IN THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 76 of 2007

Date of Decision 9.8.2007

Mantri Finance Ltd. **……** ***Appellant***

Versus

Securities and Exchange Board of India **……** ***Respondent***

Present : Mr. Paritosh Jaiswal, Advocate with Mr. Ashish Bhakta, Advocate for the appellant

Dr. Poornima Advani, Advocate with Ms. Sejal Shah, Advocate for the respondent

Coram:
Justice N.K. Sodhi, Presiding Officer
Arun Bhargava, Member
Utpal Bhattacharya, Member

Per: Justice N.K. Sodhi, Presiding Officer (oral)

Whether for the purpose of calculating registration fee the "block of five financial years" would commence with effect from 17.10.1995 when the appellant was initially registered as a stock broker with the Securities and Exchange Board of India (for short the Board) on becoming a member of the National Stock Exchange (NSE) or whether the said period would commence from 1.4.1998 when it was registered afresh on becoming a member of the Calcutta Stock Exchange (CSE) is the primary question that arises for our consideration in this appeal filed under section 15T of the Securities and Exchange Board of India Act, 1992 (for short the Act). Whether the Act contemplates more than one registrations of a stock broker

and whether the registration fee payable by the appellant has been properly worked out in accordance with the provisions of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter called the Regulations) are the other questions which fall for our consideration. Facts giving rise to this appeal lie in a narrow compass and these may first be noticed.

2. One Srikant Mantri became a member of CSE and sought registration as a stock broker with the Board. He was granted registration on 30.11.1992 with registration no. INB030054715. He continued as a stock broker for a few years. Sometime in the year 1997 he decided to transfer his membership card of CSE in favour of Mantri Finance Ltd. – the appellant herein and hereinafter referred to as the company. It is not in dispute that the company was registered with the Registrar of Companies, Calcutta on 27.12.1988 under the name and style of Ushagram Properties and Finance Ltd. It changed its name to Mantri Finance Ltd. on 13.11.1992. The company started the business of stock broking in 1995 and became a member of NSE and thereafter sought registration with the Board as a stock broker. It was granted registration on 17.10.1995. Thereafter, when the membership card of Srikant Mantri was transferred in the name of the company, the latter became a member of CSE and was registered again as a stock broker of CSE on 1.4.1998. Having obtained the membership of CSE on the transfer of the card from Srikant Mantri, the company claimed that it should be exempted from payment of registration fee for the period for which Srikant Mantri had already paid the fees. In other words, it claimed the benefit of the fee already paid by Srikant

Mantri. It also claimed that all the conditions prescribed by paragraph 4 of Schedule III to the Regulations were satisfied and, therefore, it was entitled to the benefit. This claim of the company has been rejected by the Board by its order dated 7.5.2007 holding that Srikant Mantri was only a director in the company during the three year period after the transfer of his membership and since he was not the whole time director, the conditions prescribed by paragraph 4 were not satisfied. It is against this order that the present appeal has been filed.

3. At the outset, we may mention that the company is not entitled to the benefit of paragraph 4 of Schedule III and that its claim has been rightly rejected by the Board. Rule 3 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Rules, 1992 provides that no stock broker or sub-broker shall buy, sell or deal in securities unless he holds a certificate of registration granted by the Board under the Regulations. Rule 4 of these Rules then prescribes the conditions for the grant of certificate to a stock broker and one of the conditions is that he shall pay the amount of fees for registration in the manner provided in the Regulations. Regulation 10 requires every applicant eligible for grant of a certificate to pay such fees and in such manner as specified in Schedule III. It is necessary to refer at this stage to the relevant provisions of Schedule III with which we are concerned in this appeal and they read as under:

> "**I. Fees to be paid by the Stock Broker**
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> 1. Every stock-broker shall subject to paragraphs 2 and 3 of this Schedule pay registration fees in the manner set out below:

(a) Where the annual turnover does not exceed rupees one crore during any financial year, a sum of rupees five thousand for each financial year;

(b) Where the annual turnover of the stock-broker exceeds rupees one crore during any financial year, a sum of rupees five thousand plus one hundredth of one percent of the turnover in excess of rupees one crore for each financial year;

(bb) …….

(c) after the expiry of five financial years from the date of initial registration as a stock-broker, he shall pay a sum of rupees five thousand for every block of five financial years commencing from the sixth financial year after the date of grant of initial registration to keep his registration in force.

2. Fees referred to in clause (a) and (b) of paragraph 1 above shall be paid -

(a) in respect of the financial year 1992-1993 within one month of the commencement of these regulations;

(b) in respect of the financial year beginning on the 1st day of April, 1993 and the following financial years, on or before the first day of October of the financial year to which such payment relates,

and such fees shall be computed with reference to the annual turnover relating to the preceding financial year.

3. Every remittance of fees referred to in clauses (a) and (b) of paragraph 1, shall be accompanied by a certificate as to the authenticity of turnover on the basis of which fees have been computed duly signed by the stock exchange of which the stock-broker is a member or by a qualified auditor as defined in Section 226 of the Companies Act, 1956.

Explanation - For the purposes of paragraphs 1, 2 and 3 “annual turnover” means the aggregate of the sale and purchase prices of securities received and receivable by the stock broker either on his own account as well as on account of his clients in respect of sale and purchase or dealing in securities during any financial year.

4. Where a corporate entity has been formed by converting the individual or partnership membership card of the exchange, such corporate entity shall be exempted from payment of fee for the

> period for which the erstwhile individual or partnership member, as the case may be, has already paid the fees subject to the condition that the erstwhile individual or partner shall be the whole-time director of the corporate member so converted and such director will continue to hold minimum 40 percent shares of the paid-up equity capital of the corporate entity for a period of at least three years from the date of such conversion
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> ["Explanation: It is clarified that the conversion of individual or partnership membership card of the exchange into corporate entity shall be deemed to be in continuation of the old entity and no fee shall be collected again from the converted corporate entity for the period for which the erstwhile entity has paid the fee as per the regulations"].
>
> ……..."

Paragraph 1 of Schedule III makes it clear that where the annual turnover of a stock broker does not exceed rupees one crore during any financial year he is required to pay a sum of rupees five thousand as registration fee for each such financial year and where his annual turnover exceeds rupees one crore during any financial year then he has to pay a sum of rupees five thousand plus one hundredth of one percent of the turnover in excess of rupees one crore for each financial year. Clause (c) of paragraph 1 then provides that after the expiry of five financial years from the date of initial registration a stock broker shall be required to pay a sum of rupees five thousand for every "block of five financial years" commencing from the sixth financial year after the date of grant of initial registration to keep his registration in force. Paragraph 4 then provides some relief to stock brokers who convert their individual or partnership membership card of an exchange into a corporate entity. This paragraph provides that where an individual or a partnership firm gets converted into a corporate entity then the corporate entity shall be exempt from payment of fee for the period for

which the erstwhile individual or partnership member, as the case may be had already paid the fees subject to, of course, the fulfilment of the other conditions enumerated in this paragraph. One of the conditions is that the erstwhile individual should become a whole time director of the corporate entity so converted and should continue to hold 40% shares of the paid up equity capital of the corporate entity for a period of three years from the date of conversion. The explanation to this paragraph makes it abundantly clear that where an individual or a partnership has been converted into a corporate entity, then the latter (corporate entity) shall be deemed in continuation of the old entity. It follows that if there is no conversion, there will be no continuity and the corporate entity will not get the benefit of the fee already paid by the individual or the partnership, as the case may be. Large number of brokers in the securities market were either individuals or partnership firms and obviously their working was not very transparent. The Board adopted a policy to encourage the brokers to corporatise themselves so that their working becomes more transparent as corporate entities have more and better regulatory controls as compared to individuals and partnerships. With this object in view, the Board introduced paragraph 4 in Schedule III to the Regulations with effect from 21.1.1998 and it decided to give the benefit of the fee already paid by the individual or partnership prior to its becoming a corporate entity. In the case before us the Board has found that when Srikant Mantri transferred his membership card of CSE to the company, he was not a whole time director therein but was only a director. This fact is being disputed by the appellant before us. It is not necessary for us to record a finding in this regard because we are of

the view that the company is not entitled to the benefit under paragraph 4 of the Schedule because there is no continuity. As already noticed, the corporate entity is entitled to claim exemption from the payment of registration fee only if the individual or partnership membership had been converted into a corporate entity. In the instant case, Srikant Mantri did not convert himself into a corporate entity but instead, transferred his membership card of CSE to an existing company and became a director therein. The Regulations do not provide for exemption in such cases. The company before us was an existing company and therefore, when it became a member of CSE on the transfer of membership card from Srikant Mantri it could not claim the benefit under paragraph 4. It could claim such a benefit only if Srikant Mantri had formed himself into a company and continued his broking business. Since that was not the case, we are clearly of the view that the company could not claim the benefit of paragraph 4. In this view of the matter, we have no hesitation in upholding the order passed by the Board rejecting the claim of the appellant.

4. During the course of the hearing of the appeal we found that the company had been registered as a stock broker twice by the Board – once when it started carrying on its broking business with effect from 17.10.1995 on becoming a member of NSE and again on 1.4.1998 when it became a member of CSE on the transfer of the membership card from Srikant Mantri. When the case came up for hearing on 24.7.2007 we had put to the learned counsel for the respondent Board as to whether the Act contemplates more than one registrations for stock brokers and whether the fee liability of the company has been worked out on the basis of its two

different registrations. She sought an adjournment to seek instructions in the matter. We accordingly adjourned the case for today. She informs us that, according to the Board, the Act contemplates multiple registrations of stock brokers and, therefore, it was justified in granting two registrations to the company on the basis of its memberships with NSE and CSE. She has also informed us that the fee payable by the company has been worked out on the basis of its two registrations and that the block period of five financial years has been worked out separately as per the dates of membership of the two exchanges.

5. Having heard the learned counsel for the parties we are clearly of the view that the Act does not contemplate multiple registrations of stock brokers and that each stock broker is required to be registered with the Board only once even though he may become a member of several stock exchanges. It is not necessary for us to examine this issue threadbare on first principles because this issue came up for consideration before a Division Bench of the Delhi High Court in National Stock Exchange Member vs. Union of India & Ors. (2006) 133 Comp.Cas 504 and it has been held that the Act envisages only one registration even if a broker is a member of several stock exchanges. We are in respectful agreement with the view expressed therein and also with the reasoning. This is what the learned judges have held in this case.

> "In our opinion, section 12(1) of the Act is very clear and it clearly envisages only one registration by the SEBI. Hence, it is really not necessary to look into the rules and regulations in this connection, far less looking into any circular. If we accept the

> interpretation canvassed by Mr. Raju Ramachandran, learned senior counsel for the respondent, that multiple registration by the SEBI is envisaged by the Act, then we will be modifying the language of section 12(1) of the Act and instead of the words "and in accordance with the conditions of a certificate of registration obtained from the Board", we will be substituting the words "and in accordance with the conditions of the certificates of registration in respect of each of the stock exchanges from where it operates obtained from the Board.""

The learned judges further concluded the matter in the following words:

> "For the reasons given above, the appeal is allowed and the impugned judgement is set aside and we clarify that only a single registration with the Securities and Exchange Board of India is required even if a stock broker has membership of, and functions from, several stock exchanges. The consequence is, therefore, that he will have to pay registration fees for registration with the Securities and Exchange Board of India, and he does not require any further registration even if he operates in several stock exchanges. If he has paid any fees to the Securities and Exchange Board of India for any subsequent registration after his first registration, the said fees has to be refunded to him by the Securities and Exchange Board of India forthwith. Paragraph (vi) of Part A of the circular dated March 28, 2002, issued by the Securities and Exchange Board of India and any other part of the circular inconsistent with section 12(1) as interpreted by us is hereby quashed.
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> The appeal is allowed with no orders as to costs."

6. The learned counsel for the respondent Board strenuously urged before us that the view expressed by the Delhi High Court should not be

followed as it was contrary to the Rules, Regulations, circulars and contemporaneous practice of the Board as a regulator. She urged that right from the beginning the Board has been granting multiple registrations to the stock brokers on the basis of their memberships with different stock exchanges and that the said practice should be allowed to be continued. She has filed her detailed written submissions in this regard. She also informs us that the Board has preferred an appeal in the Supreme Court against the aforesaid judgment of the Delhi High Court and that the same stands admitted and the parties therein have been directed to maintain status quo. We have given our thoughtful consideration to the contentions advanced by the learned counsel for the respondent but regret our inability to accept the same as we are in agreement with the view expressed by the Delhi High Court. It was also contended by the learned counsel for the Board that the appellant had not taken any such plea either before the Board or in the memorandum of appeal and therefore we should not allow such a contention to be raised at this stage of the proceedings. We cannot accept this contention. It is true that no such plea has been taken in the grounds of appeal but it certainly arises from the facts of the case which are not in dispute. When the law does not contemplate multiple registrations and we find that the Board has calculated the fee separately qua each membership of a stock exchange we find that there is not only an error which is apparent on the face of the record but it also results in manifest injustice to the appellant. The Board has collected fee on the basis of two registrations of the company whereas it should have considered only the first registration which was granted on 17.10.1995 and ought to have calculated the fee

liability on that basis. Since this has not been done, we have no hesitation in setting aside the impugned order on this ground which we hereby do and remit the case back to the Board for a fresh computation of the registration fee payable by the company on the basis of its registration with effect from 17.10.1995. We further make it clear that the company will have only one block period keeping in view its date of initial registration. The questions posed in the earlier part of the order stand answered accordingly. The Board will pass a fresh order in accordance with law in the light of the observations made herein above. The appeal stands allowed with no order as to costs.

Justice N.K. Sodhi
Presiding Officer

Arun Bhargava
Member

Utpal Bhattacharya
Member

9.8.2007

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