

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

**Appeal No. 165 of 2007
Alongwith
Misc. Application No. 17 of 2008**

Date of decision : 3.4.2008

1. Vyas Securities Pvt. Ltd.
2. Pradyuman Joitaram Vyas

... Appellants

Versus

Securities and Exchange Board of India

...Respondent

Mr. Sanjay Mehta Advocate for the Appellants.

Dr. Poornima Advani Advocate with Mr. Haihangrang E.H. Newme and Mr. Shodan
Advocates for the Respondent.

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

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

This case is yet another instance of how arbitrary the Securities and Exchange Board of India could be when it comes to dealing with the market intermediaries. We say so because the facts of the case speak for themselves. Pradyuman Joitaram Vyas (Pradyuman) was a stock broker and a member of the Ahmedabad Stock Exchange. He was registered as a broker with the Securities and Exchange Board of India (for short the Board) on 2.12.1992. The policy of the Board has been to encourage individual brokers to corporatize themselves so that there could be some transparency in their working. Pradyuman after joining some others with him formed a corporate entity by the name of Vyas Securities Pvt. Ltd. (for short the company). The company was incorporated on 31.7.1998 and thereafter the individual membership card of Pradyuman was transferred in its name whereupon it applied to the Board for registration as a stock broker. As is clear from the certificate of registration, the company was registered by

the Board as a stock broker on 23.12.1998 and is carrying on its business as a stock broker with effect from that date. With a view to give incentive to those brokers who corporatize themselves, the Board introduced paragraph 4 in schedule III to the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter called the Regulations) which grants exemption to the corporate entity from payment of registration fee for the period for which erstwhile individual member had already paid the fee subject to the conditions enumerated in this paragraph. It is not in dispute that one of the conditions on which a corporate entity could be granted the benefit of the fee paid by the erstwhile individual is that the said individual should be a whole time director of the newly formed corporate entity and that he should continue to hold a minimum of 40% shares of the paid-up equity capital of the corporate body for a period of at least 3 years from the date of corporatization. After the company was granted registration as a stock broker with effect from 23.12.1998, it applied to the Board for granting exemption from payment of registration fee for the period for which Pradyuman had already paid such fee stating that Pradyuman being the chairman-cum-managing director of the company held more than 40% shares of its paid-up equity capital and that he continued to hold that position and the percentage of shares for more than 3 years from the date of corporatization. The claim was rejected and a fee liability statement issued by the Board calling upon the company to pay the amount specified therein treating it as a newly registered stock broker with effect from the date of registration. The fee liability statement was challenged before this Tribunal in Appeal no. 202 of 2004 which came up for hearing alongwith several other appeals on 4.5.2006 and the same was allowed on the ground that the liability had been fixed without affording an opportunity of hearing to the company. The case was remanded to the Board for a fresh decision in accordance with law. It was then that the deputy general manager of the Board by her order dated 29.3.2007 rejected the claim of the company holding that it was not entitled to claim the benefit of paragraph 4 in schedule III to the Regulations on the ground that Pradyuman was not a whole time director of the company. It is against this order that the present appeal has been filed.

Was Pradyuman a whole time director of the company is the short question that arises for our consideration in this appeal. The fact that he held office as a director of the company for a period of more than 3 years from the date of its corporatization is not in dispute. In order to establish its claim for exemption under paragraph 4 in schedule III to the Regulations, the company placed before the Board the original proceedings of the meeting of its board of directors held on 31.7.1998 in which Pradyuman was appointed as the managing director of the company and by another resolution passed in the same meeting he was appointed its chairman as well. In addition, a copy of the relevant para of the proceedings of the meeting held on 31.7.1998 certified to be true by the company was also produced. These documents were produced thought the Ahmedabad Stock Exchange as per the practice followed by the Board. There was a slight discrepancy in the original proceedings and the certified copy of the proceedings. In the original proceedings it has been recorded that the meeting was held at 11 a.m. whereas in the copy certified to be true, the meeting is shown to have been held at 1800 hrs. The deputy general manager who conducted the proceedings on behalf of the Board and before whom these documents had been produced, noticed the discrepancy and came to the conclusion that Pradyuman was not a whole time director of the company and accordingly rejected the claim by passing the impugned order. She did not rely upon either of the two proceedings. She doubted the correctness of the proceedings on the following two grounds as noticed by her in the impugned order:-

“..... The said minutes have been signed only by Shri Pradyuman J.Vyas in the capacity of Chairman on August 01, 1998, although other directors – Shri Ajay P. Vyas and Shri Hiren I. Shah were also present at the meeting.

3.14 From the above, it is seen that the Minutes in original indicates that the resolution was passed in the meeting of Board of Directors held at 11.00 a.m. on July 31, 1998, whereas, the true copy of the Board Resolution indicates that the same resolution was passed in the meeting of Board of Directors held at 1800 hours. Both documents have been certified by the same Company Secretary. It is not understood as to why on the same day, two meetings were conducted – one at 11.00 a.m. and another at 1800 hours for passing the same

resolution twice. Further, the first annual report of Vyas for the year 1998-99 provided by ASE, indicates that Shri Pradyuman J. Vyas was the Chairman of Vyas. But, the report does not indicate that he was the Managing Director.”

In addition to the aforesaid two grounds she also doubted the correctness of the proceedings of the meeting on the ground that the original proceedings produced before her did not “appear to be a decade old document”. In view of these findings the claim has been rejected.

We have heard the learned counsel for the parties. The only discrepancy in the original proceedings of the meeting of the board of directors and the certified copy of those proceedings is that the certified copy records the timing of the meeting as 1800 hrs. whereas the original proceedings record that the meeting was held at 11 a.m. In view of this discrepancy, the Board should have followed the original proceedings as those are evidence of the proceedings in terms of the provisions of section 194 of the Companies Act, 1956 and should have concluded the matter. Instead of doing that, the deputy general manager drew an absurd conclusion from the discrepancy by holding that two meetings were held on 31.7.1998 when, admittedly, the original proceedings book records the holding of one meeting at 11 a.m. As already observed the matter should have ended here but it did not and the deputy general manager further goes on to doubt the correctness of the proceedings on the ground that the original proceedings did not appear to her to be one decade old. She is not an expert on determining the age of the documents. Now when we look at the proceedings as recorded, it is not in dispute that Pradyuman was appointed the managing director and chairman of the company by two separate resolutions in the board meeting held on 31.7.1998. As a managing director he cannot but be a whole time director of the company. Here again the deputy general manager went wrong in not accepting the proceedings as recorded. The term managing director has been defined in section 2(26) of the Companies Act and it means a director who by virtue of an agreement with the company or of a resolution passed by the company by its board of directors or by virtue of its memorandum of Articles of

Association is entrusted with substantial powers of management which would not otherwise be exercisable by him. There was no other claim set up by any other person to the managing directorship of the company and we see no reason for the deputy general manager to have doubted that fact. In view of this, she should have accepted the claim of the company.

There is yet another reason which will go to show how arbitrary the action of the Board is. Admittedly, the company was registered by the Board as a stock broker on 23.12.1998 and the certificate of registration granted to it is on the record. It was Pradyuman who applied to the Board for the registration of the company as a stock broker and signed the application in his capacity as chairman cum managing director of the company. A copy of this application was furnished to the deputy general manager at the time of personal hearing. Having granted registration to the company on that basis, we fail to understand how the deputy general manager could hold otherwise. For this reason as well, we cannot uphold the impugned order. It is interesting to note that in identical circumstances the Board itself in the case of PRS Shares and Finance Pvt. Ltd. granted the benefit of fee continuity when the erstwhile individual member became the managing director of the corporate entity.

For the reasons recorded above and while expressing our displeasure in regard to the manner in which the deputy general manager has conducted the proceedings, we allow the appeal and set aside the impugned order. The Appellants will have their costs which are assessed at Rs.50,000/-.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

3.4.2008
ddg/-