

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 24.04.2018
Date of Decision : 07.05.2018

Misc. Application No. 236 of 2017
And
Appeal No. 229 of 2017

SLA Securities Limited
4-A Pollock Street,
Kolkata- 700 001

...Appellant

Versus

1. Mr. S, Raman,
Whole Time Member
Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051
2. Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051
3. The Secretary,
The Calcutta Stock Exchange Limited
(CSE Ltd.) 7, Lyons Range,
Kolkata- 700 001

...Respondents

WITH
Misc. Application No. 237 of 2017
And
Appeal No. 230 of 2017

Shree Nath Kapoor
Room No. 6-A, 3rd Floor,
7, Lyons Range,
Kolkata- 700 001

...Appellant

Versus

1. Mr. S, Raman,
Whole Time Member
Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051

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3. The Secretary,
The Calcutta Stock Exchange Limited
(CSE Ltd.) 7, Lyons Range,
Kolkata- 700 001

...Respondents

Mr. Shanker Lal Agarwala, Authorised Representative for Appellants in
Appeal Nos. 229 & 230 of 2017.

Mr. Mustafa S. Doctor, Senior Advocate with Mr. Shantanu Mitra and
Mr. Anubhav Ghosh, Advocates i/b Desai & Diwanji for Respondents in
Appeal Nos. 229 & 230 of 2017.

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

Per: Justice J.P. Devadhar (Oral)

Misc. Application Nos. 236 & 237 of 2017

There is delay of 913 days in filing the respective appeals. By
these Miscellaneous Applications, applicants seek condonation of the
said delay. For the reasons stated in the respective applications, the delay
is condoned.

Miscellaneous Applications are disposed of accordingly.

Appeal Nos. 229 & 230 of 2017

1. These two appeals are filed to challenge two orders both dated
07.01.2015 passed by the Whole Time Member (“WTM” for short) of
Securities and Exchange Board of India (“SEBI” for short). By the said
orders Certificate of Registration (Stock Brokers Registration) granted to

the respective appellants were suspended till the time outstanding registration fees payable to SEBI were fully paid.

2. It is not in dispute that in implementation of the impugned orders SEBI attached the amounts lying with the Calcutta Stock Exchange (“CSE”) and on receiving from CSE entire amount of registration fees determined as payable in the impugned orders, the Recovery Officer of SEBI has issued release of attachment orders on 28.07.2015 and 04.08.2015 respectively. Thus, both appeals have become infructuous.

3. However, appellants have contended that the impugned orders passed by SEBI are contrary to law and therefore, in the peculiar facts of present case, we have deemed it fit to dispose of these two appeals on merits.

4. Facts in these two appeals being similar both these appeals are heard together and disposed of by this common decision. By consent Appeal No. 229 of 2017 is taken as a lead matter and both parties agree that the decision in Appeal No. 229 of 2017 would equally be applicable to Appeal No. 230 of 2017. Shri Shanker Lal Agarwala, Director of Appellant in Appeal No. 230 of 2017 appearing on behalf of both appellants submitted that both appeals be decided on the basis of the written submissions tendered by him in both the appeals.

5. Facts relevant for Appeal No. 229 of 2017 are as follows:-

- a) SLA Securities Limited ('Appellant') was a member of the cash segment in CSE. Its Directors were Shri Shanker Lal Agarwala and Ms. Rita Agarwala. Initially registration was granted to its proprietor Shri Shanker Lal Agarwala with effect from November 30, 1992 and later on the said registration was converted to corporate registration with effect from 06.02.1996.
- b) As per regulation 10(1) of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 ("Brokers Regulations") every stock broker is required to pay registration fees to SEBI as specified in Schedule III thereof on or before 1st October for the preceding financial year.
- c) It was observed by SEBI that the appellant had made an initial payment of ₹ 5,000/- on 07.01.1993 towards registration fees and thereafter no payments were made by the appellant. Therefore, summary proceedings were initiated and the designated member of SEBI vide order dated 07.12.2009 suspended the Certificate of Registration of the appellant till the time outstanding registration fees were fully paid. The said order of suspension was passed in respect of 101

members of various stock exchanges including the appellant.

- d) On the appellant filing an appeal, this Tribunal by an order dated 31.03.2010 set aside the order dated 07.12.2009 and remanded the case to SEBI for fresh decision.
- e) Accordingly, by a letter dated 07.04.2010 SEBI called upon the appellant to submit written submissions together with the relevant documents. A copy of the Enquiry Report was also annexed to the said letter. In response, apart from contending that the notice dated 07.04.2010 was illegal, appellant submitted that annexures to the Enquiry Report have not been furnished. Thereupon, by a letter dated 11.01.2011 annexures to the Enquiry Report and fee liability statement as on January 2011 was also furnished by SEBI to the appellant.
- f) By a letter dated 05.02.2011 appellant reiterated that the proceedings initiated by SEBI against the appellant are illegal.
- g) By a notice dated 04.04.2013 CSE informed the trading members of the Exchange that SEBI vide letter dated 03.04.2013 has directed the Exchange not

to continue with the clearing and settlement activities of trades executed on the C-Star trading system through its clearing house beyond 05.04.2013 till CSE establishes a clearing corporation in compliance with the provisions of SECC Regulations, 2012. Accordingly trading in C-Star of the Exchange was suspended with immediate effect from 04.04.2013.

- h) By an application dated 08.06.2013 appellant surrendered the Certificate of Registration and demanded refund of the security deposit lying with CSE inter alia on ground that there was no fee liability in terms of the order passed by this Tribunal on 31.03.2010.
- i) By an E-mail dated 17.07.2013 SEBI informed CSE about the outstanding fees payable by the appellant. By a letter dated 08.08.2013 CSE informed SEBI that according to the appellant no amount was payable to SEBI. Once again by an E-mail dated 01.10.2013 SEBI advised the appellant to pay the outstanding fees. As the registration fees remained unpaid, the application of the appellant seeking to surrender the certificate of registration was not considered.
- j) Thereafter, several opportunities of hearing were given to the appellant. However, at each hearing

appellant contended that the WTM has no jurisdiction to decide the case because, as per the decision of this Tribunal dated 31.03.2010, on remand fresh proceedings could be initiated only by the duly constituted board of SEBI and not by the WTM.

- k) In these circumstances, as the appellant failed to point out any error in the fee liability statement furnished to him, the WTM of SEBI passed impugned order on 07.01.2015 thereby suspending the Certificate of Registration of the appellant till the time the outstanding registration fees are fully paid.
- l) Thereafter, the Recovery Officer drew up the Recovery Certificate on 02.06.2015 for recovery of ₹ 10,43,454 being the outstanding dues payable by the appellant to SEBI as a member of CSE along with interest, costs, charges and expenses.
- m) As the appellant failed to pay the said amount even after receipt of the Recovery Certificate, attachment proceedings were initiated on 26.06.2015 by attaching the money of the appellant held by CSE. Thereupon, in July 2015 CSE remitted the amounts to SEBI. Thus, on recovering entire dues payable by the appellant under the impugned order, the Recovery

Certificate has been marked as satisfied by issuing a release of attachment order on 28.07.2015.

- n) Belatedly thereafter in the year 2017, appellant filed an appeal to challenge the aforesaid decision of SEBI in demanding and recovering the arrears of registration fees. The said appeal was withdrawn with liberty to file fresh appeal. Accordingly, present appeal is filed to challenge the impugned order dated 07.01.2015.
- o) Although the appeal suffers from gross delay, in the peculiar facts of present case, we have condoned the delay with a view to dispose of the appeal on merits.

6. Basic argument of the appellants is that as per the order of this Tribunal dated 31.03.2010 fresh proceedings on remand could only be initiated by the Board and not by the WTM of SEBI. There is no merit in the above argument because, in exercise of powers conferred under Section 19 of SEBI Act, a General Order has been issued by SEBI on 03.05.2010 whereby powers and functions under the SEBI Act, inter alia, relating to passing an order for suspending or cancelling the registration under Section 12(3) of SEBI Act and the regulations made thereunder have been delegated to the WTM of SEBI. Therefore, in the facts of present case, proceedings initiated by the WTM of SEBI for suspending the Registration Certificate granted to the appellants cannot be said to be without jurisdiction. Accordingly, argument of the appellants that the

WTM of SEBI had no jurisdiction to pass the impugned order cannot be accepted.

7. Even on merits, argument of the appellants that the demand and recovery of the registration fees is based on erroneous turnover data furnished by CSE is without any merit because, neither before the WTM nor before this Tribunal appellants could demonstrate as to how the turnover data furnished by CSE to SEBI was erroneous.

8. In para 17 to 19 of the impugned order, the WTM has specifically recorded that the appellants did not submit the turnover data in the prescribed format duly certified by the auditor and certified by CSE within the timeline as specified in SEBI (Interest Liability Regularization) Scheme, 2004 (“2004 Scheme”) and that the appellants wanted CSE to consider the turnover data submitted in the year 1998 pursuant to the notice for creation of Broker Database. As per the 2004 Scheme, the fee liability had to be computed on the basis of the turnover data furnished as per the format at Annexure ‘C’ of SEBI Circular dated 30.09.2002. As the appellants failed to submit turnover data in the prescribed format during the period as specified in 2004 Scheme, the turnover of the appellants furnished by CSE was taken on record and fee liability of the appellants was computed and a copy of the fee liability statement was furnished to the appellant. Having failed to bring on record any material to show as to how the turnover data furnished by CSE was erroneous, appellants are not justified in contending that the turnover data furnished by CSE was erroneous. Consequently the fee

liability determined on the basis of the turnover data furnished by CSE cannot be faulted.

9. Argument that the appellants had furnished the turnover data as per SEBI Circular dated 16.02.1998 read with notice of CSE dated 24.02.1998 is without any merit. Admittedly, appellants have not paid registration fees to SEBI after 1993. After the decision of the Apex Court in case of BSE Brokers Forum v/s SEBI reported in (2001) 30 SCL 31 it was obligatory on part of the appellants to submit the turnover data in terms of the 2004 Scheme, for the relevant period in the prescribed format duly certified by an auditor and the CSE. Having failed to submit turnover data in the prescribed format at any point of time, appellants are not justified in contending that they had furnished requisite turnover data to the CSE.

10. Fact that SEBI in the year 2009 had demanded registration fee of ₹ 83,764/- vide notice dated 31.07.2009 cannot be a ground to find fault with the impugned order, because, the said demand was raised on the basis of the summary proceedings initiated during the period when the appeal filed before the Apex Court challenging the levy of registration fees by SEBI was pending. After the Apex Court decision, in terms of 2004 Scheme appellants could claim waiver of interest payable on the arrears of registration fees by furnishing turnover data for the relevant period in the prescribed format duly certified by an auditor and the CSE. As the appellants failed to furnish turnover data in the prescribed format within the period specified in the 2004 scheme, appellants were not

entitled to waiver of interest. Therefore, the registration fees determined by SEBI on the basis of turnover data furnished by CSE with interest cannot be faulted.

11. Although appellants in their written submissions have quantified their fee liability on the basis of the turnover set out therein, the said quantification cannot be accepted, because, firstly, the turnover set out therein is not supported by any documentary evidence and secondly, the said turnover data is not in the prescribed format duly certified by an auditor and CSE.

12. Reliance placed by the appellants on the decision of this Tribunal in case of Mangalore Stock Exchange v/s SEBI reported in (2006) 67 SCL 27 is misplaced because, that decision dealt with the maintainability of appeal before this Tribunal, whereas, in the present case, no such question arises. Similarly, decision of Delhi High Court in case of Association for Welfare of Delhi Stock Broker and Ors. v/s Union of India (W.P. (c) No. 17349 of 2004 decided on 03.06.2010) is distinguishable on facts. In that case appellants therein wanted SEBI to consider the turnover data furnished by the Association in the prescribed format before the commencement of the regularization period for the purpose of calculating the outstanding registration fees. In the present case, turnover data in the prescribed format has not been furnished by the appellants at any point of time. Hence, the aforesaid decision of the Delhi High Court is also distinguishable on facts.

13. Similarly, reliance placed on a decision of the Apex Court in case of OPG Securities Pvt. Ltd. v/s SEBI (Civil Appeal No. 3548 of 2010 decided on 04.12.2015) is also misplaced. In that case, basic dispute was whether after Schedule III A was inserted to Stock Brokers Regulations became applicable to the case of the appellant therein, SEBI could apply the provisions contained in Schedule III of the Stock Brokers Regulations to the case of the appellant therein. No such dispute arises in the present case. Hence, reliance placed on the decision of the Apex Court in case of OPG Securities Pvt. Ltd. (Supra) is wholly misplaced.

14. In the result, we see no merit in these two appeals. Accordingly both appeals are dismissed with no order as to costs. As the entire fee liability computed under the impugned orders have already been recovered, SEBI is directed to cancel the Registration Certificate surrendered by the appellants so that balance amount, if any, lying with CSE could be refunded by CSE to the appellants expeditiously.

Sd/-
Justice J.P. Devadhar
Presiding Officer

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