IN THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 367 of 2004

Date of decision : 15th February, 2007

Shubam & Co. .. .. Appellant

Versus

Securities and Exchange Board of India .. .. Respondent

Mr. Bharat Merchant , Advocate for the appellant.

Dr. Poornima Advani, Advocate with Ms. Sejal Shah along with Mr. U.N. Das, Advocate for the respondent.

Coram : Justice N.K. Sodhi, Presiding Officer
R.N. Bhardwaj, Member

Per : **Justice N.K. Sodhi, Presiding Officer**

Challenge in this appeal is to the order dated August 17, 2004 passed by the adjudicating officer imposing a penalty of Rs.1,60,000/- on Shubam & Co.– appellant herein for violating the provisions of sections 15A(c) and 15B of the Securities and Exchange Board of India Act, 1992 (for short the Act). The facts giving rise to this appeal lie in a narrow compass and these may first be noticed.

The appellant before us is a registered stock broker. By letter dated September 13, 2002, the Securities and Exchange Board of India (hereinafter referred to as the Board) appointed J.N. Sharma & Co., chartered accountants to carry out inspection of the books of account and

short comings in the books of account, records and systems of accounting as maintained by the appellant and submitted its report dated 30th October, 2002 to the Board. Since the penalty has been imposed on the appellant on two counts, we shall refer to those discrepancies only. On receipt of the inspection report, a copy of the same was forwarded to the appellant and it was required to send its comments along with documentary evidence on the irregularities mentioned in the report. The appellant furnished its comments as per its letter dated 3.3.3003, in which it stated as under –

> "1(iii) Order Book have not been maintained properly, but in this context, we have to inform you that we have only few clients and they are either relative or close friends of the proprietor. But we assure you to maintain proper order book in future. SEBI Auditor checked the Sauda Book, hence this allegation is denied."

On a consideration of inspection report and the comments offered by the appellant, the Board decided to initiate adjudication proceedings and appointed an adjudicating officer on December 5, 2003 to inquire into and adjudge the alleged contravention of, amongst others, sections 15A(c) and 15B of the Act by the appellant for its failure to maintain statutory books of account and records and its failure to enter into agreements with its clients. The adjudicating officer served the appellant with a notice dated January 8, 2004 to show cause why an inquiry be not held against it for the alleged contravention of the statutory provisions referred to therein. The reply

conclusion that the appellant had not maintained the "order" book and that the "sauda" book did not contain the particulars of orders received from the clients. He also found that there was no record kept by the appellant to show the date and time of receiving the orders, name and number of scrips ordered and other necessary instructions, if any, received from the clients. The adjudicating officer further concluded that it was not possible to verify whether all orders received by the appellant had been executed and, if not, the reasons for non-execution and whether the orders were executed in accordance with the instructions issued by the clients. The adjudicating officer relied upon the admission made by the appellant in this regard and observed that the appellant did not have the practice of executing agreements with its clients. It appears that during the course of adjudication proceedings the appellant made available some agreements allegedly executed with its clients and since those were not executed on stamp paper it was not possible to establish the actual date of their execution. He also observed that unstamped agreements could not be enforced in a court of law and, therefore, they did not offer adequate protection to the investor whose interests have to be protected by the Board. He, thus, found that section 15B of the Act also stood violated. By his order dated August 17, 2004, the adjudicating officer imposed the penalty as stated in the earlier part of the order. Hence this appeal.

We have heard the learned counsel for the parties and find no merit in the appeal. The fact that the appellant had not maintained "order" book

earlier part of the order where the appellant admitted that it had not maintained the order book but assured the Board that it would be maintained properly in future. In view of this admission the charge levelled against the appellant stands established. What is contended by the learned counsel for the appellant is that the rules and regulations framed under the Act do not require a stock broker to maintain "order" book. We can not accept this contention. The learned counsel for the respondent placed before us a copy of the circular dated February 11, 1997 issued by the Board to all the stock exchanges in the country and registered market intermediaries and drew our attention to clause 7 thereof which provides that a "broker member should maintain record of time when the client has placed the order and reflect the same in contract note along with the time of execution of the order." As per this circular which is binding on all the market intermediaries including the appellant, stock brokers are required to maintain some record where time when the client places an order must be recorded and the same should be reflected in the contract note along with the time of execution of the order. Admittedly, the appellant has not been maintaining any such record which is usually maintained in a register commonly known as order book. Clause 7 of the circular may appear to be innocuous but it is not so and is a very important step which the board has taken to protect the interests of the investors. In a volatile market like ours where the price of a scrip fluctuates every moment, it is absolutely necessary that a broker should record the time when it receives an order from the client and also the time when the same is executed. If this is not

mandatory for the stock brokers to maintain such records. Having issued the circular, the Board would be well advised in ensuring strict compliance thereof by every stock broker so that the interests of the investors do not get jeopardised..

As regards non-execution of the agreement with its clients, it may be mentioned that law requires every stock broker to execute an agreement with his client (s) and provides a severe penalty for not doing so. When the records of the appellant were inspected by the chartered accountants, the former did not produce the agreements before them and, therefore, the inspecting team was right in observing that the appellant did not have the practice of executing agreements with its clients. However, during the course of adjudication proceedings the appellant produced some agreements allegedly executed with its clients and those agreements were not on stamp paper and the adjudicating officer was right in not relying upon those agreements because it is not possible to establish the actual date of their execution. The agreements were apparently an after thought and were prepared by the appellant for the purpose of adjudication proceedings. In this view of the matter, we cannot find any fault with the finding recorded by the adjudicating officer. We are, therefore, satisfied that section 15B of the Act also stood violated.

In view of the serious irregularities committed by the appellant and also in view of the fact that sections 15A (c) and 15B of the Act stood

Chairman, SEBI v Shriram Mutual Fund AIR 2006 SC 2287 wherein their lordships observed as under –

> In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not. On a careful perusal of Section 15(D)(b) and Section 15E of the Act, there is nothing which requires that *mens rea* must be proved before penalty can be imposed under these provisions. Hence once the contravention is established then the penalty is to follow."

Section 15A of the Act before its amendment by the amending Act of 2002 provided that for the violation of clause (c) thereof, a penalty not exceeding ten thousand rupees for every day during which the failure continues could be imposed. Similarly, section 15B of the Act before its

with its clients. Having regard to the period during which the failure continued and the amount of penalty prescribed by the Act we are of the view that penalty of Rs.1,60,000/- imposed by the adjudicating officer is more than reasonable and does not call for any inference by us in appeal.

In the result, the appeal fails and the same is dismissed with no order as to the costs.

Justice N.K. Sodhi
Presiding Officer

R.N. Bhardwaj
Member

Date : 15. 2. 2007
BBN