REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4664 OF 2006

VSE Stock Services Ltd. .....Appellant

Versus

S.E.B.I & Anr. .....Respondents

J U D G M E N T

SHIVA KIRTI SINGH, J.

1. Challenge in this appeal is to order dated 18.5.2006 rendered by the Securities Appellate Tribunal, Mumbai (for short 'SAT') whereby Appeal No.342/2004 preferred by the appellant was dismissed by holding that the appellant is not entitled to the fee continuity benefit claimed under the provisions of Securities & Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 [for short, 'the Regulations'].

2. Since there is no dispute on the material facts which have been correctly recorded in the order under appeal, no useful purpose will be served by recollecting the facts in detail once again. It would suffice to note that in terms of policy decision by respondent no.1, the Securities & Exchange Board of India (for

brevity, 'the SEBI') reflected in its circulars dated 26.11.1999 and 16.12.1999, the Vadodara Stock Exchange Ltd. incorporated a subsidiary company named as VSE Securities Ltd. on 24.12.1999. It got membership of Bombay Stock Exchange (BSE) as well as registration under the SEBI resulting in commencement of operation on BSE from 29.5.2000 but failed to get membership of National Stock Exchange (NSE) for the specific reason that it was a company limited by guarantee and not by stock or shares. To overcome this handicap, the Vadodara Stock Exchange Ltd. corresponded with the SEBI as well as NSE but without success because apparently it had ignored the clarifications contained in circular dated 16.12.1999 indicating that a Stock Exchange could acquire the membership right of a major Stock Exchange through a subsidiary company but it should be a company limited by stocks. The bye-laws of NSE also permitted membership only to such a company and not to one limited by guarantee. Hence Vadodara Stock Exchange Ltd. incorporated another subsidiary company, the appellant herein, on 16.1.2002. Being limited by stocks, the appellant obtained membership of NSE on 16.4.2002. But SEBI refused to grant recognition to the appellant on the ground that as per its policy and circular dated 26.11.1999 only one subsidiary of

Vadodara Stock Exchange Ltd. could claim registration as a broker. Such decision of the SEBI dated 31.12.2002 was accepted by the Vadodara Stock Exchange Ltd. and was never challenged.

3. In view of stand of the SEBI and clearly because the appellant wanted to operate on NSE, steps were taken to get the earlier subsidiary company – VSE Securities Ltd. amalgamated with the appellant. The High Court was moved and on completion of necessary formalities, amalgamation order was passed by the Gujarat High Court on 17.3.2003. Under the above scheme of amalgamation the appellant became a transferee company entitled to the assets and liabilities of the transferor company. Post amalgamation, the appellant obtained fresh registration from the SEBI in respect of its operation on BSE in the month of October 2003. On 30.04.2004, the SEBI granted registration for business on NSE on the usual conditions including payment of fees in the manner provided in the Regulations, particularly Regulation 10(1) read with Schedule III of the Regulations. The appellant paid the provisional fee liability but the demand of final fee by the SEBI was challenged before SAT on the ground that the appellant is entitled to fee continuity benefit in terms of circular of the SEBI dated

30.09.2002. The claim of the appellant, as noticed earlier, was rejected by SAT by the order under appeal.

4. The moot question falling for determination, as rightly noticed by SAT, is whether the appellant is entitled to the fee continuity benefit in terms of the Regulations. Regulation 10 mandates that every applicant eligible for grant of a certificate shall pay such fees and in such manner as specified in Schedule III. For non-payment of requisite fees the SEBI may suspend the registration certificate and in that situation the stock broker shall cease to buy, sell or deal in securities as a stock broker.

5. The Central Government in exercise of the powers conferred by Section 29 of the Securities & Exchange Board of India Act, 1992 has made Rules called the Securities & Exchange Board of India (Stock Brokers and Sub-brokers) Rules 1992 [hereinafter referred to as 'the Rules']. Rule 4 prescribes the conditions for grant of certificate to a stock broker and as per condition no.(c), in case of any change in the status and constitution, the stock broker shall obtain prior permission of the Board to continue to buy, sell or deal in securities in any Stock Exchange and as per condition no.(d), he shall pay the amount of fees for registration in the manner provided in the Regulations. Schedule III of the

Regulations has undergone various amendments in 1995, 1998, 2000, 2002 and also in 2003.

6. By policy circular dated 30.09.2002 the SEBI issued several clarifications on the subject of fees payable by stock brokers. The circular declares that the clarification was pursuant to judgment of Hon'ble Supreme Court in **B.S.E. Brokers' Forum** v. **Securities & Exchange Board of India** (2001) 3 SCC 482 which necessitated amendments in the Regulations to implement the recommendations of R.S. Bhatt Committee. In respect of issues raised in the representations received from brokers in their individual and representative capacities, a circular was issued on March 28, 2002. Since some issues remained pending, they were clarified by the circular dated 30.09.2002. Clause 7 of this circular has been pressed into service by the appellant to claim the benefit of fee continuity. It reads as under :

> "**7. Mergers/ Amalgamations**
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> Where mergers/ amalgamations are carried out as a result of compulsion of law, fees would not have to be paid afresh by the resultant transferee entity provided that majority shareholders of such transferor entity continue to hold majority shareholding in transferee entity. The Exchange would have to enumerate what constitutes 'compulsion of law' resulting in such merger/ amalgamations, for consideration of SEBI."

7. For deriving advantage from the afore-quoted clause 7 the appellant has the onerous task of showing that in its case the merger/ amalgamation was carried out as a result of compulsion of law. Before considering the submissions on behalf of appellant in this regard, the relevant legal position may be concluded by pointing out that many of the clarifications including clause 7 have not been incorporated as a part of the Regulations inspite of subsequent amendments in the Regulations. Nonetheless for lack of any issue on this point, the policy decision granting benefit by the circular dated 30.09.2002 is being relied upon as valid and operative during the relevant period. Another circular dated July 09, 2003 was issued to clarify what kind of changes in the status and constitution of the stock brokers shall have to be submitted to obtain prior approval of the SEBI under Rule 4(c) of the Rules. On and from 09.07.2003 prior approval is required, inter-alia, in respect of consolidation/ merger/ amalgamation of brokers and the 'remarks' column shows that full fees along with interest as on the date of application for approval is required to be paid. According to appellant this circular of July 09, 2003 being later in time does not apply to the case at hand.

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8. On the question as to what is the compulsion of law for amalgamation of the appellant as a transferee company with the earlier subsidiary company, learned counsel for the appellant has contended that in absence of registration from the SEBI, the appellant like any other entity is prevented by law to carry on its business as a broker and to acquire the registration it had to ensure that in place of two subsidiary companies only one should exist otherwise the Vadodara Stock Exchange Ltd. could not get the benefit of membership of one of the major Exchanges, i.e., NSE. Hence the condition imposed by the SEBI to have only one subsidiary for the purpose amounts to compulsion of law which led to the scheme of amalgamation. The other contention is that the scheme of amalgamation in which appellant is the transferee company has been approved by the Gujarat High Court and hence the benefits flowing from such scheme must be respected by all concerned including the SEBI. As per submissions, the earlier fees paid by the transferor company to SEBI for registration are now an asset with the appellant company and such asset must be respected. The learned counsel for the appellant realised some difficulties on account of law laid down by this Court in the case of **Ratnabali Capital Markets Ltd.** v. **Securities & Exchange Board**

of India (2008) 1 SCC 439 and hence he sought to distinguish that judgment by pointing out that in paragraph 11 of that judgment the Court noticed that the merger was with a view to have the benefit of enlarged business by entering the derivative markets. In the present case, according to him no such reason exists and the amalgamation was carried out only on account of compulsion explained above. According to learned counsel for the appellant for accepting a compulsion as one of law, the term 'law' needs to be given a liberal interpretation so as to include orders and directions of a statutory authority such as the SEBI.

9. On behalf of the SEBI, reliance has been placed upon relevant dates and facts emanating from appellant's letters to contend that the amalgamation was for voluntary reasons to access larger business through membership of NSE; there was no compulsion of law and order under appeal requires no interference.

10. We find that the facts of the case have been properly appreciated by SAT for coming to the conclusion that the amalgamation was not on account of any compulsion of law. The compulsion of the appellant was a business compulsion to do business as a broker with NSE. Initially the Vadodara Stock Exchange Ltd. had chosen to form another subsidiary company

limited by guarantee ignoring the circular of the SEBI dated 16.12.1999 and also the bye rules of NSE laying down conditions for membership but later it decided to have a subsidiary company which could get registration as a broker with NSE. Such decision was effected through amalgamation. Such a situation cannot be treated as a compulsion of law for amalgamation.

11. Even if we accept the submission that the compulsion of law be given a liberal meaning so as to include orders and directions of the SEBI, in the present case it is not possible to accept that amalgamation was forced upon the appellant under orders or directions of the SEBI. Only because the appellant and the parent company Vadodara Stock Exchange Ltd. subsequently decided and opted to do business as a broker with NSE, they chose the path of amalgamation. They could have as well chosen the path of winding up of the earlier subsidiary company. In the facts of the case it is not possible to accept that there was any compulsion of law for the merger/ amalgamation of the VSE Securities Ltd. with the appellant.

12. So far as legal position is concerned, in the case of **Ratnabali Capital Markets** the contention that the assets and liabilities of the transferor company have passed into the hands of the transferee

company did not cut any ice in respect of fees payable to the SEBI as per Regulations. In para 13 of that judgment it was held that on merger of the two companies, a new entity emerged which was given a right to operate in the derivative segment and therefore it had to pay fresh registration fees on the turnover basis. We find no good ground to take a different view. In paragraph 19 of that judgment this Court clarified that when the facts disclose that amalgamation/ merger had to be resorted to as an alternative to liquidation then it may be successfully urged that merger/ amalgamation was on account of compulsion of law so as to attract the exemption assured by the SEBI under the circular dated 30.09.2002. The facts of this case even remotely do not suggest any such or similar situation.

13. As a result, we find no merit in this appeal and it is accordingly dismissed. However, there shall be no order as to costs.

.....J.
[VIKRAMAJIT SEN]

.....J.
[SHIVA KIRTI SINGH]

New Delhi.
November 04, 2015.