

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

IN THE MATTER OF DATABASE FINANCE LIMITED

In respect of Bharti Thakkar India Securities Private Limited

(SEBI Registration No. INB 010996432)

Date of hearing: May 10, 2011

Appearances:

For Noticees: Ms. Bharti Dhiren Thakkar, Director
Mr. Ulhas Deosthale, Advocate

For SEBI: Mr. Rajeev Rastogi, Presenting Officer
Ms. Medha Sonparote, Deputy General Manager
Mr. Amol Ramchandra Hogade, Assistant General Manager
Mr. Pradeep Kumar, Assistant Legal Adviser

ORDER

**Under Regulation 28(2) of the Securities and Exchange Board of India
(Intermediaries) Regulations, 2008**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into dealings in the scrip of Database Finance Limited (hereinafter referred to as 'Database') for the period of April 1, 2002 to June 30, 2002 *inter-alia* to ascertain possible violation of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as 'PFUTP Regulations').
2. The trading details of the persons who had traded in the scrip were collected and analyzed along with the data of the volumes contributed. Database had a total paid up capital of ₹5.33 crores, for the year ended in July, 2001. In comparison to this, the net profit of the company was negligible, i.e., ₹3.6 lac and for the year ended in July, 2002, the profit was ₹3.7 lac. Further, in the subsequent two quarters, Database had incurred losses to the tune of ₹5.8 lac and ₹0.2 lac respectively. During the period of investigation, the price of

the scrip increased from ₹42.35 as on April 01, 2002 to ₹83.90 as on June 30, 2002. This price rise was not justified by the fundamentals of the company.

3. Investigation *inter alia* revealed that Bharti Thakkar India Securities Private Limited (hereinafter referred to as 'noticee'), a trading member of the Bombay Stock Exchange (hereinafter referred to as the 'BSE'), registered with SEBI as stock broker, bearing registration no. INB 010996432 was among the top ten brokers who had traded extensively in the scrip of Database during the period of investigation. The trades entered by the noticee were found to be circular and structured in nature. Such trades were found to be creating false appearance of trading in the securities market and resulted in artificial price rise in the scrip of Database.
4. Based on the findings of the investigation, SEBI initiated enquiry proceedings as against the noticee in terms of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'Enquiry Regulations') by appointing an Enquiry Officer under Regulation 5(1) of the Enquiry Regulations vide order dated October 09, 2006 read with subsequent orders dated November 23, 2007 and August 17, 2010. SEBI appointed the Enquiry Officer, to enquire into the alleged violation of the provisions of PFUTP Regulations and the Code of Conduct specified under Schedule II of the SEBI (Stock brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as 'Broker Regulations'). As the Enquiry Regulations were repealed with effect from the notification of the SEBI (Intermediaries) Regulations, 2008, the Enquiry Officer/ Designated Authority (hereinafter referred to as 'Enquiry Officer') submitted his report dated February 21, 2011, in terms of Regulation 27 of the SEBI (Intermediaries) Regulations, 2008, recommending thereby a penalty of suspension for a period of two weeks for violating the provisions of Regulations 4(a), (b), (c) and (d) of PFUTP Regulations read with Clauses A(1), (2), (3), (4), (5) of the Code of Conduct prescribed for the Stock Brokers in Schedule II under the Broker Regulations.

5. Subsequently, a Show Cause Notice dated February 23, 2011 (hereinafter referred to as 'SCN') under Regulations 28(1) and 38(2) of the SEBI (Intermediaries) Regulations, 2008, was issued by SEBI to the noticee, asking it to show cause as to why the appropriate penalty including the penalty as recommended by the Enquiry Officer should not be imposed. The noticee was advised to reply to the SCN, together with the documents that it may choose to rely upon in support of its reply within 21 days of the receipt thereof. It was also informed that in case of failure, it would be presumed that it had no explanation to offer and SEBI shall be free to take such action in the manner as it deemed fit. A copy of the Enquiry Report was also forwarded to the noticee along with the said SCN.
6. The noticee vide its letter dated March 15, 2011 replied to the SCN and sought an opportunity of personal hearing. Accordingly, an opportunity of personal hearing was granted to the noticee on May 10, 2010. On the date scheduled for the hearing, Ms. Bharti Dhiren Thakkar, Director and Mr. Ulhas Deosthale, Advocate appeared for the noticee and made submissions. The submissions of the noticee, in brief, are as under:
 - a. The client's turnover in the scrip of Database was minuscule as compared to his total turnover in the year 2002-03 and they had no reason to suspect any wrongdoing on his part. There was no violation by the noticee in respect of margin or settlement obligation at any stage till the closure of the client's trading account. The noticee complied with KYC norms and the account of the client was introduced by an existing client.
 - b. The contract notes prevalent during the period of investigation did not have provision for mentioning 'order time' as is available in the contracts which are being generated presently.
 - c. They were not having any relationship with client, broker or related clients of other brokers.
 - d. It had exercised normal caution expected of a broker.
 - e. It did not have proprietary position in the shares of Database and none of its employees were involved in buying/ selling of shares of Database.

7. I have carefully considered the Enquiry Report, the SCN issued to the noticee, its reply and the material available on record. The Enquiry Officer has found the noticee guilty of violation of the provisions of Regulation 4(a), (b), (c) and (d) of the PFUTP Regulations and Regulation 7 read with Clauses A(1), (2), (3), (4) and (5) of the Code of Conduct specified under Schedule II of the Brokers Regulations. Considering this, the issues that arise for my consideration is: Whether the noticee in collusion with other brokers created artificial liquidity/ false market in the scrip of Database?

8. **Whether the noticee in collusion with other brokers created artificial liquidity/ false market in the scrip of Database?**

a. I note that during the investigation period, the noticee had traded for its client Mr. S. Thirunavukarasu, in the scrip of Database. The Enquiry Report has alleged a pattern of circular trading among a group of inter-related clients trading through respective brokers including the noticee. The details of their trades including that of the noticee in the scrip of Database, during the period of the investigation are given below (Table A):

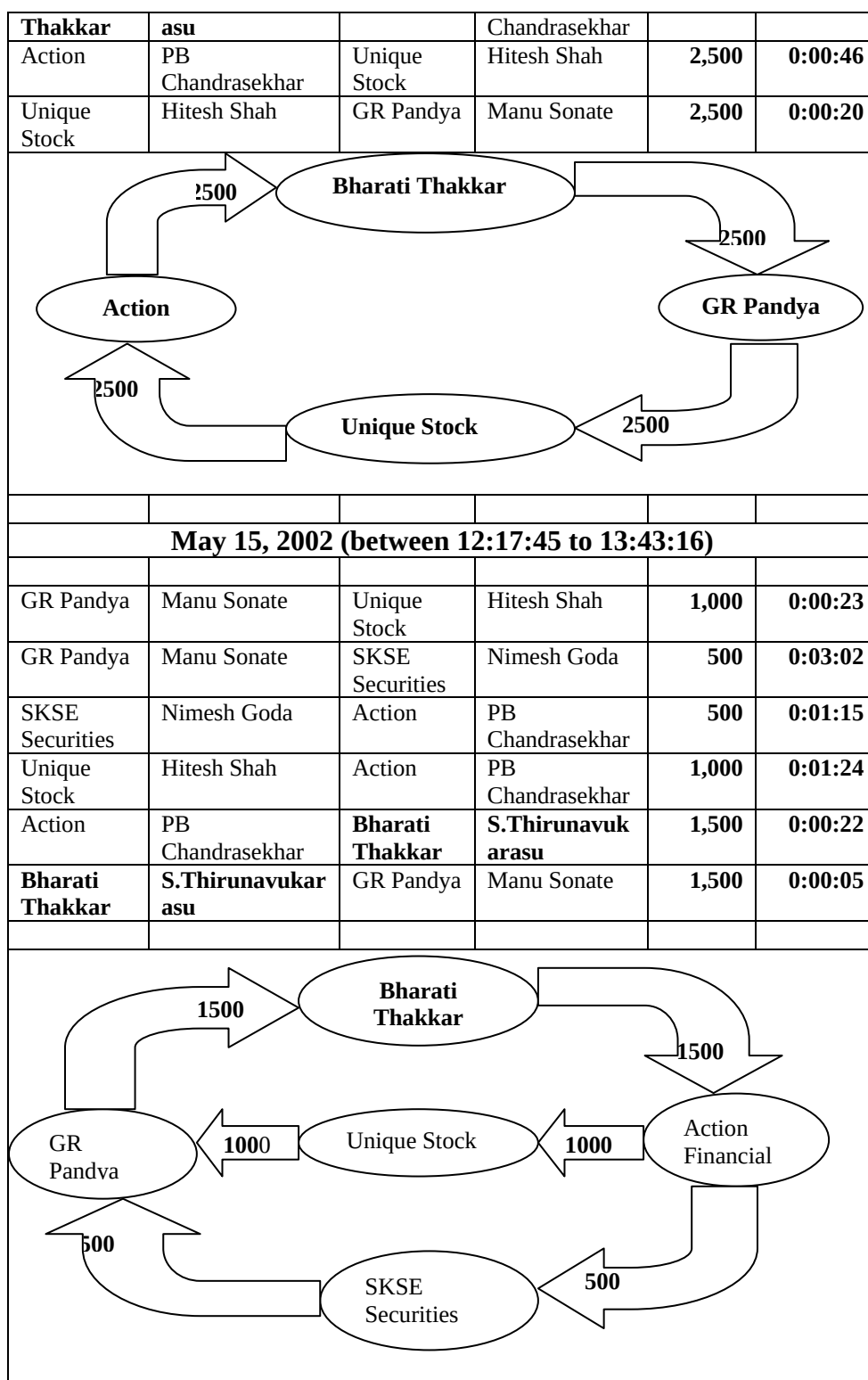
Table A

	Broker	Client	Buy			Sell		
			Total Qty.	Among these clients	% of trade with group clients	Sell Qty.	Among these clients	% of trade with group clients
1	Vijay Bhagwandas Shah	Ridhi K Shah	32,638	29,806	91.32%	31,570	31,570	100.00%
2	Unique Stock Bro	Hitesh Shah	80,287	44,837	55.85%	49,651	47,650	95.97%
3	Networth Stock	Indumati Goda	75,567	45,951	60.81%	44,379	41,420	93.33%
4	G.R. Pandya	Manu Sonate	53,850	46,330	86.04%	42,980	42,980	100.00%
5	Bhavesh R Mehta	Nimish U. Goda	49,620	35,102	70.74%	28,720	26,663	92.84%
6	Narendra Tanna	Baban Sonate	52,432	44,482	84.84%	38,282	38,282	100.00%
7	Deepak Bhogilal	Rajubhai U. Goda	6,780	3,700	54.57%	10,900	9,800	89.91%
8	M.P. Vora Shares	Chandrakant K. Shah	5,950	4,950	83.19%	8,188	8,188	100.00%
9	Action Financial	P B Chandrasekhar	82,520	61,975	75.10%	62,570	62,170	99.36%
10	Rajchandra Capital	Suniti K Shah	39,650	25,090	63.28%	24,350	24,350	100.00%
11	Mangal Keshav	Samir N Shah	2,600	2,600	100.00%	1,755	1,755	100.00%
12	Sushil Finance	Ajay Goda	1,225	1,155	94.29%	1,500	1,500	100.00%
13	Bharati Thakkar	S. Thirunavukarasu	75,460	49,460	65.54%	59,110	59,110	100.00%
		Total	5,58,579	3,95,438	70.79%	4,03,955	3,95,438	97.89%

- b. I observe that the said group of clients had together purchased 5,58,579 shares and sold 4,03,955 shares constituting 44.15% of the gross purchase and 31.93% of gross sale respectively during the period of investigation. It is seen that the 70.79% of the purchases and 97.89% of the sales of the group entities were confined to themselves. Further, the purchase and sale of the group of clients constituted 99% of the total traded volumes during the month of April, 2002 i.e. when the price of the scrip of Database increased from ₹42.35 to ₹63.75. Thereafter, in the month of May, 2002, the purchases constituted 42% and sales constituted 36% of the market volume of the group and the price increased from ₹62.65 to ₹71.85.
- c. I note that the noticee had purchased 75,460 shares and sold 59,110 shares of Database on behalf of S. Thirunavukarasu, during the period of investigation. I further note that, during this period, the noticee had entered 122 buy and 89 sell orders on behalf of S. Thirunavukarasu in the scrip of Database. Out of these orders, 83 buy and 85 sell orders resulted in trades among the group entities only. Further, the counter-party in 843 out of 1,069 buy trades and all the 1,179 sell trades of the noticee was one among the inter-related clients which shows that the trades were matching among themselves.
- d. I have seen the pattern of circular trading that was being followed by the noticee and other brokers in the group, while trading in the scrip of Database. A few instances of exact circular/ reversal trades are being reproduced below showing pattern of noticee:

Table – B

Buying Member	Client Name	Selling Member	Client Name	Quantity Traded	Time Difference
May 06, 2002 (between 13:37:43 to 14:22:08)					
GR Pandya	Manu Sonate	Bharati Thakkar	S.Thirunavukarasu	2,500	0:00:42
Bharati	S.Thirunavukar	Action	PB	2,500	0:00:44



- e. I note from the above instances of circular trades as pointed out in the Enquiry Report that there were exact matching of quantities entered. It is seen that the trades were so well organized within this group which is evident

from the same number of shares going back to the original seller at the end of the day and the net position of each client/ broker remaining nil on most of the occasions. Further, I note that the buy and sell order quantities and rates were almost similar and also, time difference between the buy and sell orders was negligible. The time difference between 396 buy orders and 396 sell orders was either less than or equal to 1 minute. These orders accounted for 3,704 trades and a volume of 1,94,105 shares which amounted to about 49.05% of the volume of trades among the group clients. I consider that the exact matching of quantities entered by the entities cannot be accidental and it points to the concerted efforts of the group to get the orders matched with each other.

- f. The noticee has argued that it had made/ received deliveries of shares to/ from the client S. Thirunavukarasu both before and after the transfer of the scrip of Database to trade to trade segment of the exchange. In this regard, I note from the day-wise trading of the noticee for its client S. Thirunavukarasu that out of the 54 days on which the noticee had traded for the said client during the investigation period, the net purchase/ sale quantity was zero on 34 days. Further, the counter-parties to the purchase trades for 49,460 shares out of total 75,460 shares purchased by the noticee and the counter-parties to all sell trades by the noticee for its client was, one of the connected group entities only, which shows that even though the beneficial ownership had transferred from one group client to another group client, the beneficial ownership remained within the group only. In view of this, I do not find the argument of the noticee convincing.
- g. The noticee has argued that the client's turnover in the scrip of Database was minuscule as compared to his total turnover in the year 2002-03 and there was no violation of obligations relating to margin or settlement at any stage. The noticee has also argued that it had no relationship with any of the brokers or their clients. The noticee has argued that the contract notes prevalent during the period of investigation did not have the provision of mentioning the order time and in the absence of the same, it had no reason to raise any

suspicion on its clients' pattern of trading. This argument of the noticee finds no merit as the pattern of trading continued for several days. In this regard, I place my reliance of the order of the Hon'ble Securities Appellate Tribunal (SAT) in the Appeal No. 190 of 2010 in the matter of Ajmera Associates Vs. SEBI wherein Hon'ble SAT observed that *"If the broker knew at the time of executing the trade what the client was upto, then obviously he is a party to the mischief. Since the trading system maintains complete anonymity, brokers always plead that they were ignorant about the counter party or his broker. In such a situation one has to look to the trading pattern and if the trades match too often or if the matching of the trades is noticed day after day and trade after trade, one can infer that the matching was done not by the system, but by manipulating the same."* I observe that the pattern of trading in the present matter suggests that the orders were punched in with a preconceived motive that the orders shall be picked up by a particular client on the opposite side, and this indicates that there was a prior arrangement within the group to execute such transactions. Such type of transactions, especially when they occur repeatedly, cannot be mere coincidence. The trades do not appear to be genuine. The execution of circular trading in a synchronized manner repeatedly for several days by the noticee and the group reveals that they were having nexus with each other and were acting in tandem as a group. Therefore, it can be said that the aforesaid group of clients, in connivance with the brokers, including the noticee herein, created artificial volume in the scrip thereby influencing the price of the scrip.

- h.** All these facts point to the active connivance of the noticee in matching of its trades with counterparty broker. I note that even though the screen based trading system is faceless in nature and maintain anonymity of the counterparty broker/ client, it is also an established fact that two parties with prior intent can match their trades with each other by placing orders simultaneously at the same price. I observe that the trading pattern followed by the noticee and the group is clearly in the nature of circular trades since they were the main entities who traded amongst themselves by executing synchronized trades with the intention that the orders of a particular entity get

matched with the other. In the instant case, the circular trading on so many days clearly reveals manipulative intent. These transactions, apart from creating artificial volume of trading, also influenced the prices, by giving an impression to others that the scrip is being actively traded at prevailing prices. I note that it is absolutely most unlikely that persons unknown to each other could trade continuously by placing orders in a circular manner and contribute significantly to the total volumes in the market.

- i. I note the argument of the noticee that the quantity of shares traded by it was not high and that no alerts were received by it and further that it had discontinued trading with S. Thirunavukarasu pursuant to the receipt of information from BSE. The noticee has also submitted that it has improved upon the systems. I note that the steps taken by the noticee are in the nature of preventing any further damage by its client to the market. However, had the noticee taken necessary precautions beforehand, then it could have prevented the client from succeeding in his game plan. Therefore, the noticee has failed to prevent its client from carrying out its nefarious design and had thus aided and abetted in creating the artificial volumes in the subject scrip.
- j. I am also of the view that in the securities market, it is not possible for a single entity to inflate or deflate the scrip price as well as the trading volume in any scrip. Therefore, the role of the entire group has to be taken into consideration in a holistic manner to arrive at any conclusion. In the instant case, the trading volume was created by certain entities, including the noticee herein, by way of trading among themselves. The above discussed role of the noticee shows that it played a vital role in the game plan of the manipulation of the trading in the scrip of Database. The noticee by carrying out synchronized transactions and circular trading, created artificial liquidity in the scrip of Database and rigged the price upwards. Thus, I am of the view that the charge of the violation of the provisions of Regulation 4(a),(b),(c) and (d) of the PFUTP Regulations stands established against the noticee.

9. Based on the above discussion and considering the nature of the trades, I note that the noticee indulged in the pattern of trades which were not genuine, but manipulative as discussed above while trading on behalf of its client. I also note the admission of the noticee that the system was used by the client and a lapse of its part with regard to monitoring the dealing of its client. I find that the noticee has failed to perform its statutory duties, which are expected from a prudent stock broker who has a duty not only towards its client but also towards maintaining the integrity of the securities market. A registered intermediary is expected to observe due compliance of the rules/regulations and the directives issued by SEBI. It is the duty of the stock broker to maintain high standards of integrity, promptitude and fairness. Further, it shall not *inter alia* indulge in manipulative transactions with a view to distort the market equilibrium to the detriment of genuine investors. As already established, the noticee has aided and abetted the creation of misleading appearance of trading by its client in the securities market. Thus, it is clear that the noticee has failed to comply with duties expected from a registered intermediary.
10. In view of the discussion above, I find that the noticee is guilty of the violating the provisions of Regulation 4(a), (b), (c) and (d) of PFUTP Regulations and Clauses A (1), (2), (3), (4) and (5) of the Code of Conduct prescribed for the stock brokers in Schedule II under Regulation 7 of the Broker Regulations.
11. I note that pursuant to the notification of the SEBI (Intermediaries) Regulations, 2008, the Enquiry Regulations have been repealed and in terms of Regulation 38(2) of the SEBI (Intermediaries) Regulations, 2008, notwithstanding such repeal, any enquiry commenced under the Enquiry Regulations, shall be deemed to have been commenced under the corresponding provisions of the SEBI (Intermediaries) Regulations, 2008.
12. I, therefore, in the exercise of power conferred upon me by Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) Securities and Exchange Board of India (Intermediaries) Regulations, 2008,

hereby suspend the certificate of registration of the stock broker, Bharti Thakkar India Securities Private Limited registered with SEBI as stock broker, bearing registration no. INB (SEBI Registration no. INB 010996432) [PAN: AAACB 6484C] for a period of two weeks.

- 13.** This order shall come into force on expiry of twenty one days from the date of this order.

DATE : 27/JUNE/2011
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA