BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing: 17.06.2014
Date of Decision: 23.06.2014

Appeal No. 50 of 2014

Indira Securities Pvt. Ltd.
5, Indira House, 3rd Floor,
Topiwala Lane, Lamington Road,
Mumbai – 400 007. …… 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. Simil S. Purohit, Advocate with Mr. A. A. Mukri, Advocate for the Appellant.
Mr. Shiraz Rustomjee, Senior Advocate with Mr. Manish Acharya, Advocate for the Respondent.

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

Per : Jog Singh

The appellant is a company incorporated under the provisions of Companies Act, 1956, having its registered office at Mumbai. It is mainly acting as share broker and is a member of Bombay Stock Exchange (BSE) and National Stock Exchange of India Ltd. (NSE). In the present appeal, an order dated December 31, 2013 passed by SEBI is impugned by the appellant. By the said order, an aggregate penalty of ₹ 16 lac under Sections 15A and 15HB of the SEBI Act, 1992 has been imposed on the appellant for non compliance with the provisions of SEBI's circular dated December 3, 2009. This circular regulates the dealings between the clients and the stock brokers. It, *interalia*,

lays down that the actual settlement of funds and securities shall be done by the broker, within 24 hours or atleast once in a calendar quarter or month, depending on the preference of the client. It further lays down that while settling the account, the broker shall send to the client "a statement of accounts" containing an extract from the client ledger for funds and an extract from the register of securities displaying all receipts/deliveries of funds/securities. This statement shall also explain the retention of funds/securities and the details of the pledge, if any.

2. Briefly stated the facts of the case are that the respondent with a view to carry out inspection of books of accounts, records and other documents of the appellant, addressed a letter on August 10, 2012 and alongwith the said letter inspection questionnaire was sent interalia seeking information as to whether SEBI circular dated December 3, 2009 and May 13, 2011 with respect to quarterly settlement of funds and securities have been complied with.

3. Appellant in response to SEBI's queries/questionnaire had submitted by email/letter dated 11th/17th August 2012 that it has implemented the provisions regarding running account settlement for its various clients with effect from July 10, 2010 and that authorizations in this regard had already been taken from the clients. Similarly, the appellant had taken a plea that the statement sent to its clients would show the retention of funds/securities regarding settlements. It was also specifically submitted by the appellant to the SEBI in the said letter/email that payment for funds/securities was done within a prescribed time and settlements of funds was done on monthly/quarterly basis. It was found to be a wrong submission reported to the SEBI which was contrary to the provisions of Clause C(6) of the Code of Conduct specified

under Schedule II read with Regulation 7 of the SEBI (Stockbrokers and Sub-brokers) Regulations, 1992.

4. The respondent, accordingly, proceeded against the appellant by appointing an adjudicating officer under Section 15I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Enquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 to enquire and adjudge conduct of the appellant under Sections 15A and 15HB of the SEBI Act. A Show Cause Notice (SCN) dated November 28, 2013 accordingly was issued. The appellant submitted its reply dated December 10, 2013 stating that the communications dated August 11th/17th, 2012 sent by it to the respondent were an error/mistake. Thus, after practically admitting the violation, the appellant requested that it be pardoned for such a mistake on its part as the same was unintentional.

5. The appellant also submitted that it was having large number of active clients to the tune of more than 10,000 who traded on a daily basis and since generally the clients tend to take a position beyond their permissible limit, it created a situation not acceptable to the risk management system, thus, resulting in debit balance in the clients account on a daily basis. When the appellant tried to settle the running accounts on a quarterly basis, it had no choice, but, to consider such accounts as settled as there was a net debit balance on the respective date at the end of the quarter. It further submitted that an analysis of credit balances over all seven quarters was being submitted which would reveal that number of accounts having credit balances over ₹ 10,000 are less than 1,000 and the number of clients having credit balances over ₹ 25,000 are less than 500 in number, hence, aging analysis may not be considered as a base. It was further submitted that credit balances may be

appearing in many accounts, but, the corresponding debit balance may be in a client's relative's account, hence, effectively the number of clients having credit balances on continuous basis would be insignificant in number.

6. After considering the reply to SCN filed by appellant, the learned adjudicating officer granted an opportunity of personal hearing to the appellant on December 23, 2013. In consonance of the principles of natural justice, the appellant reiterated its earlier stand during the personal hearing. After considering the submissions advanced by the appellant and material brought on record, the learned adjudicating officer came to the conclusion that the appellant had made a false statement on 11th/17th August 2012 regarding implementation of the circular dated December 3, 2009 and thereby misled the respondent. It is only when SEBI on September 18, 2012 insisted on submitting information pertaining to inspection, appellant by email dated September 21, 2013 admitted that they were not settling client accounts on quarterly basis and hence were not in a position to submit the data as required by SEBI. Later on, in January 2013, the appellant had stated that now it was complying with the provisions of SEBI Circular in question. A clear violation of the provisions of the circular was, therefore, established which lasted for almost three years before it could be complied with. In the circumstances, the learned adjudicating officer imposed an aggregate penalty of ₹ 16 lac on the appellant for not reporting the correct position to the SEBI when called upon to do so as regards the implementation of the circular in question and there was admitted lapse in not settling the accounts of the clients on monthly/quarterly basis for almost three years.

7. We have heard both the learned counsel for the parties at length and with the consent we have heard the matter finally at the admission stage.

8. Shri Simil Purohit, learned counsel for the appellant has strenuously argued that the contents of circular dated December 3, 2009 are not mandatory in nature and are only directory. Shri Purohit further submitted that there were three subsequent clarifications issued by NSE on February 3, 2010, September 7, 2012 and October 29, 2013 which show that original circular dated December 3, 2009 was a work in progress circular.

9. We have minutely perused the contents of SEBI's circular in question as well as the three clarifications issued by NSE and we do not subscribe to the view advanced by the learned counsel for the appellant. The concept of monthly or quarterly running settlement of clients' accounts by the brokers is incorporated in the said circular dated December 3, 2009 with a view to instill greater transparency and discipline in the dealings between clients and the broker. This circular was issued by SEBI after detailed consultation with various quarters including Investors Association, Secondary Market Advising Committee of SEBI (SMAC), Market Participants and major stock exchanges. Therefore, it cannot be said that SEBI issued this circular dated December 3, 2009 as a directive only and not as a mandatory one.

10. Next, in this connection, we have also perused the three subsequent clarifications issued by NSE on February 3, 2010, September 7, 2012 and October 29, 2013. None of the circulars, in any way, tends to dilute the concept of monthly/ quarterly running settlements of clients' accounts by the brokers as envisaged in the circular dated December 3, 2009 by the SEBI. Moreover, no stock exchange can supersede or make a SEBI's circular infructuous or ineffective by subsequent mere clarifications. The whole scheme of SCRA, 1956 read with the provisions of SEBI Act, 1992 does not contemplate such a situation which could be very harmful to the orderly and

regulated growth of capital market. A larger task is assigned to SEBI and the stock exchanges supplement the efforts of SEBI in implementation of larger policy matters and they are not supposed to lay down their own parameters which may have the effect of diluting the provisions of SEBI's circular, rules or regulations. Since clarifications were issued by NSE with a view to smoothly implement the SEBI's circular dated December 3, 2009, appellant is not justified in contending that issuance of the clarifications by NSE from time to time itself suggests the SEBI's circular was not mandatory. Admittedly, automated back office software for quarterly settlement was not installed by the appellant after the SEBI's circular in 2009 and such software was installed only in January 2013, i.e. after lapse of more than three years. Hence, contention of the learned counsel for the appellant in this connection is liable to be rejected.

11. We also note it from the records that the appellant in response to the initial queries/questionnaires raised by SEBI had categorically stated that it was complying with the provisions of circulars dated December 3, 2009 in its email/letter dated 11th/17th August 2012. Suddenly, on January 18, 2013 the appellant, in order to come out of the clutches of SEBI, took a summersault and stated that it had started complying with the provisions of SEBI circular in question. This false reporting of the actual affairs of the appellant company can hardly be appreciated and this tendency of companies needs to be curbed at the threshold. We, therefore, do not find any infirmity in the impugned order. The same has been passed by the learned adjudicating officer after affording a reasonable opportunity of being heard to the appellant. Principles of natural justice have been duly complied with in conducting the enquiry against the appellant. Therefore, the appeal is liable to be dismissed. Moreover, we have not found any cogent and convincing reason for the appellant not to comply

with the mandatory provisions of SEBI's circular dated December 3, 2009 for more than a period of three years from the date of issuance of the circular till January 2013.

12. Lastly, we may also take into consideration the submission made by the learned counsel for the appellant Shri Purohit that it is highly disproportionate to the violation committed by the appellant. In this connection, we note that the maximum penalty prescribed by law may go up to ₹ 1 crore. Therefore, a penalty of ₹ 16 lac is not disproportionate and commensurate with the violation of norms of law committed by the appellant.

The appeal is, therefore, dismissed with no order as to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A. S. Lamba
Member

23.06.2014
Prepared & Compared by
PTM