BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on : 17.09.2013
Date of Decision: 25.09.2013

Misc. Application No. 94 of 2013
And
Appeal No. 217 of 2012

R. R. Chokhani Stock Brokers Pvt. Ltd.
Having their registered address at
5-A, Maker Bhavan No. 2, Sir Vithaldas
Thackersay Marg, New Marine Lines,
Mumbai – 20. …… 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. Zal Andhyarujina, Advocate with Mr. Atul Singh, Mr. Maneck Andhyarujina, Advocates 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 September 28, 2012 passed by the adjudicating officer imposing a penalty of ₹ 5,00,000/- 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. Securities and Exchange Board of India ('SEBI' for short) conducted an investigation into the affairs of Bank of Rajasthan Ltd. ("BOR") during the period June 2007 to December 2009. The investigation revealed that shareholding of the promoters of BOR with their PACs had increased from 46.80% in June 2007 to 63.15% in December 2009. Promoters alongwith their PACs increased their shareholdings by way of acquiring shares from the security market. It was also observed that certain brokers, including R. R. Chokhani Stock Brokers Pvt. Ltd. ('Appellant' for short), traded for some clients who were related to the promoters of BOR and received payment for the trades from third parties, which is specifically prohibited by SEBI vide Circular dated August 27, 2003.

3. The appellant prays for the following reliefs :

a) This Hon'ble Tribunal be pleased to set aside the Impugned order bearing Order No. BM/AO-52/2012 dated 28th September 2012 passed by the Adjudicating Officer.

b) Appellant prays that the Hon'ble Tribunal be pleased to declare that the penalty imposed on the Appellant is arbitrary, unjustified, and disproportionately high vis a vis the alleged offence and that the Hon'ble Tribunal be further pleased to drastically reduce and/or conditionally pardon the Appellant from the penalty imposed by the Impugned Order.

c) For Ad-interim and Interim Relief in terms of prayer (i) and (ii).

d) For any other order that the Hon'ble Tribunal may deem fit in the facts and circumstances of the given case.

e) For Costs.

4. Briefly stated the facts of the case are that in years 2007 and 2008 the Appellant accepted payments from third parties i.e. other than clients, in respect of certain trades undertaken by it, on behalf of a few clients. The details have been reproduced by the Appellant in para 5(c) of the appeal. Acceptance of payment from third parties through cheques instead of from clients through account payer

cheques drawn by the client, was found objectionable by the Bombay Stock Exchange ("BSE") and as such an investigation regarding this affair was conducted by BSE in July-August 2010. After completion of the investigation, and obtaining reply from the Appellant regarding the investigation report and perusal of the same, BSE directed the Appellant to comply with rules and regulations of SEBI meticulously in future. No other coercive action was deemed necessary by BSE in the matter and the investigation came to an end as BSE did not find any gain, profit or benefit which had accrued to the Appellant out of such transactions. In fact, the present case of the Appellant is that no harm/prejudice/unlawful gain, was caused to any other party due its act of accepting payment from third parties instead of its client, in a few instances inadvertently.

5. After a couple of years SEBI issued a show cause notice dated May 16, 2012 through adjudicating officer appointed under Section 15I of the SEBI Act, 1992 read with Rule 3 of Securities and Exchange Board of India (Procedure of Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995. The main allegation against the Appellant in the said show cause notice is that it violated norms laid down by SEBI in its Circular dated August 27, 2003.

6. Thus, the main case of the respondent against the Appellant is that the alleged acts complained of by SEBI relate to receipt of payments by the Appellant from entities other than those on behalf of whom the Appellant had traded in shares during the relevant period. The Appellant submitted a detailed reply on May 29, 2012 contending that BSE had already investigated the matter and had found no major irregularity in the working of the Appellant. It is further submitted that after said incident the Appellant had revamped its system and such mistakes have not been repeated in offices of the Appellant. Appellant also submits that payments in question on about 28 occasions have been made by the Appellants' clients using Real Time Gross Settlement (RTGS) method wherein the recipient of the payment

i.e. the Appellant in this case, has no control and/or knowledge of such payments until respective bank statements are received by the recipient i.e. the Appellant. It was further submitted by the Appellant that payments were received by the Appellant by means of cheques from its clients and these cheques were deposited directly by its clients into its account with the concerned bank and hence in such an eventuality, the Appellant was helpless. It is, therefore, contended by the Appellant that the impugned order dated September 28, 2012 imposing a penalty of Rs. 5,00,000/- on the Appellant is totally unjustified.

7. We have heard both learned counsel for the parties at length and we note that we have already heard and decided a case of similar nature in Appeal no. 119 of 2013 Finquest Securities Pvt. Ltd. vs. SEBI. The validity of the said circular dated August 27, 2003 issued by SEBI has since been upheld. However, keeping in view the venial nature of the violation made by the Appellant in that case, we have modified the penalty to a simple warning, calling upon the Appellant in that case to be more cautious in future in following provisions of Circulars issued by SEBI from time to time. We follow the said order in the present case and relevant paragraphs are reproduced hereinbelow :-

> *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.

8. In view of abovesaid discussion of law, facts and precedent cited above, in present case also we are convinced that a mistake of venial nature has inadvertently occasioned. Moreover, error has been rectified immediately on being brought to notice of appellant. 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 the appellant to be more diligent in complying regulatory norms prescribed by SEBI instead of imposing penalty. Accordingly, while upholding that 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 present case, we set aside the penalty and direct appellant to be more careful in complying with regulatory norms prescribed by SEBI. Ordered accordingly. With this modification of penalty, the appeal stands partly allowed. Accordingly, Miscellaneous Application No. 94 of 2013 stands disposed of. No costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A. S. Lamba
Member

25.09.2013
PTM