

WTM/TCN /135/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. DEEPAK BHOGILAL SHAH, MEMBER
AHMEDABAD STOCK EXCHANGE, AND SUB BROKER TO ASE
CAPITAL MARKETS LTD. SEBI REGISTRATION NO. INS011043036 IN
THE SCRIP OF DATABASE FINANCE LTD.**

Date of hearing : 05 September, 2006

Appearances

For Noticees : Shri Bharat Shah, Partner, M/s. Deepak Bhogilal Shah

For SEBI : Shri P.K.Nagpal, Executive Director

Shri Amol Hogade, Manager

Ms. Kshama Chavan, Legal Officer

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 these connected or related clients including clients of M/s. Deepak Bhogilal Shah (hereinafter referred to as "the sub broker") viz., Shri Rajubhai U Ghoda 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 that the sub broker failed to exercise due care and diligence and violated clauses A(1),(2), D(1), (4) and (5) of Code of Conduct as specified in schedule II under Regulation 15 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 15 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 then that recommended by the Enquiry Officer.

5. The sub broker vide its letter dated February 28, 2006 *interalia* stated that Shri Shirish Shah was a genuine client since many years and had introduced Shri Raju Ghoda as a client, whom they had not met personally. Since they had a long satisfactory association with Shri Shah, they had no hesitation for enrolling Shri Ghoda as a client and executing the transactions recommended by Shri Shah on behalf of Shri Ghoda. Shri Shah used to place orders on behalf of Shri Ghoda and they in turn executed the transactions. While executing orders all obligations were fulfilled by Shri Shah. In the course of executing the orders for so many retail clients, it was not possible to keep a watch as desired in the show cause notice. Keeping in view the value of the total transactions and the small number of transactions entered into by Shri Shirish Shah on behalf of Shri Ghoda, the fact that the said transactions were entered into on various dates and time over a period of time and not on a single day, it was highly improbable for a sub-broker to suspect the action of the party or make any enquiries about the transactions entered into by him as expected or observed by the Enquiry Officer. On knowing that Shri Ghoda had entered into such practice against investor's interest as observed by SEBI they have discontinued the transactions with him. They have no role in the issue of trading of shares of Database Finance Ltd., either directly or indirectly and they have acted bonafidely while executing transactions of Shri Shirish Shah on behalf of Shri Ghoda. In view of the above observations of the Enquiry Officer and keeping in view the facts, submission and explanation furnished by me till date, it was requested to adopt a lenient approach and withdraw the proposal

contemplating imposing of higher penalty than that recommended by the Enquiry Officer.

6. An opportunity of personal hearing was granted to the broker on September 05, 2006 before me. Shri Bharat Shah, Partner, M/s. Deepak Bhogilal Shah attended the hearing on behalf of the sub broker and made submissions.
7. I have carefully examined the investigation report, enquiry report, show cause notices and the replies/ submission of the sub 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 sub 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 sub broker knew that their client was indulging in circular trading, manipulation etc. or showing that the sub 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 sub broker. I

further note that the investigation report does not bring out any attempts at synchronization of trades by the involved sub brokers which can be one indication of connivance. However, I am of the view that the sub 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 sub broker with their client. Further the investigation report also does not bring out any relationship of the group of clients with the sub 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 sub 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 Shri M/s. Deepak Bhogilal Shah, 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. Deepak Bhogilal Shah, Member Ahmedabad Stock Exchange, and sub broker, ASE Capital Markets Ltd. SEBI Registration No. INS 011043036 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
PLACE : MUMBAI

T.C.NAIR
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA