

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 03.08.2017

**Misc. Application No. 118 of 2016
And
Appeal No. 172 of 2016**

Pradeep A. Ramnani
A/602, Peoples Cosmopolitan,
TPS – 3, 24th Road,
Bandra (West),
Mumbai – 400 050.

.....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. Vikram Nankani, Senior Advocate with Mr. H.S. Khokhawala,
Advocate i/b M/s. Nankani & Associates for the Appellant.

Mr. Rajesh Nagory, Advocate with Mr. Pulkit Sukhramani and Ms. Vidhi
Jhawar, Advocates i/b The Law Point for the Respondent.

CORAM : Justice J.P. Devadhar, Presiding Officer
Dr. C.K.G. Nair, Member

Per : Dr. C.K.G. Nair, Member (Oral)

1. This appeal is preferred by the appellant aggrieved by the order of the Adjudicating Officer ('AO' for short) of Securities and Exchange Board of India ('SEBI' for short) issued on March 22, 2016. By the said order a penalty of ₹ 5 lakh has been imposed on the appellant under section 15HB of the Securities and Exchange Board of India Act, 1992 ('SEBI Act' for short) for violation of Clauses A(1) and A(2) of the Code of Conduct for Sub Brokers as stipulated in Schedule II r/w Regulation 15(1)(b)(d) of SEBI

(Stock Brokers and Sub Brokers) Regulations, 1992 and SEBI Circular No. SEBI/MIRSD/DPS-1/Cir-31/2004 dated 26.08.2004 which stood modified as SEBI/MIRSD/16/2011 dated 22.08.2011, NSE Circular No. NSEIL/LEGAL/3534 dated 02.08.2002 and NSE Circular No. NSE/MEM/3589 dated 05.09.2002.

2. The appellant is a sub broker registered with both Bombay Stock Exchange Ltd. ('BSE' for short) and National Stock Exchange of India Ltd. ('NSE' for short) at the relevant time. SEBI conducted an inspection of the books of accounts and other records of the appellant pertaining to period between April 2012 and March 2013. This inspection revealed that the appellant had executed trades in the Futures & Options ('F&O' for short) segment without having the stipulated qualifications for the same. It was further revealed that he made certain off-market transfer of shares to his client and received payment in cash which are also against SEBI Circulars on this subject. However, in the impugned order benefit of doubt is given to the appellant for the second violation and penalty is imposed only for the first violation. It is an undisputed fact that the appellant did not have the necessary qualification i.e. the NSE's Certification in Financial Market ('NCFM' for short) required for executing trades in the F&O segment. Though the appellant did not have this qualification he executed 3 self trades and 3 trades on behalf of his client during the period from 01.04.2009 to 31.03.2013. This was done by becoming a sub broker of Angel Broking Pvt. Ltd. ('Angel Broking' for short) and by means of becoming an "Authorized Person" of the NSE to deal in the F&O segment. While the SEBI and NSE Circulars clearly state that to become an Authorized Person NCFM certification is mandatory, certificates of 3 other persons were used by the appellant's broker i.e. Angel Broking and a terminal was placed with

the appellant by Angel Broking w.e.f. 11.11.2008 which continued till the appellant's surrender of sub broker-ship on 09.10.2013.

3. Shri Vikram Nankani, Learned Senior Counsel appearing on behalf of the appellant stated that clear position relating to the requirement of NCFM certification was not known to the appellant, Angel Broking did not insist on having NCFM certification and provided the appellant with a terminal and the appellant mainly did only self trades and 3 minor transactions were only done for clients. It was also argued that since the main broker i.e. Angel Broker has been punished through the impugned order with higher penalty of ₹ 20 lakh, the appellant deserves leniency in terms of full application of section 15J of SEBI Act since the alleged violation is of a minor nature as far as the appellant is concerned.

4. We do not find any merit in the above contentions.

5. It is an admitted fact that the appellant was aware of the requirement of NCFM certification as a pre-requisite for becoming an Authorized Person and/or for executing trade in F&O segment of NSE. Moreover, being a sub broker the appellant was expected to know and follow the rules and regulations fully and cannot take shelter under ignorance. The argument of the appellant is that the NCFM certificates of 3 other qualified persons were used and uploaded by Angel Broking and the appellant has no role in the same also cannot be accepted because the appellant was aware that the same was an illegal use and he himself did not possess the necessary qualifications. Therefore, the argument that since the fault was committed by his broker i.e. Angel Broking and a higher penalty imposed upon them has been already paid is sufficient in the matter cannot be accepted. The contention that conditions under section 15J of SEBI Act not been taken into account is also not correct as under section 15HB of SEBI Act the

maximum penalty imposable is upto a crore of rupees (with minimum of not less than ₹ 1 lakh). Therefore, mitigating factors are already taken into account when the AO imposed a penalty of only ₹ 5 lakh. It is also noted that for a graver violation by the broker a penalty of ₹ 20 lakh has been imposed thereby maintaining inter-se proportionality between the two appellants in the same matter.

6. For the above stated reasons, we see no merit in the appeal and the appeal is dismissed with no order as to costs. Appellant is directed to pay the penalty amount within 30 days from the date of this order.

7. In the result, Misc. Application No. 118 of 2016 seeking stay of the impugned order becomes infructuous which is also disposed of accordingly.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

03.08.2017
Prepared and compared by:
msb