REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 2402 OF 2008

GPSK CAPITAL PRIVATE LIMITED (FORMERLY KNOWN AS MANTRI FINANCE LIMITED) **....APPELLANT(S)**

VERSUS

THE SECURITIES AND EXCHANGE BOARD OF INDIA **....RESPONDENT(S)**

WITH

CIVIL APPEAL NO(S). 5636 OF 2007

J U D G M E N T

Rastogi, J.

Civil Appeal No(s). 2402 of 2008

1. The instant appeal has been filed under Section 15(Z) of the Securities and Exchange Board of India Act, 1992(hereinafter being

referred to as the "Act 1992") assailing the judgment and order dated 9th August, 2007 passed by the Securities Appellate Tribunal(hereinafter being referred to as the "Tribunal") affirming the order of the Securities and Exchange Board of India, Mumbai(hereinafter being referred to as the "Board") dated 7th May, 2007 holding that the appellant did not satisfy the conditions of clause (4) of Schedule III of the Securities and Exchange Board of India(Stock Brokers and Sub-Brokers) Regulations, 1992(hereinafter being referred to as the "Regulations") hence the exemption from payment of fees for the period for which the erstwhile individual Srikant Mantri has paid to the Board cannot be converted to the corporate entity MFL.

2. The brief facts of the case culled out are that one Srikant Mantri became a member of the Calcutta Stock Exchange(hereinafter being referred to as the "CSE") and was granted registration as a stock broker on 30th November, 1992. Sometime in the year 1997, he decided to transfer his membership card of CSE in favour of Mantri Finance Ltd.-the appellant herein(hereinafter being referred to as the "Company"). It is not in

dispute that the company was registered with the Registrar of Companies, Calcutta on 27th December, 1998 under the name and style of Ushagram Properties and Finance Ltd. Later, it changed its name to Mantri Finance Ltd. on 13th November, 1992. The Company had started the business of stock broking in 1995 and became a member of NSE and thereafter sought registration with the Board as a stock broker and obtained membership of NSE as a stock broker on 17th October, 1995. Thereafter, when the membership card of Srikant Mantri was transferred in the name of the Company, the latter became a member of CSE and was registered as a stock broker of CSE on 1st April, 1998.

3. After obtaining the membership of CSE on transfer of the card from Srikant Mantri, the appellant Company claimed that it should be exempted from payment of registration fee for the period for which Srikant Mantri had already paid the fees. In other words, it claimed the benefit of exemption of the fee already paid by Srikant Mantri. At the same time, also claimed that all the conditions prescribed under para 4 of Schedule III to the Regulations were satisfied and, therefore, it was entitled to claim exemption.

4. The claim of the Company was rejected by the Board by its Order dated 7th May, 2007 holding that Srikant Mantri was only a Director in the Company during the three years period after the transfer of his membership and since he was not the whole time Director, the conditions prescribed under para 4 of Schedule III are not satisfied and accordingly, was not entitled to claim exemption as prayed for by the appellant.

5. The appellant Company filed appeal against order of the Board dated 7th May, 2007 before the Tribunal on following two issues:-

(i) Whether the stock broker requires multiple registrations to operate on more than one stock exchange(s) or a single registration will suffice for all the stock exchanges.

(ii) Whether the appellant Company is entitled to fee continuity benefits provided under para 4 of Schedule III.

6. In regard to issue no. (i), the learned Tribunal held that the single registration with the Board is sufficient even if the stock broker has multiple memberships and functions from several stock exchanges and therefore, will have to pay the fee for initial registration with the Board and set aside the impugned order and

remitted the matter to the Board for a fresh computation of the registration fee payable by the Company on the basis of its registration with effect from 17th October, 1995.

7. So far as issue no. (ii) is concerned, learned Tribunal held that the appellant Company has failed to satisfy the conditions of clause (4) of Schedule III to the Regulations and was not eligible to claim exemption from payment of fee over the period for which the erstwhile individual Srikant Mantri has paid the fees.

8. Hence, appeals have been preferred by the appellant Company as well as by the Board against the self-same impugned judgment of the Tribunal dated 9th August, 2007.

9. The main thrust of submissions advanced by learned counsel for the appellant is that Srikant Mantri, in the first instance, was the sole proprietor of the firm M/s. Govind Prasad Shrikant & Co. which was registered with the Board since 30th January, 1992. Under Para 4 to Schedule III, it applies for conversion of membership to a corporate entity and membership of the old entity, i.e., M/s. Govind Prasad Shrikant & Co. (SEBI Registration No. INB030054715) was converted into a corporate entity w.e.f. 1st

April, 1998. Accordingly, the appellant fulfils the pre-conditions as indicated in para 4 of Schedule III annexed to the Regulations and this is the apparent error which has been committed by the Board in the first instance and the factual matrix has not been appreciated by the Tribunal as well.

10. Learned counsel further submits that para 4 was added to Schedule III pursuant to Board's policy to corporatize individual stock brokers, and to institutionalize the stock broking activity and further submits that the interpretation ought to be in consonance with the intent and purport of the policy to which para 4 was added to Schedule III.

11. Learned counsel further submits that in the case of conversion, the individual registration has been converted into a corporate registration and, therefore, the exemption for the payment of fees is available and further submits that para 4 to Schedule III does not contemplate two registrations. The Explanation to para 4, by a deeming fiction, mandates a continuity from the erstwhile membership to the converted membership qua the payment of fees and further submits that the law, therefore, mandates that in a

case of conversion, no fresh fee will be collected from the converted corporate entity. In the facts and circumstances, the finding returned by the Tribunal needs to be interfered with by this Court.

12. Per contra, learned counsel for the respondent, while supporting the finding returned by the Board and affirmed by the Tribunal submits that the material which has come on record has been appreciated at two stages by the Board as well as by the Tribunal. It remains uncontroverted that Srikant Mantri transferred his membership card of CSE to the appellant Company and he was not a whole time Director therein but only a Director and the corporate entity is entitled to claim exemption from the payment of registration fee only if the individual or partnership membership had been converted into a corporate entity. However, in the instant case, Srikant Mantri did not convert himself into a corporate entity, instead transferred his membership card of CSE to an existing company and became a Director therein.

13. Accordingly, it has rightly been held by the Board and confirmed by the Tribunal in the order impugned holding that the appellant was not entitled to claim exemption invoking Para 4 of

Schedule III to the Regulations and no evidence has been placed by the appellant on record even in rebuttal before this Court. In the given circumstances, there appears no reason or justification to disturb the concurrent finding of fact in the appeal filed at the instance of the appellant Company.

14. We have heard learned counsel for the parties and with their assistance perused the material available on record.

15. So far as issue no. (i) in reference to stock broker which requires multiple registrations to operate on more than one stock exchange(s) or a single registration will suffice for all the stock exchanges is concerned, it has been decided by this Court in ***Securities and Exchange Board of India*** *Vs.* ***National Stock Exchange Members Association and Another***[1] and remains no more res integra in view of the judgment of this Court wherein it has been held as under:-

> "**47**. Thus, in our considered view, the conjoint reading of the expression "a certificate" as referred to in Section 12(1) of the Act read with the scheme of Rules, 1992 and Regulations 1992, leads to an inevitable conclusion that the stock broker not only has to obtain a certificate of registration from SEBI for each of the stock exchange where he operates, at the same time, has to pay ad

1 2022 SCCOnline SC 1392

> valorem fee prescribed in terms of Part III annexed to Regulation 10 of the Regulations, 1992 in reference to each certificate of registration from SEBI in terms of the computation prescribed under Circular dated 28th March, 2002 and fee is to be paid as a guiding principle by the stock broker which is in conformity with the scheme of Regulations 1992."

16. The issue involved in the instant appeal confines as to whether the appellant Company is entitled to fee continuity benefits under Para 4 of Schedule III of the Regulations 1992.

17. To examine the said issue no. (ii), it will be apposite to first take note of para 4 of Schedule III of Regulations, 1992 which is as follows:-

> "Where a corporate entity has been formed by converting such 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 minimum 40 per cent shares of the paid up equity capital of the corporate entity for a person 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 entity for the period for which the erstwhile entity has paid the fee as per the regulations."

18. The Board, in the first instance, after appraisal of the evidence placed on record under its Order dated 7th May, 2007, and taking

into consideration para 4 of Schedule III of the Regulations, 1992 returned its finding as follows:-

> "3.11 Exemption from payment of fees confers a benefit to the corporate entity. For granting such benefit, the conditions subject to which such benefit is available need to be established beyond doubt. From the true copy of Annual Returns for the relevant period provided by MFL, it appears that Shri Shrikant Mantri was a director, but, not a whole time director during the relevant period. This fact has also been established from the copy retrieved from ROC's office in respect of AGM dates April 28, 1997 and May 19, 1999. MFL was granted registration after the issue of notification dated January 21, 1998 i.e. after the conditions subject to which exemption can be granted to a converted corporate entity were in place. It is clear from the above that MFL did not satisfy at least one of the conditions of clause I (4) of Schedule III of the Regulations. Hence, MFL cannot become eligible for exemption from payment of fees for the period for which the erstwhile individual Shri Shrikant Mantri has already paid the fees."

19. On appeal being preferred by the appellant Company, the Board, on reappreciating the evidence on record confirmed the finding under its Order impugned dated 9th August, 2007 as follows:-

> "…. The Board adopted a policy to encourage the brokers to corporatize themselves so that their working becomes more transparent as corporate entities have more and better regulatory controls as compared to individuals and partnerships. With this object in view, the Board introduced paragraph 4 in Schedule III to the Regulations with effect from 21.1.1998 and it decided to give the benefit of the fee already paid by the individual or partnership prior to its becoming a corporate entity. In the case before us the Board has found that when Srikant Mantri transferred his membership card of CSE to the company, he was not a whole time

> director therein but was only a director. This fact is being disputed by the appellant before us. It is not necessary for us to record a finding in this regard because we are of the view that the company is not entitled to the benefit under paragraph 4 of the Schedule because there is no continuity. As already noticed, the corporate entity is not entitled to claim exemption from the payment of registration fee only if the individual or partnership had been converted into a corporate entity. In the instant case, Srikant Mantri did not convert himself into a corporate entity but instead, transferred his membership card of CSE to an existing company and became a director therein. The Regulations do not provide for exemption in such cases. The company before us was an existing company and therefore, when it became a member of CSE on the transfer to membership card from Srikant Mantri it could not claim the benefit under paragraph 4. It could claim such a benefit only if Srikant Mantri had formed himself into a company and continued his broking business. Since that was not the case, we are clearly of the view that the company could not claim the benefit of paragraph 4. In this view of the matter, we have no hesitation in upholding the order passed by the Board rejecting the claim of the appellant."

20. It remains uncontroverted that when Srikant Mantri transferred his membership card of CSE to the Company, he was not a whole time Director but was only a Director. Neither CSE nor its internal auditors, were clear of the exact date on which Srikant Mantri had acquired 40% shareholding in the appellant Company. At the same time, it was informed by the Board to the CSE vide letter dated 18th March, 1998 that Srikant Mantri was holding less than 40% of the paid-up capital of the corporate entity. It was also recorded by the Tribunal that from the true copies of annual

returns provided by the appellant Company, it was revealed that the details of the Directors provided by them nowhere indicate Srikant Mantri as a whole time Director for any of the relevant years. The designation of Srikant Mantri has been indicated as "Director" in all the relevant years' Annual Return. It was also established from the copy retrieved from ROC's office in respect of AGM dated 28th April, 1997 and 19th May, 1999.

21. At the same time, appellant Company was granted registration after para 4 was put in place by notification dated 21st January, 1998 and the appellant Company failed to satisfy that it fulfilled the conditions of para 4 to Schedule III pursuant to which the appellant has claimed his entitlement of fee continuity benefits.

22. After going through the material on record, we are satisfied that the appellant Company failed to fulfil the conditions as referred to under Para 4 of Schedule III appended to the Regulations of which a reference has been made.

23. Consequently, the appeal is without any substance and accordingly dismissed. No costs.

24. Pending application(s), if any, shall stand disposed of.

Civil Appeal No. 5636 of 2007

25. This appeal is preferred by the Board against the self-same impugned judgment dated 9th August, 2007 as in Civil Appeal No. 2402 of 2008. Hence, the facts need not be reiterated for the purpose of instant appeal.

26. The appeal filed by the Board deserves to succeed as the question remains no more res integra in view of judgment of this Court in ***Securities and Exchange Board of India*** *Vs.* ***National Stock Exchange Members Association and Another*** (supra).

27. Consequently, the appeal succeeds and is allowed.

28. Pending application(s), if any, shall stand disposed of.

.....J.
(AJAY RASTOGI)

.....J.
(BELA M. TRIVEDI)

NEW DELHI;
MARCH 20, 2023