

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 27 of 2008

Date of decision: 2.5.2008

SMC Global Securities Limited

..... Appellant

Versus

Securities and Exchange Board of India

..... Respondent

Mr. P. N. Modi with Mr. R. R. Bhansal Advocates for the Appellant.

Mr. L. S. Shetty with Mr. A. S. Khan and Haihangrang E. H. Newme Advocates for the Respondent.

Coram : Arun Bhargava, Member
Utpal Bhattacharya, Member

Per : Arun Bhargava, Member

Whether the appellant broker can be faulted under clause A (2) of the Code of Conduct for Stock Brokers (for short, the brokers code), prescribed under Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992, for suppression of information by its clients in the Clients Registration Form about their dealings with other brokers, is the short issue in this appeal. The relevant facts in brief are mentioned hereunder.

2. The appellant company is a broker of the National Stock Exchange of India since 1995. During investigation into the abnormal trading activities in the scrip of DSQ Biotech Limited between December 1999 and January 2001, the Securities and Exchange Board of India (for short, the Board) found that the appellant's clients Harish C Biyani, Arun Polymers Pvt. Ltd. and Coolex Commodities Pvt. Ltd. had dealt through the appellant as well as other brokers in the said scrip. The Board observed that the appellant was neither aware of such dealings nor did it 'pose any query on this aspect to the clients'. The enquiry officer and the whole time member of the Board were of the opinion that the appellant failed to exercise due skill, care and diligence in the conduct of its

business in terms of clause A (2) of the brokers code. The Board was also of the view that it was mandatory for brokers to collect details of their clients registration with any other broker-member in the Client Registration Form. The whole time member also found that the appellant violated the guidelines issued by the Board vide its letter dated 18 November, 1993 listing the “Precautions to be exercised by member-brokers of recognised stock exchanges while selling shares on behalf of clients, entertaining new clients, etc.” After considering the explanation given by the appellant, the whole time member levied a penalty of censure in the impugned order.

3. The appellant has disputed the charges leveled against it in the impugned order. It was pointed out that the charges made in the show cause notice were vague. It was argued that no charge of failure to obtain the information about the registration of clients with other brokers could have been made by the Board because it failed to provide to the appellant the basic details like the names of such brokers, the dates of its clients joining them etc; the appellant could not be faulted if the clients got registered with the other brokers after they had registered themselves with the appellant. It was stated that the guidelines requiring a client to fill in the details of other brokers in the Client Registration Form were not mandatory and that the order of this Tribunal in Appeal no. 117 of 2003 dated 10.10.2007. in the case of Harinarayan G. Bajaj vs. SEBI squarely covers this case and, therefore, the impugned order should be set aside.

The counsel for the Board supported the impugned order and stated that the case of the appellant is not covered by the aforesaid order of this Tribunal dated 10.10.2007.

4. We have considered the submissions made by both the parties. This Tribunal was called upon to examine a similar issue in the aforesaid case of Harinarayan Bajaj (supra). After examining the guidelines issued by the Board in 1993, this Tribunal came to the following conclusion in para 8 of its order:

“8.....The learned senior counsel for the appellants referred to the Board circular no.SMD I / 23341 dated 18.11.1993 listing the precautions to be exercised by member-brokers of recognized stock exchanges while trading on behalf of their clients and entertaining new clients. The Board in its wisdom considered it necessary to list these precautions so that they were uniformly followed by the member-brokers as this would protect the interests of member-brokers, instill transparency and discipline in the deal

between clients and brokers and would contribute to the healthy working of the secondary capital market. The precautions to be exercised by the member-brokers have been classified into two categories- (a) mandatory; and (b) precautions by way of a guideline. The Board wants member-brokers of the exchanges to compulsorily follow the precautions suggested in part (a) of their operating system, whereas those suggested in part (b) may be treated as guidelines to be followed as and when circumstances warrant.

We have gone through the mandatory precautions laid down by the board and find that there is no requirement of any broker to know from his client the names of other brokers through whom he may be dealing with.....In view of the aforesaid circular issued by the Board, we have no hesitation in holding that it was not a mandatory requirement for a trader to inform his broker about other brokers through whom he was dealing in the scrip though the form contains a clause requiring a trader to furnish such information.....”(emphasis supplied)

5. The above order of this Tribunal, clearly settles the issue in favour of the appellant. Further, the appellant could not force its clients to compulsorily furnish the said details in the Clients Registration Form when the Board in its wisdom had made it optional. The appellant broker on its own could not make filling up of the relevant columns in the Client Registration Form compulsory when the guidelines do not so prescribe. The appellant cannot be punished for its failure to do due diligence in respect of matters which were not mandatory and left by the Board at the discretion of the clients.

6. In the result, the appeal is allowed. The order of the Board is set aside. The parties will bear their own costs.

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

2.05.2008
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