WTM/TCN /131/IVD1/Jan/09

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

IN THE MATTER OF M/s NETWORTH STOCK BROKING, MEMBER, BOMBAY STOCK EXCHANGE LIMITED, SEBI REGISTRATION NO INB 010638634 IN THE SCRIP OF DATABASE FINANCE LTD.

Date of hearing : 05 September, 2006

Appearances

For Noticees : Shri J.J.Bhatt, Advocate
Shri S.P. Jain, Managing Director, M/s Networth Stock Broking

For SEBI : Shri P.K.Nagpal, Executive Director
Shri Amol Hogade, Manager
Ms. Kshama Chavan, Legal Officer

ORDER

UNDER ORDER UNDER REGULATION 28(2) OF THE SEBI (INTERMEDIARIES) REGULATIONS, 2008.

1. SEBI conducted an investigation into the buying, selling and dealing in the scrip of Database Finance Ltd (hereinafter referred to as "Database" or "the Company") for the period 2001 to 2002. It was found that the price of the scrip having face value of Re. 1 rose from a low of Re.1 on April 10, 2001 to a high of Rs. 14.45 on August 31, 2001 during the first period of investigation and from Rs. 42.35 on April 1, 2002 to Rs. 82.90 on June 28, 2002 during the second period of investigation. It was observed that during the first investigation period 12 entities/ individuals who were prima facie

related/connected to each other traded significantly for approximately 75% of the total trades in the scrip on BSE through 14 member broker/sub brokers .

2. It was alleged that the connected or the related clients including clients of Networth Stock Broking Limited (hereinafter referred to as "the broker") viz., Indumati U Goda had influenced the price of the scrip by creating artificial volume in the market thereby violating the provisions of Regulation 4(a),(b), (c) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating Securities Market) Regulations 1995 (hereinafter referred to as PFUTP Regulations). It was further alleged the broker failed to exercise due care and diligence and violated clauses A(1),(2),(3),(4) and (5) of Code of Conduct as specified in schedule II under Regulation 7 of the SEBI(Stock Broker and Sub Broker) Regulations, 1992.

3. In view of the above findings of investigation, SEBI vide order dated October 10, 2004, appointed an Enquiry Officer under the then SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as "Enquiry Regulations") to enquire into the violations/irregularities committed by the broker. The enquiry officer conducted enquiry in terms of Enquiry Regulations and found that the broker had failed to exercise due skill, care and diligence in conduct of its business thereby violating the provisions of Regulation 7 read with Clause A(2) of Code of Conduct specified under schedule II of the Stock Broker

Regulations. The enquiry officer submitted his report dated March 9, 2005 recommending a minor penalty of warning to the broker.

4. A copy of the enquiry report along with show cause notice dated January 13, 2006 was forwarded to the broker, in terms of Regulation 13(2) and 13(5) of the Enquiry Regulations advising it to show cause as to why higher penalty should not be imposed against it than that recommended by the Enquiry Officer.

5. The broker vide its letter dated February 16, 2006 submitted interalia stating as under :

   i. *The findings of the Enquiry Officer do not indicate in any manner whatsoever that serious violations has been committed by them as wrongly alleged in the show cause notice dated January 13, 2006. On this ground alone, the subject show cause notice deserves to be dismissed forthwith.*

   ii. *It is submitted that the show cause notice does not point out any infirmities in the conclusion arrived at by the Enquiry Officer. Indumati U Goda was client of the company from December, 2000 to November, 2002. It is submitted that at no time did the said client disclose or inform that she was in any way related /concerned and/or interested with any of the other entities mentioned in the Enquiry Report.*

   iii. *During the year 2001-02 and 2002-03, the total turnover of the client was Rs. 4943.35 lakh and Rs. 2668.64 lakh respectively whereas turnover in Database done by the said client was Rs. 12.82 lakh and Rs. 82.78 lakh respectively which constituted an infinitesimal 0.26% and 3.10% respectively. In the said circumstances they had no reasons to doubt the bonafides of the trades done by their client in Database.*

   iv. *They had no cause or reason to doubt the genuineness of the transactions done by the client especially as the transactions were delivery based. They further submit that there have been no margin or settlement obligation violations. They further submit that the company for abundant precaution stopped executing any transactions in DFL or in any respect or in any other scrip for the said Indumati U*

Goda. After November, 2002, the company has not done any transactions of any kind whatsoever for the said Indumati U Goda.

6. An opportunity of personal hearing was granted to the broker on September 05, 2006 before me. Shri J J Bhatt, Advocate and Shri S. P. Jain, Managing Director, Networth Stock Broking attended the hearing and made submissions. Further written submissions were made vide letter dated September 4, 2006 which are taken on record.

7. I have carefully considered the enquiry report, show cause notices and the replies/submission of the broker. I note that though the Enquiry Regulations were repealed with effect from the notification of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, anything done and any action taken under the said enquiry regulations shall be deemed to have been done or taken or commenced under the corresponding provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008. My findings are as under:

8. I find that the investigation report has not given any evidence in support of the allegation that there was a connivance of the broker with their client so as to give an inference that it has indulged in circular trades and was thus instrumental in creating artificial volumes in the scrip which distorted the market equilibrium of the shares. Also no evidence has been given showing that the broker knew that their client was indulging in circular trading, manipulation etc. or showing that the broker knew the relationship of their client with other clients. I note that the investigation report also does not bring out any relationship of the group of clients with the broker. I

further note that the investigation report does not bring out any attempts at synchronization of trades by the involved brokers which can be one indication of connivance. However, I am of the view that the broker should have been alerted by the prolonged trading by the client in an illiquid scrip by making necessary enquiries and discontinued trading in the said scrip.

9. I further note that the show cause notice was also issued under Regulation 13(5) of the Enquiry Regulations calling upon the noticee to show cause as to why higher penalty should not be imposed upon it. After perusal of the show cause notice and materials available on record, I find that the show cause notice does not clearly bring out the reasons for enhancement of the penalty. The Enquiry Officer has found that there is no evidence in corroboration of the allegation that there was a connivance of the broker with their client. Further the investigation report also does not bring out any relationship of the group of clients with the broker. It is pertinent to note that the show cause notice has not dispelled the said finding. After perusal of the show cause notice and material available on record, I do not find legally sustainable grounds to enhance the penalty. However in the facts and circumstances of the case, the broker should have acted with the due skill and care as is mandated in the code of conduct for stock brokers in the Stock Brokers Regulations.

10. Now, therefore, in exercise of powers conferred upon me in terms of Section 19 of SEBI Act, 1992 read with Regulation 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, I direct M/s Networth Stock Broking Ltd. to be careful in future and

exercise due care and diligence in the conduct of its affairs as a capital market intermediary. I also direct M/s Networth Stock Broking Ltd, Member, Bombay Stock Exchange Limited, SEBI Registration No. INB 010638634 to note that any instance of violation or non compliance of SEBI Act and Rules and Regulations in future shall be dealt with stringently.

DATE :13.1.2009 **T.C.NAIR**
PLACE : MUMBAI **WHOLE TIME MEMBER**
SECURITIES AND EXCHANGE BOARD OF INDIA