

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 215 of 2011

Date of decision: 16.07.2012

KCA Stock Broking Pvt. Ltd.
29B, Rabindra Sarani,
4th Floor, Room No. 411,
Kolkata – 700 073.

...Appellant

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-1A, G-Block,
Bandra Kurla Complex,
Mumbai – 400 051.

2. Calcutta Stock Exchange Ltd.
7, Lyons Range,
Kolkata – 700 001.

... Respondents

Mr. Bharat Merchant, Advocate with Mr. Neerav Merchant, Advocate for the Appellant.

Dr. Poornima Advani, Advocate with Mr. Ajay Khair, Ms. Rachita Romani,
Advocates for Respondents.

Coram : P. K. Malhotra, Member & Officiating Presiding Officer
S.S.N. Moorthy, Member

Per : P. K. Malhotra

The appellant before us is a company incorporated under the provisions of the Companies Act, 1956. It is a member broker of the Calcutta Stock Exchange Ltd. and is also registered as a stock-broker with the Securities and Exchange Board of India (for short the Board). Initially, one Mr. K. C. Agarwal was a member of the Calcutta Stock Exchange Ltd. in his individual capacity and subsequently under the scheme of corporatization of the Board, membership of Mr. K. C. Agarwal was corporatized as

KCA Stock Broking Pvt. Ltd. Accordingly, the Board granted registration to the appellant.

2. On corporatization of the membership of the stock exchange, certain benefits of continuity of fee paid by the individual members were extended to the corporate entity on fulfillment of certain conditions. The payment of the fee and consequences of failure to pay fee by the stock-broker is governed by regulation 10 read with Schedule III and Schedule IIIA of the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992. The relevant provisions of the Regulations are extracted below for ease of reference:

“ Payment of fees and the consequences of failure to pay fees.

10. (1) Every applicant eligible for grant of a certificate shall pay such fees and in such manner as specified in Schedule III or Schedule IIIA, as the case may be:

Provided that the Board may on sufficient cause being shown permit the stock-broker to pay such fees at any time before the expiry of six months from the date on which such fees become due.

(2) Where a stock-broker fails to pay the fees as provided in regulation 10, the Board may suspend the registration certificate, whereupon the stock-broker shall cease to buy, sell or deal in securities as a stock-broker.”

SCHEDULE III

I. Fees to be paid by the Stock Broker.

1 to 3

4. 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.”

The Board also came out with a scheme on July 15, 2004 known as Securities and Exchange Board of India (Interest Liability Regularisation) Scheme, 2004 whereby certain benefits regarding payment of interest on the principal amount of fee were extended to the brokers who had not paid their fee earlier in accordance with the laid down norms. The said scheme provides for payment of only a portion of the interest due on the principal amount in case the same is paid within the stipulated period. The object of the scheme was to give the brokers an opportunity to pay interest at a reduced rate as per the scheme. The scheme was to come to an end on November 15, 2004.

3. The appellant before us claimed exemption from the Board for payment of fee for the period for which Shri K. C. Agarwal had paid fee to the Board. Since this exemption was denied, the appellant along with many other entities, preferred appeals before this Tribunal. The Tribunal, by its interim order dated October 12, 2004, in Appeal no. 164 of 2004, observed that in view of the large number of pending appeals, it would not be possible for the Tribunal to dispose of these appeals before the date when the scheme for payment of interest at concessional rate comes to an end. Therefore, by way of an interim order and without prejudice to the contentions of the respondent, the Tribunal directed that it would be appropriate that the appellants be allowed to submit their applications under the scheme with regard to principal and interest outstanding as if the appellants were entitled to the benefit of the scheme. If ultimately the appeals fail, the appellant will be liable to pay the balance principal and the balance interest under the scheme. It was also obligated that the appellants will give an undertaking in writing to the Board that in the event the appeals fail, they will pay the balance of principal and balance of interest under the scheme. The Tribunal, accordingly, directed the appellants to make an application as if the benefit of fee continuity is available to them and pay the principal and interest under the scheme and also give an undertaking to the Board that the appellants will make good the balance amount of principal and interest thereon under the provisions of the scheme. Similar order was passed by this Tribunal on November 3, 2004 in the Appeal filed by the appellant and some other entities (Appeals no. 286 to 303 and 307 of 2004). In

compliance with the aforesaid order, the appellant gave an undertaking and deposited the amount of fee and interest under the scheme vide letter dated November 9, 2004.

4. The appellant was ultimately denied the benefit of fee continuity vide Board's order dated March 29, 2007. As no appeal was preferred against the said order, it has acquired finality. The appellant accordingly paid the balance amount of fee of Rs.6,41,280/- in accordance with the undertaking given under the scheme read with the Tribunal's interim order dated October 12, 2004. However, the Calcutta Stock Exchange Ltd., by its letter dated September 30, 2010, informed the appellant that the Board, vide its email dated September 29, 2010, has reported an outstanding fee amount of Rs.5,84,545 from the appellant. The said demand is towards payment of interest on the outstanding fee which the appellant paid on March 29, 2007. The appellant disputes the liability for payment of this amount on the ground that he had availed of the benefit of the scheme of 2004 and in terms of the Tribunal's order dated October 12, 2004, he is not liable to pay interest as claimed by the Board.

5. The short question that arises for our consideration is whether the appellant is entitled to benefit of Interest Liability Regularisation Scheme of 2004 thereby restricting his liability towards interest to 20% only. The relevant portion of the scheme reads as under:

“1.2 The stock brokers had been contesting the fees liability before various High Courts. Finally the Hon'ble Supreme Court of India, vide its judgment dated February 01, 2001 in the matter of BSE Brokers Forum vs. SEBI, (as reported in [2001] 30 SCL 31], upheld the Regulations and the power of SEBI to levy fees for carrying out the purposes of the Act. It also held that turnover can be the measure for levy of fees. It, however, directed SEBI to incorporate the recommendations of the R.S. Bhatt Committee in the Regulations. In compliance with the directions of the Hon'ble Supreme Court, the Regulations were amended on February 20, 2002 by incorporating the recommendations of the R.S. Bhatt Committee.

1.3 In the meantime, in order to enforce payment of fees by the stock brokers, the Board, on December 16, 1998, amended the SEBI (Broker and Sub Broker) Regulations, 1992. By this amendment it was provided that if a stock broker fails to remit fees in accordance with paragraph 1 and 2 of Schedule III of the Regulations, he shall be liable to pay interest at the rate of 15% per annum for each month of delay or part thereof.

2.0 It has been observed that defaults have occurred in payment of registration fees. Given the background of defaults, the Board has decided to introduce a scheme, namely, SEBI (Interest Liability Regularisation) Scheme, 2004 (the Scheme) to provide a one time opportunity to enable the stock brokers in the Cash segments of stock exchanges to regularise their defaults. Therefore, in exercise of the powers under Section 11 of the Act read with Regulation 10 and Schedule III of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992, the Board hereby introduces the Scheme viz. SEBI (Interest Liability Regularisation) Scheme, 2004. Under the Scheme, if the defaulting broker pays the entire outstanding principal amount of fees, if any, and 20% of the outstanding interest during the regularization period, he will not be required to pay the balance 80% of outstanding interest.

2.1 It is clarified that after the expiry of the scheme, a broker having outstanding registration fees liabilities towards the Board shall be liable to pay entire outstanding amount, including interest, as per the Regulations and shall also be liable for appropriate enforcement action as permissible under the Act and the Regulations framed thereunder. It is further clarified that in terms of regulation 27 of the Regulations, a stock broker, who fails to pay fees as per Schedule III of the Regulations, is liable for action as specified in the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, including the suspension or cancellation of certificate of registration. Besides, such persons may also be liable for prosecution under section 24 of the Act.

3.0 The details of the Scheme are as under:

3.1 Interest Liability Regularisation: Under the Scheme, the stock brokers who have outstanding fee liabilities (principal and/or interest) as on 1st October 2004, as per the Regulations, may pay the entire outstanding amount of principal, if any, together with 20% of the outstanding interest as on that date. On payment of the aforesaid amounts during the “Regularisation Period” specified under the Scheme, the stock brokers shall not be liable for payment of the balance 80% of the outstanding interest on the date.

3.2 Regularisation Period: The regularization period shall commence on 15th October 2004 and end on 15th November, 2004 (both days inclusive).”

It is the case of the appellant that by virtue of the interim order dated October 12, 2004 of the Tribunal, the benefit of interest under the scheme will be available not only up to the date of regularisation period as mentioned in the scheme i.e., 15th November, 2004, but up to the disposal of the appeal filed by the appellant. The issue regarding continuity of fee benefit acquired finality when the Board rejected the claim of the appellant by its order dated March 29, 2007. Accepting the Tribunal’s order, the appellant paid the fee on December 19, 2007. During the pendency of the issue before the Tribunal/Board,

the appellant is not liable to pay any interest. If any interest is payable, it is only for the period from 29th March, 2007 to 19th December, 2007 i.e. from the date of final order to the date of payment of principal amount of fee. It was argued by learned counsel for the appellant that the Board has taken three years to decide the issue and the appellant cannot be burdened with the interest liability for the delay which is attributable to the Board. The Board cannot take advantage of its own wrong. In support of his contention, learned counsel for the appellant relied on the judgment of the Supreme Court in the case of Mrutunjay Pani vs. Narmada Bala AIR 1961 Supreme Court 1353 and Union of India vs. Madan Lal Yadav AIR 1996 Supreme Court 1340.

6. Learned counsel for the respondent Board submitted that the appeal having been finally disposed of, the interim order merges with the final order. In the final order the benefit of the scheme has not been extended. The appellant is, therefore, not entitled to the same. In support of her contention, she relied upon the judgments of the Apex Court in the case of Jaipur Municipal Corporation vs. C.L. Mishra (2005) 8 SCC 423, Prem Chandra Agarwal and anr. vs. U.P. Financial Corporation and ors., (2009) 11 SCC 479 and Amarjeet Singh and ors. vs. Devi Ratan and ors. (2010) 1 SCC 417. It was further argued by the learned counsel for the respondent Board that assuming the interim order survives; it only talks of benefit of reduced interest amount **under the scheme** (emphasis supplied) which ended on November 15, 2004.

7. We have considered the arguments advanced on both sides. The general proposition of law is that once a final order is passed, all the earlier interim orders merge into the final order and the interim orders cease to exist. This is what has been said by the Supreme Court in the case of Prem Chandra Agarwal (supra) relied upon by the learned counsel for the respondent Board. However, in that case what was being dealt with was ‘appeal against the interim order’ and the observation was made in that context. When appeal against the final order has been decided, appeal against the interim order will not survive. Similarly in the case of Jaipur Municipal Corporation (supra), the observations were made in the context where a contempt petition was

dismissed as withdrawn, the Court observed that the time given earlier to comply with the order ceased to be operative. In the case of Amarjeet Singh, the Court was dealing with a matter where the litigant had taken benefit under an interim order due to pendency of the case and the question was whether that benefit can be continued when the matter is finally decided. It is in that context that the Supreme Court observed that no litigant can derive any benefit from mere pendency of case in a Court of law as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically.

8. Let us now have a look at the interim order dated October 12, 2004 passed by this Tribunal to see whether this was an interim order in the sense as referred to in the above noted judgments. We are of the considered view that it is not so. This interim order was passed for the purpose of extending the benefit of the scheme namely, Securities and Exchange Board of India (Interest Liability Regularisation) Scheme, 2004, to the entities whose cases with regard to fee continuity benefits were pending before the Tribunal. The scheme was to come to an end on 15th November, 2004 and this Tribunal observed that in view of a large number of appeals pending, it would not be possible for the Tribunal to dispose of these appeals before the stipulated date. Therefore, as an interim order, which was passed with the consent of the Board, it was ordered that the appellants be allowed to submit their applications under the scheme with regard to principal and interest outstanding as if the appellants are entitled to the benefit of the scheme of corporatization and the Board was directed to accept the same without prejudice to their contentions otherwise the benefit under the scheme will become infructuous. Admittedly, the appellant had complied with the requirements and furnished necessary undertaking along with the outstanding amount to the Board within the stipulated period. If the argument of the learned counsel for the Board is accepted that the benefit of the scheme was available only up to 15th November, 2004, it will make the whole process of the interim order and undertaking given to the Board meaningless in respect of all the appeals which were pending before the Tribunal/Board. We are, therefore, unable to agree to such an interpretation. Since the appellant had

complied with the requirements as laid down in the said interim order and his appeal acquired finality by the order passed by the Board on March 29, 2007, we are of the considered view that the appellant is entitled to the benefit of the scheme on finalization of the dispute with regard to payment of fee of corporatization. If at all, there is a liability to pay interest, it is only for the period from the date of finalization of the dispute i.e. March 29, 2007 up to the date of payment of principal amount i.e. December 19, 2007.

We, therefore, allow the appeal with no order as to costs.

Sd/-
P. K. Malhotra
Member &
Presiding Officer (*Offg.*)

Sd/-
S.S.N. Moorthy
Member

16-07-2012
Prepared & compared by-ddg