BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 105 of 2012

Date of decision: 04.07.2012

UPSE Securities Ltd.
Padam Towers, 14/113, Civil Lines,
Kanpur – 208 001 (U.P.) … Appellant

Versus

The Manager,
Inspection Department,
National Stock Exchange of India Limited (NSE)
Exchange Plaza,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051. … Respondent

Mr. K. D. Gupta, Authorized Representative for the Appellant.

Mr. Sachin Chandarana, Advocate with Ms. Shambhavi Arjunwadkar, Advocate for the Respondent.

Coram : P. K. Malhotra, Member & Officiating Presiding Officer
S.S.N. Moorthy, Member

Per : P. K. Malhotra (Oral)

The present appeal has been filed against the Order dated December 9, 2011 passed by the National Stock Exchange of India Limited (for short NSE) against the appellant imposing a monetary penalty of ₹ 45,000/- for certain irregularities noticed by NSE during the course of inspection of the books of account of the appellant.

2. The appellant is a public limited company and wholly owned subsidiary of U.P. Stock Exchange Ltd. It is a member of Bombay Stock Exchange, National Stock Exchange and MCX Stock Exchange Ltd. and registered as a stock broker with the Securities and Exchange Board of India. NSE carried out inspection of the books of accounts, documents and records of the appellant and observed that the appellant had committed certain irregularities in its functioning as a stock broker. By the impugned order, NSE imposed a total penalty of ₹ 45,000/- in respect of the following three irregularities:

(i) One Ledger account is maintained for the clients who are also acting as sub-broker - penalty imposed is ₹ 25,000.

(ii) Contract Notes are not sent directly to the clients. They are sent to the sub-brokers who in turn give them to the clients – penalty imposed is ₹ 10,000.

(iii) Trading Member has not displayed its notice board at the sub-broker's office in accordance with NSE Circular - penalty imposed ₹ 10,000.

3. Against the aforesaid order, the appellant filed a review petition which was considered by the Internal Committee for Minor Actions of NSE (the committee) and after considering the representation, the committee in its meeting held on December 29, 2011 decided that the penalty of ₹ 10,000 levied on the appellant in respect of 'notice board of the trading member not displayed at the inspection location' be dropped. In the present appeal, the appellant is challenging the penalty of ₹ 25,000 imposed on it for not maintaining client ledger properly and penalty of ₹ 10,000 imposed for not dispatching/delivering contract notes to the clients directly within 24 hours.

4. NSE had issued a circular to all its members on December 24, 2010 giving a list of violations and applicable penalties. It is the case of NSE that in view of the fact that no satisfactory explanation was offered by the appellant in respect of the above violations, the committee imposed above penalties as laid down in the said circular.

5. We have heard the authorized representative of the appellant and the learned counsel for NSE and are of the view that the appeal deserves to be allowed. The first irregularity is with regard to maintaining one ledger account for the clients who are also acting as their sub-brokers. During the course of argument the learned counsel for the respondent referred to para 6 of the Regulations issued by NSE. Para 6.1.3B (e) of the said regulations reads as under:

> "The Trading Members shall keep a separate ledger account for each client in respect of the transactions on the Exchange and shall not mingle such account with the account of the client in respect of transactions of any other stock exchange or any other transaction which the trading member may enter into with such client."

A bare perusal of the said regulation makes it clear that it talks of a separate ledger account for each client in respect of the transactions on the stock exchange which shall not mingle with the account of the client in respect of transactions of any other stock exchange. The case of the appellant is that it was maintaining ledger account for the clients who are also acting as their sub-brokers. There is no clarity in the said regulation that even in respect of client who is acting in dual capacity i.e., as a client and as a sub-broker of the broker, separate account is to be maintained in respect of transactions as client and as sub-broker. After NSE directed the appellant to maintain separate accounts in its dealings as a client and as a sub-broker, the appellant has complied with the requirements. Keeping in view the ambiguity in the existing regulation, we are of the view that penalty of ₹ 25,000 imposed on this count is uncalled for.

6. On the second issue relating to contract notes not being sent directly to the client and being routed through the sub-broker, it is the case of NSE that the appellant had not produced any evidence to prove that the contract notes were delivered to the client within 24 hours. It is the case of the appellant that it is issuing contract notes to its client within 24 hours of the execution of the trade and the notes are sent to the client through the sub-broker. The regulations require that contract notes should be issued without delay which has been done by the appellant. We find merit in the argument of the

appellant. The regulation also provides that a sub-broker shall render necessary assistance to his client in obtaining the contract note from the stock-broker. If the contract notes have been issued within the prescribed limit and the same were sent to the sub-broker, in our view, it does not amount to violation of any specific regulation that might have been issued by NSE.

In the result, the appeal is allowed and the impugned order set aside with no order as to costs.

Sd/-
P. K. Malhotra
Member &
Presiding Officer (*Offg.*)

Sd/-
S.S.N. Moorthy
Member

04.07.2012
Prepared & compared by-ddg