

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 14.08.2019

Date of Decision : 09.09.2019

Appeal No. 425 of 2015

Century Finvest Private Limited
75, 2nd Floor, Vijay Block,
Laxmi Nagar, Vikas Marg,
New Delhi – 110 092.

..... 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. P.N. Modi, Senior Advocate with Mr. Neville Lashkari,
Mr. Joby Mathew, Mr. Nikhil Shah and Ms. Mahima Mongia,
Advocates i/b Joby Mathew & Associates for the Appellant.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Abhiraj
Arora and Ms. Misbah Dada, Advocates i/b ELP for the
Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M.T. Joshi, Judicial Member

Per : Dr. C.K.G. Nair, Member

1. Vide order dated September 15, 2015 the Whole Time
Member ('WTM' for short) of Securities and Exchange Board
of India ('SEBI' for short) has ordered the suspension of

registration of the appellant, who is a broker with the National Stock Exchange of India Limited ('NSE' for short), for a period of one year. This appeal has been filed aggrieved by the said order.

2. Facts relevant to the matter are the following:-

- (a) Officials of SEBI and NSE conducted a joint inspection of two branch offices of the appellant in Aligarh, U.P. and registered office in Delhi during January - February 2005. These inspections brought out a number of irregularities in the functioning of the appellant as a stock broker. The inspection report was submitted on June 20, 2005. A copy of the said report was given to the appellant vide SEBI letter dated July 5, 2005. On further reminder dated September 13, 2005 the appellant submitted its reply to the inspection report vide its letter dated November 14, 2005.
- (b) An enquiry process was initiated against the appellant under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 and a show cause notice issued on June 19, 2006. The appellant submitted its

reply to the show cause notice on October 24, 2006. Thereafter, a personal hearing was granted and held on December 9, 2010 which was attended by the appellant.

- (c) Since the appellant is a broker, under Regulation 27 of the SEBI (Intermediaries) Regulations, 2008 ('Intermediaries Regulations' for short) a Designated Authority ('DA' for short) was appointed who submitted the enquiry report on October 21, 2011. This enquiry report, inter alia, found multiple violations of SEBI Act, Rules, Regulations and Circulars and therefore recommended suspension of the appellant's registration for a period of five years. A post-enquiry show cause notice was issued to the appellant on November 22, 2011 along with a copy of the enquiry report. The appellant was also provided an opportunity of personal hearing. The appellant sought multiple extensions for both filing reply as well as for personal hearing which was granted and after this process was completed the impugned order was passed by the WTM

thereby suspending the registration of the appellant for a period of one year. The main findings in the impugned order are that the appellant had committed grave violations, including allowing unregistered entities and clients to operate the trading terminals allotted to it by the NSE; aiding and abetting unregistered entities to function as sub-brokers by issuing contract notes carrying several client codes to such unauthorized persons such as BGSPL; failing to collect daily margins from its clients or collecting margins less than the required amount under the law, reporting of false information regarding such margins collection to the NSE; delay in remitting dividends to its clients; failing to maintain a proper segregation between its own funds and its clients fund etc.

3. We have heard the extensive submissions made by Shri P.N. Modi, learned senior counsel for the appellant on the various charges upheld in the impugned order. It was contended that the allegations relating to appellant's connection with M/s. Bhadra Gupta Securities Pvt. Ltd.

(‘BGSPL’ for short) and its Director Shri Puneet Agarwal is devoid of any merit. Shri Puneet Agarwal was the owner of the premises where the appellant’s branch office was located; the premises had other brokers also in operation; BGSPL was later found to be fit and proper and granted registration as a sub broker by SEBI; Shri Puneet Agarwal was shown as Branch Manager in the VSAT application form given to NSE was for facilitating installation of the VSAT at the roof top of the building since he was the owner of the premises; if any cash deposit was found in the account of BGSPL it had no connection to the appellant and the appellant never took cash from its client as alleged. There was no issue of multiple unique client code as alleged, all trades were carried out in the client code of BGSPL and other codes found in the contract notes were just reference codes to distinguish between various trades conducted by BGSPL and no such client as alleged has been found by SEBI. Similar submissions were also made in respect of the alleged violations relating to using the employees of BGSPL for the trading work of the appellant stating that appellant’s own employees were operating appellant’s terminals the employees of BGSPL might have been in the premises for doing BGSPL’s own work. Salary slips or bank statements could not be produced because the

Aligarh office of the appellant was closed since about 2005. Therefore, it was wrong to allege that there was mismatch between the trade logs in the books of account of the appellant as well as stock exchange data. The diaries / manual registers found in the premises were also not of the appellant.

4. Further, on the allegation of not separating or intermingling appellant's own account with client accounts and thereby violating SEBI circular dated November 18, 1993 the learned senior counsel contended that these payments were paid from appellant's own account for various services rendered by some people (not clients), such as consultancy services, VSAT installation etc. Further, on delay reportedly in crediting dividend to the client accounts is only that of a few days which was needed for operationalising the same and there is no client complaint in this regard. Similarly, the margin shortfall alleged to be made in the cash segment by the appellant is a very small amount of Rs. 62853.75 during the entire period while because of the typographical error in the impugned order it is shown as Rs. 6285375 and sufficient margin was available with the appellant. Since sufficient margin money was available with the appellant's account there is no violation relating to the relevant circulars

regarding 10% upfront margin collection as the broker had the required discretion in this regard since the appellant was not a clearing member. Similarly, the alleged violation relating to margin collection in the F & O segment is too small in respect of only 10 clients on only a few days in the context of the appellant having an annual turnover of more than Rs. 10,000 crore and a client base of 7500. In fact, during the entire period of 13 years the NSE had found no fault by the appellant in such matters.

5. In short, the learned senior counsel for the appellant submitted that there was no major violation by the appellant on any of the grounds stated in the impugned order. At best, there could be some technical violation because of circumstantial factors such as the appellant operating from hired premises, some of them belonging to its clients. However, all the premises were taken on rent and were operated by appellant's own employees. Therefore, for some minor technical violations penalty of one year suspension of registration of the appellant is too harsh. Effectively, one year suspension of a broker's registration is like capital punishment because during such a long period all clients would move away and the business has to be closed. Given

the fact that appellant has 26 sub brokers in 10 cities and 200 employees, such a harsh order will affect not only the appellant's own business but lead to large number of unemployment. Moreover, the fact that during the last 13 years the appellant was not found wanting in its functioning as a broker and never found violating any rules and procedures and the impugned order has been issued after more than 10 years after the alleged violations in 2005 should come to the aid of the appellant in mitigating the punishment.

6. The learned senior counsel for the appellant also relied on two orders of this Tribunal, *Samkit Share and Stock Brokers (P.) Ltd. vs. Securities and Exchange Board of India, MANU/SB/0237/2004* and *Cholamandalam Securities Ltd. vs Securities and Exchange Board of India, MANU/SB/0166/2005* whereby this Tribunal had let off the appellants therein with just a warning in place of suspension of six months and three months respectively ordered by the impugned orders therein.

7. We have heard Shri Pradeep Sancheti, learned senior counsel for the respondent. He submitted that suspension of the license is different from cancellation of the license and while the DA recommended five years suspension the WTM,

after considering all the mitigating factors and circumstances, has reduced it to a one year period. He further contended that the orders relied on by the appellant are distinguishable as the violations committed by the appellant are of much serious nature and therefore cannot be let off with warning. He further submitted that with respect to BGSPL working as a sub broker before giving license to do so the appellant misguided SEBI in stating that he is the landlord while the lease agreement has been signed by the appellant and one Shri Vasant Sharma, who is stated to be the landlord. Similarly, on account codes mismatch details relating to 192 such clients are on record in Volume-I of the appeal memo. Effectively, the appellant was using a system of unauthorized sub broker which is a serious offence.

8. On a detailed hearing of the matter and perusal of all the records we feel that the contentions of the appellant are more in the nature of explanations or justifications rather than proof of no violations. Even if it is assumed that the branch offices of the appellant were operating in hired premises and some of the premises were taken on lease from clients and some of these premises had other brokers or entities also functioning do not absolve the appellant from serious deficiencies in

discharging the duties of a broker with due diligence and care. Safekeeping all the documents and material relating to a broker's functions is a basic responsibility. Conflicting replies relating to the role of BGSPL and Shri Puneet Agarwal as well as relating to other similar clients owned premises based branch operations therefore do not absolve the appellant fully from the violations upheld in the impugned order. It is held in the impugned order that the appellant violated various provisions of law, regulations and circulars issued thereunder. These include SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992, PFUTP Regulations, Securities Contract (Regulations) Act, 1956 and the Securities Contract (Regulations) Rules, 1957 and various circulars issued by SEBI. Some of the violations though may be technical and procedural in nature.

9. We also do not agree with the contentions of the appellant that client codes given in the contract notes are just reference codes in the absence of SEBI identifying those clients. When BGSPL was only one client and its unique client code was used there was no requirement for using other reference codes. Therefore, we do not find any fault in the finding in the impugned order that the appellant was using the

services of unregistered sub brokers or some of its clients were actually discharging functions of sub brokers without SEBI registration. Whether BGSPL or some other such entities got the registration for sub broker-ship later is not germane to the matter because what is relevant is whether they were certified sub brokers at the relevant time. Therefore, given these major violations we do not find any fault in penalizing the appellant with an order of suspension.

10. However, given the undue delay in passing the impugned order during which substantial positive changes have happened in broker operations, procedures and technology on account of continuous changes in regulations, regulatory practices and market dynamics many of the violations of the past era would look magnified now. The instant violations in 2005 therefore would look very serious when compared with the practices in 2015 as a decade of development in the securities / financial markets coupled with drastic innovations in technology would make earlier practices very crude. Therefore, the time frame is very important while judging gravity of offences across time and in doing justice. We also agree with the submissions of the appellant that a long period of suspension of a market intermediary like a broker would make them completely

defunct which, in the given context would make the punishment disproportionate. At the same time we do not agree with the submission that a warning would suffice since utilizing unauthorized sub-broker type dealing by a broker is a serious offence irrespective of the vintage of the offence. Balancing all these factors and circumstances into account we are of the view that a complete suspension of the appellant for a period of one year may not do full justice. Therefore, we modify the order of one year suspension of the appellant to that of one year restriction from taking any fresh clients. Therefore, the appellant shall not admit or take business from any new clients for a period of one year from the date of this order.

11. Appeal is accordingly partially allowed with no orders on costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M.T. Joshi
Judicial Member

09.09.2019

Prepared and compared by:msb