WTM/TCN /138 /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. APEX STOCK BROKERS PVT. LTD., (PREVIOUSLY KNOWN AS M/s. ACME SHARES AND STOCK PVT. LTD.),MEMBER, BOMBAY STOCK EXCHANGE LIMITED, SEBI REGISTRATION NO INB 010991838 IN THE SCRIP OF DATABASE FINANCE LTD.

Date of hearing : 05 September, 2006
Appearances
For Noticees : Shri J J Bhatt, Advocate

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 brokers/sub brokers .

2. It was alleged that these connected or the related clients including clients of M/s. Apex Stock Brokers Pvt. Ltd. (hereinafter referred to as "the Broker") viz., Shri Baban Sonate, Ms. Rekha Vakharia, Shri Chandrakant K Shah, traded through its sub brokers M.S. Consultancy Services and Mahek Consultants 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),(3),(4) and (5) of Code of Conduct as specified in schedule II under Regulation 15 of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as "Stock Brokers Regulations").

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 March 21, 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 Broker vide its reply dated February 13, 2006 *interalia* replied to the show cause notice and stated that the show cause notice issued by SEBI for imposing higher penalty does not mention the type, nature and category of serious violation nor indicate the basis, premise and grounds/ reasons for contemplating some higher penalty nor mentions particular kind of higher penalty. The show cause notice has not pointed out any material on record that the enquiry officer failed to take cognizance of or that appraisal of evidence was improper. In the circumstances, no penalty whatsoever is leviable because there is no finding in the enquiry report of price manipulation in the scrip or of assisting any such manipulation, and we have been absolved of all the alleged charges by the enquiry officer and hence SEBI is precluded from imposing any penalty – minor as recommended or higher as contemplated. They also stated that they acted with due skill, care and diligent in the conduct of their business.

6. An opportunity of personal hearing was granted to the broker on September 05, 2006 before me. Shri J. J. Bhatt, Advocate attended the hearing on behalf of the broker and made submissions. Further written submissions were submitted vide letter dated September 30, 2006 stating that there was no proprietary trading in the scrip of Database. Further the broker submitted that the transactions were carried out by their sub brokers for their clients in the normal course of business and their gain was confined to only brokerage income of about Rs. 4390. There is no evidence to prove the main charge of prolonged trading by the clients and there is no cogent rational reason to consider higher penalty as proposed.

7. I have carefully examined the investigation report, the enquiry report, the show cause notice and the reply/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 note 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 Apex Stock Brokers Pvt. 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 Apex Stock Brokers Pvt Ltd, Member, Bombay Stock Exchange Limited, SEBI Registration No. INB 010991838 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 **T.C.NAIR**
PLACE : MUMBAI **WHOLE TIME MEMBER**
SECURITIES AND EXCHANGE BOARD OF INDIA