**BEFORE THE SECURITIES APPELLATE TRIBUNAL,**
**MUMBAI**

**APPEAL NO.10/2001**

**In the matter of:**

**Ujala Finstock P. Ltd** **Appellant**

**Vs**

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

**Appearance**

**Shri K.S. Javeri**
**Advocate** **for Appellant**

**Shri Ranganayakulu**
**Dy. Legal Adviser, SEBI.**

**Shri Sura Reddy**
**Asst. Legal Adviser,**
**SEBI** **for Respondent**

(Appeal arising out of the order dated 9.1.2001 made by the Adjudicating officer, Securities and Exchange Board of India)

**ORDER**

The present appeal is directed against the order dated 9.1.2001 made by the adjudicating officer imposing a sum of Rs 3 lakhs as penalty against the Appellant.

The Appellant is a member of the Ahmedabad Stock Exchange (ASE), and holds a certificate of registration to act as broker issued by the Respondent. As a part of its supervisory and regulatory function, the Respondent conducts inspection of the records of the intermediaries registered with it. In that process the Respondent decided to carry out inspection of the books of account, records and other documents of the Appellant. The purpose of the inspection was to ascertain the level of compliance of the statutory requirements including maintenance of records, by the Appellant. According to the inspection team the Appellant did not co-operate with it in the inspection in as much as the Appellant did not produce all - the requisite books etc and did not furnish certain details as called for. The Appellant's failure to produce certain books, furnish materials etc., was brought to the notice of the Respondent. Consequentially, the Chairman, SEBI ordered adjudication in the matter and an adjudicating officer was appointed for the purpose on 3.1.2000. The adjudicating officer conducted an inquiry and on completion there of, concluded that the Appellant had failed to comply with the requirements of producing books etc before the inspection team. He imposed a sum of Rs. 3 lakhs as penalty against the Appellant, in terms of section 15A (a) of the Securities and Exchange Board of India, Act 1992 (the Act). The allegations against the Appellant as per the impugned order are as follows:

> "(i) the Appellant had neither produced the desired books before the inspection team nor submitted the questionnaire, duly filled up, to the Exchange, as intimated by SEBI, prior to the commencement of the inspection ASE had asked the member, on 28.1.98 to produce 18 books that are required to be maintained under Rule 15 of SCRA, 1956 and Regulation 17 of Regulations 1992. Member had not produced all the books specified before the inspecting officials on 2.2.98 ……. Based on the inspection of the documents submitted by the member on 2.2.1998, SEBI vide its letter dated 3rd February 1998, had asked for further information…. that the member failed to

produce those documents…. .

SEBI vide its letter dated 13.2.1998 had asked the member to produce the relevant details/statements/records at the SEBI office, Mumbai……. the Member had provided only with partial records/documents……

Member refused to give any written statement to the inspection team."

Shri K.S.Javeri, learned counsel for the Appellant submitted that as per the show cause notice dated 24.2.2000, the allegations were raised against the Appellant on the basis of the report made by the inspector appointed by the Respondent to inspect the books of accounts etc of the Appellant. The Appellant has not been provided with a copy of the inspection report to enable it to reply to the show cause notice. He pointed out that vide letter dated 19.03.98 (Annexure IX to the report) the Appellant had furnished all the books and information and there is no finding any where by the inspecting team that the Appellant had not furnished the requisite books, details etc., Learned counsel further stated that in terms of section 15 I of the Act, the Adjudicating officer should have heard the Appellant before imposing the penalty, on conclusion of the inquiry. Since the adjudicating officer did not comply with this requirement, the order is bad and deserve to be set aside. Shri Javeri further submitted that certain records such as sauda book called for by the inspection team are not maintained by brokers under the 1957 SCRA Rules and as such the same can not be produced.

According to the learned counsel the scope of adjudication cannot go beyond the order issued for the purpose by the competent authority and that as per the relevant order dated 31.1.2000 issued by the Chairman, the adjudicating officer was authorised for holding an inquiry into the contravention, if any, of section 15 A, that the said section does not empower the adjudicating officer to impose penalty for non co-operation, non submission of the written statement etc, to the inspection officer.

Shri Javeri submitted that the penalty has been imposed twice for the same failure as could be seen from paras 6.2 and 6.3 of the order. He also submitted that the quantum of penalty at the rate of Rs. 1 lakh for each alleged failure, imposed by the adjudicating officer is unjustified and untenable as it has been fixed arbitrarily.

Shri Javeri also submitted that since the inspection was to be carried out at Ahmedabad, any failure to furnish the particulars / books etc at the Respondent's office at Mumbai can not be said to be a failure to co-operate in the inspection to warrant penalty. He further pointed out that the inspection was carried out in 1998, the Respondent opted to remain silent on the so called omissions on the part of the Appellant for a period of 2 years and only in February 2000 a show cause notice was issued requiring the Appellant to submit to adjudication and then again after a lapse of about one year, i.e. on 9.1.2001 an order was made imposing monetary penalty without any justification. Learned Counsel submitted that from all sides the order is defective and deserves to be set aside.

Shri Ranganayakulu, learned representative of the Respondent submitted that there was no inspection report as such on which the Respondent has relied on. The adjudication was on the Appellant's failure to co-operate with the inspecting team and this fact has been recognised even by the Appellant as could be seen from the Appellant's, own correspondence in the matter. Learned representative further submitted that section 15I does not require any specific personal hearing to precede the imposition of monetary penalty. He pointed out that the Appellant did not even bother to be present in the adjudication proceedings to explain its stand before the adjudicating officer inspite of several letters issued by the adjudicating officer. Shri Ranganayakulu also submitted that the adjudicating officer has acted well with in his power in terms of section 15A and that since Section 15A provides for penalty for each failure on the part of the person concerned, separate penalty for each such failure viz: non submission of books, non furnishing of details and non submission of written statement, is justified and the quantum decided by the adjudicating officer can not be considered excess or unreasonable.

I have carefully considered the rival contentions and material facts before me. It is true that the routine inspection to evaluate the extent of statutory compliance by the Appellant with reference to maintenance of books/records and compliance of the general provisions of the 1992 Regulation etc., was taken up by the Respondent. The fact of inspection was notified well in time to the Appellant to enable it to keep all the relevant materials including the books ready for the perusal of the inspection team. For the

convenience of the Appellant it was decided to carry out the inspection at Ahmedabad. For the purpose, the Appellant's officers went to Ahmedabad. On a perusal of the explanation submitted by the Appellant to the adjudicating officer and also from the copies of the correspondence filed with the appeal it is evident that the Appellant had not fully met with the requirements of the inspecting team with reference to production of books, furnishing of particulars and submission of written statement as called for. The argument that certain books are not maintained by any broker, that the ASE did not give information etc are not valid grounds. The Appellant was asked to provide the books and particulars required to be maintained/kept by it and not to procure from others and produce.

The Appellant's contention that a copy of the inspection report based on which the allegations have been levelled was not made available to it and as a result the adjudication order itself was bad is not very sound. It is seen from the reply to the show cause notice dated 13.11.2000, referred to in the order that the Appellant had not asked for any such report and non availability of the report has not been cited by the Appellant any where as a factor disabling the Appellant to answer the show cause notice. In fact Annexure II – of the notice provides the details of the charges. Therefore the Appellant's submission at this stage, alleging non-supplying of the report, as a ground to set aside the order is not tenable.

Regarding the need to issue a separate show cause notice for the purpose of determining the quantum of penalty, it can not be but said that the submission is mis conceived. Section 15 I reads as under

> "15-I. Power to adjudicate
>
> For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G and 15H, the Board shall appoint any of its officers not below the rank of Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.
>
> While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections."

On a perusal of the section it is clear that what is required there under, is to give the person concerned an opportunity of being heard in the inquiry. If the Appellant's version is to be accepted, it is not necessary to hear the person concerned for the purpose of deciding as to whether he has committed any failure in terms of the sections referred to there in, but only after concluding the inquiry and finding that the person has failed to comply with the statutory requirement, he need be heard for the purpose of deciding the penalty. The fallacy of such an argument is evident from sub section (2) of the section, as reproduced below. The Appellants submission that the Respondent did not follow the principles of natural justice on this count lacks support from the provisions of Section 15 I.

Since the Respondent has not imposed any penalty for the alleged failure at (i) above, I do not consider it necessary to deal with the same.

With reference to the failures listed at items (ii) (iii) (iv) above, it is considered relevant to have a look at regulation 21 of the 1992 Regulations which is extracted below:

> "21. Obligations of stock-broker on inspection by the Board. -
>
> (1) It shall be the duty of every director, proprietor, partner, officer and employee of the stock-broker, who is being inspected, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with the statements and information relating to the transactions in securities market within such time as said officer may require.
>
> (2) The stock-broker shall allow the inspecting authority to have reasonable access to the

premises occupied by such stock-broker or any other person on his behalf and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the stock-broker or any other person and also provide copies of documents or other materials which, in the opinion of the inspecting are relevant.

(3) The inspecting authority, in the course of inspection, shall be entitled to examine or record statements of any member, director, partner, proprietor and employee of the stock-broker.

(4) It shall be the duty of every director, proprietor, partner, officer and employee of the stock-broker to give to the inspecting authority all assistance in connection with the inspection, which the stock-broker may be expected to give.

In this context it is also relevant to have a look at section 15 A (a) invoked by the adjudicating officer. Section 15A(a) is as follows:-

"15 A If any person who is required under this Actor any rules or regulations made there under-

.....

(b) to furnish any document, returns or report to the Board, fails to furnish the same, he shall be liable to a penalty not exceeding one lakh fifty thousand rupees for such failure……..

……."

It is clear that in terms of regulation 21 that it is the duty of the person concerned to make available to the inspecting authority "such books, accounts and other documents in his custody or control and furnish him with the statements and information". The allegation is that the Appellant had failed make available the books, and other details and written statement to the inspecting authority. This is a requirement of the Regulations and failure to comply with such requirements of the Regulation attracts section 15A (a). Section 15A (a) need be understood in its broad sense. Therefore to my mind the failure, on the part of the Appellant in this regard attracted the provisions of section 15A (a).

The submission of the Appellant that the inspection was to be done at Ahmedabad and as such failure to furnish books/ information etc at Mumbai is not covered under the adjudication to warrant penalty is baseless. The books etc., were asked to be produced at Mumbai as part of the one and the same on ongoing inspection and the change of venue for scrutiny of the records does not absolve the Appellant from producing/making available the books / records / statements to the inspecting authority. If the Appellant had produced books etc., to the inspecting team at Ahmedabad itself during their visit, the need for producing the same at Mumbai would not have arisen.

It is seen that the adjudicating officer has treated non production of books, failure to furnish certain details statements etc and refusal to give written statement, to the inspection team, as separate failures and imposed penalty for each such failure. In my view treating these failures independent of each other and imposing penalty for each such failure is not correct. It has to be seen that the failure is of the composite obligation arising out of the provisions of regulation 21 relating to inspection and as such only one set of penalty is attracted. Therefore, the total penalty of Rs 3 lakhs as arrived at on the basis of penalty for failures on three counts by the adjudicating officer can not sustain. Since the Adjudicating officer had decided to impose Rs 1 lakh as the quantum for each failure, it is felt that Rs 1 lakh as penalty for the failure to comply with regulation 21 will be sufficient. Therefore the total penalty levied by the adjudicating officer is limited to Rs. 1 lakh as against 3 lakhs imposed by him. The order stands modified to the said effect.

The order as modified is upheld.

The appeal is disposed of accordingly.

**(C. ACHUTHAN)**
**PRESIDING OFFICER**

**PLACE: MUMBAI,**
**DATE: MAY 25, 2001**