

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

CORAM: Dr. T.C. NAIR, WHOLE MEMBER

**AGAINST C.R. KULKARNI, BROKER, PUNE STOCK EXCHANGE LIMITED
(INB110240516) FOR THE IRREGULAR TRANSACTIONS IN THE
SCRIP OF HOME TRADE LTD.**

ORDER

[Under Regulation 28(2) of SEBI (Intermediaries) Regulations, 2008]

BACKGROUND

1. M/s Chandrahas R Kulkarni (hereinafter referred to as the 'Stock Broker') is a member of the Pune Stock Exchange Ltd. (hereinafter referred to as PSE) and 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 (INB110240516).
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 sharp price rise in the scrip of HTL both at PSE and BgSE. The price of 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 05, 2000	874.00

3. The maximum rise in the price of the scrip of HTL was witnessed between November 16, 1999 and March 31, 2000, when it had shot up from Rs.275/- to Rs.815/-.
4. SEBI conducted investigations 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).

ALLEGATION AS PER SHOW CAUSE NOTICE

5. It is alleged that the broker along with some other members of PSE had contributed to more than 90% of the volumes, in the trading in the scrip of HTL at PSE, and created artificial prices and volumes. It was alleged that during the period April 01, 2001 to December 31, 2001, the broker had purchased 16,700 shares (amounting to 3.91% to the total volume of the scrip of HTL at PSE) and sold 16,300 shares (amounting to 3.82% to the total volume of the scrip of HTL at PSE) of HTL on behalf of his client, namely Smt. Sarika Bothra.

6. It was alleged that though the client was Smt. Sarika Bothra, w/o Shri Sandeep Bothra, the actual trades were executed as per the instructions of Shri Raj Singhi, employee of HTL. It is stated that the client of the broker namely Smt. Sarika Bothra is the sister-in-law of the said Shri Raj Singhi.

APPOINTMENT OF ENQUIRY OFFICER

7. On completion of the investigations, SEBI appointed an Enquiry Officer, vide order dated May 28, 2003, under Regulation 24(1) of SEBI (intermediaries) Regulations, 2008 (hereinafter referred to as the 2008 Regulations) to enquire into the alleged irregular transactions of the broker in the scrip of HTL.
8. A show cause notice was issued to the broker by the Enquiry Officer in which the following allegations were leveled:
 - a. The client was no known to the broker and the orders on behalf of the client were placed by third party. This is in violation of SEBI Circular No. SMD/POLICY/IECG/1-97 dated February 11, 1997.
 - b. Broker did not enter into member client agreement with the client which is in violation of SEBI Circular No. SMD/POLICY/CIRCULAR/5-97 dated April 11, 1997.
 - c. Broker did not obtain acknowledgment of clients on the counterfoils of the contract notes which is in violation of Regulation 17(1)(i) of SEBI (SB & SB) Regulations, 1992.
 - d. The broker actively traded in the scrip of HTL and artificially created higher price and volumes in the scrips of HTL at the behest of an employee of HTL who was placing order on behalf of the client. The broker had entered into transactions that are not genuine trade transactions in contravention of the 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 (3-4) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (SB & SB) Regulations 1992.

- e. Violation of Rule 4(b) of SEBI (SB & SB) Rules 1992 and Clause A(1) (2) and A (5) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (SB & SB) Regulations 1992 in the aforesaid transactions”.

9. Reply to the aforesaid show cause notice was submitted by the broker, vide letter dated April 05, 2004 denying the allegations. Thereafter, the Enquiry Officer conducted the enquiry in accordance with SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002. The broker participated in the said enquiry proceedings. The Enquiry Officer submitted his report dated November 18, 2004. The Enquiry Officer in his Report has held that the broker did not act in good faith and without negligence and failed to execute due care and diligence while trading in the scrip of HTL for a client who is relatively new without verifying the financial strength

10. The client had traded only in the scrip of HTL and no other scrip and that most of the trades were squared off and did not result in deliveries. I agree with the findings of the Enquiry Officer that having regard to the price of the scrip, the value of these transactions is also significant and unusual for a client who just started trading only in the scrip of HTL. In absence of the income details it is difficult to establish whether the financial capability of the client was strong enough to support the volumes of trades executed by the client and the broker should have ensured that the client who places the buy order first is financially capable of lifting the delivery if necessary as otherwise the liability

would devolve. 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.

11. While dealing in the securities market, in terms of Clause A(1) and (2) of the Code of Conduct prescribed under Schedule II of the Broker Regulations, 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. 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) referred to by the Enquiry Officer in his report.

12. In a situation where the client was 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 his client in the scrip of HTL. The Enquiry Report established that the Broker has failed to exercise due skill, care and diligence and failed to maintain high standards of integrity and fairness in the conduct of all his investment business as specified in clause A (1) and A (2) of Schedule II of the Broker Regulations in his transactions in the scrip of HTL made on behalf of his client. I agree with the findings of the Enquiry Officer.

13. In terms of the provisions of the Code of Conduct for Stock Brokers, 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 Enquiry Officer observed that:-

- a) The broker had furnished copies of transaction statements specifying the delivery of 400 shares at her client ID No.16234587 with HDFC Bank Ltd., which confirms that the delivery of shares of HTL was made at the respective client account only.
- b) The Enquiry Officer further held that the broker had failed to obtain the acknowledgements of the client on the counterfoils of the contract notes. However, he has observed that the broker had furnished the copy of proof of delivery of the contract notes through UPC. Also since the delivery of shares is taking place at the client's DP account as aforesaid he has observed that not obtaining the acknowledgements of the client on the counterfoils of the contract notes may not be viewed seriously.

A copy of the Enquiry Report was sent to the broker vide letter dated November 25, 2004 and his comments that were received vide letter dated December 05, 2004. I have carefully examined the show cause notice, reply of the broker thereto, Enquiry Report, comments of the broker vide his letter cited and other materials on record. I agree with the findings of the Enquiry Officer. However, taking into account the submissions made by the broker and the mitigating factors that the broker had traded outside the period of maximum price manipulation, that the broker had not executed any proprietary trades in the scrip of HTL. I am of the considered view that a minor penalty of warning would meet the ends of justice.

ORDER

15. Now, therefore, in exercise of powers conferred vide regulation 28(2) of SEBI (Intermediaries) Regulations, 2008, I hereby impose a minor penalty of 'warning' in terms of Regulation 27(vi) of SEBI (Intermediaries) Regulations 2008 on Chandrahas R Kulkarni (Reg. No.), Member, Pune Stock Exchange Ltd. , for the aforesaid reasons.

DATE: January 09, 2009

PLACE: MUMBAI

T. C. NAIR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA