

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

**IN THE MATTER OF SHRI BHAVESH MEHTA, MEMBER,
SAURASHTRA KUTCH STOCK EXCHANGE, AND SUB BROKER OF
SKSE SECURITIES LTD., SEBI REGISTRATION NO. INS010564917 IN
THE SCRIP OF DATABASE FINANCE LTD.**

Date of hearing : 05 September, 2006

Appearances

For Noticees : Shri Bhavesh Mehta, Proprietor,

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

ORDER

**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 Bhavesh Mehta, (hereinafter referred to as “the sub broker”) sub broker of SKSE Securities, viz., Sayed Qader Yusuf 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 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 February 15, 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 sub 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 16, 2006 interalia stated that the alert of any trading pattern as mentioned in the enquiry report was not known to them as they were not aware of the related party and statistical data regarding company and overall volume as available with SEBI and Exchanges. Besides at any point of time its maximum outstanding position in any settlement was 1400 shares which is common in the scrip having low prices. There was no heavy volume or continuous profit or loss or other factors that establish trading patterns so as to raise doubt in their mind and inform the client to discontinue the operations. If the client is cornering or accumulating shares then they might have received indication as mentioned in the inspection report. The said client overall volume was not more than 1% of our total volume. His maximum outstanding position settlement wise never exceeded 1400 shares and volume in amount did not exceed Rs. 67000 how one can imagine that his dealing can influence the price of the company. The deal was cancelled as soon as they came to know that the client's dealing was not proper and the dealing was terminated and informed to close his account with them. Regarding Client introduction Form it was submitted that they knew Shri Sayed Kadar Yusuf personally and it is mentioned in the Know Your Client form that

he has filled up the name of the introducer. As regards absence of signature on the form it is submitted that it is just technical procedure as they know the client personally and the client reference is obtained on telephone from their sources regarding his credibility. Further confirmation regarding client introduction from Shri Prakash Shah and letter confirming from him that he has introduced the client have been obtained.

6. An opportunity of personal hearing was granted to the sub broker on September 05, 2006 before me. Shri Bhavesh Mehta, Proprietor, attended the hearing on behalf of the sub broker and made submissions.
7. I have carefully considered the 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 sub 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.

9. 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 Bhavesh Mehta, 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 Shri Bhavesh Mehta, Member, Saurashtra Kutch Stock Exchange, and sub broker of SKSE Securities Ltd., SEBI Registration No. INS 010564917 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 :13.01.2009

PLACE : MUMBAI

T.C.NAIR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA