997 advised the stock brokers to maintain a database [pertaining to 'Know Your Client' (KYC) norms/ guidelines] of their clients. By a subsequent circular dated April 11, 1997, SEBI had again advised the stock brokers to follow the circular dated February 11, 1997 and further desired 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.
- 3.4 In the present matter, admittedly, the Broker had not met his client and no member client agreement was entered into by the Broker and his client was new. These circumstances show that the Broker had made transactions on behalf of a new client without the member client agreement. The client of the Broker made a statement before the investigating authority of SEBI that Shri Rajneesh used to place orders in the shares of HTL and that he had not spoken to the Broker at any point of time. This is more relevant, considering the fact that Broker had not maintained the copies of the acknowledgement of the contract notes. In the facts and circumstances of the case, it stands to reason that the orders were placed by a third party without any specific authorization.
- 3.5 Further, it is one of the precautionary measures to be exercised by a stock broker to verify the financial capacity of his clients before executing the trades on their behalf, which is one of the checks under the KYC norms/guidelines. Such assessment of financial capacity of the client is necessary in order to avoid the risk. When a stock broker fails to perform the said primary requirements and further, if he happens to be transacting on behalf of such clients without knowing their antecedents and financial capacity, he is putting the entire system in jeopardy. In the present matter, the Enquiry Officer has clearly noted that that Broker could not adduce any satisfactory evidence to prove that he had assessed the financial capacity of his client.
- 3.6 The Broker had admitted before the investigating authority of SEBI that he had not entered into the member client agreement as stipulated in terms of SEBI Circular dated April 11, 1997. The Broker explained at that time that he thought that the client registration form containing the terms and conditions was sufficient. The said explanation can not be accepted as the Broker, being an intermediary registered with SEBI, is required to comply with the regulatory requirements which are meant for the protection of the interest of the investors and the securities market in general. Further, SEBI had also developed a uniform format of the client registration form and the member client agreement separately. In view of the above, I hold that the Broker had violated the above mentioned circular while trading on behalf of his client in the shares of HTL.
- 3.7 In view of the above, it is fairly established that the client was not known to the Broker and that the orders were not placed by him and no member client agreement was entered into by the Broker. Therefore, I hold that the Broker had violated the circulars of SEBI dated February 11, 1997 and April 11, 1997.
- 3.8 Further, 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. 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 trades of significant volume in the shares of HTL on behalf his client, without any specific authorization. Despite executing such transactions, the Broker had failed to obtain the acknowledgement copy of contract notes, even in a single transaction. It does not appear to be a simple omission and has to be viewed seriously in the background of the allegations that the orders were placed by a third party without any specific authorization. Therefore, the Broker had violated the provisions of regulation 17 (1) (i) of the Broker Regulations.
- 3.9 In view of the above facts and circumstances, it is fairly established that the Broker had violated the SEBI circulars dated February 11, 1997 and April 11, 1997. Further, the Broker had also violated regulation 17(1) (i) of the Broker Regulations. In view of the above acts, it is fairly established that the Broker had failed to maintain high standards of integrity, promptitude and fairness and failed to act with due skill, care and diligence in the conduct of his business while dealing in the shares of HTL on behalf of his client and thereby violated clause A(1) and (2) of the Code of Conduct specified in Schedule II of the Broker Regulations. As the Broker failed to comply with the above statutory requirements, I also hold that the Broker had violated clause A(5) of the Code of Conduct specified in Schedule II of the Broker Regulations.
- 3.10 Such violations are quite serious and the failure on the part of the Broker to explain his conduct despite opportunities given only serves to demonstrate that he has no defence.
- 3.11 In view of the above violations committed by the broker while dealing in the shares of HTL at BgSE on behalf of his client, Shri Uday Narayan Shetty, he deserves a higher penalty than recommended by the Enquiry Officer.

4.0 ORDER

In view of the foregoing, I, in exercise of the powers conferred vide regulation 13(4) of (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, hereby impose a penalty of suspension on the certificate of registration of M/s Wycare Securities Pvt. Ltd., Member, Bangalore Stock Exchange Ltd. (Registration number INB 080810031), for a period of fifteen days.

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

G ANANTHARAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Place : Mumbai
Date : October 3, 2006

