

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 23 of 2011

Date of Decision: 16.6.2011

Religare Securities Limited
Plot no.A3, A4, A5, GYS Global Sector 125,
NOIDA (NCR) – 201301.

..... Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400051.

..... Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Paras Parekh and Ms. Delna Aga,
Advocates for the Appellant.

Mr. Kumar Desai, Advocate with Ms. Harshada Nagare, Advocate for the Respondent.

CORAM : Justice N. K. Sodhi, Presiding Officer
P. K. Malhotra, Member
S. S. N. Moorthy, Member

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

The appellant before us is a company registered under the provisions of the Companies Act, 1956 and is registered with the Securities and Exchange Board of India (for short the Board) as a stock broker and also as a participant with the two depositories. It claims that it is offering equity broking services to more than half a million clients using both offline and online platforms and also offers depository participant services. The Board carried out inspection of the records of the appellant from September 24, 2007 to October 4, 2007 both in relation to its stock broking activities and depository participant activities for the financial years 2005-06 to 2007-08. During the course of inspection, the inspecting team found a large number of deficiencies/ irregularities committed by the appellant in the maintenance of its records and it submitted to the Board two separate reports, one relating to stock broking activities and the other in relation to depository participant operations. It is pertinent to mention here that the inspecting team did not point out to the appellant the deficiencies/irregularities at the time

of inspection and subsequently copies of the two reports submitted by the inspecting team were sent to the appellant for its comments. Inspecting team found that the appellant had committed about 60 irregularities. The appellant furnished its explanation on each count and on a consideration thereof, the Board decided to initiate adjudication proceedings against it for violating the provisions of the Securities and Exchange Board of India Act, 1992, the Depositories Act, 1996 and the Regulations framed thereunder. The adjudicating officer issued a show cause notice dated November 30, 2009 alleging that there were deficiencies/irregularities on six counts, as pointed out by the inspecting team, in regard to the broking activities of the appellant and another twelve as a depository participant. The appellant furnished its detailed reply to the show cause notice and on a consideration of the entire material on record, the adjudicating officer concluded that the appellant had breached the procedures in regard to the maintenance of records in two matters pertaining to its broking activities and another seven in regard to its depository participant operations. The appellant was exonerated in regard to the other irregularities/deficiencies alleged in the show cause notice. By order dated November 10, 2010, the adjudicating officer imposed a monetary penalty of ` 3 lacs on the appellant on account of the violations committed by the latter. It is against this order that the present appeal has been filed.

2. We have heard the learned counsel for the parties who have taken us through the record and, in the circumstances of this case, we are inclined to exonerate the appellant by giving it the benefit of doubt. We are clearly of the view that the inspection carried out by the inspecting team was faulty which compels us to give the benefit of doubt to the appellant. One of the charges that has been established against the appellant pertains to the discrepancies in the client registration forms and agreements. It is alleged that in as many as fifteen cases, the client registration forms did not have the details of the introducer of the client to which the appellant replied after receipt of the inspection report that one of the clients was a direct client and he was interviewed by the Group CFO (Chief Financial Officer) before opening the account. In the case of other fourteen clients, the stand of the appellant is that they were introduced by the employees of the company and in support thereof undated letters of the employees were produced. The

reply of the appellant has not been accepted by the adjudicating officer only on the ground that these were not produced before the inspecting team. As already pointed out, the inspecting team did not ask for any explanation from the management of the company at the time of inspection and it (inspecting team) only submitted its two reports pointing out the deficiencies/irregularities. It is true that the letters of the employees are undated and it is possible that these might have been prepared subsequently as an after thought after the receipt of the inspection report and it is equally possible that these were there on record with the management. Only if the inspecting team at the time of inspection had made a query in this regard from the management, the reply would have then come and that would have made it clear whether the letters were then in existence or not. We would not have had to face the situation we are in. Again, if the letters were to be manufactured for the purpose of the defence, they would not have been left undated. In these circumstances, we cannot but give the benefit of doubt to the appellant.

3. As regards the stamping of agreements, it is alleged that in the case of three clients, the member client agreement was not stamped. The reply of the appellant is that in one of those cases the agreement had been duly franked by the stamp duty officer. This explanation has been accepted by the adjudicating officer. In regard to the other two cases, the appellant pointed out that there were stamp papers duly crossed/cancelled for the purpose of the agreements which were produced along with its reply. The adjudicating officer did not accept this plea of the appellant on the ground that the date of the agreement had not been mentioned on the stamp paper. From this he concluded that it could not be conclusively said that the stamp paper had been used only for the purpose of the agreement and found the appellant guilty of not exercising due care and diligence as a stock broker. Similarly, there were some other instances where the stamp papers produced by the appellant had been crossed but those did not bear the dates of the agreements thereon and the adjudicating officer did not accept the plea that they were duly stamped. We are unable to accept the reasoning of the adjudicating officer. Once the name of the parties is written on the stamp papers and the same have been crossed, it is enough to establish that the papers have been duly cancelled for the purposes of the agreement and are not capable of being used for any other purpose. It is enough evidence

of the fact that they have been validly used for the agreement. In any case, the purpose of attaching a stamp paper with an agreement is to ensure that the requisite duty has been paid to the state and the Board cannot find fault in this regard. This is not a case where the stamp papers have been purchased subsequent to the agreement. We cannot, therefore, uphold the finding of the adjudicating officer. There is yet another ground on which the appellant has been found guilty. The adjudicating officer has held that it failed to maintain records and details pertaining to the investors' complaint in a proper manner and thereby violated the code of conduct prescribed for the stock brokers. The adjudicating officer has found that the appellant as a stock broker failed to exercise due care and diligence in this regard. The appellant had pleaded that there is no prescribed manner in which such records are to be maintained and that it was maintaining a record in MS-Excel files and that the correspondence with the clients was maintained in their respective files. In the absence of a finding that the appellant was not maintaining record in this regard in MS-Excel files as pleaded, we cannot agree with the adjudicating officer that there was any deficiency on the part of the appellant in maintaining records of investors' complaints.

4. We have carefully perused the impugned order and find that all the deficiencies found by the adjudicating officer could have been adequately responded to by the appellant if queries had been made by the inspecting team at the time of inspection. If this procedure/practice had been followed, there would have been no scope for an allegation that the supporting documents were subsequently prepared. It is not necessary for us to deal with each and every allegation as, in most of the cases, the adjudicating officer has refused to accept the stand of the appellant on the ground that the supporting documents were not produced before the inspecting team. As already observed, the inspecting team did not make any queries nor did it ask for the supporting documents at the time of inspection.

5. It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose sight of the fact that every minor discrepancy/irregularity found during the course of inspection is not culpable and

the object of the inspection could well be achieved by pointing out the irregularities/deficiencies to the intermediary at the time of inspection and making it compliant. This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent.

For the reasons recorded above, the appeal is allowed and the impugned order set aside with no order as to costs.

Sd/-
Justice N.K.Sodhi
Presiding Officer

Sd/-
P.K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

16.6.2011

Prepared and compared by
RHN