BEFORE THE SECURITIES APPELLATE TRIBUNAL

MUMBAI

Appeal No.102/2002

In the matter of:

Anoop Jain & Co.

Appellant

Vs.

Chairman, Securities and Exchange Board of India Respondent

Appearance:

Shri Anoop Kumar Jain, Chartered Accountant

Authorised Representative For Appellant

Shri Kumar Desai,

Advocate,

Ms. Daya Gupta

Advocate

Shri Joby Mathew,

Legal Officer, SEBI **For Respondent**

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ORDER

The Appellant is a stock broker. It is a member of the Ludhiana Stock Exchange (the Exchange). The Respondent had granted a certificate of registration to the Appellant in terms of section 12 of the Securities and Exchange Board of India Act (the SEBI Act) read with the provisions of the Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Regulation 1992 (the Stock Broker Regulations) to carry on the activities of stock broker. An inspection of the books of account, documents and other records of the Appellant was carried out by the Respondent some time in January 2000. The inspection revealed certain irregularities on the part of the Appellant, which included irregularities in the issuance of Contract notes, failure to segregate the clients accounts and own accounts, non maintenance of client data base, failure to execute agreement with the clients, not reporting the off the floor transactions, dealing as sub brokers without being registered with SEBI, delayed payments to clients and inadequate payment of registration fees. On the findings of the inspection, the Appellant's comments were sought by the Respondent vide its letter dated June 30, 2000. The Appellant responded to the same vide letter dated September 18, 2000. Since the reply was found not satisfactory, the Respondent appointed an Inquiry Officer on March 5, 2001 to conduct an inquiry into the matter. The Inquiry Officer after conducting the inquiry submitted his report on October 10, 2001 confirming the findings of the inspection. Though failures were established he recommended warning in certain cases. But he recommended suspension of the certificate of registration granted to the Appellant on

the ground of irregularities in the issue of Contract notes, non reporting the off the floor transactions, non segregation of client account and own account, and entering into structured transactions. He had also recommended that in case the Appellant failes to pay the requisite fees within the specified period, the suspension period be allowed to run till such time the fee is paid. The Respondent vide notice dated 12.10.2001 forwarded a copy of the Inquiry Report to the Appellant and asked to show cause in the matter as to why action as recommended by the Inquiry Officer should not be taken against it. The Appellant, except informing the Respondent that it had paid the fees and requesting on that ground to take a lenient view, did not make any detailed representation. The Appellant, despite the opportunity provided to make oral submissions, did not avail of the same. The Respondent in that context based on the material available on record passed an order on 27.7.2002. By the said order the certificate of registration granted to the Appellant was suspended for a period of six months or till the payment of the balance fee whichever is later. The order was made effective from 12.8.2002.

Claiming to be aggrieved by the Respondent's order dated 12.8.2002 the Appellant preferred the present appeal praying inter alia that the impugned order be revoked, it be declared null and void, and the Respondent be directed to refund the excess turnover fee paid.

The Appellant's submission is as under:

> The Appellant is a member of the Ludhiana Stock Exchange since 1991 and there are no complaints against it from anybody. The inspection of the records carried out by the Respondent in January, 2000, revealed certain irregularities of minor nature. The Respondent had fixed a personal hearing in the matter on April 26, 2002 and adjourned the same on his own for June 7, 2002 and again adjourned the hearing for July 12, 2002, that on July 7, 2002 the Appellant sent a letter through courier to the Respondent

requesting for adjournment and also a letter dated 7.7.2002 giving reply to the show cause notice, that the Respondent did not consider the same and passed the impugned order on 27.7.2002."

The grounds of appeal are as under.

"(i)That the order dated 27.7.2002 of the Hon'ble Chairman, SEBI is illegal, arbitrary and against the cannons of natural law and justice as the submissions dated 7.7.2002 have not been considered by the Chairman, SEBI.

(ii) That the order passed by the Chairman, SEBI dated 27.7.2002 is beyond the time limit of 30 days.

(iii)That the order dated 27.7.2002 has lost its relevance as the Ludhiana Stock Exchange where the Appellant has done alleged irregularities has closed its operation and not doing any business.

(iv) That the Appellant has paid all the dues regarding the turn over fee to SEBI and hence order passed on this account that the Appellant be suspended till the payment of turn over fee is illegal, arbitrary and bad."

When the appeal was taken up for consideration, the learned Authorised Representative of the Appellant, focussed his arguments only on the quantum of the fees worked out by SEBI and submitted that the said quantification is not correct as the same has not been calculated in terms of the Respondent's circular No.SMD/Policy/Cir-07/2002 dated March 28, 2002 addressed to all the Stock Exchanges regarding fees payable by Stock Brokers. In this context he referred to Part 'A' of the said circular "providing clarifications on the issues arising out of the various representations on fees to be paid by brokers to SEBI" and in particular to the following portion:

"The issues raised in the representations from brokers with respect to the payment of fees to SEBI are clarified as under:

I. Reckoning of first five years:

It is clarified that the period of first five years as specified in the regulations shall be computed as under:

Brokers who were already carrying on their activities in the financial year 1991-92 would have to pay the fees for the financial year 1992-93 on the basis of their turnover for the previous financial year i.e. 1991-92. The brokers who have commenced their business from the financial year 1992-93 and onwards would pay a flat fee of Rs.5,000/- for the first financial year if they have a nil turn over in the preceding financial year. For the next four years, brokers would pay fees based on their corresponding previous financial years turnover."

II……

According to the learned Representative from the cited circular it is clear that the brokers who were already carrying on their activities have to pay fee for the financial year 1991-92 to 1995-96 (5 years) in the manner provided in the circular. He submitted that the Appellant is a member of the Exchange since August/September 1991 and doing the stock broking business since then and applied seeking registration as stock broker in the year 1992 and paid the requisite fee, but registration certificate was issued only in March, 1995. The Appellant has paid the turnover fee as per circular whereas Respondent has demanded turnover fee from the date of grant of registration. According to the learned Representative the said decision of the Respondent is illegal. In this context the learned Representative submitted that it is well settled that the circulars issued by a department are binding on its officials, that the Respondent has intentionally ignored its own circular No.07/2002 issued following the judgement of the Hon'ble Supreme Court in BSE Brokers Forum's case (2001 (3) SCC 482) and the recommendations of the R.S.Bhatt Committee. Learned Representative in support of his contention that the circulars issued by the authorities are binding on their officials referred to the following observation made by the Hon'ble Supreme Court in Paper Products Ltd., V

Commissioner of Central Excise (AIR 1999 SC 3341):

> "…….apart from the fact that the circulars issued by the Board are binding on the Department, the Department is precluded from challenging the correctness of the said circulars even on the ground of the same being inconsistent with the statutory provision. The ratio of the judgement of this court further precludes the right of the Department to file an appeal against the correctness of the binding nature of the Circulars. Therefore, it is clear that so far as the Department is concerned, whatever action it has to take, the same will have to be consistent with the circular which is in force at the relevant point of time."

In support of the contention that the Appellant was already in business in the year 1992-93 and that the fact of delayed issuance of the certificate of registration in the year 1995, does not take away the Appellant's entitlement to be covered under the Respondent's circular no.07/2002, learned Representative referred to the following observation of the Hon'ble Allahabad High Court in Shaym Cold Storage V Sales Tax Officer (1976) 38 STC 386) that

> "Where the petitioner made an application for registration under the Central Act and it was complete in all respects and no defect was found in it, the mere fact that the Sales Tax Officer did not pass the order immediately could not be a ground for making the registration certificate effective from the date of the order. The registration certificate in such a case should be made effect from the date of the application."

According to the Appellant the ratio of Shyaam Cold Storage case is applicable to the Appellant, as it had made the application seeking registration in the year 1992 and for no fault of the Appellant, the certificate of registration was granted to the Appellant belatedly, in 1995. The fact that the Respondent accepted the fee paid by the Appellant indicates deemed registration and the Respondent can not now say that the registration is effective only from

1995.

Learned Representative submitted that the Appellant paid the entire fee as calculated by the Respondent under protest, only to ensure that its trading activities are not hampered because of the Respondent's illegal decision and in this context he referred to the letter of the Appellant to the Stock Exchange dated 9.5.2003; that along with the said letter a D.D. for Rs.24,700 drawn in favour of the Respondent was furnished to the Exchange by stating that

> "This payment is made in protest as demand created by the SEBI for turnover fee is illegal and against the judgement of the Hon'ble Supreme Court and is also against the norms fixed in its own circular no.SMD/Policy/Cir-07/2002 which was issued keeping in view the Judgement of the Hon'ble Supreme Court and R.S. Bhatt Committee Report.
>
> I am making this payment without prejudice to my right for challenging the liability of the above demand before the Hon'ble Securities Appellant Tribunal and other competent courts.
>
> Since I have deposited the alleged fee, you are requested to activate my Terminal without any delay."

He submitted that it is not that the Appellant accepted the Respondent's decision and paid the fee as is now being tried to be made out by the Respondent. He submitted that even though the alleged turn over fee was paid under protest on 8.5.2003, the Appellant was allowed trading only from 2.6.2003, that the act of the Respondent debarring the Appellant from trading for no reason is illegal, arbitrary, excessive and blatant abuse of power.

Learned Representative submitted that punitive action be taken against the erring officials who have failed to grant registration to the Appellant within reasonable time and for not having acted diligently in discharging their duties, that also action be taken against those officials of the Respondent who acted against the circulars of the Respondent by not allowing the Appellant to trade in the Stock Exchange for non payment of fee despite having paid the requisite fee in terms of the Respondent circular No.07/2002.

Shri Kumar Desai learned Counsel appearing for the Respondent submitted that the impugned order was passed on 27.7.2002, and the suspension of the certificate of registration came into effect from 12.8.2002, and that the suspension period of six months was over by the middle of February, 2003. He submitted that show cause notice was issued to the Appellant on 12.10.2001, that the Appellant had not paid the requisite turnover fee on that date, that even on 27.7.2002 i.e. the date on which the impugned order was passed, the fee was outstanding. Shri Desai submitted that the Appellant has not challenged the validity of the suspension order. Learned Counsel submitted that on 12.2.2003 i.e. one day after the expiry of the 6 months suspension, the Appellant of its own remitted Rs.12,000, that this itself is indicative of admission by the Appellant that fee was due and outstanding.

Learned Counsel submitted that penalty by way of suspension was awarded by the Respondent for the violation of the rules and regulations as clearly brought out in the order and not for failure to make the requisite fee. He submitted that it is a condition of the registration and also a requirement under the regulation that the stock broker will pay the requisite fee, and non payment of such fee is in fact a ground for suspending the certificate of registration granted to the stock broker. Learned Counsel submitted that inspection of the Appellant's

records revealed that it had not paid the fees on a turnover basis and in fact the turnover figures for the period 1992-93 to 1994-95 were not provided, that it was found that the fees paid for the years 1995-1996, 1996-1997 were inadequate in terms of the provisions of regulation 10 of the Stock Broker Regulations. Shri Desai submitted that the Appellant had informed the Inquiry Officer that it had not done any business during the period December, 1995 to March 1997 and on that basis a minimum fee Rs.5000/- was paid, that on the basis of the submissions made by the Appellant, the Inquiry Officer directed that the Appellant pay the required fee within the time limit as specified by the Respondent and in the event of failure to do so, the registration of the Appellant will continue to remain suspended beyond the six months' period till the payment is made.

Learned Counsel submitted that Schedule III of the Stock Broker Regulations specifies the manner in which the registration fee is to be paid by the Stock Broker, that para 1(c) of the said Schedule stipulates that after expiry of 5 financial years from the date of initial registration as a stock broker, the stock broker shall pay a sum of Rs.5,000 for a block of every 5 financial years commencing from the six financial year after the date of grant of initial registration to keep his registration in force, that in terms of para 1(c) of the Schedule III the 5 financial years contemplated therein have to be calculated on the basis of the date on which initial registration was granted to the stock broker. Learned Counsel submitted that as on 30.4.2003 the Appellant was liable to pay a sum of Rs.24,453 towards registration fee in terms of the Regulations, that for non payment of fee in time the Appellant is also liable to pay interest till the date of actual payment. He submitted that the Appellant vide letter dated 9.5.2003 informed the Respondent that it had submitted a Draft dated 8.5.2003 for Rs.24,700 in favour of the Respondent. Since the Appellant has paid the fees and the interest, the Appellant can not question the levy of fees.

Shri Desai submitted that the circular no.07/2002 dated 28.3.2002 relied on by the

Appellant is not a mandatory circular, that it was only a clarification in the context of the doubts raised by the stock brokers and such a clarificatory communication can not over ride the statutory provisions of the Regulations. He submitted that the fee is required to be decided as per the provisions of the Regulations and the Respondent has rightly fixed the fee accordingly.

Shri Desai further submitted that the Appellant's contention that though the certificate of registration was issued in the year 1995, for the purpose of calculating registration fee**,** the Appellant should be considered to have got registered from the date on which it submitted the application(in the year 1992) is not correct in as much as what is contemplated by the regulation is the date of registration and not the date from which the stock roker was carrying on business. He submitted that in the light of the facts specific to the present case, the ratio of Hon'ble Supreme Court's decision in Paper Products and Shyam Cold Storage, cited by the Appellant has no application.

I have considered the rival contentions. Though the impugned order had charged the Appellant for several violations/failures, the Appellant has not chosen to contest any one of them except the matter relating to the requirement of the fee payable by the Appellant as fixed by the Respondent. Since the Appellant has not contested the other charges, the presumption is that the same has been admitted by it. Therefore, I do not consider it necessary to deal with the findings of the Respondent on those charges.

As far as the question of payment of fee is concerned, it is noted that in terms of section 12 of the SEBI Act, stock brokers and other intermediaries stated in the said section are

prohibited from buying, selling or dealing in securities except under and in accordance with the conditions of a certificate of registration, obtained from the Respondent SEBI in accordance with the regulations made thereunder. For the purpose of obtaining the registration, the concerned intermediaries are required to make an application in the prescribed manner with such fees as may be prescribed by the Regulations. The Respondent SEBI notified the Stock Broker Regulations in the year 1992. Regulation 10 on "Payment of Fees and the consequences of failure to pay fees" is as under:

> 10(1) Every applicant eligible for grant of a certificate shall pay such fees and in such manner as specified in Schedule III.
>
> Provided that the Board may on sufficient cause being shown permit the stock broker to pay such fees at any time before the expiry of six months from the date on which such fees become due
>
> (2) Where a stock broker fails to pay the fees as provided in regulation 10 the Board may suspend the registration certificate where upon the stock broker shall cease to buy, sell or deal in securities as a stock broker.
>
> Schedule III provides the manner in which the fee is required to be paid. Portion relevant for the purpose of the present appeal is extracted below:
>
> "1. Every 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 turn over in excess of rupees one crore for each financial year;

(bb) xxxxxxx

(c) after expiry of five financial years from the date of initial registration as a stock broker, he shall pay a sum of five thousand **rupees** 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. xxxxxx

3 xxxxxx

4 xxxxxx"

Writ petitions questioning the validity of regulation 10 of the Stock Broker Regulations read with Schedule III thereof and certain letters issued by the Respondent SEBI in this regard were filed in various High Courts. These cases were transferred to the Hon'ble Supreme Court. The Hon'ble Supreme court passed an order in the matter on 1.2.2001 inter alia directing the Respondent SEBI to amend the regulations incorporating the recommendations of the R.S. Bhatt Committee report. Respondent SEBI amended the Regulations on 2.2.2002. However, the Respondent SEBI is stated to have received several representations from the stock brokers in this regard. SEBI after examining those representations issued a circular on 28.3.2002 (SMD/Policy/Cir 07/2002) "providing clarifications on the issues arising out of the various representations on fees to be paid by brokers to SEBI".

In the said circular with reference to the "reckoning of first five years fees" it was clarified that the period of first five years as specified in the regulations shall be computed as under:

"Brokers who were already carrying on their activities in the financial year 1991-92

would have to pay the fees for the financial year 1992-93 on the basis of their turnover for the previous financial year i.e. 1991-92. The brokers who have commenced their business from the financial year 1992-93 and onwards would pay a flat fee of Rs.5,000/- for the first financial year if they have a nil turn over in the preceding financial year. For the next four years, brokers would pay fees based on their corresponding previous financial year's turnover."

(emphasis supplied)

According to the Appellant the Respondent has not adhered to the clarification given by the circular for the purpose of the fee payable by the Appellant. though the Respondent is bound to go by its own circular even if it is not consistent with the Regulations in the light of the view held by the Hon'ble Supreme Court in Paper Products (supra).

As stated earlier a stock broker is required to pay such fees and in such manner as specified in Schedule III. Thus it is clear that the Respondent can not increase or decrease the quantum of fee or the manner in which such fee is to be paid by the stock brokers outside the said Schedule III. If any variations are required to be made for the purpose, the concerned provisions of Schedule III have to be amended. It is to be noted that the Regulations made by the Respondent SEBI, in terms of section 31 of the Act are required to be laid before Parliament. The Stock Broker Regulations was also accordingly laid before Parliament. Since Parliament has not disapproved the Regulations, the Regulations are to be considered to have the approval of Parliament. The Regulations approved by Parliament can not be amended by way of issuing clarifications by the administrative authorities. To clarify means, according to Websters Encyclopedic Unabridged Dictionary "to make an idea, statement etc. clear or intelligible : to free from ambiguity". Through a clarification by the administrative authorities, provisions of a statute can not be amended.

It is to be noted that the Respondent SEBI has also stated the scope of the said clarificatory circular No.07/2002 in the circular itself. It has been stated therein that "Following the judgement of the Hon'ble Supreme Court, SEBI has received representations from the brokers in their individual capacities as well as their representative capacity. The issues have been examined by SEBI. Part A of this circular contains clarifications on the issues sought by the brokers." Part 'A' referred to therein is on "clarifications on the issues arising out of the various representations on fees to be paid by brokers to SEBI." Thus it is clear that circular No.07/2002 is of a clarificatory nature and it is not meant to amend the substantive provisions of the Regulations. It is to be noted that Para I of Schedule III to the Stock Broker Regulations does not take the date of commencement of business by Stock Brokers as a referral point, though the circular refers to the commencement of business as a referral date. Sub para (c) of Para I takes "date of initial registration" as the referal date.

The Learned representative of the Appellant had emphasised that the circular issued by the Respondent is binding on it even if it is not consistent with the provisions of the Regulations in the light of the observations made by the Hon'ble Supreme Court in Paper Products case (supra). It is to be noted that in the said case the Hon'ble Supreme Court had made the cited observation with reference to circular issued by the Central Board of Excise and Customs (CBEC). The circular in question was the one dated 23.7.86/7.8.87 classifying certain products manufactured by the Petitioner as products of printing industry and not that of the packaging industry, for the purpose of Chapter 49. Sch. to the Tariff Act. The circular was issued under section 37B of the Central Excises & Salt Act, 1944 (the Excise Act). In this context it is pertinent to have a look at the said section 37B, which is extracted below:

37B. Instructions to Central Excise Officers: The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of

1963), may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board.

Provided that no such orders, instructions, or directions shall be issued –

(a) so as to require any Central Excise Officer to make a particular assessment or to dispose off a particular case in a particular manner

(b) so as to interfere with the direction of the Commissioner of Central Excise (Appeals) in the exercise of his appellate function."

On a perusal of section 37B it is clear that the section enables CBEC to issue directions ostensibly for the purpose of uniformity in two matters namely –(i)classification of excisable goods; and (ii) with respect to levy of excise duty on such goods. It is to be noted that the section itself makes it mandatory for all officers to follow such orders, instructions and directions."

The Hon'ble Supreme Court's decision, holding that the circulars issued under section 37B are binding on the Board's officers has to be seen in the light of the scope of the section itself. First of all the scope of section 37B is restricted. Secondly the section itself mandates that the Board's orders, instructions and directions are to be acted upon by its officers. It is in the said context the Hon'ble Court viewed that the officers of the Board are required to comply with Board's orders etc. even if it is not consistent with the provisions of the Act. There is no specific provision in the SEBI Act comparable to section 37B of the Excise Act, and the

circular no.07/2002 is not a "statutory circular". It is a clarificatory circular and such an administrative circular can not over ride the Regulations made by the Respondent SEBI. In the event of a conflict of circular 07/2002 and the provisions of Schedule III, the provisions of Schedule III should survive and not the non statutory circular. The fees legally payable is the one under the Regulations.

Learned Representative of the Appellant had submitted that though the Appellant had submitted the application for registration some time in the year 1992, the Registration certificate was granted only in the year 1995 and that since the delay in issuing the certificate was not because of theAappellant, the Certificate of registration be considered to have been given in the year 1992. In support of this he had cited the Hon'ble Allahabad High Court's decision in Shyam Cold Storage (supra). In the context of the Shyam Cold Storage case relied on by the Appellant, to understand the background in which the Hon'ble Court expressed the view that the registration certificate in such a case should be made effective from the date of the application, it is considered necessary to see the facts of the said case. The petitioner in the said case was carrying on the business of purchase and sale of potatoes. It applied for registration under the U P Sales Tax Act, 1948 on 8th April, 1974. On the same day, an application for registration was also moved under section 7(2) of the Central Sales Tax Act, 1956. This Application was made in Form A. While giving other particulars required in the form, the petitioner mentioned compressor and parts, ammonia receiver, full machinery of ice candy and ice plant, ammonia pipe and ammonia cylinder for the manufacture and sale of ice and ice cream. As in respect of goods for use in the generation or distribution of electricity, it mentioned generating set and its parts. The registration was granted to the petitioner under the U.P. Sales Tax Act vide order dated 11th April 1974, and this registration was made operative from 8th April 1974. Subsequently, the petitioner purchased a generating set from a Delhi party, and also other electrical goods for the manufacture of ice and ice cream. Although registration had been granted to the petitioner under the U P Sales Tax Act, no order for

registration had been issued to the petitioner at the time when the above purchases were made. On 14th May 1974, the petitioner applied for provisional registration under section 8-B of the UP Sales Tax Act. This was granted on 18th June, 1974 and the registration certificate was made operative with effect from 14th May, 1974 i.e. the date of making of the application. Subsequently on 21st June, 1974 the petitioner received registration certificate under section 7 (2) of the Central Sales Tax Act which was made operative from 14th May, 1974. The petitioner challenged the said order on the ground that the registration certificate should have been made effective from the date of application i.e. 8.4.1974. It is in the said set of facts the Hon'ble High Court made the observation which the Appellant has cited. In this context the observation made by the Hon'ble High Court need be noted. The Hon'ble Court observed:

> "The Central Sales Tax Act does not mention the date from which the certificate takes effect. It is, however, well settled that a person can not be made to suffer on account of laches or delay on the part of public authorities. The petitioner had made the application for registration on 8th April, 1974. That application was complete in all respects and no defect had been found or pointed out to us in that application. The mere fact that the Sales Tax Officer did not pass the order immediately can not possibly be a ground for making the registration effective from the date of the order. Any other view would inflict unnecessary hardship on a dealer for no fault of his, in case orders are not passed expeditiously on his application by the appropriate authority."

The Appellant's argument is that its registration be deemed to have been taken effect from the date of submitting the application and not with effect from the year 1995, as the delay involved in issuing the certificate of registration was not because of any fault from its side.

It is seen from the copy of the certificate of registration granted to the Appellant that it was dated 15.3.1995.

It is to be noted that the Hon'ble High Court in its order in Shyam Cold Storage had viewed that "the Central Sales Tax Act does not mention the date from the certificate takes effect". It is in that context the Hon'ble Court viewed that the certificate of registration granted by the Sales Tax Officer should be made effective retrospectively, i.e. from the date of the application. Since it was open ended under the Central Sales Tax Act, and in that context it was possible to take a view that the registration can be effected retrospectively the Hon'ble Court did not want the petitioner to be denied of the benefit of registration and subject him to hardship and accordingly directed to consider the date of registration as the date of submission of the application for registration. In the instant case we are concerned with the provisions of section 12, which requires a stock broker to obtain the certificate of registration for buying, selling or dealing in securities. On a perusal of the provisions of section 12 of the Stock Broker Regulations, it appears that a certificate of registration can not be issued retrospective effect.

According to section 12(1)

> No stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such bother intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:
>
> Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so

for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration."

Obtaining certificate of registration in terms of section 12, thus is a condition precedent for carrying out the activities of a stock broker. The proviso provides protection to those who were already carrying on the business of stock broker etc. on the date of commencement of the SEBI Act, as in the absence of such a provision, in the light of the clear mandate in sub section (1) those existing intermediaries would have been debarred from continuing with their ongoing business. The proviso is thus to avoid hardship to those existing intermediaries. It provides relaxation from the requirement of regulation 12(1). it is only a protective measure. The proviso does not grant any deemed registration status to the intermediaries from the date on which section 12(1) came into operation.

Obtaining a certificate of registration from the Respondent is a pre condition to carry on business activities of a stock broker is abundantly clear from rule 3 of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 also as the rule stipulates that "No stock broker or sub broker shall buy, sell, deal in securities unless he holds a certificate granted by the Board under the Regulation". The rule in tune with the proviso to section 12(1) referred to above has provided in the proviso to the said rule 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." The proviso to section 12(1) and rule 3 is only an enabling provision to allow the then existing stock brokers to carry on with their ongoing activities during the interim period.

Since the Act and the rules do not provide for making registration with retrospective effect, the Appellant's contention that the registration granted to it in the year 1995 be considered to have come into effect in the year 1992 is not acceptable. In my view the initial registration referred to in clause 1 (c) of Schedule III of the Stock Broker Regulation can not be on any other date than on 15.3.1995, in the Appellant's case.

In the light of the above the Appellant's contention that the fees be calculated on the basis of the Respondent's circular No.07/2002 and that the Appellant be deemed to have got registered in the year 1992 is not tenable.

For the reasons stated above, I do not find any reason to interfere with the decision taken by the Respondent in deciding the quantum of fees and the manner in which it is arrived at as specified in Schedule III.

The excess fee, if any, collected by the Respondent over and above the fee leviable in terms of the provisions of the Schedule III be returned to the Appellant without any undue delay.

For the reasons stated above the Appeal is dismissed.

Sd/-

(C. ACHUTHAN)

PRESIDING OFFICER

Place: Mumbai

Date: September 19, 2003