BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 1 of 2012

Date of decision : 16.01.2012

Monarch Projects and Finmarkets Limited
901-902, 9th Floor, Atlanta Centre,
Sonawala Road, Opp. Udyog Bhavan,
Goregaon (E),
Mumbai – 400 063. …… Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C-4A, 'G' Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051. …… Respondent

Mr. P. N. Modi, Advocate with Mr. Ranjeet Bhonsale and Mr. Joby Mathew, Advocates for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody and Mr. Mobin Shaikh, Advocates for the Respondent.

Coram : P. K. Malhotra, Member
S.S.N. Moorthy, Member

Per : P. K. Malhotra, Member (Oral)

This order will dispose of Appeals No.1 and 2 of 2012. Securities and Exchange Board of India (for short the Board) passed an ex-parte ad-interim order on December 28, 2011 under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 issuing certain directions to a large number of entities including the appellant. The appellant has been restrained from buying, selling and/or dealing in any manner whatsoever in the proprietary account and also prohibiting it from entering into any fresh agreements with the new clients in its operation as stock broker till further orders. It is the grievance of the appellant that although it has been permitted to

continue business for its existing clients, on account of the said impugned order, NSDL/CDSL have stopped all operations of the margin/client beneficiary DP accounts also resulting in significant loss to a large number of clients who sold the securities but the sales had to be closed out/auctioned since the securities could not be delivered. This anomalous situation was brought to the notice of the Board by the appellant by its letters dated December 29, 2011, December 31, 2011, January 2, 2012, January 3, 2012, January 4, 2012 and January 5, 2012. Since the Board has not yet responded to the letters written by the appellant, this Tribunal has been approached seeking direction that the impugned order shall have no application to the margin/client beneficiary accounts as listed in Exh.D to the appeal memorandum.

2. During the course of hearing, it was admitted on behalf of the Board that a difficulty might have arisen as pointed out by the appellant. With a view to enable the Board to dispose of the representations received from the appellant, the case was adjourned twice. However, no consensus could be arrived at. It is claimed that the appellant/its clients have already suffered a loss of about Rs.5 crores. Since the Board has admitted the anomalous situation that has arisen because of the impugned order but has failed to pass appropriate orders on the representations filed by the appellant in spite of two opportunities afforded by us, we are constrained to pass the following order.

3. The case is still at the investigation stage. We are not inclined to hear the matter on merits. To overcome the situation that has arisen due to the passing of the impugned order, the appellant states that it is willing to furnish an undertaking in writing to the Board that it will not be buying, selling and/or dealing in their proprietary accounts as per the directions contained in the ex-parte ad-interim order pending further orders in the proceedings before the Board. If such an undertaking is furnished, the Board shall direct the two depositories to permit the operation of the accounts listed in Exh.D immediately on furnishing of the undertaking. This course is being adopted having regard to the peculiar facts and circumstances of the present case. The appellant shall cooperate with the Board and furnish all necessary material that may be required in this

regard. The Board is also directed to conclude the investigation expeditiously. It is made clear that the furnishing of the undertaking and acceptance thereof by the respondent Board shall be without prejudice to the rights of the parties on the merits of the case.

The appeal stands disposed of as above with no order as to costs.

Sd/-
P. K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

16/01/2012
Prepared & compared by-ddg