BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No.44 of 2012

Date of Decision : 30.3. 2012

Pee Dee Kapur Stock & Securities Ltd.
802, International Trade Tower
Nehru Place, New Delhi – 110 019. ….. Appellant

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, C-4A, G Block,
Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051.

2. National Stock Exchange of India Limited
Exchange Plaza, Plot no.C-1, "G" Block,
Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051. ..…Respondents

Mr. Sunil Kumar, Chartered Accountant for the Appellant.

Mr. Ajay Khaire, Advocate with Ms. Rachita Romani, Advocate for Respondent no.1.
Mr. Somasekhar Sundaresan, Advocate with Mr. Paras Parekh, Advocate for Respondent no.2

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

Per : P. K. Malhotra, Member

The appellant before us is a stock broker, a member of the National Stock Exchange of India Limited (NSE) and registered with the Securities and Exchange Board of India (the Board). The appellant is aggrieved by the debit note dated September 27, 2011 issued by NSE whereby the appellant has been asked to pay a sum of ₹ 1,97,365/- on account of penalty for client code modification for the period August 1, 2011 to August 31, 2011.

2. The said penalty was imposed by the stock exchange in terms of the circular dated July 5, 2011 issued by the Board to all the recognized stock exchanges and conveyed to all the members by NSE by its circular no.653 of July 29, 2011. The circular dated July 5, 2011 issued by the Board inter alia provides that the stock exchanges may allow

modification of client codes of non institutional trades only to rectify genuine error in entry of client code at the time of placing/modifying the related order. It also cast a duty on stock exchanges to lay down strict objective criteria, with the approval of the governing Board, for identification of genuine errors in client code which may be modified and disclosed to market in advance. The exchanges are also required to set up a mechanism to ensure that trading members modify client codes only as per the strict objective criteria. The circular also mandates that the stock exchanges shall levy penalty on the trading member for modification of the client code and credit the penalty amount to its investor protection fund. In compliance with the said circular of the Board, NSE issued the circular dated July 29, 2011 inter alia stating that the following client code modification would be considered as genuine modification:

> (1) Where original client code/name and modified client code/name are similar to each other but such modifications are not repetitive.
>
> (2) Where original client code and modified client code belong to a family. (Family for this purpose means spouse, dependent parents, dependent children and HUF).

It was also stated that the circular will replace the existing penalty structure for the client code modification and shall be effective from August 1, 2011.

3. It seems difficulties were felt in the implementation of the aforesaid circular and, therefore, after a joint meeting between the Board and the stock exchanges, NSE issued another circular dated August 26, 2011 to all its members stating that the following would constitute genuine error with regard to client code modification.

> "Error due to communication and/or punching or typing such that the original client code/name and the modified client code/name are similar to each other.
>
> Modification within relatives ('Relative' for this purpose would mean "Relative" as defined under the Companies Act, 1956).
>
> 2. Shifting of any trade (institutional or non institutional) to the error account of the trading member shall not be treated as modification of client code under SEBI circular dated July 5, 2011, provided the positions arising out of trades in error account are subsequently liquidated/closed out in the market and not shifted to some other client code.
>
> 3. Trading members would be required to disclose the client codes which are classified as 'Error Accounts' to the Exchange at the time of UCC upload.

> 4. Trading member should have a well documented error policy to handle client code modifications, approved by their board/management.
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> 5. With a view to minimize errors committed by the trading members, the Exchange will periodically review the trades flowing to the 'Error Account' of the trading members."
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> As per SEBI circular dated July 5, 2011 and the Exchange circular dated July 29, 2011 on client code modifications, penalty will be levied on all client code modifications w.e.f. August 1, 2011 (including genuine errors) except as mentioned in point no.2 above."

4. When NSE imposed penalty on the appellant vide its debit note dated September 27, 2011 for client code modification for period August 1, 2011 to August 31, 2011, it was pleaded by the appellant that the client code modification was done to rectify the genuine punching error in order to effect the trades in correct client code. It further stated that modifications are of the month of August only being the very initial period of applicability of the circular under which penalty has been imposed. The contents of the circular dated July 29, 2011 were clarified vide circular issued on August 26, 2011 and, therefore, no penalty can be imposed for the month of August, 2011. By its letter dated October 8, 2011, the appellant requested NSE to waive the penalty amount. The NSE rejected the request vide its letter dated December 28, 2011 observing as under:

> "As per the Exchange records, it has been observed that all the modifications in the month of August, 2011 in the F&O segment were done from the client code 'SI99A' (Shivam Investment – Prop. Sushma Kapur) to client code 'AD11' (Aditya Enterprises Pvt. Ltd). These modifications do not fall under the criteria of genuine modifications as laid down in the Exchange circular dated July 29, 2011 pursuant to SEBI circular dated July 5, 2011.
>
> Further, it has been observed that you have continued to do client code modifications in the month of September 2011 in the F&O segment wherein the modifications were done again from the client code 'SI99A' to client code 'AD11' which do not fall under the criteria of genuine modifications as laid down in the Exchange circular dated July 29, 2011.
>
> The Exchange has been levying penalty on all client code modifications of non-institutional trades w.e.f. August 1, 2011, in accordance with its circular dated July 29, 2011 issued pursuant to the SEBI circular dated July 5, 2011 except as provided in Exchange clarificatory circular dated August 26, 2011 issued pursuant to the joint meeting held between SEBI and Stock Exchanges."

5. Aggrieved by the aforesaid decision the appellant has come up in appeal before us. We have heard learned representative of the appellant and learned counsel for the respondents. Learned representative of the appellant submitted that penalty was imposed for client code modification done in respect of all trades in the month of August, 2011 whereas the code for levying the penalty itself was finalized only on August 26, 2011. Since necessary mechanism and procedures pursuant to such code for levying penalty were provided only at a later date, the penalty provisions could be made operative prospectively only from such date i.e. August 26, 2011 and not from a back date. On the other hand, learned counsel for NSE stated that NSE is carrying out only the order issued by the Board and it has no power to waive the penalty as requested by the appellant. It was further submitted that circular dated August 26, 2011 issued by NSE is only clarificatory in nature and it does not affect the provision with regard to imposition of penalty for client code modification of non institutional trades as contained in the circular dated July 29, 2011.

6. After hearing the learned counsel for the parties and perusing the records, we do not find any merit in the appeal. The circular dated August 26, 2011 issued by NSE is by way of clarification to the circular dated July 29, 2011. The circular dated August 26, 2011 liberalizes and expands the scope of genuine error for the purpose of client code modification and does not in any way disturb/change the power of the stock exchange to levy penalty for client code modification. It is the appellant's case that had the error account facility been available earlier, he would have availed of it and, therefore, his modification prior to August 26, 2011 should be treated leniently. This argument is not available to him because of his own conduct. Even after August 26, 2011, when the exception to the penalty was introduced by paragraph 2 of the said circular, the appellant continued to modify client codes and did not upload an error account client code in order to shift trades to the error account and thereafter to liquidate/close out the position arising out of the trades executed with erroneous client code entries. We were told during the course of the hearing that all trades in the month of August, 2011 have in fact been ultimately attributed to the modified client code and have not been liquidated at all as required even for the period after August 26, 2011. Perusal

of the letter dated October 8, 2011 addressed by the appellant to NSE also indicates that request of the appellant to NSE was for taking a lenient view and for waiving the penalty amount and not for enabling him to shift the wrongly punched trades to 'error account'.

We, therefore, do not find any merit in the appeal. The same stands dismissed with no order as to costs.

Sd/-
P.K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

30.3.2012
Prepared and compared by
RHN