

THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 59 of 2007

Date of decision: 10.7.2007

Apollo Sindhoori Capital Investments Ltd. Appellant

Versus

Securities and Exchange Board of India and
National Stock Exchange of India Ltd. Respondents

Mr. V. Ramakrishnan Advocate with Mr. J.J. Bhatt Advocate for the
appellant.

Dr. Poornima Advani Advocate with Ms. Sejal Shah
Advocate for the respondent no.1.

None for the respondent no2.

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

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

Whether the block period of five financial years in the case of the
appellant would commence from 22.11.1995 the day on which it was
first registered as a stock broker with the Securities and Exchange Board
of India (for short the Board) or from 23.3.1999 when it was registered
afresh after its earlier registration had been withdrawn is the short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.
This question arises in the context of clause (c) in paragraph 1 in
Schedule III to the Securities and Exchange Board of India (Stock
Brokers and Sub-Brokers) Regulations, 1992 (hereinafter called the

Regulations). Facts giving rise to this appeal lie in a narrow compass and these may first be noticed.

Apollo Sindhoori Capital Investments Ltd. (for short Apollo) is the appellant before us. It was registered as a stock broker with the Board on 22.11.1995 after it acquired membership of the National Stock Exchange of India Ltd. (NSE). Some time during the year 1998, Apollo decided to discontinue with its stock broking business and transfer the same to another group company namely, Om Sindhoori Capital Investments Ltd. (for short Om). By letter dated July 15, 1998 Apollo informed NSE of its decision to transfer the membership to Om. Since this letter is relevant for our purpose, the same is reproduced hereunder for facility of reference:

“Further to the discussion Mrs. Geetha Sridhar, our Company Secretary had with you we clarify the following :

The Board have taken decision to transfer the membership from our Company to another group Company of ours viz. Om Sindhoori Capital Invt. Ltd. for the following reasons.

a. The present networth of our Company is only Rs.89 lakhs which is not sufficient for the purpose of carrying on the broking activities. The company also plans to have nearly 15 branches, and also become member of depository and carry on various expansion activities incidental to broking. As Om Sindhoori Capital investments Ltd., has ceased to carry on the business of Non Banking Financial Companies, the Board of Directors have decided to shift the broking activities to the said Company instead of increasing the networth of the present Company.

b. Please find enclosed the original shareholding pattern duly certified by the Company’s Auditors and the copy of the listing letter issued by MSE.

We look forward to your approval for transferring the card from our Company to OSCIL.”

This letter was forwarded to the Board which accepted the request of Apollo and took a decision on 21.12.1998 to withdraw its registration

and grant a fresh registration in favour of Om. It may be mentioned that in pursuance to the aforesaid decision of Apollo, Om had applied in Form A for the grant of fresh registration on August 4, 1998. The decision of the Board was communicated by it to the NSE which in turn informed Om of the decision by its letter dated February 18, 1999. The relevant parts of this letter read as under :

“In response to your request for taking up the trading membership of M/s. Apollo Sindhoori Capital Investments Ltd. in the name of your group company, M/s. Om Sindhoori Capital Investments Ltd., we are pleased to inform you that Securities and Exchange Board of India (SEBI) has granted registration to you in the name of M/s. Om Sindhoori Capital Investments Ltd. as a Trading Member of the National Stock Exchange. **Consequently the SEBI registration in the name of M/s. Apollo Sindhoori Capital Investments Ltd. has been withdrawn.**

.....

We would request you to fulfill the requirements indicated in the Annexure A to this letter, by March 9, 1999 so that we may take steps to activate you on the NEAT system in the name M/s. Om Sindhoori Capital Investments Ltd. failing which we may not be able to continue to permit you to trade.”

A reading of the aforesaid letter leaves no room for doubt that the request of Apollo had been accepted and a fresh registration had been granted to Om and that of Apollo had been withdrawn. It appears that Om having applied for a fresh registration in Form A had not completed all the formalities with the NSE and, therefore, the latter informed the former to fulfill the requirements by March 9, 1999 as indicated in the annexure to the letter so that NSE could take steps to activate Om on the NEAT system failing which Om would not be allowed to continue to trade. It is relevant to refer to the provisions of Rule 3 of the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Rules, 1992 (for short the Rules) which provides that no stock broker or sub-broker shall buy, sell or deal in securities unless he holds a certificate of

registration granted by the Board under the Regulations. The provision to this rule enables a person to continue to buy, sell or deal in securities if he had made an application for registration till the disposal of such application. Since Om had applied in Form A on August 4, 1998 it was allowed to trade in securities pending the final disposal of that application. As already mentioned above, the application was allowed by the Board on 21.12.1998 when a fresh certificate of registration was granted to it (Om). After the request by Apollo had been accepted by the Board and its registration withdrawn and a fresh registration granted to Om, Dr. Prathap C. Reddy, chairman of Apollo addressed a letter dated March 1, 1999 to the Board requesting therein to withdraw its earlier request for the transfer of membership to Om. A copy of this letter was addressed to the NSE as well. It is the case of the Board that this subsequent request made by Apollo was never granted. Apollo appears to have changed its mind and decided to continue with the business of stock broking. It addressed a communication dated 4.3.1999 to the Board which is quite relevant for our purposes. It reads thus –

“To,

Division Chief,
Secondary Market Dept.,
Securities and Exchange Board of India,
Mittal Court, ‘B’ Wing,
MUMBAI – 400 021

Sub : SEBI Registration.

Dear Sir,

We had earlier requested you to transfer the NSE Membership from ‘APOLLO SINDHOORI CAPITAL INVEST. LTD. to OM SINDHOORI CAPITAL INVESTMENT LTD.

You were kind enough to accede to the request subject to completion of some formalities.

On reconsideration we have decided to continue the NSE Membership in the name of APOLLO SINDHOORI CAPITAL

INVESTMENT LTD. only. We are confident that SEBI will restore the certificate of Registration in Apollo Sindhoori Capital Invest. Ltd.'s name as NSE Broker.

We, however, do not have any objection to SEBI issuing a fresh certificate of Registration in our name.

We very much regret for all the inconvenience caused in this regard. “

Since the earlier registration granted to Apollo on 22.11.1995 had already been withdrawn, it was granted a fresh registration as a stock broker on 23.3.1999. This fact is clear from the provisional fee liability statement prepared by the Board and sent to Apollo through NSE, a copy of which is on the record. In view of the fact that Apollo had been granted a fresh registration on 23.3.1999, the Board while computing the fee liability of Apollo required it to pay registration fee in terms of the Regulations for the first five years from the date of its fresh registration and gave the benefit of the block period with effect from the fee year 2003-04. Apollo claims that since it was initially registered on 22.11.1995 the benefit of the block period should be given with effect from the fee year 2000-01. As already noticed in the earlier part of the order, the question is whether the Board is right in allowing the benefit of the block period with effect from the fee year 2003-04.

A stock broker requires a certificate of registration from the Board before he can trade in securities. Rule 4 of the Rules provides for the conditions for the grant of certificate and one of the conditions is that he shall pay the fees for registration in the manner provided in the Regulations. Regulation 10 provides that every applicant eligible for grant of a certificate shall pay such fees and in such manner as specified in Schedule III. When we look at Schedule III to the Regulations we

find that, subject to paragraphs 2 and 3 of the schedule, a stock broker is required to pay a sum of rupees five thousand as registration fee for each financial year in which his annual turn over does not exceed rupees one crore. Where the annual turn over exceeds rupees one crore during any financial year, he is required to pay a sum of rupees five thousand plus one hundredth of one percent of the turnover in excess of rupees one crore for each financial year. Clause (c) in paragraph 1 of the schedule which is relevant for our purposes is reproduced hereunder –

“ (c) after the expiry of five financial years from the date of initial registration as a stock-broker, he shall pay a sum of rupees five thousand for every block of five financial years commencing from the sixth financial year after the date of grant of initial registration to keep his registration in force.

A reading of the aforesaid clause makes it abundantly clear that after the expiry of five financial years from the date of initial registration as a stock broker he has to pay a sum of rupees five thousand for every block of five years commencing from the sixth financial year after the date of grant of initial registration to keep his registration in force. In other words, a stock broker has to pay registration fee for the first five years on the basis of his annual turn over as referred to in clause (a) or (b) of paragraph 1 in schedule III as the case may be, and thereafter to keep his registration in force, he shall continue to pay a sum of rupees five thousand for every block of five financial years which block period commences from the sixth financial year from the date of initial registration. The learned senior counsel appearing for the appellant laid great emphasis on the word ‘**initial**’ as used in clause (c) of paragraph 1 and strenuously urged that the word ‘**initial**’ refers to the first

registration granted to Apollo and the block period of five years should commence from the sixth financial year from the date of the first registration. The learned counsel appearing for the Board, on the other hand, contended that since the first registration granted to Apollo had been withdrawn on its own request in December, 1998 and fresh registration having been granted on 23.3.1999, the benefit of the block period of five financial years would commence with effect from the fee year 2003-04 as has been allowed by the Board in the impugned fee liability statement. Having given our thoughtful consideration to the rival contentions of the parties, we are unable to agree with the learned senior counsel for the appellant. What the board has been doing is that it has been granting several registrations to a stock broker for each of the stock exchanges of which he became a member. It is pertinent to mention here that one of the conditions on which a certificate of registration is granted to a stock broker is that he should hold membership of a stock exchange. This means that a stock broker could be a member of more than one exchanges and it is a matter of common knowledge that most of the stock brokers become members of different stock exchanges. The Board for whatever reasons was granting multiple registrations to the stock brokers for each membership with a stock exchange. Not only this, even within the same exchange the Board has been issuing separate certificates of registration to a stock broker for each segment of the exchange where he was trading. It is in view of this perception of the Board regarding multiple registrations of a stock broker that clause (c) in paragraph -1 in schedule III to the Regulations

provides that the block period of five years will commence from the date of 'initial registration as a stock broker'. For instance, where a stock broker held a number of registrations whether qua different stock exchanges, or within the same stock exchange was given the benefit of the block period in terms of clause (c) only from the date of his first registration. If the perception of the Board regarding the grant of multiple registrations had been correct then it was right in granting the benefit of the block period from the date of the first registration. The question whether a stock broker could be granted multiple registrations or whether the law contemplates only one registration for a stock broker came up for consideration before a Division Bench of the Delhi High Court in National Stock Exchange Member vs. Union of India and others (2006) 133 Comp. Cas. 504 and the learned judges interpreted the provisions of section 12 of the Securities and Exchange Board of India Act, 1992 along with the regulations framed thereunder to mean that a stock broker could be granted only one registration and that the law does not envisage multiple registrations. We are informed that the Board has since amended the Regulations and the word '**initial**' has been deleted in the newly added schedule III A. Be that as it may, the word '**initial**' in clause (c) aforesaid only meant the first registration granted to a stock broker. Now that the law has been clarified by the Delhi high court in National Stock Exchange Member's case (supra) there has to be only one registration for a stock broker and the word '**initial**' as used in clause (c) of paragraph 1 of schedule III to the Regulations loses its significance. At any rate, the word '**initial**', as already observed would

mean the first of the registrations granted to a stock broker and such registration cannot relate back after it is withdrawn on his own request and a fresh registration granted subsequently. Coming to the case in hand, we find that Apollo had been granted registration on 22.11.1995 and that registration was withdrawn on its own request when it wanted the membership of the stock exchange to be transferred in the name of Om. It is also not in dispute that Om was granted a fresh registration when it applied for the same on August 4, 1998 in Form A. It is also clear from the record that Apollo changed its mind of transferring the membership to Om and wanted its certificate of registration to be restored. It addressed a communication to the Board on 4.3.1999 which has been reproduced hereinabove in which it was clearly stated that it had no objection if a fresh certificate of registration was issued to it. We further find from the impugned fee liability statement that Apollo was granted a fresh certificate of registration on 23.3.1999. This being so, we are clearly of the view that the fresh registration granted to Apollo on 23.3.1999 cannot relate back to the initial grant on 22.11.1995 which stood withdrawn on its own request. It is true that on March 1, 1999 the chairman of Apollo had requested the Board to allow it to withdraw its earlier request to transfer the membership in the name of Om but this subsequent request could have no meaning because the earlier request for transfer had already been accepted by the Board on 21.12.1998 when a fresh certificate of registration was granted to Om and the earlier registration granted to Apollo on 22.11.1995 stood withdrawn. Not only this, the decision of the Board to withdraw the registration of Apollo

granted on 22.11.1995 had been communicated to Om by the NSE as per its letter dated February 18, 1999 the relevant parts of which have been reproduced above. When the registration had already been withdrawn, the same could not be restored to Apollo subsequently when it had changed its mind. It could only be granted a fresh registration which was granted on 23.3.1999. What is contended by the learned senior counsel for the appellant is that the fresh grant of registration to Apollo had never been communicated to it and that Apollo had never applied for a fresh registration. We cannot agree with these contentions. In the letter dated 4.3.1999 reproduced hereinabove, Apollo had clearly stated that “it had no objection to the Board issuing a fresh certificate of registration in our name”. As regards the communication of the fresh registration, this fact could not be verified in the absence of records because the learned counsel appearing for the Board stated that some of the records were not available as they had been misplaced. We, however, find from the provisional fee liability statement which was admittedly received by Apollo in August 2004 a fresh registration number had been mentioned therein along with its old registration number on the basis of which the registration fee had been provisionally assessed. Apollo itself having requested for a fresh certificate of registration, it does not lie in its mouth to say that it was not aware of the same. This being the position, we have no hesitation to hold that Apollo is entitled to the benefit of the block period of five financial years only from 23.3.1999 and not from 22.11.1995 as claimed by it and that the Board was

justified in computing the registration fee on that basis. The question posed in the earlier part of the order stands answered accordingly.

No other point has been raised.

In the result, the appeal fails and the impugned fee liability statement upheld leaving the parties to bear their own costs. Since the total liability of the appellant to pay the registration fee in terms of the impugned fee liability statement is more than Rs. 2.6 crores including interest thereon we grant six weeks time from today to Apollo to deposit the said amount failing which it would be open to the respondents to recover the same in accordance with law.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

10.7.2007
bbn