BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on : 06.09.2013
Date of Decision: 25.09.2013

Appeal No. 119 of 2013

Finquest Securities Pvt. Ltd.
602, Boston House,
Suren Road,
Andheri (East),
Mumbai -400 093. …… 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. N. H. Seervai, Senior Advocate with Mr. Ashish Rao, Advocate for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody, Mr. Pratham V. Masurekar, Advocates for the Respondent.

CORAM : Justice J. P. Devadhar, Presiding Officer
Jog Singh, Member
A. S. Lamba, Member

Per : Jog Singh

The present appeal arises out of order dated April 25, 2013 passed by the adjudicating officer imposing a penalty of ₹ 8,00,000/- for violating Clauses A(2) and A(5) of Schedule II prescribed under Regulation 7 of the Securities and Exchange Board of India (Stock Broker and Sub-broker) Regulations, 1992 ('Stockbroker Regulations' for short) read with Circular dated August 27, 2003 issued by the Respondent.

2. Appellant is a broker, registered with the Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) since last eight years apart from being registered with SEBI.

3. The appellant prays for the following reliefs :

a) This Hon'ble Tribunal be pleased to entertain, try and dispose of this Appeal as expeditiously as possible and to set aside the impugned order dated April 25, 2013.

b) Pending the hearing and final disposal of this Appeal this Hon'ble Tribunal be pleased to stay the operation, implementation and effect of the said impugned order dated April 25, 2013.

c) Such further and other reliefs in the facts and circumstance of the case be passed as this Hon'ble Tribunal may deem fit and proper.

4. Briefly stated, facts of the case are that a show cause notice dated May 16, 2012 was issued to the appellant under Rule 4(1) of the SEBI (Procedure for Holding Enquiry and Imposing Penalties by the Adjudicating Officer) Rules, 1995. The appellant was called upon to explain as to why it contravened contents of Circular dated August 27, 2003 issued by SEBI by accepting payments from third parties and unrelated entities on behalf of its registered clients through normal banking channels like Real Time Gross Settlement i.e. RTGS and cheques. This alleged act on part of the appellant was considered a violation of the Code of Conduct of Stockbrokers in as much as the appellant had failed to act with due skill, care and diligence in conduct of its business, thereby violating certain norms laid down by SEBI as per provisions of SEBI Act, along with rules and regulations framed thereunder.

5. The appellant filed its reply dated June 11, 2012 and mainly stated that it had to make payments monetarily to Stock Exchange on T + 2 basis on all transactions, and with a view to meet this deadline its clients deposited cheques in its bank accounts and confirmed details of deposited cheques over the telephone, since the appellant's office is located in a distant suburb of Mumbai,

i.e. Andheri. The appellant, accordingly, credited said client's account based on details provided by the client over the telephone. Lastly, the appellant submitted that the amount received as third party payment, on behalf of a few clients, was miniscule in nature, as compared to total funds received as payment, from clients.

6. We have heard both learned senior counsel for the parties at length and have perused pleadings as well as impugned order minutely.

7. The case of appellant, as projected by Shri Seervai, learned senior counsel for appellant, is that impugned order is bad in eyes of law as it is based on a mere circular dated August 27, 2003 regarding "mode of payment and delivery."

8. Shri Seervai also read contents of circular dated August 27, 2003 in detail and argued that the same is unconstitutional and if it were to be challenged in the Hon'ble High Court under Article 226 of the Constitution, the same would have been set aside. Thrust of the arguments of the learned senior counsel was that once a "demand draft" has also been provided as one of the modes of payment and delivery, the issue of third party payment becomes insignificant, since the demand draft is a "banker's cheque" and the identity of the person paying for that is not revealed in that instrument. Therefore, the transactions undertaken by the appellant on behalf of its client by accepting payments through third parties are not illegal.

9. On the other hand, Shri Rustomjee, learned senior counsel for the respondent, vehemently argued that SEBI's circular dated August 27, 2003 is within the competence of SEBI and it is one of the steps to regulate affairs of brokers in the larger interest of investors as well as market regulation. The

conditionalities provided in the circular are reasonable, just and fair, therefore, contentions of learned senior counsel for appellant, are liable to be rejected.

10. First of all, we would deal with the submission of Shri Seervai as to legality of the circular dated August 27, 2003. The circular in question is issued for the purpose of regulating mode of payment and delivery. The underlying idea is to discourage cash transactions in capital market. Indeed, records show that such a circular was issued way back on November 18, 1993 which, mainly, regulated transactions between clients and brokers. Now, by way of circular dated August 27, 2003, SEBI has further attempted to streamline said regulations and transactions between clients and brokers by laying down certain specific and slightly more stringent norms. First of all, it is reiterated in para 2 of the circular that brokers and sub-brokers shall not accept cash from the client against any obligation or margin for purchase of securities. Similarly, they should not give cash against sale of securities to the clients. It is a crucial requirement for proper regulation and systematic growth of capital markets, which is the basic function of SEBI and by laying down certain definite norms in this regard, SEBI has just discharged its statutory duty. Legality of circular dated August 27, 2003 is hereby upheld. However, the respondent is advised to look into the aspect of payments by demand drafts and issue certain clarifications, if deemed necessary.

11. Turning to facts of the case in hand, we note that there are, in all, 20 transactions which have been considered by learned adjudicating officer as objectionable, being third party payments. We have perused details of payments received through cheques, as third party payments, by the appellant which has been done in respect of 6 transactions, mainly, executed on January 23, 2008 and August 7, 2007. The money was received by the appellant from Krishna Knitwear Technology Ltd. as well as K-Lifestyle and Industries Ltd.

instead of Pallash Construction Pvt. Ltd. and Axon Realpro Pvt. Ltd. respectively. Similarly, there are at least 14 transactions, in which the appellant has received payments through RTGS. Even here a third party has made payment on behalf of the clients. All these 14 transactions are undoubtedly undertaken through RTGS which is considered as part of Electronic Fund Transfer i.e. EFT. In fact, irregularity does not lay in having transactions through RTGS or EFT, which is allowed by SEBI, but in accepting payments through third parties.

12. The above 20 transactions have not been denied, as third party payment, by the appellant. The justification that such transactions are miniscule, compared to appellants' total transactions and hence inconsequential or that its office is located at Andheri which is at a distant place, is very weak and not convincing. The appellant being a reputed broker for many years should have conducted its affairs with diligence and should not have indulged in such transactions by accepting payments from third parties even on a few occasions which is totally barred by circular dated August 27, 2003, issued by SEBI.

13. At the same time we note that out of the voluminous transactions running into tens of thousands, carried out by the appellant, deficiency is found only in 20 transactions. Moreover these 20 transactions have not been undertaken by the appellant with any intention to de-fraud anybody or as a matter of wilful defiance but are more or less technical in nature and appear to be due to inadvertence or oversight. In its reply dated April 16, 2013, the appellant has categorically stated in para 11 of said reply that "we reiterate that we have instructed our Accountant to ensure strict compliance of said Circular of SEBI and our Systems are in place to monitor settlement division on regular basis."

14. In the case of **Samkit Share and Stock Brokers Pvt. Ltd. vs. SEBI Appeal No. 53 of 2003 decided by this Tribunal on August 31, 2004**, this Tribunal held that instead of imposing a penalty of suspension of certificate of the appellant in that case for a period of six months, a warning to the appellant not to repeat the incidence in future was considered sufficient. The appellant company was a member of the Ahmadabad Stock Exchange and was headed by a qualified Chartered Accountant and was started in February 1999. SEBI carried out an inspection of books of accounts of the appellant for the financial year 1999-2000 and 2000-2001 during January 2001. On receipt of inspection report, an inquiry was conducted as per the provisions of Rule 4(b) and (d) of SEBI (Stock Broker and Sub-brokers) Rules, 1992 and Regulation 10(1) and Clause A(5) and B(1) of the Code of Conduct as specified in Schedule II read with Regulation 7 of the said regulations. After the inquiry, it was found that the appellant delayed in delivery of securities from the pool account to the beneficiaries account atleast in four to five cases. It was also found that the appellant failed to segregate clients' accounts and its own account in addition to indulging in some off market transactions/cross-deals. On appeal before this Tribunal, it was noted that the appellant was a new entrant in the field of capital market and the mistakes were committed inadvertently. Therefore, keeping in view the totality of facts and circumstances of that case as well as the venial nature of mistakes, the Tribunal found it appropriate to issue a warning to the appellant instead of suspending/closing the business of the appellant for six months. In the case in hand also we are of the opinion that acceptance of payment from the third parties on a few occasions by the appellant was inadvertent. Therefore, instead of a monetary penalty, a simple warning to the appellant to be more vigilant in future in following the SEBI guidelines to the appellant would suffice in the facts and circumstances of the case.

15. Since the error has been rectified immediately on being brought to notice of the appellant and accordingly, in these circumstances, when the lapse is technical, unintentional, and does not involve monetary loss to any party in our opinion, on facts of present case, it would have been just and proper to warn appellant to be more diligent in complying regulatory norms prescribed by SEBI, instead of imposing a penalty. Accordingly, while upholding that the act of receiving payments through third parties was in violation of Clauses A(2) and A(5) of Schedule II prescribed under Regulation 7 of the Securities and Exchange Board of India (Stock Broker and Sub-broker) Regulations, 1992, in facts of the present case, we set aside the penalty and direct the appellant to be more careful in complying with regulatory norms prescribed by SEBI. Ordered accordingly. With this modification of the penalty, the appeal stands partly allowed. No costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A. S. Lamba
Member

25.09.2013
PTM/RHN