

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATIONS 33A and 33B READ WITH REGULATION 38 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008

In respect of

NAME OF THE NOTICEE	SEBI REGISTRATION NO.
Bhavana Investor Services Limited	INB230906533

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) appointed an Enquiry Officer/ Designated Authority (hereinafter referred to as “**DA**”) in terms of Regulation 16 (1) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as “**Enquiry Regulations**”) for initiating Summary Proceedings against Bhavana Investors Services Limited (hereinafter referred to as “**Noticee**”). The said proceedings were initiated for non-payment of fee by the Noticee, as specified in Regulation 10 read with Schedule III of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to “**Stock Brokers Regulations**”), as it stood then [later renamed to SEBI (Stock Brokers) Regulations, 1992].
2. Pursuant to the appointment, the DA issued a Show Cause Notice bearing reference No. SCN/SP/AN/54399/011/2005 dated November 23, 2005 (hereinafter referred to as ‘**SCN**’) to the Noticee alleging that the Noticee had failed to pay the turnover fee to SEBI in terms of the Stock Brokers Regulations. Aggrieved by the aforesaid SCN, the Noticee filed a writ petition in the Hon’ble High Court of Judicature of Andhra Pradesh, in December 2005, challenging the issuance of the aforesaid SCN. It is noted from the material available on record that the Hon’ble High Court, vide order dated December 13, 2005, directed the Noticee to file its submissions on merits before the DA and further directed that no order be passed cancelling/ suspending the license of the Noticee. Accordingly, the Noticee filed its submissions vide letter dated December 21,

2005. Thereafter, vide order dated December 28, 2005, the Hon'ble High Court, directed as under:

'...the petitioner submitted his explanation on 21-12-2005. If that be so, I am of the opinion that final orders may not be passed by the respondent. Accordingly, there shall be stay of all further proceedings pursuant to the impugned proceedings...'

3. In compliance with the aforesaid directions of the Hon'ble High Court, the proceedings were kept in abeyance. Taking into account the long pendency of the matter and the operation of stay on SEBI proceedings, SEBI filed an application on June 16, 2016 requesting the Hon'ble High Court to expedite the hearing of the Writ Petition. Though the said petition was listed on a few dates, the hearing could not take place. SEBI took steps for early listing of the matter and the Hon'ble Court heard the parties on September 1, 2022 and September 14, 2022. Pursuant to the same, the Hon'ble High Court, vide order dated June 5, 2023, disposed of the matter. The said Order of Hon'ble High Court was received by SEBI on December 21, 2023. Vide the said Order, the following directions were issued by the Hon'ble High Court:

"SEBI shall consider the explanation dated 21.12.2005 submitted by the petitioner company to the show-cause notice dated 23.11.2005, if not already considered;

... SEBI shall consider the aforesaid explanation dated 21.12.2005 and the representation dated 22.02.2006 submitted by the petitioner company and pass a reasoned order by putting the petitioners on notice and affording it an opportunity;

... SEBI shall consider the specific contentions of the petitioner company that it is not due and liable to pay transaction fee pursuant to the SEBI Rules, 2002 since the said Rules are prospective in nature but not retrospective;

... SEBI shall also consider the request made by the petitioner company not to withhold the amount of Rs.87.50 Lakhs; and

... SEBI shall complete the aforesaid exercise within four (04) weeks from the date of receipt of copy of this order."

4. Pursuant to the directions of the Hon'ble High Court, on February 26, 2024, Competent Authority appointed an Enquiry Officer to continue the proceedings. Accordingly, the DA issued a letter to the Noticee, advising it to submit its response, if any. On the basis of the response received from the Noticee and other material available on record, the DA submitted the Enquiry Report dated July 10, 2024 (hereinafter referred to as the **"Enquiry Report"**), in terms of Regulation 33B of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as the **"Intermediaries**

Regulations”). The recommendation made by the DA in the Enquiry Report is as under:

“After taking into consideration the facts and circumstances of the case, material available on record and submissions made by the Noticee, having regard to orderly functioning of the securities market and protection of interest of investors, I recommend for the cancellation of the certificate of registration of Noticee i.e. Bhavana Investors Services Ltd. having SEBI Registration No.: INB230906533.”

5. Pursuant to the above, the matter was assigned to the undersigned for further proceedings. In terms of regulation 33B(4) of the Intermediaries Regulations, the DA has submitted the Enquiry Report recommending cancellation of certificate of the Noticee. It is noted that the present proceedings are being undertaken in terms of the *summary procedure* provided under Chapter V-A of the Intermediaries Regulations and in terms of the said procedure, there is no requirement of providing an opportunity of hearing to the Noticee at this stage. The relevant regulation i.e., 33B(5), provides as under:

“(5) The Chairman or the member, as may be, after receipt of recommendations from the officer under sub-regulation (3) or sub-regulation (4), shall pass such orders as he may deem appropriate.”

CONSIDERATION AND FINDINGS:

6. Before moving ahead and analysing the material available on record, I deem it fit to briefly examine the alleged violations committed by the Noticee. Stock Brokers Regulations came into effect on October 23, 1992 wherein the erstwhile regulation 10 read with Schedule III of the Stock Brokers Regulations (as it stood in 1992) provided for payment of fee for grant of certificate of registration. Clause I(b) of Schedule III provided that where the annual turnover of the broker exceeds ₹1 crore during any financial year, a sum of ₹5000 plus 1/100th of one percent of the turnover in excess of ₹1 crore was to be paid as turnover fees. In this regard, certain complaints/ clarifications were sought by the market players as regards the imposition of turnover fee. In order to address such concerns, an Expert Committee was constituted under the guidance of Shri R.S. Bhatt (hereinafter referred to as **“Bhatt Committee/ Committee”**). The terms of reference for the Bhatt Committee were as under:

- a) to examine and recommend the various types of transactions, which may reasonably be taken into account to determine the ‘turnover’ of stock brokers for purposes of levy of registration fees in accordance with

- Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992; and
- b) any other related matter.

7. The Committee submitted its report on December 18, 1992 and recommended as under:

“The committee concluded that using turnover as the basis of payment of registration fees was a well established practice in a country like the US and that it was a fair basis.

The committee concluded the incidence of fees was not unreasonable.

The committee recommends that for jobbing transactions identified and included in the turnover as proposed in the report, the scale of fees may be reduced to One Two Hundredth of 1 percent.

The committee recommends that in the case of carry forward renewal or badla transactions the off-setting entries (as clarified in the report) made by the exchange may not be counted as part of the turnover. However, in those exchanges where such off-setting entries are not made the question of any exclusion from turnover will not arise.

For Government securities and PSU bonds and units traded in the similar manner, the turnover may be calculated separately and a registration fee of One Thousandth of one percent may be charged on such turnover rather than the present scale of One Hundredth of one percent.

If brokers are carrying out transactions in securities without reporting these to the stock exchanges those transactions would be taken into account for the purpose of turnover and the individual broker would be responsible for reporting such transactions for payment of registration fees. Stock exchanges would ensure that registration fees are properly calculated and paid to the Securities and Exchange Board of India.

The trade put through on other stock exchanges would be included in the turnover on that exchange.

The activities such as underwriting and collection of deposits would not be taken into account for the purpose of calculating the turnover of the brokers.”

8. The Committee observed that ‘turnover’ was a fair basis for determination of registration fee and the incidence of fee specified by Board was not

unreasonable. It, however, recommended concessional rates of fee for certain types of transactions. The Central Government and SEBI accepted the recommendations of the Committee in principle and SEBI advised the brokers vide Circular dated January 7, 1993 to pay fees in the manner recommended by the Bhatt Committee. Aggrieved by the same, many brokers challenged the fees liability before various Courts and finally, the Hon'ble Supreme Court, vide its judgement dated February 01, 2001 in the matter of **BSE Brokers Forum vs. SEBI**¹ (hereinafter referred to as "**BSE Brokers Forum case**"), upheld the constitutional validity of the Stock Brokers Regulations and the power of SEBI to levy fee for carrying out the purposes of the SEBI Act. The Apex Court also held that turnover can be the measure for levy of fee. It, however, directed SEBI to incorporate the recommendations of the Bhatt Committee in the Stock Brokers Regulations. In compliance with the directions of the Hon'ble Supreme Court, the Stock Brokers Regulations were amended with effect from February 20, 2002 (hereinafter referred to as "**2002 amendment**") by incorporating the recommendations of the Bhatt Committee.

9. In light of the above, I note that the fee on the basis of turnover was being levied on the brokers since 1992 and pursuant to the Circular dated January 7, 1993, the fee was being levied on the brokers in accordance with the recommendations made by the Committee.
10. The Noticee in the present case received its certificate of registration in April 1996. In the year 2004, the board of directors of the Noticee resolved to stop the business and surrender its trading membership. However, the application for surrender was not processed by National Stock Exchange of India Limited as the Noticee could not get a No-Dues Certificate from SEBI. In terms of the 1993 Circular, the Noticee was required to pay the turnover fee in accordance with regulation 10 read with clause I of Schedule III of the Stock Brokers Regulations. I note from the SCN issued by the DA that the fee paid by the Noticee from 1996 to 2001 (i.e., first five years of registration, where the annual turnover fee was to be paid in accordance with the Circular) was not in accordance with the Stock Brokers Regulations read with the aforesaid Circular.
11. Having laid down the relevant facts for the present matter, I now proceed with the matter on merits. I have perused the submissions made by the Noticee before the DA, the analysis and recommendation of the DA in that regard and other material available on record. I am of the view that further scrutiny of the submissions made by the Noticee along-with the analysis and recommendation of the DA is necessary and would be apt in the interest of justice. The

¹ [2001] 30 SCL 31

submissions made by the Noticee, vide letters dated December 12, 2005 and June 14, 2024 are summarized as under:

- a) The Noticee has not violated any of the rules/ regulations with respect to payment of fees, or otherwise;
 - b) The entitlement of SEBI to charge fee from brokers under regulation 10 of the Stock Brokers Regulations is a contentious issue and has been challenged before the Hon'ble High Court of Calcutta;
 - c) Regulations requiring the Noticee to pay the SEBI fee, as amended in 2002 does not apply to the Noticee since its liability to pay any fee on the turnover was limited only up to 5 years from the date of registration. The said period of 5 years got over in 2000, i.e., prior to coming into effect of the amendment to the Stock Brokers Regulations;
 - d) The Hon'ble High Court of Telangana, while disposing of the writ filed by the Noticee against the issuance of SCN, has categorically noted that the amendments brought to the Stock Brokers Regulations are prospective in nature and not retrospective and on this ground alone, the proceedings are not sustainable in law;
 - e) SEBI is not empowered to make any law with regard to levy of additional registration charges against stock broking companies which were registered prior to the amendment of Schedule III of the Stock Brokers Regulations and such an amendment cannot be made applicable retrospectively.
12. With regard to the contention of the Noticee that the authority of SEBI to charge fee from the brokers has been challenged before the Hon'ble High Court of Calcutta, I find that the said contention has become infructuous in light of the decision of the Hon'ble Supreme Court in the *BSE Brokers Forum Case* (supra). The Hon'ble Supreme Court in the said case has endorsed the authority of SEBI to levy fee and upheld the validity of regulation 10 read with Schedule III of the Stock Brokers Regulations. Accordingly, the said contention needs no further deliberation.
13. The Noticee in both of its replies has argued that the amendment to the Stock Brokers Regulations was carried out in 2002, i.e., after five years of Noticee receiving its registration and therefore, the fees stated therein cannot be made applicable to the Noticee retrospectively. In this regard, I find it relevant to reiterate that pursuant to the acceptance of the recommendations of the Bhatt Committee, vide circular dated January 7, 1993, the brokers, via respective stock exchanges, were directed to pay fees in accordance with the recommendations of the Bhatt Committee. Additionally, the recommendations were specifically incorporated in the Stock Brokers Regulations pursuant to the directions of the Hon'ble Supreme Court in the *BSE Brokers Forum case* only to make the already

existing provisions, more clear. Clause I(bb) of schedule III which was amended vide the 2002 amendment, *inter alia*, reads as under:

*“[(bb)Notwithstanding anything contained in clause (b) **it is clarified** that the fee shall be recoverable as computed as under:*

- (i) in respect of jobbing transactions that is to say all transactions which are squared off during the same day which have not been undertaken by the broker on behalf of clients, the fees shall be computed at the rate of one two hundredth of one per cent in respect of the sale side of such transactions;
...*

I note from the aforesaid that the 2002 amendment was merely clarificatory in nature and did not impose any new obligations on the brokers. The said amendment, in effect, crystallized in the Stock Brokers Regulations, what was always in existence by virtue of the Circular dated January 7, 1993. The clarifications issued vide the 2002 amendment were first intimated to the brokers by way of the Circular dated January 7, 1993. In other words, the aforesaid amendments merely crystallized the recommendations of the Bhatt Committee made vide report dated December 18, 1992 and informed to the brokers vide the said Circular dated January 7, 1993. As the amendment did not impose any new obligation on the brokers, it did not impact the brokers adversely. Accordingly, the arguments as regards the 2002 amendment being retrospective in nature, and therefore, not applicable to the Noticee, are not tenable.

14. Lastly, the Noticee has also submitted that the Hon'ble High Court of Telangana has categorically noted that the amendments brought to the Stock Brokers Regulations are prospective in nature and not retrospective. I note that the said submission is misleading in nature and no such finding has been made by the Hon'ble High Court of Telangana. Rather, the Hon'ble Court has observed as under:

“d) Both NSEIL and SEBI shall consider the specific contentions of the petitioner company that it is not due and liable to pay transaction fee pursuant to the SEBI Rules, 2002 since the said Rules are prospective in nature but not retrospective;”

15. I note from the above that the Hon'ble Court has only made a reference to the submissions made by the Noticee and has directed SEBI to consider the contention that the 2002 amendment is prospective in nature. I have duly perused the said submission of the Noticee and am of the view that the said amendment was merely clarificatory in nature. The obligation, as stipulated in the 2002 amendment, accrued by virtue of Circular dated January 7, 1993 and therefore, the Noticee cannot be absolved from its liability to pay the requisite

fees. Accordingly, the contention of the Noticee as regards the 2002 amendment being prospective in nature is not tenable in law.

16. I note that the SEBI (Procedure for Holding Enquiry by the Enquiry Officer and Imposing Penalty) Regulations, 2002 have since been repealed and replaced by the SEBI (Intermediaries) Regulations, 2008. In terms of the Intermediaries Regulations, after receipt of the recommendation from the DA, the Designated Member is required to pass such orders, as deemed fit. In this regard, the possible recommendations which may be made by the DA, after conducting an enquiry, are as under:

*“(i) disposing of the proceedings without any adverse action;
(ii) cancellation of the certificate of registration;
(iii) suspension of the certificate of registration for a specified period;
(iv) prohibition of the noticee from taking up any new assignment or contract or launching a new scheme for such the period as may be specified;
(v) debarment of an officer of the noticee from being employed or associated with any registered intermediary or other person associated with the securities market for such period as may be specified;
(vi) debarment of a branch or an office of the noticee from carrying out activities for such period as may be specified;
(vii) issuance of a regulatory censure to the noticee.”*

In the present matter, the DA has recommended that the certificate of the Noticee may be cancelled. On the basis of the discussion above, I am of the view that it is not in dispute that the 2002 amendment was applicable to the Noticee and it has failed to pay the requisite fee in terms of the said amendment. Accordingly, I am in agreement with the recommendation made by the DA.

17. From the material on record, it is noted that the Hon'ble High Court of Telangana, vide its order dated June 5, 2023, has directed that “...NSEIL and SEBI shall also consider the request made by the petitioner company not to withhold the amount of Rs.87.50 Lakhs;”. The SCN dated November 23, 2005 mentions that as on August 31, 2005, the Noticee had an outstanding payment of ₹2,76,99,017/- towards SEBI. It is noted that proceedings in the present matter have been undertaken in terms of the summary procedure provided under the Enquiry Regulations read with the Intermediaries Regulations to determine the actions which may be taken against the Noticee, in terms of the aforesaid regulations. Accordingly, issuance of any direction in relation to the withholding of the security deposit amount and/ or the recovery of the outstanding fee is beyond the scope of the proceedings before me. The said aspect of security deposit and the outstanding fee shall be addressed by the relevant operational department of SEBI in accordance with the applicable procedure in that regard.

ORDER

18. I, therefore, in exercise of the powers conferred upon me under section 19 of the SEBI Act, 1992 read with regulation 33B(5) of the SEBI (Intermediaries) Regulations, 2008, accept the recommendation made by the Designated Authority and hereby cancel the certificate of registration of Bhavana Investors Services Limited (SEBI Regn. No. INB230906533).
19. Notwithstanding the direction at paragraph 18 above, the Noticee shall allow its existing clients, if any to withdraw or transfer their securities or funds held in its custody, within 15 days from the date of this order. In case of failure of any clients to withdraw or transfer their securities or funds within the said 15 days, the Noticee shall transfer the funds and securities of such clients to another broker registered with SEBI within a period of next 15 days thereon, under advice to the said clients.
20. This Order shall be published in two newspapers in accordance with regulation 33C of the Intermediaries Regulations.
21. This order shall come into effect with immediate effect.

Place: Mumbai

Date: August 29, 2024

Sd/-

AMARJEET SINGH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA