REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3696 OF 2005

S.E.B.I ...Appellant

Versus

Saikala Associates Ltd. ...Respondent

With

CIVIL APPEAL NO. 4640 OF 2006

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. In both these appeals common points are involved and are, therefore, taken up together for disposal. In both these appeals challenge by the Securities and Exchange Board of India (in short 'SEBI') is to the order passed by the Securities Appellate Tribunal (in short the 'Tribunal').

2. Factual Position is almost undisputed and in respect of the appellants stand as follows:

(I) C.A. No. 3696 of 2005:

The Respondent has acted as a sub-broker at the National Stock Exchange with 2 NSE Members, MIS PCS Securities Limited & M/S Zen Securities Ltd. without being registered as a sub-broker with the SEBI with the said Exchange for the Period from the years 2000-01, 2001-02 and from April,2002 to May, 2002 and created the value of Rs.403.29 Crores, in breach of Section 12(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "Act") read with Rule 3 of the Securities and Exchange Board of India (Stock Brokers & Sub Brokers) Rules, 1992 (hereinafter referred to as the " Rules")

(II) C.A. No. 4640 of 2006 (SEBI Vs SHILPA STOCK BROKERS P. LTD & M/S MEHTA VAKIL & Co)

Tribunal has recorded the fair concession of the Respondent that the Respondent registered as a broker with the SEBI while executing trades on behalf of their client Kamlesh Shroff, had dealt with M/s Jairam Enterprises, an unregistered sub-broker, which is admittedly in violation of the Circular

No. SMD/I POLICY /CIRCULAR/3-97 dated 31.3.1997 issued by SEBI in exercise of powers under Section 11 of the Act. As regards the second charge, the Tribunal did not uphold the finding of the Appellant SEBI.

(iii) As regards M/s. Mehta Vakil & Co P. Ltd. (Appeal No. 11 of 2000 before the Tribunal) the respondent-co. were involved in purchase of 19400 shares and Sale of 800 shares of V.B. Financial which had been transacted by the said broker on behalf of their sub-broker, namely, Akshay Dalal, who was registered as a sub broker only with effect from 14.1.2000 but had dealt with him since December, 1998 in breach of the Act, Rules Securities and Exchange Board of India Regulations & Circulars of SEBI, (Stock Brokers and Sub-Brokers) (Hereinafter referred to as "Regulation").

3. The only question is whether Tribunal has power to modify the penalty imposed by SEBI? According to the appellant the Tribunal had no jurisdiction to modify the sentence. The Tribunal in each case held that the proved charges against the respondent were not serious enough to warrant suspension of certificate of registration.

4. The respondent, on the other hand, supports the order of the Tribunal and contends that proportional penalty can be leveled and the modification

done is clearly within the scheme and framework of the Act. It is submitted that when a regulator chooses to elect a particular form of authority, amongst various available penalties which is available and it is appealable the Tribunal has the right to modify it. Reference in this context is made to Section 15(T) of the Act.

5. There is no dispute that there was violation of the provisions of Section 12(1) of the Act read with Rule 3 of the Rules.

6. Section 12, 15A, 15B, Rule 3 of the Rules and Regulation 25 of the Regulation are relevant and read as follows:

> "Regulation of stock brokers, sub-brokers, share transfer agents, etc.
>
> 12. (1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:
>
> Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market

immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.

(1A) No depository, [participant,] custodian of securities, foreign institutional investor, credit rating agency or any other intermediary associated with the securities market as the Board may by notification in this behalf specify, shall buy or sell or deal in securities except under and in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a depository, [participant,] custodian of securities, foreign institutional investor or credit rating agency immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to buy or sell securities or otherwise deal with the securities market until such time regulations are made under clause (d) of sub-section (2) of section 30.

(1B) No person shall sponsor or cause to be sponsored or carry on or cause to be carried on any venture capital funds or collective investment schemes including mutual funds,

unless he obtains a certificate of registration from the Board in accordance with the regulations:

Provided that any person sponsoring or causing to be sponsored, carrying on or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30.]

(2) Every application for registration shall be in such manner and on payment of such fees as may be determined by regulations.

(3) The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations.

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

15A. Penalty for failure to furnish information, return, etc.- If any person, who is required under this Act or any rules or regulations made thereunder,-

(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to [a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less];

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to [a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less];

(c) to maintain books of accounts or records, fails to maintain the same, he shall be liable to [a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.]

15B. Penalty for failure by any person to enter into an agreement with clients.- If any person, who is registered as an intermediary and is required under this Act or any rules or regulations made thereunder to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to [a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.]

Rule 3 – No stock broker or sub-broker shall buy, sell, deal in securities, unless he holds a certificate granted by the Board under the Regulations:

Provided that such person may continue to buy, sell or deal in securities if he has made an application for such registration til the disposal of such application."

"Regulation 25. Liability for contravention of the Act, rules or the regulations -

A stock broker or a sub-broker who contravenes any of the provisions of
the Act, rules or regulations framed thereunder shall be liable for any or more of the following actions:

(i) Monetary penalty under Chapter VIA of the Act.

(ii) Penalties as specified under Securities and Exchange Board of India (Procedure for Holding Enquiry Officer and Imposing Penalty) Regulation, 2002 including suspension or cancellation of certificate of registration as a stock broker or a sub-broker

(iii) Prosecution under section 24 of the Act."

7. It is the stand of the appellant-Board that in terms of Regulation 25 which was applicable prior to the amendment with effect from 2.11.2003, it was provided that any contravention of any provisions of the Act, Rules and Regulations is to be dealt with in the manner provided in Regulations 26 to 32 of the Regulation prior to the amendment with effect from 27.9.2002. Therefore, Regulation 25 prior to amendment with effect from 20.11.2003 is applicable which provides that any contravention of any provision of the Act, Rules and Regulation is to be dealt with under the Securities and Exchange Board of India (Procedure For Holding Enquiry By Enquiry Officer and Imposing Penalty) Regulation, 2002 (hereinafter referred to as the '2002 Regulations).

8. The provisions of section 12(3) of the Act confer power on the Board, by an order, to suspend or cancel a certificate of Registration in such manner as may be determined by Regulations, provided that no order under 'the said section will be made unless the person concerned has been given a reasonable opportunity of being heard.

9. Rule 3 prohibits any broker sub-broker from buying, selling, dealing in securities, unless he holds a certificate granted by the Board under the Regulations, provided however, those who were already in the said business on the date of coming into force of the Rules (i.e. 20.08.1992) & Regulations, were allowed to continue with their business during the period till application for registration was disposed of. This means that the existing brokers & sub-brokers, in business were allowed to continue pending registration but no new person commencing the business of the broker or sub-broker after 20.08.1992 could do the business pending registration and could commence only after being registered.

10. Regulation 25 is the crucial Regulation. Applicable regulations prior to amendment (w.ef.20.11.2003) provide that any contravention of any provision of the Act, Rules & Regulation is to be dealt with in the manner

provided in Regulations 26 to 32 of Regulations prior to amendment w.e.f 27.09.2002 and thereafter the Regulation 25 of the Regulations prior to amendment w.e.f 20.11.2003 provides that any contravention of any provision of the Act, Rules & Regulation is to be dealt with under the 2002 Regulations.

11. As per provisions of Regulations 13(1)(a) (iv) read with Regulation, 13(4) of the 2002 Regulations, SEBI can impose a minor penalty of suspension of the Certificate of Registration of the concerned Stock Broker or Sub-Broker upto three months and can impose major penalty under Regulation 13(1)(b)(i) of cancellation of the Certificate of Registration and suspension of the Certificate of Registration of the concerned stock Broker or Sub-Broker exceeding three months. From the above provisions, it is clear that in case of contravention of Section 12(1) and/or Rule 3 of the Rules, the only penalty provided under the Act & the Regulations is of either suspension or cancellation of the certificate of Registration as set out in Section '12(3) of the Act. There is no power even on the Board to impose any monetary penalty.

12. According to respondents, a Tribunal constituted under Section 15K of the Act in exercise of powers under Section 15T of the Act read with Regulation 21 of the Securities Appellate Tribunal [Procedure] Rules, 2000. (hereinafter referred to as the "SAT Rules, 2000") can modify the order of SEBI so as to modify the nature of penalty not provided for under the provisions of the Statutes in respect of the concerned violations.

7. The Tribunal has been constituted under section 15K of the Act and is thus a creation of the said Statute and as such the Tribunal is to exercise the jurisdiction, powers and authority conferred on it by or under the Act or any other law for the time being in force.

8. Under Section 15 T (4) of the Act Tribunal has been empowered to pass such orders on the Appeal as it thinks fit, confirming, modifying or setting aside the order appealed against.

9. Under Rule 21 of the SAT Rules, 2000 the Tribunal may make such orders or such directions as may be necessary or expedient to give effect to its Orders or to prevent abuse of its process or to seek the ends of justice.

10. In the instant case, the position of Broker/Sub-Broker in case of violation is statutorily provided under Section 12 of the Act, which has to be read along with Rule 3 of the Rules. No power is conferred on the Tribunal to travel beyond the areas covered by Section 12 and Rule 3. When something is to be done statutorily in a particular way, it can only be done that way. There is no scope for taking shelter under a discretionary power.

11. Above being the position the appeals are bound to succeed, which we direct. The orders of the Tribunal are set aside and that of SEBI stands restored.

12. Appeals are allowed.

.....J.
(Dr. ARIJIT PASAYAT)

…….....J.
(LOKESHWAR SINGH PANTA)

New Delhi,
April 21, 2009