

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER AGAINST MARLECHA SECURITIES PRIVATE LIMITED, MEMBER, THE 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 SHARES OF HOME TRADE LTD.

WTM/GA/103/ISD/11/06

1.0 BACKGROUND

- 1.1 M/s Marlecha Securities Private Limited (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 081009639.
- 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 Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 1995 (hereinafter referred to as the FUTP Regulations) and Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as the Broker Regulations).
- 1.4 The investigation conducted by SEBI found that the Broker had traded in the shares of HTL on behalf of his sole client, Shri Manish Kumar. The transaction details of the Broker in the shares of HTL 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	23,300	2.72%	23,300	2.72%

- 1.5 The investigation conducted by SEBI prima facie revealed that the Broker had resorted to circular trading with other members of BgSE, wherein the shares of HTL were traded amongst themselves, creating artificial volumes in the shares of HTL. It was also observed that the trades executed by the Broker along with other members of BgSE contributed more than 98% of the volume in the shares of HTL.

2.0 APPOINTMENT OF ENQUIRY OFFICER

- 2.1 SEBI appointed an Enquiry Officer, vide order dated May 28, 2003, under regulation 5(1) of Securities and Exchange Board of India (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. The following allegations were leveled against the Broker :

"1) The client was not known to the broker and Mr Rajneesh, an employee of Home Trade was placing the orders on behalf of the client. The client registration form and member client agreement forms were not maintained. Financial worthiness and background of the client was not verified. Due care and diligence was not exercised in admitting the client.

2) 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 amongst themselves by trades which were not genuine and created artificial volumes. It is, therefore, alleged that the broker had contravened provisions of the Regulation 4 (a)(b)(c) (d) 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".

- 2.2 The Broker had made his submissions before the Enquiry Officer. The Enquiry Officer conducted the enquiry in terms of the Enquiry regulations and vide report dated November 8, 2004, he had recommended for the imposition of a minor penalty of censure against the Broker.

3.0 CONSIDERATION OF ISSUES AND FINDINGS.

- 3.1 Based upon the recommendations of the Enquiry Officer, a show cause notice dated November 22, 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 delivered to the Broker through BgSE. Though sufficient time was given to the Broker, he had failed to file his reply to the said show cause notice.
- 3.2 While considering the Enquiry Report, I noticed that the Broker had prima facie violated the allegation no.1 on page 2 of the Enquiry Report and the said violation called 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 the certificate of registration 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. The Broker, vide his reply dated September 11, 2006 inter alia submitted that " We have received a letter dated 22.11.2004 under Ref. No. ISD/SR/AM/HTL/26183/2004, informing us that, a minor penalty of censure has been considered against us. **On receipt of the above letter, we have accepted the proposed penalty of censure and we thought that the same need not be intimidated to the SEBI and hence we have not replied to the above notice dated November 22, 2004**". The Broker further stated that neither he nor his client was a party to the price rigging of the shares of HTL. It was contended that the total volume of transaction of its client represented only 2.72% of the total volume of transaction of BgSE and that his client had traded between December 08, 2000 to February 05, 2001 within a price range of Rs.158.95/- to Rs.168.95/-. The Broker contended that the penalty recommended by the Enquiry Officer was correct and the proposed penalty of suspension of the certificate of registration for a period of 15 days was very high. In view of the above submissions, the Broker had requested to drop the proposed penalty of suspension of the certificate of registration for a period of 15 days. The Broker had also enclosed the copy of the analysis of trading details, copy of page no.6&7 of the Enquiry Report and the ledger copy of his client, along with his aforesaid reply.
- 3.3 The Broker was also granted an opportunity for hearing before me on October 27, 2006. However, the said hearing was adjourned to November 01, 2006, as per the request of the Broker. Shri Gautham Chand, Director of the Broker appeared for the hearing and made submissions on behalf of the Broker. Shri Gautham Chand reiterated the submissions made by the Broker vide reply dated September 11, 2006. Shri Gautham Chand further submitted that no margin money was collected as the trades were not substantial. He also submitted that the client registration form as well as the member client agreement was shown to the Enquiry Officer during the enquiry proceedings. The Broker was advised to produce the copies of the member client agreement, client registration form and the proof address of its client collected at the time of execution of trades along with the original for verification. The said documents including the telephone bill issued by the Bangalore Telecom District in the name of Shri. P. Mahaveer Chand (client of the Broker) for the period April 01, 2000 to May 31, 2000, were produced by the Broker. The Broker had also produced an affidavit sworn in by his client, inter alia affirming that the name of his client was Manishkumar alias P. Mahaveer Chand. It was also affirmed that Manish Kumar was his nick name and that he was known as Manish Kumar than by his birth name, P Mahaveer Chand.
- 3.4 I have perused the Enquiry Report, show cause notices issued to the Broker, his reply dated September 11, 2006 , the submissions made at the time of the hearing, the copies of the documents submitted by the Broker subsequently 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. The fact that the Broker had transacted for his clients and also on his proprietary account in the shares of HTL during the period April 01, 2000 and March 31, 2001 are not disputed by the Broker. I note that the Broker had entered into the member client agreement (now produced) and the client registration form with his aforesaid client before entering into transactions in the shares of HTL on his behalf. Though the Broker had produced the client registration form (now produced), I note that the details pertaining to the last 3 years income of his client and the details of the introducer of the client were not mentioned, as required in the said form.
- 3.5 It is one of the precautionary measures of 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 Know Your Client norms/guidelines. 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 this regard, I note the observation made by the Enquiry Officer that the value of the transactions executed by the Broker was significant and unusual for a client who had just started trading only in the shares of HTL and the Broker had not assessed the financial net worth of his client. The Broker should have exercised care, due skill and diligence while executing such trades on behalf of a client who had just started trading with the Broker. This has to be read in the context of the fact that the annual income of the client for the last 3 years was not mentioned in the client registration form. Further, admittedly, the Broker had not collected the margin money from his client, in terms of the SEBI Circular. The assessment of financial capacity of the client can not be taken as irrelevant even when the trades were squared off. The Broker could not establish that he had assessed the financial net worth of his client before executing trades on his behalf. The Broker should have acted with due skill and care while trading on behalf of his client in the above circumstances. The above acts of the Broker clearly established that

he had failed to assess the financial capacity (one of the Know Your Client norms) of his client before executing trades on his behalf in the shares of HTL.

- 3.6 In the facts and circumstances as detailed above, it is fairly established that that the Broker had not obtained the complete details as required in the client registration form and not assessed the financial net worth of his client before executing trades on his behalf. Admittedly, the Broker had not obtained the margin money from his client. The above violation calls for a penalty under the provisions of 2002 Regulations. As the Broker has now produced the copy of the member client agreement, client registration form (though certain details were absent in the form), the proof of address of his client, and also in view of the fact that the Broker has assured that he would comply with the Rules, Regulation etc. without any failure, I do not consider this as a fit case for imposing a higher penalty than recommended by the Enquiry Officer. I further note that the Broker vide letter dated September 11, 2006 had accepted the penalty of censure.

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 minor penalty of censure on the certificate of registration of M/s Marlecha Securities Private Limited, Member, Bangalore Stock Exchange Ltd. (Registration number INB 081009639).

Place : Mumbai

Date : 24-11-06

G. ANANTHARAMAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA