

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 11 of 2008

Date of decision : 30.4.2008

1. M/s. V & U Securities Pvt. Ltd. Appellants
2. Shri Kirtikumar Kantilal Shah
The Chairman & Managing Director

Versus

Securities and Exchange Board of India Respondent

Mrs. D. N. Raval Advocate for Appellants.
Dr. Poornima Advani Advocate with Mr. Haihangrang E.H. Newme Advocate for the Respondent.

Coram : Justice N.K. Sodhi, Presiding Officer
Arun Bhargava, Member
Utpal Bhattacharya, Member

Per : Justice N.K. Sodhi, Presiding Officer (Oral)

Whether the appellant is entitled to the benefit of fee continuity in terms of paragraph I(4) in schedule III to the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations 1992 (hereinafter called the regulations) is the short question that arises for our consideration in this appeal filed under section 15T of the Securities and Exchange Board of India Act, 1992 (for short the Act). Paragraph I(4) along with the Explanation under which relief is sought reads as under:

“Where a corporate entity has been formed by converting the individual or partnership membership card of the exchange, such corporate entity shall be exempted from payment of fee for the period for which the erstwhile individual or partnership member, as the case may be, has already paid the fees subject to the condition that the erstwhile individual or partner shall be the whole-time director of the corporate member so converted and such director will continue to hold a minimum of 40 per cent shares of the paid-up equity capital of the corporate entity for a period of at least three years from the date of such conversion.

[Explanation : It is clarified that the conversion of individual or partnership membership card of the exchange into corporate entity shall be deemed to be in continuation of the old entity and no fee shall be collected again from the converted corporate entity for the period for which the erstwhile entity has paid the fee as per the regulations.]

A plain reading of the aforesaid provision makes it clear that where a corporate entity has been formed by converting the individual membership card of an exchange, then the corporate entity is exempt from payment of fee for the period for which the erstwhile individual has already paid the fees subject to the condition that the erstwhile individual shall be a whole time director of the corporate entity so converted and holds a minimum of 40% shares of the paid up equity capital of the corporate entity for a period of at least 3 years from the date of conversion. It is not in dispute that Kirtikumar Kantilal Shah was the individual member of the Ahmedabad Stock Exchange and a registered stock broker with the Securities and Exchange Board of India (for short the Board). He corporatized himself by forming a company under the name and style of V & U Securities Pvt. Ltd – the appellant herein. The board of directors of this company in their meeting held on 30.5.1995 appointed Kirtikumar Kantilal Shah as the chairman and managing director of the company. In the same meeting Nirav Shah was appointed as the acting whole time director of the company and he was required to look after of the corporate and other affairs of the company. There is no dispute between the parties that Kirtikumar Kantilal Shah held more than 51% shares in the company and he held this percentage of shares for a period of more than 3 years from the date of corporatization. In these circumstances, the appellant claimed the benefit of the fee which Kirtikumar Kantilal Shah had paid as an individual member of the aforesaid stock exchange. The claim was rejected and a fee liability statement was issued by the Board calling upon the appellant to pay a sum of Rs.10,52,467/- as the registration fee under the regulations. Feeling aggrieved by the fee liability statement, the appellant filed Appeal no. 339 of 2004 before this Tribunal which was allowed on May 4, 2006 along with 10 other appeals on the ground that the appellants therein had not been heard. The cases were remanded back to the Board for a fresh decision after affording

an opportunity of hearing. On remand the deputy general manager of the Board was authorized to deal with the claim made by the appellant and by order dated 29.3.2007 she rejected the claim of the appellant once again. It is against this order that the present appeal has been filed.

We have heard the learned counsel for the parties who have taken us through the impugned order and the record. The claim of the appellant has been rejected by the deputy general manager primarily on the ground that Kirtikumar Kantilal Shah was only a director of the company and he was neither its 'managing director' nor its 'whole time director'. In order to establish the claim, the appellant had placed before the officer a true copy of the board resolution dated May 30, 1995 by which Kirtikumar Kantilal Shah had been appointed the chairman cum managing director of the company. The copy produced was certified to be true by Kirtikumar Kantilal Shah as the director and authorized signatory of the company. This true copy was not accepted by the Board on the ground that it had not been certified by an independent professional as was advised to the appellant. The deputy general manager then observes in the impugned order that even if Kirtikumar Kantilal Shah was the chairman cum managing director of the company it could not be inferred that he was a 'whole time director'. The annual return dated September 30, 2000 filed by the company was also taken into account in which Kirtikumar Kantilal Shah was shown as the director of the company and not as its 'managing director' or 'whole time director'. In view of this finding the claim was rejected.

We do not think that the deputy general manager was justified in rejecting the claim for the aforesaid reasons. A true copy of the board resolution dated May 30, 1995 had been produced which clearly shows that Kirtikumar Kantilal shah had been appointed the managing director cum chairman of the company. Merely because the true copy produced had not been signed by an independent professional was no ground to reject the same. Be that as it may, if the deputy general manager was not satisfied with the true copy she should have called upon the appellant to produce the original proceedings book in which the resolution of the board of directors had been

recorded. Had she done that, the original proceedings would have been produced before her which are per se evidence in terms of section 194 of the Companies Act. When this appeal came up for hearing before us on 15.4.2008 we directed the appellant to produce the original proceedings before us and those have been placed before us today. We have perused the same and find that Kirtikumar Kantilal Shah was appointed the managing director of the company on May 30, 1995. The original proceedings in our view clinch the issue. It is thus clear that the erstwhile individual member of the Ahmedabad Stock Exchange became the managing director of the company when it was formed in May 1995. What is sought to be argued before us on behalf of the Board is that the managing director of the company need not be its whole time director and that there is a clear distinction between the two. Reference was made to the resolution of May 30, 1995 to contend that one Nirvan Shah had been appointed as the acting whole time director of the company and therefore it could reasonably be inferred that Kirtikumar Kantilal Shah was not the whole time director. We cannot accept this contention. A managing director of a company cannot but be a whole time director. The word managing director has been defined in clause (26) of section 2 of the Companies Act, 1956 to mean a director who by virtue of a resolution passed by the board of directors is entrusted with substantial powers of management which would not otherwise be exercisable by him and includes a director occupying the position of managing director by whatever name called. The mere fact that Kirtikumar Kantilal Shah was appointed the managing director is enough to establish the fact that he was entrusted with powers of management and in addition Nirvan Shah had also been appointed as the acting whole time director to look after the corporate and other affairs of the company. We are therefore satisfied that the erstwhile individual stock broker who was a member of the Ahmedabad Stock Exchange on corporatization became its whole time director when he was appointed as the managing director and since he continued to hold more than 51% shares of the paid up equity capital of the company for a period of more than 3 years, the requirements of paragraph 4 are satisfied and that the claim has been rejected for reasons which are untenable.

In the result, the question posed in the earlier part of the order is answered in the affirmative and it is held that the appellant is entitled to the benefit of fee continuity in terms of paragraph I(4) in schedule III to the regulations. Accordingly the appeal is allowed and the impugned order set aside with no order as to costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

30.4.2008
ddg/-