BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 164 of 2010

Date of decision: 20.12.2010

M/s. Aspi Noshir Gandhi
7, Central Bank Flats,
Ambavadi, Hira Baug,
Ahmedabad- 380 006. ……Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra Kurla Complex,
Bandra (East),
Mumbai …… Respondent

Mr. Dakshesh M. Vyas, Advocate for the Appellant.

Mr. Advait Sethna, Advocate for the Respondent.

CORAM : Justice N.K. Sodhi, Presiding Officer
Samar Ray, Member
P.K. Malhotra, Member

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

The appellant before us is the sole proprietorship concern of Aspi Noshir Gandhi who was registered as a broker with the Ahmedabad Stock Exchange (ASE) on June 27, 2000. The appellant was also registered as a sub-broker on the Bombay Stock Exchange, Mumbai (BSE) on October 24, 2000 and also on the Calcutta Stock Exchange (CSE) on January 17, 2001. All these registrations were with the Securities and Exchange Board of India (hereinafter called the Board). He is alleged to have executed trades on the National Stock Exchange (NSE) as a sub-broker of Mahipat Raichand Share Broking Pvt. Ltd. which was a registered broker on the NSE. The appellant had also issued a one page advertisement as a member of ASE giving his address and telephone numbers. This advertisement was issued in the year 2004 in the Parsi Yellow Pages which is a publication of the Ahmedabad Parsi Panchayat, a registered Charitable Public Trust which is meant for private circulation.

2. Since the appellant had executed trades as a sub-broker on the NSE without being registered as such on that exchange and also for issuing the aforesaid advertisement, the Board was of the view that the appellant violated Regulation 11(1) and Regulation 26(xiv) of the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (for short the Regulations) and also Regulation 15(1) (d) and 26(xx) of these Regulations. The Board was further of the view that the appellant had violated the code of conduct prescribed for stock-brokers and sub-brokers by the Regulations. By notice dated March 30, 2009, the appellant was called upon to show cause as to why an enquiry should not be held against him for the imposition of monetary penalty for the violation of the aforesaid provisions. Three specific charges were levelled against the appellant which read as under**:-**

> "a. acted as an unregistered entity for cash and F & O on NSE in violation of Regulation 11(1) and 26(xiv) of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.
>
> b. issued advertisements for soliciting business in violation of Regulation 15(1)(d) and 26(xx) of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.
>
> c. not conducted in a manner which is prescribed under Code of Conduct of sub-brokers of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992."

He did not appear before the adjudicating officer but filed his written submissions in the form of a reply to the show cause notice denying all the allegations. On a consideration of the material collected during the course of the enquiry, the adjudicating officer by his order of March 29, 2010 held the appellant guilty of violating the aforesaid provisions and imposed a monetary penalty of ₹ 50,000/-. It is against this order that the present appeal has been filed.

3. We have heard the learned counsel for the parties who have taken us through the record. The first charge relates to the appellant having acted as an unregistered sub-broker of Mahipat Raichand Share Broking Pvt. Ltd. on the NSE. The fact that the appellant executed trades as a sub-broker on the NSE in the year 2004 is not in dispute. It is also not disputed that the appellant was not then a registered sub-broker on that exchange. It is, however, common case of the parties that the appellant was a registered broker on the ASE and a registered sub-broker on BSE and CSE in the year 2004 when he executed trades on

the NSE. The argument of the learned counsel for the appellant is that his client being registered as a broker and sub-broker on three different exchanges could trade on the NSE as a sub-broker without obtaining registration for that exchange. The argument is that having obtained registration as a sub-broker on BSE and CSE, it was not necessary for the appellant to get himself registered as a sub-broker on NSE for executing the trades. We find merit in this contention. The question whether a stock broker who is registered on one stock exchange is required to be registered on all other exchanges for executing trades on those exchanges came up for the consideration of the Division Bench of the Delhi High Court in National Stock Exchange Member vs Union of India and Ors. 2006 (133)Comp Cases 504 and the learned Judges held that a stock broker who is registered on any stock exchange does not require multiple registrations and that he could trade on all other exchanges without being registered on these exchanges. It was held that only a single registration with the Board was required even if the broker has membership of, and functions from several stock exchanges. We have followed this judgement of the Delhi High Court in several cases including the one in Apollo Sindhoori Capital Investment Ltd. vs Securities and Exchange Board of India and another Appeal no. 59 of 2007 decided on July 10, 2007. We have also followed this judgement in Mantri Finance Ltd. vs Securities and Exchange Board of India Appeal no. 76 of 2007 decided on August 9, 2007. It is not necessary for us to examine the provisions of law again and suffice it to say that a single registration was enough for the appellant to function as a stock- broker on all other stock exchanges. Admittedly, the appellant had been registered as a sub-broker on BSE and CSE when he executed trades on the NSE. In this view of the matter, he did no wrong in executing the trades and the first charge levelled against him must fail.

4. There is yet another reason why the first charge cannot be sustained. In the year 2004 we had on the statute book Rule 3 of the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Rules, 1992 which read as under:-

> “No stock-broker or sub-broker shall buy, sell, deal in securities, unless he holds a certificate granted by the Board under the Regulations:
> Provided that such person may continue to buy, sell or deal in securities if he has made an application for such registration till the disposal of such application.”

It is the case of the appellant that he had applied to the Board for registration as a sub-broker on the NSE on December 12, 2002 and his application was pending in the year 2004 when he executed the trades on NSE. His argument is that the proviso to Rule 3 which was then in force enabled him to trade as a sub-broker during the pendency of his application for registration. There is merit in this submission as well. These Rules were in force in the year 2004 and were repealed only w.e.f. September 7, 2006. The proviso to Rule 3 clearly enabled a person to deal as a sub-broker if he had made an application for registration which was pending. The adjudicating officer has rejected this argument on an erroneous ground. According to the adjudicating officer, the Rules were applicable only to brokers and sub-brokers who had been trading prior to the year 1992. We find no warrant for such an interpretation. The learned counsel appearing for the Board pointed out during the course of the hearing that the appellant could not get the benefit of the proviso to Rule 3 because his application had been rejected by the Board on the same day when it was received. We do not find any mention of the rejection of the application in the impugned order. We, therefore, hold that the first charge against the appellant cannot be sustained.

5. Now we shall deal with the second charge and also the third one which flows therefrom. It is not in dispute that the appellant had issued an advertisement in the Yellow Pages Published by the Ahmedabad Parsi Panchayat. We have perused the one page advertisement which in bold letters states the name of the appellant being a member of ASE. He has given his address and telephone numbers. The argument of the learned counsel for the appellant is that this is not an advertisement soliciting business. We cannot agree with him. A mere look at the advertisement leaves no room for doubt that the only purpose could be to solicit business which is clearly barred by para C(5) in Schedule II to the Regulations read with Regulation 7. It is clearly stipulated in these provisions that a stock-broker shall not advertise his business publicly unless permitted by the stock exchange. We do not find any permission on the record. As a matter of fact, there is none. The appellant has, therefore, violated the code of conduct. Both these charges stand established.

6. The learned counsel for the appellant contends that since the first charge has not been sustained, the quantum of penalty should be reduced. We do not think so. Even for violating the code of conduct, the appellant should have been given a heavier dose of penalty. Having regard to the amendments made in the year 2002 to the Securities and Exchange Board of India Act, 1992 the adjudicating officer has already erred on the lower side. There is, thus, no scope to reduce the penalty further.

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

Sd/-
Justice N.K.Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

Sd/-
P.K.Malhotra
Member

20.12.2010
pmb

Prepared & Compared By: pmb