

2019 C L D 626

[Lahore]

Before Ayesha A. Malik, J

LAHORE STOCK EXCHANGE---Appellant

Versus

DIRECTOR (ICW) SECP and others---Respondents

Commercial Appeal No. 3 of 2015, heard on 9th April, 2019.

(a) Securities and Exchange Ordinance (XVII of 1969)---

---Ss. 22(c) & 34---Brokers and Agents Registration Rules, 2001, R. 7---Unified Trading System Regulations, Reglns. 6.1.1 & 6.1.2---Broker trading on stock exchange without renewal of registration---Penalty imposed on stock exchange---Securities and Exchange Commission of Pakistan ('the Commission') imposed a penalty of Rs. 1 million on (Lahore) Stock Exchange for allowing a broker to continue trading without renewal of its registration in violation of Reglns. 6.1.1 & 6.1.2 of the Unified Trading System Regulations ("Regulations")---Plea of Stock Exchange (appellant) that the broker in question forwarded its application for renewal of registration to the Stock Exchange who then forwarded it to the Commission; that the matter was delayed considerably by the Commission and in the meantime show cause notice was issued to Stock Exchange to show as to why penalty should not be imposed on it; that role of the Stock Exchange was that of a post office, as it was merely to forward the request of the broker for renewal of registration to the Commission, and in fact it was the responsibility of the Commission to renew the registration of the broker, that too within time; that in the event the Commission was unable to renew the registration in time, it must intimate to the Stock Exchange and the broker that the registration had not been renewed or it was still pending---Held, that Regln. 6.1.2 of the Regulations clearly provided that the Stock Exchange or the COMMISSION could suspend use of the terminal immediately if a member or broker did not meet the criteria given under Regln. 6.1.1 of the Regulations---Stock Exchange's contention that it was the responsibility of the Commission to suspend the operation of a member at its terminal was totally misplaced as the Regulations clearly placed this responsibility on Stock Exchange as well as on the Commission---Brokers and Agents Registration Rules, 2001 ('the Rules') provided that the application for renewal of registration was to be forwarded through the Stock Exchange, however the intent of such rule was to enable the Stock Exchange to monitor the eligibility of its broker---Stock Exchange could not exonerate itself from its fundamental responsibility to ensure that every broker was duly registered with the Commission

and was operating under a valid registration certificate---Purpose of moving the renewal application through the Stock Exchange was so that the Stock Exchange became aware of the fact that a broker's registration certificate was due to expire within a specified period, hence it could pursue the matter to ensure that the registration certificate was renewed within time---Issue of whether there is a delay on the part of the Commission was totally irrelevant for the purposes of the Stock Exchange, as its primary responsibility as a frontline regulator was to ensure that only registered brokers operated through the Exchange on the Unified Trading System---Basic function of a Stock Exchange was to promote and protect all investors who operated through it for which registration of a broker was a vital requirement---Stock Exchange was found responsible for neglecting its functions and also for violating the Regulations against the interest of the investors, hence a penalty of Rs.1 million was appropriate---Appeal was dismissed in circumstances and the penalty imposed by the Commission was maintained.

(b) Securities and Exchange Ordinance (XVII of 1969)---

---S. 22---Penalty for certain refusal or failure---Quantum---Quantum of penalty was based on the circumstances of each case such that it was appropriate and a proportionate amount of penalty, not exceeding the upper limit---Basic objective to impose penalty was to ensure compliance by creating an effective deterrence---In order for the deterrent to be effective it should be of an amount which hurt the offender---Amount of penalty reflected on the seriousness of the infringement, the duration of the infringement, the degree of harm caused, if any, whether actual or potential---Penalty would also reflect on whether the contravention was deliberate or reckless and whether any effort was made to prevent the wrong from continuing---Past history was also relevant along with any precedents on the issue---Penalty was imposed in each case depending on its facts and context and in proportion to the infringement and its impact.

Anwaar Hussain and Mehr Muhammad Iqbal for Appellant.

M. Usman Ghani Rashid Cheema for Respondents.

Date of hearing: 9th April, 2019.

JUDGMENT

AYESHA A. MALIK, J.---This appeal has been filed by the Appellant, Lahore Stock Exchange Limited ("LSE") under Section 34 of the Securities and Exchange Commission of Pakistan Act, 1997 ("Act") against the order dated 06.02.2015 issued by Respondent No.2,

Appellate Bench-1, Securities and Exchange Commission of Pakistan ("SECP").

2. The Appellant is aggrieved by the penalty imposed by Respondent No.2, SECP for allowing a broker to continue trading without renewal of its registration in violation of Regulations 6.1.1 and 6.1.2 of the Unified Trading System Regulations ("Regulations"). Learned counsel for the Appellant stated that the Universal Equities (Pvt.) Limited ("UEL") a broker registered under the Broker and Agents Registration Rules, 2001 ("Rules") forwarded its application for renewal of registration to the Appellant who then forwarded it to the Respondent SECP. The matter was delayed considerably by the SECP and in the meantime show cause notice dated 17.11.2009 was issued to LSE to show as to why penalty should not be imposed as provided under section 22(c) of SECP Ordinance, 1969 for violation of Regulations 6.1.1 and 6.1.2 of the Regulations made under section 34 of the Securities and Exchange Ordinance, 1969 ("Ordinance").

3. The main allegation contained in the show cause notice was that the Appellant allowed UEL to continue trading at its terminal despite the fact that its registration had expired. The Appellant was asked to explain why the trading terminal was not switched off after the expiry of the broker's registration. The Appellant filed its reply on 23.11.2009 primarily explaining its role and function and elaborating that it is not the mandate of the Appellant to register UEL as a broker and the delay if any cannot be attributed to the Appellant especially since the matter was pending with the SECP. The case was heard in detail and ultimately order dated 10.12.2009 was passed by the Director (ICW) SMD SECP holding the Appellant liable to penalty in the amount of Rs.1 Million for being negligent of its duties. Against the said order, the Appellant filed an appeal before Respondent No.2 which was dismissed and the penalty was upheld.

4. In terms of the impugned order, the Appellant was held responsible to monitor the activities of brokers, to ensure that they are duly registered with the SECP and in the event that the registration expires they should not allow them for trading on terminals. The impugned order has relied upon Regulations 6.1.1 and 6.1.2 of the Regulations and maintained penalty in the amount of Rs.1 Million against the Appellant.

5. Learned counsel for the Appellant argued that the impugned order has failed to consider that the role of the Appellant is that of a post office; it is merely to forward the request of the broker for renewal of registration to the SECP and in fact it is the responsibility of the SECP to renew the registration of the broker, that too within time. And in the event it is unable to renew the registration in time, it must

intimate to the LSE and the broker that the registration has not been renewed or it is still pending. Hence the terminal should be shut down. Learned counsel also argued that in the absence of such intimation, the Appellant cannot be held responsible for willful contravention under section 22(c) of the Ordinance as well as the Regulations. Learned counsel further argued that in terms of the Rules no time has been specified with respect to renewal of registration and there is no consequence provided in the Rules in the event of a delay for renewal of registration. Learned counsel also argued that when the terminal was shut down by the Appellant, UEL filed W.P. No.23719/2009 before this Court in which a direction was issued to SECP to hear the matter and pass an order immediately meaning thereby that the responsibility lies with the SECP and not with the Appellant.

6. Parawise comments have been filed by the Respondents. Learned counsel for the Respondents states that the Appellant is a frontline regulator and is responsible to ensure that every broker operating a terminal at the LSE is duly registered by the SECP. Learned counsel argued that the contention of the Appellant that it is simply a post office is totally against the mandate of the law as its role is to ensure compliance of all Rules and Regulations and suspend operation of any broker who is acting in contravention of the Rules and Regulations. In this case UEL was operating its terminal without registration as a broker meaning thereby that the Appellant kept the market and its investors at risk by allowing an unregistered broker to operate through its terminal for more than a year. Learned counsel further argued that this is an admitted fact which the Appellant itself acknowledged through letter dated 04.11.2009 wherein it has specially stated that due to restructuring of management of human resource this issue was inadvertently missed out by the Appellant. Learned counsel further argued that the Appellant failure to stop UEL from operating as a registered broker without any registration from 24.07.2008 to 16.06.2009 and without submission of any application until 21.05.2009 which is in gross violation of the Regulations. Consequently, the Appellant has to be made responsible as it is a violation of public trust.

7. The Appellant has relied upon the Rules to show that a member desirous of acting as a broker shall make an application to the Commission in Form A as set out in the First Schedule for grant of a certificate of registration, through the stock exchange in which he is a member. This application is to be forwarded by the relevant stock exchange to the Commission within fourteen days from the date of its receipt. Thereafter it is the SECP, which is to determine eligibility for certificate of registration as a broker under the law. In the event of renewal of registration Rule 7 of the Rules prescribes that the

certificate of registration shall be renewable on payment of fee on the same Rules for eligibility as at the time of initial registration. They have also relied upon the fact that the suspension of registration lies within the jurisdiction of SECP for contravention of the Rules and Regulations showing that if a broker was to operate a terminal of LSE without registration, the Commission can take necessary action against the broker and impose any penalty or fine as under the Rules. The Respondents have relied upon the Regulations, which have been made in exercise of power under section 34 of the Ordinance. These Regulations are relevant to the Unified Trading System ("UTS") in terms of which LSE is a frontline regulator with respect to its members and the companies/securities listed on the LSE. The trading on UTS shall only be done by eligible members which clearly shows that a member must be registered with the SECP as per Regulation 6.1.1 of the Regulations. If at any time a member ceases to fulfil the criteria given under Regulation 6.1.1 of the Regulations, Regulation 6.1.2 comes into force which provides that membership should be immediately suspended either by the stock exchange or by the Commission. In this case it is the Regulations which are relevant and not the Rules as the Regulation clearly address the issue of operating on the UTS without a registration. Regulation 6.1.2 of the Regulations clearly provides that the stock exchange or the Commission can suspend use of the terminal immediately if a member or broker does not meet the criteria given under Regulation 6.1.1 of the Regulations. Therefore, the Appellant's contention that it is the responsibility of the SECP to suspend the operation of a member at its terminal is totally misplaced as the Regulations clearly place this responsibility on stock exchange as well as on the Commission.

8. The Appellant has also argued that it had no knowledge of the pendency of the renewal application and that it operates merely as a post office for the purposes of forwarding the application of renewal. In this regard the Rules provide that the application is to be forwarded through the stock exchange, however the intent of such a rule is to enable the stock exchange to monitor the eligibility of its broker. The Appellant cannot exonerate itself from its fundamental responsibility to ensure that every broker is duly registered with the Commission and is operating under a valid registration certificate. The purpose of moving the renewal application through the stock exchange is so that the stock exchange becomes aware of the fact that a broker's registration certificate is due to expire within a specified period, hence it can pursue the matter to ensure that the registration certificate is renewed within time. The issue of whether there is a delay on the part of the Commission is totally irrelevant for the purposes of the stock exchange, in this case the LSE, as its primary responsibility as a

frontline regulator is to ensure that only registered brokers operate through the LSE on the UTS. In this regard, it is important to note that the stock exchange is a frontline regulator to monitor brokers so as to protect the interest of the investors. It is the stock exchanges basic function to promote and protect all investors who operate through it for which registration of a broker is a vital requirement. In this regard the stock exchange cannot shy away from its responsibility to ensure that a broker is registered with the SECP nor can it shy away from the responsibility of shutting down the terminal, since in this case UEL was operating on LSEs UTS system. Hence LSE has to ensure that only a registered broker can operate on UTS. The Commission can also suspend operation, however, primary responsibility is of the LSE.

9. The Appellant has also questioned the penalty imposed of Rs.1 Million on the ground that it is excessive and the infringement was not willful. It was argued that SECP is at much at fault as LSE hence the punishment should have been lenient and further no loss was reported on account of this inadvertent mistake. Section 22 of the Ordinance provides for penalties where a person contravenes or fails to comply with the Ordinance or the Rules and Regulations made thereunder. As per the Section the penalty cannot exceed Rs.50 Million. Regulatory penalty, as the Section clearly provides, is for compliance of the law the violation of which results in punishment in the form of a penalty. The quantum of penalty is based on the circumstances of each case such that it is appropriate and a proportionate amount of penalty, not exceeding the upper limit of Rs.50 Million. The basic objective to impose penalty is to ensure compliance by creating an effective deterrence. The amount of penalty reflects on the seriousness of the infringement, the duration of the infringement, the degree of harm caused if any, whether actual or potential. It will also reflect on whether the contravention was deliberate or reckless and whether any effort was made to prevent the wrong from continuing. Of course past history is also relevant along with any precedents on the issue. Penalty is imposed in each case depending on its facts and context and in proportion to the infringement and its impact. In this case there is no justification for the Appellant to claim leniency or a notional punishment as the Appellant has totally abdicated itself from its role as a frontline regulator. The Appellant's case was considered and the gravity of the infringement was also considered. The penalty is well within the statutory limit and does not reflect upon any random quantum. The Appellant has been held responsible for neglecting its functions and also for violating the Regulations against the interest of the investors. In order for the deterrent to be effective it should be of an amount

which hurts the offender. Therefore, in this case no illegality is made out.

10. In view of the aforesaid, the contention of the Appellant that it is not responsible to ensure the registration of UEL is totally misplaced as in terms of the record the application for renewal of registration was filed by the UEL on 21.05.2009 after a delay of 10 months, which should have been in the knowledge of the Appellant and called for immediate action. Under the circumstances, no case for interference is made out as Respondent No.2 has rightly imposed penalty on the Appellant. Resultantly, the instant appeal is dismissed and the order impugned dated 06.02.2015 is maintained.

MWA/L-5/L Appeal dismiss

