

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 39 of 2008

Date of decision: 25.9.2008

Dilip S. Pendse Appellant

Versus

Securities and Exchange Board of India Respondent

Mr. V. M. Singh Advocate for the Appellant.

Mr. Kumar Desai Advocate with Ms. Daya Gupta and Ms. Chloris John 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 order will dispose of three Appeals no.39 to 41 of 2008 in which common questions of law and fact arise. These appeals are directed against the common order dated 11.1.2008 passed by the wholetime member of the Securities and Exchange Board of India (for short the Board) by which the appellants and one Dr. Anjali Beke have been restrained from accessing the securities market and also prohibited from buying, selling, dealing or associating with the securities market in any manner whatsoever for a period of five years.

2. We have heard the learned counsel for the parties. Since we are remanding these cases to the Board for passing a fresh order, we need not state the facts in detail. Suffice it to say that the transactions in securities executed by the appellants which gave rise to proceedings under section 11B of the Securities and Exchange Board of India Act, 1992 culminating in the passing of the impugned order were also the subject matter of Appeals no.1 to 3 of 2007 and for the same transactions the Board initiated proceedings under section 11B of the Act and also under chapter VIA thereof. When Appeals no.1 to 3 of 2007 came up for hearing before us on 9.9.2008, we found that the adjudicating officer

had not properly dealt with the defences taken by the appellants and after setting aside his order, we remanded the cases for a fresh decision. The case of the appellants is that the transactions between them and the broker were on a principal to principal basis and that the trades which were executed in September 2000 had been reported to the Bombay Stock Exchange. The primary issue to be decided in these cases is whether the trades were executed in September 2000 as contended by the appellants or in March 2001 as alleged in the show cause notice. We find from the impugned order that the defences of the appellants have not been dealt with therein. The learned counsel for the respondent is right when he contends that the appellants did not appear despite ample opportunity and in the absence of a reply from them, the Board had no option but to proceed exparte. This may be so, but in view of the fact that the pleas of the appellant are being examined afresh by the adjudicating officer on remand, it would be in the interest of justice if the wholetime member also examines those pleas afresh, the transactions being the same. In this view of the matter, we set aside the impugned order qua the appellants only and remand the case back to the Board. Since the matter is being sent back, the Board may serve a fresh notice on the appellants or proceed on the basis of the notices already issued and allow the appellants to file their response and thereafter pass a fresh order in accordance with law. The matter pertains to the year 2000-2001 and, therefore, we shall appreciate if the cases are disposed of expeditiously preferably before the end of March 2009. Mr. V.M. Singh Advocate undertakes on behalf of the appellant that he shall not access the securities market or buy, sell or deal in securities in any manner whatsoever till such time the Board passes the final order. In view of this undertaking, it is not necessary for us to issue any direction in this regard. No costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

25.9.2008
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