

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 30.07.2021

Date of Decision : 01.09.2021

Appeal No. 512 of 2019

IIFL Securities Limited
(Erstwhile India Infoline Limited)
IIFL House, Sun Infotech Park,
MIDC, Plot No. 23B,
Wagle Estate,
Thane

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai- 400 051

...Respondent

Mr. Nimay Dave, Advocate with Mr. Ankur Loona, Ms. Aparna Wagle, Ms. Swapna Roopavate and Ms. Divya Dhawan, Advocates i/b Alliance Law for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b K. Ashar & Co. for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member

Per: Justice M. T. Joshi, Judicial Member

1. Aggrieved by the decision of the learned Adjudicating Officer (hereinafter referred to as “AO”) of respondent

Securities and Exchange Board of India (hereinafter referred to as “SEBI”) dated July 31, 2019 imposing a penalty of Rs. 3 lakh for violation of the provisions of Clause A (2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub- Brokers) Regulations, 1992 (hereinafter referred to as “Stock Brokers Regulations”), the present appeal is preferred.

2. The appellant is a stock broker and one Smt. Vimala Devi Kalantri was his client. Respondent, SEBI had started investigation for a period between March and May 2011 in the scrip of Saint- Gobain Sekurit India Limited (hereinafter referred to as “SGSIL”). In the investigation it was found that the son-in-law of the client Vimala Devi i.e. one Mr. Atul Saraogi had carried certain trades in the said SGSIL though he was involved in the advisory transaction of the said company. Thus, the investigation *prima facie* found that said Mr. Atul Saraogi had carried certain transactions being insider.

During the investigation it was also found that on October 23, 2018 in the account of Smt. Vimala Devi Kalantri certain transactions were carried in the scrip of said SGSIL. The order was however placed by wife of Mr. Atul Saraogi i.e. the daughter of the appellant namely, Ms. Sapna Saraogi from the

mobile number belonging to Mr. Atul Saraogi. When enquiry was made by respondent – SEBI, with the appellant it was confirmed by the appellant that on the verbal instructions from Smt. Vimala Devi Kalantri to accept trade order from Mr. Atul Saraogi and Mrs. Sapna Saraogi the orders were executed. Since this conduct of the appellant as a stock broker was allegedly against the Clause A (2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub- Brokers) Regulations, 1992 the show cause notice was issued against the present appellant and the present proceeding was conducted.

3. The appellant submitted that in the transactions no abnormality was found by the appellant. It has not violated any provisions of the rules or regulations. The appellant had over 10 lakh clients and the orders were executed servicing the client as per the system and process put in place as per the SEBI/ Exchange norms in the process of normal course of servicing. It further explained that on the oral instructions of the client the orders were accepted and executed on the instructions of her daughter namely, Mrs. Sapna Saraogi. Since the communications were from one of the family member of the client through the registered mobile number, the appellant had

accepted the request of the client in good faith. Therefore it sought exoneration.

4. The appellant further pointed that in a different scrip the appellant was already penalized in the amount of Rs. 2 lakhs by the respondent vide order dated February 23, 2018 for the similar violation as the appellant had accepted the order in the account of Smt. Vimala Devi Kalantri, on the oral instructions of Mr. Atul Saraogi. It was in the scrip of United Spirits Limited. In such circumstances, the appellant pleaded that the rule of *res judicata* would be applicable as the issue is finally heard and decided by respondent - SEBI and therefore the appellant can not be made to face the same litigation twice. The learned AO however did not agree with the appellant, hence the present appeal.

5. We have heard Mr. Nimay Dave, the learned counsel for the appellant and Mr. Kumar Desai, the learned counsel for the respondent.

6. The learned counsel for the appellant submits that the appellant was penalized for carrying the similar oral instructions of the client of accepting the orders from her daughter or son-in-

law in another scrip. Now for every transaction separate penalty is being imposed and, thus, the matter is hit by the principle of *res judicata*. He further submitted that the appellant had in good faith acted on the oral instructions of the client for acceptance of the order in her account either from her daughter or her son-in-law. As the instructions came from her registered mobile number the same were accepted in due course while dealing with lakhs of transactions of lakhs of customers. He, therefore, submitted that the appeal be allowed.

7. On the other hand, the learned counsel for the respondent specifically pointed out the provisions and more particularly Clause 20 of the Member Client agreement dated April 19, 2010 between the appellant and Smt. Vimala Devi Kalantri.

8. Upon hearing both side, in our view there is no merit in the appeal. The same is therefore liable to be dismissed for the following reasons.

9. It is to be noted that Schedule II of the Stock Brokers Regulations provides for Code of Conduct for stock brokers. Provides that the stock broker is required to exercise due skill care and diligence in the conduct of all his business. Clause 20

of the Member Client agreement dated April 19, 2010 between the appellant and Smt. Vimala Devi Kalantri clearly provided that if a letter is issued by the client authorizing another person to give instructions on behalf of the client then those instructions would be binding on the client. The appellant who is a seasoned stock broker is supposed to know the importance of having written authority from a client permitting any other entity to transact in the account on his/her behalf. In the circumstances, the appellant cannot escape the liability.

10. As regard the issue of *res judicata* it should be noted that the principle is applicable if the facts are heard and decided finally by the competent authority then the issue comprising those facts cannot be heard again. Here, the issue is of another violation by the appellant of the same nature. It is not the case that the respondent was raising the same grievance twice in the same scrip. The principle of *res judicata* therefore would not be applicable.

11. In the result, the following order:-

ORDER

The appeal is hereby dismissed without any order as to costs.

12. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the Registry. In these circumstances, this order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala
Presiding Officer

Justice M. T. Joshi
Judicial Member

01.09.2021
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