

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER AGAINST M/S GANESH STOCK & SHARE BROKERS PVT. LTD. MEMBER, BANGALORE STOCK EXCHANGE LTD., UNDER REGULATION 13(4) OF SECURITIES AND EXCHANGE BOARD OF INDIA (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/93/ISD/10/06

1.0 BACKGROUND

- 1.1 M/s Ganesh Stock & Share Brokers 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 080926534.
- 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 and it reached Rs.315/- within two weeks of its listing, i.e. by December 06, 1999. Thereafter, the price of the said 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). The investigation conducted by SEBI inter alia revealed that the members of BgSE including the Broker contributed to more than 98% of the volumes in the shares of HTL and it was alleged that they had resorted to circular trading, wherein the shares of HTL were traded amongst themselves, and created artificial volumes in the said shares.
- 1.4 The investigation conducted by SEBI revealed that the Broker had traded from his own account in the shares of HTL and also traded for his only client, Smt. Santosh Chindaliya in the shares of HTL at BgSE and his transaction details 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, 2001 to December 31, 2001	48,120	16.52%	47,370	16.26%

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.
- "1. The client was not known to broker and the orders were placed by Shri Raj Singhi on client's behalf which is in violation of SEBI Circular No. SMD/POLICY/IECG/1-97 dated 11.02.97.
 2. The details regarding the name and address of the introducer was not entered in the client introduction form which is in violation of SEBI Circular No. SMD/POLICY/CIRCULAR/5-97 dated 11.04.1997
 3. The broker had not obtained acknowledgements on the counterfoils of the contract notes issued to the client 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 resorted to circular trading with other members of BgSE wherein the shares were traded themselves and created artificial volumes. The broker contravened provisions of the 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.

5. Contract notes were sent to Shri Raj Singhi instead of the client Smt. Santosh Chindaliya which is in violation of Clause B(2) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (SB&SB) Regulations 1992.

6. All the above are in violation of Rule 4(b) of SEBI (SB & SB) Rules, 1992 and Clause A(1) 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 neither filed any reply to the aforesaid show cause notice nor appeared for personal hearing before the Enquiry Officer. The Enquiry Officer concluded the enquiry in terms of the Enquiry Regulations and inter alia had observed that there was no material to suggest that the Broker had verified the financial worthiness of the client while trading in the shares of HTL. It was also stated in the Enquiry Report that the details of the introducer were not filled in the 'Know Your Client' (KYC) form. It was also mentioned in the Enquiry Report that the Broker had violated Regulation 17(1)(i) of the Broker Regulations. The Enquiry Officer, after taking into account certain mitigating circumstances, vide report dated November 24, 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. The Broker vide his reply dated December 07, 2004 stated that necessary due diligence and care was exercised by him while dealing with his aforesaid client and that he had kept the securities with him till all the transactions were completed . The Broker further requested to take lenient view in the matter.

3.2 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 hereinabove and the said violations call 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.

3.3 I have perused the Enquiry Report, show cause notices issued to the Broker, his reply dated December 07, 2004 and other relevant materials available on record. 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.

3.4 The transactions made by the Broker in the shares of HTL at BgSE on behalf of his aforesaid client during the period April 01, 2001 and December 31, 2001 (from settlement 1 to Settlement no. 40 of 2001) are incontrovertible .

3.5 In the context of such trades executed by the Broker on behalf of the said client, the first question to be decided whether the client was properly introduced to the Broker. In this regard, I note that the Broker had made a statement before the investigating authority of SEBI that his client was introduced by one Shri Raju Bhai who had come to his office and expressed his desire to trade for the said client in the shares of HTL. As per the statement made by Shri Raj Singhi (employee of HTL) before the investigating Authority of SEBI, the client was introduced by him to the Broker and that he used to place orders on behalf of the said client.

3.6 It may be mentioned here 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 stock 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. 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. I also note that in his report , the Enquiry Officer had observed that there was no material to suggest the Broker had verified the financial worthiness of his client while trading in the scrip of HTL. The Enquiry Officer had also observed that the assessment of financial capability of the client was material, though the trades were squared off.

3.7 The facts and circumstances of the present matter would establish that the client was new to the Broker and I also note that the Broker had not mentioned the details of the introducer in the client introduction form. If the client was introduced by Shri Raju Bhai (as claimed by the Broker), there was nothing to prevent the Broker to mention the details of such introducer in the client introduction form. Further, in the facts and circumstances of the case and in the absence of the details of the introducer in the client introduction form gives a suspicion that it was Shri Raj Singhi of HTL who had dealt

with the Broker and was placing orders on behalf of the aforesaid client which is serious as far as the integrity of the market is concerned. In view of the above findings, I do not hesitate in holding that the Broker had violated the SEBI Circular dated April 11, 1997.

- 3.8 The next issue to be examined whether the orders in the shares of HTL were placed by the client herself or by a third party. In this regard, I refer to the statements made by the Broker and Shri Raj Singhi before the investigating authority of SEBI. The Broker's statement was that one Shri Raju Bhai came to his office and had expressed his desire to trade for the said client in the shares of HTL, whereas Shri Raj Singhi stated before the investigating officer of SEBI that the client was introduced by him to the Broker and that he used to place orders on behalf of the said client in the shares of HTL. In such circumstances, mired in inconsistencies and contradictions, it stands to reason that the orders were not placed by the client of the Broker; instead the same were placed by a third party. To that extent there is clarity, though one is clueless as to who is the third party. The Broker could not adduce any evidence to show that his client had specifically authorized either Shri Raju Bhai or Shri Raj Singhi to place order on behalf of her. In view of the above, it is likely that Shri Raju Bhai was none other than Shri Raj Singhi of HTL. Therefore, it is fairly established that the orders in the shares of HTL were placed by a third party on behalf of the client without any specific authorization, which will firmly establish that the Broker had violated the SEBI circular dated February 11, 1997.
- 3.9 Further, in respect of the allegation that the Broker had not obtained the acknowledgments on the counterfoils of the contract note issued to his client, I note that, 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, it is an undisputed fact that the Broker had traded substantially on behalf of his client in the shares of HTL. However, the Broker failed to submit acknowledgment copies of counterfoils of contract notes. This had to be viewed in the context of the fact that the orders in the shares of HTL were not placed by his client but by a third party, without any specific authorization. I also note that despite executing sizeable transactions, the Broker had failed to obtain the acknowledgement copy of contract notes. It does not appear to be a simple omission and has to be viewed seriously in the background of the findings mentioned above. Therefore, I hold that the Broker had violated the provisions of regulation 17 (1) (i) of the Broker Regulations.
- 3.10 In view of the above facts and circumstances, it is fairly established that the Broker had not obtained the acknowledgments on the counterfoils of the contract note issued to his client. It has to be mentioned here that , in terms of Clause B(2) of the Code of Conduct specified in Schedule II of the Broker Regulations, a stock broker without any delay shall issue a contract note for all transactions in the form specified by the stock exchange. The Broker could not adduce any evidence to show that he had issued the contract note to his client. Coupled with the fact that the Broker had not obtained the acknowledgments on the counterfoils of the contract note issued to his client, it is proved without any doubt that the Broker had failed to issue contract note to his aforesaid client without delay and thereby, violated Clause B(2) of the Code of Conduct , as mentioned above. In this context, it is to be kept in mind that the orders were placed by a third party without any authorization.
- 3.11 The Enquiry Officer had observed in his report that the Broker had not exercised due diligence while trading for the client in the shares of HTL. In this context, the Enquiry Officer had also observed the order dated September 18, 2003 passed by the Hon'ble Securities Appellate Tribunal in the matter of Madhukar Sheth Vs SEBI. In view of the above findings, it can be held that the Broker had failed to maintain high standards of integrity, promptitude and fairness in the conduct of his business while dealing for his client, as required in terms of clause A (1) of the Code of Conduct specified in Schedule II of the Broker Regulations. In view of the above, I also note that the Broker had failed to comply with the regulatory requirements , as stipulated in terms of clause A(5) of the Code of Conduct specified in Schedule II of the Broker Regulations.
- 3.12 In view of the above facts and circumstances, it is reasonably established that the Broker had violated the KYC norms, the client was not known to the Broker personally, orders were placed by a third party without any specific authorization, while the Broker did not issue contract notes to the client within the stipulated time, besides not maintaining the acknowledgment copies of the counterfoils of the contract note. Accordingly, the Broker had failed to maintain high standards of integrity, promptitude and fairness in the conduct of his business while dealing for his client and also failed to comply with the regulatory requirements. However, I note that the Broker had obtained the member client agreement and also retained the shares of the client towards security till the end of the trading, as per the instruction of the said client.
- 3.13 The above violations committed by the Broker calls for a higher penalty than that recommended by the Enquiry Officer . Therefore, in the facts and circumstances of the case, the findings of which are already made out above, I consider that this is a fit case for imposing a penalty of suspension of certificate of registration of the Broker for a period of fifteen days.

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 Ganesh Stock & Share Brokers Pvt. Ltd., Member, Bangalore Stock Exchange Ltd. (Registration number

INB 080926534), 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 03, 2006