

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 17349/2004

Reserved on: April 26, 2010

Decision on: June 3, 2010

ASSOCIATION FOR WELFARE OF DELHI STOCK
BROKER AND ORS. Petitioners
Through: Mr. C. Mukund, Advocate

versus

UNION OF INDIA AND ORS Respondents
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Neeraj Malhotra, Ms. Ruchi Jain and
Mr. Nishant Kumar, Advocates for SEBI along
with Ms. Sharika, Legal Officer SEBI

CORAM: JUSTICE S. MURALIDHAR

- | | | |
|----|---|-----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

J U D G M E N T

1. The Petitioner No.1 is the Association for Welfare of Delhi Stock Brokers ('Association') which is a society registered under the Societies Registration Act, 1860. The list of the members of the Petitioner No. 1 Association is at Annexure P-1. These individual stock brokers have also joined as Petitioners in the present petition pursuant to an order dated 3rd November 2004. The Association is aggrieved by a circular dated 10th October 2003 issued by the Respondent No. 2, Securities and Exchange Board of India (SEBI) as well as

Clauses 2 and 3 of Part 2 of the SEBI (Interest Liability Regularization) Scheme, 2004 ('SILRS'), in so far as it restrains SEBI from considering the turnover data with breakup of the members of the Petitioner No.1 Association which has been furnished to the SEBI by the Delhi Stock Exchange Association Limited (DSEAL) (Respondent No.3 herein) till the expiry of the regularization period on 15th November 2004. The second prayer is that the Petitioners should be allowed the benefit of the reduced rate of fees prescribed by Clause (bb) of Schedule III of the said SILRS while participating therein to avail the benefit of the 80% waiver of interest liability.

2. A third prayer is for a writ of mandamus directing the SEBI to forthwith consider and accept the turnover data with breakup of the members of the Petitioner No.1 Association and submitted to the SEBI through the DSEAL in the prescribed format before the commencement of the regularization period for the purposes of calculations of the outstanding registration fees and interest thereon strictly in terms of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 and the concessions allowed under the SILRS.

3. The fourth prayer is that the SEBI should be directed to correct/revise the "Fee Liability Statements" issued under the SILRS in relation to the members of the Petitioner No.1 Association and give them credit of the payments already made by them on account of SEBI registration fees in the said 'Fee Liability Statements'. The last prayer is that those who could not meet the deadline for submission of the turnover data should be permitted to submit it before the expiry of the regularization period.

4. The background to the present petition is that the SEBI was constituted under the Securities and Exchange Board of India Act, 1992 ('SEBI Act'), inter alia, to protect the interests of investors in the securities market and promote, develop and look after the securities markets and all matters connected therewith and incidental thereto. It is stated that the DSEAL is duly registered under the Securities Contract (Regulation) Act, 1956 ('SCR Act'). It is stated that the DSEAL is the conduit for the purposes of administration of the SEBI registration fee regime on the stock brokers. In other words, DSEAL is responsible for co-ordinating the task of collection of the turnover data from the stock brokers on behalf of the SEBI and forwarding the said turnover data to SEBI based on which SEBI determines the registration fee liability of the stock brokers. DSEAL is also stated to be responsible for verifying the turnover data submitted by the stock brokers and making reconciliations.

5. By a notification dated 28th August 1992 in exercise of its power under Section 28 of the SEBI Act, the SEBI promulgated the Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Rules, 1992 ('the SEBI Rules'). Rule 3 provided that no stock broker shall buy, sell and deal in securities unless he holds a certificate granted by the SEBI. The Rule also provided that for grant of such certificate the concerned broker shall have to pay an amount as registration fee in the manner as may be prescribed by SEBI.

6. In 1992, the Central Government enacted the SEBI (Stock Brokers and

Sub Brokers) Regulations 1992 ('Regulations') inter alia providing for levy of registration fee. It provides that stock brokers shall pay registration fees in the manner set out in paras 1 to 4 of Schedule III to the Regulations. Briefly summarized, the stock brokers are required to pay fee based on the Annual Turnover at the rates prescribed therein only for the first five years for the date of initial registration. Thereafter they are expected to pay a flat fee of Rs.5,000/- only for every block of five years. According to the Petitioners, therefore, the annual turnover of the brokers is relevant only for the purposes of computation of this SEBI registration fees liability and is, therefore, relevant only for the first five years from the date of registration with SEBI and not thereafter. Following the various representations against the circulars, the amended regulations, SEBI constituted a Committee under the Chairmanship of Shri R.S. Bhatt, the then Chairman of Unit Trust of India.

7. The registration fee requirement was challenged by several stock brokers through writ petitions in different High Courts. One of those writ petitions was transferred to the Supreme Court. It was disposed of by the judgment in ***B.S.E. Brokers' Forum, Bombay v. Securities Exchange Board of India 2001 (3) SCC 482***. While upholding the levy based on the annual turnover of the brokers, the Supreme Court observed that there should be changes brought about in the definition of annual turnover and also in the quantum of the levy pertaining to the certain specific transactions treated as part of the turnover. Following the above judgment and pursuant to the recommendations of the Bhatt Committee, Clause (bb) was incorporated in the para 1 to Schedule III of the Regulations. The inserted Clause 'bb' 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;

(ii) in respect of transactions in Government securities, the bonds issued by any public Sector Undertaking and the units traded in a similar manner, the fee payable shall be computed at the rate of one thousandth of one percent of the turnover;

(iii) in case of carry forward, renewal or badla transactions the fees shall computed at the rate of one hundredth of one per cent of the turnover and the reverse off setting transactions shall not be counted as part of the turnover;

(iv) if brokers are carrying out transactions in securities without reporting them to the stock exchange, those transactions shall be taken into account for the purpose of turnover and the fees shall be computed at the rate of one hundredth of one per cent of the turnover;

(v) the trade put through on other stock exchanges shall be included in the turnover of that exchange if market for that security does not exist on the exchange of which he is a member and the fees shall be computed at the rate of one hundredth of one per cent of the turnover;

(vi) activity such as underwriting and collection of deposits shall not be taken into account for the purpose of calculating the turnover.”

8. Prior to the amendment dated 20th February 2002, the SEBI (Stock Brokers and Sub Brokers) Regulation 1992 was amended on 16th December 1998, inserting Para 5 in the Schedule III thereto, whereby provision for charging of interest was made on a delay in the payment of SEBI registration fees by the stock brokers. This was done so as to provide a coercive mechanism for the enforcement of the SEBI fees regime.

9. Pursuant to the amendment brought about in the said Regulations on 20th February 2002 in the form of insertion of Clause (bb), the SEBI came out with a circular bearing Ref.No.SMD/POLICY/Cir-07/2002 dated 28th March 2002 which apart from giving various clarifications relating to the fees to be paid by the stock brokers, also for the first time indicated the details of various components of the turnover as per the amended regulations that was required to be furnished by the respective stock brokers duly supported by Auditor's Certificate and even the format of such Auditor's Certificate was prescribed in the circular dated 28th March 2002. It is pertinent to note that the turnover data in the said circular, duly certified by their auditors, was to be furnished by the stock brokers not directly to the SEBI, but to the DSEAL which was obliged to recompile the same in the prescribed format and forward it to the SEBI.

10. According to the Petitioner, a reading of the above circular dated 28th March 2002 showed that it was solely for the purpose of streamlining the process of the administration of the SEBI fee regime that DSEAL was introduced as a conduit. DSEAL was to act purely as an agent of the SEBI.

DSEAL was required to verify the turnover figure submitted by its members with its own records and in case of any discrepancy the DSEAL was required to settle the same with the member concerned.

11. A further circular dated 30th September 2002 was brought out by the SEBI. In this circular SEBI further clarified about the fees to be paid by the stock brokers. The format for the auditor certificate was also altered.

12. By a circular dated 10th October 2003, SEBI fixed a deadline of 31st October 2003 for the submission of the turnover data with breakup. It was indicated that as regards such stock brokers who failed to meet the deadline, DSEAL would forward to the SEBI the gross turnover data of such stock brokers. This would mean that their fee liability would be calculated at the highest rates even though concessional rates had been prescribed in Clause (bb) of the said Regulations.

13. The Petitioners challenged the power of the SEBI to levy fees at a highest rate on components which are eligible for concessional rates under Clause (bb). Also challenged is SEBI's power to levy interest on the delayed payment of fees under Para 5 of the Schedule III.

14. It is contended that the stock brokers, including some of the members of the Petitioner No.1 Association had been submitting the turnover details and have been paying fees as per transactions since 1992. The turnover data furnished by the members of the Petitioner No.1 Association were duly supported by auditor's certificates. A circular dated 28th March 2002 stated

that the turnover data with the auditor's certificate could not be furnished to by the stock brokers to SEBI 'without remitting fees as indicated in the turnover statement supported by the auditor certificate'.

15. The Petitioner state that from 2002-2003 onwards there was no significant trading on the Delhi Stock Exchange. Members of the DSEAL, who were also members of the Petitioner No.1 Association, did not even log on their computers for trading on the exchange. The administrative infrastructure of DSEAL deteriorated and it was not able to manage its own records, settle the differences, if any, with the members and thereafter send the turnover data to SEBI on 'as is' basis. Consequently, DSEAL was unable to meet its obligation of sending SEBI the turnover data. In the circumstances, DSEAL was left with no option to seek the help of an outside agency. Consequent upon a decision of the Board of Directors, DSEAL by a letter dated 29th March 2004 hired the services of M/s. K.C. Khanna & Company to compile the members' turnover data and their fee liability in accordance with various circulars of the SEBI including the circular dated 28th March 2002. It was emphasized that the exercises had to be completed before the end of May 2004 itself. It is stated that M/s. K.C. Khanna & Company while compiling the turnover data acted contrary to the instructions contained in the letter dated 29th March 2004 and completely ignored the requirements of the SEBI circular dated 28th March 2002. Consequently, the turnover data was forwarded to SEBI by the DSEAL on 9th July 2004 without complying the essential requirements of the circular dated 28th March 2002. Even SEBI pointed out apparent mistakes in the turnover data as sent by the

DSEAL. It is stated that issue was discussed in a meeting of the Board of

Directors of DSEAL held on 14th July 2004. It was decided to make a representation to the SEBI.

16. Pursuant to the above decision some of the members of the DSEAL met a senior official of SEBI. It is stated that they were assured that the revised data would be accepted by SEBI. In the circumstances, DSEAL withdrew the data compiled by M/s. K.C. Khanna & Company decided to resubmit it to the SEBI.

17. It is stated that owing to the failure of M/s. K.C. Khanna & Company to comply with the requirements of SEBI in compiling the turnover data DSEAL hired the services of M/s. Doogar & Associates, a chartered accountants' firm, to recompile the turnover data with the breakup of the stock brokers in compliance with the requirements stated out in the circular dated 28th March 2002. DSEAL claims that SEBI was informed of all developments that were taking place. It is stated around 150 stock brokers of DSEAL, including many members of the Petitioner No.1 Association re-submitted their turnover data with the breakup in the prescribed format which was duly certified by their auditors. This was examined by M/s. Doogar & Associates who thereafter forwarded the turnover data with the breakup of the stock brokers including members of the Petitioner No.1 Association to the Respondent No.2 SEBI between 16th to 30th September 2004.

18. Meanwhile, on 15th July 2004, SEBI notified the SILRS 2004 whereby SEBI granted a one-time payment opportunity to stock brokers who had not till then paid their registration fee till then. They were permitted to pay the

entire principal amount of the registration fee together with 20% of the outstanding interest. Thereby the broker was absolved the liability to pay 80% of the outstanding interest. It was clarified that in case of non-payment of the registration fee, the broker might face suspension or cancellation of certificate of registration, or prosecution in terms of Section 24 of the SEBI Act.

19. In order to avoid adverse consequences, many of the members of the Petitioner No.1 Association decided to avail of the SILRS 2004 and make payment of the outstanding registration fee together with 20% interest. On 3rd September 2004 SEBI forwarded, through DSEAL, the 'Provisional Fee Liability Statement' to all the stock brokers. It is stated that the members of the Petitioner No.1 Association were surprised to find that the liability for fees as shown in the said statement was based upon their 'gross turnover data' and not on their turnover data with breakup duly certified, by their auditors and furnished to SEBI. In other words, the benefit of the concessional rates of fee on different components on the turnover as prescribed in Clause (bb) of Part 1 of the Schedule to the Regulations was not accorded to the members of the Association. Further, those who had converted from individual to corporate memberships understood that they would be accorded 'fee continuity benefit'. They found that they were being charged fees on their entire turnover at the highest rates without being given any opportunity to submit the auditor certified turnover data with the breakup. Further it was found that the provisional fee liability statement did not account for some of the payments made by the individual brokers on account of registration fees from time to time. Thereafter, the members of

the Petitioner No.1 Association approached the DSEAL, they were informed of the lapses of M/s. K.C. Khanna & Company. DSEAL assured the members of the Petitioner No.1 Association that the corrections would be made in the data and that the liability to principal fee and interest would be reflected in the 'Final Fee Liability Statement' which was to be issued by SEBI.

20. It is stated that the Petitioners thereafter submitted all the information as sought by the DSEAL. It is stated that on 10th October 2004, members of the Petitioner No.1 Association received the 'Final Fee Liability Statement' where again they were surprised to note that there was no change from the provisional statement. The benefit of concessional rates of fee in terms of Clause (bb) of Para 1 to the Schedule to the Regulations continued to be denied to the members of the Petitioner No.1 Association. Since the final statement was received only a few days before 15th October 2004 and the deadline for the regularization was 15th November 2004, the present petition was filed on 2nd November 2004.

21. While directing issuance of notice on 3rd November 2004 this Court required the SEBI to inform it whether any data was being accepted after the cutoff date and if so, on what conditions. On the subsequent date on 10th November 2004 after noting the submissions of the learned Senior counsel for the Petitioner that the SEBI was not accepting the payment made by the Petitioner as per their calculations, this Court directed as under:

“It is open to members of the petitioners to tender payments as per their calculations, but the same will not create any rights or equities in favour of members of the petitioner. It is

equally open to respondent No.2 SEBI to accept or not to accept the said payments since the matter is sub judice.”

22. At the outset the learned counsel for the Respondents relied upon the judgment of the Gujarat High Court in ***Virendra Bansal v. Securities and Exchange Board of India (2006) 2 Compl 93 (Guj)***. In this case, some parts of the SILRS 2004 were challenged. The Gujarat High Court upheld the Scheme as correct and legal in consonance with the Act, 1992. Likewise, the calculation of registration fees, adopted by SEBI in absence of break up turnover and in absence of Auditor's report before the cut off date, was upheld as true, correct, legal and in consonance with the SEBI Act and Regulations, 1992. The Court did not extend the benefit of the Scheme after the cut off date, especially because, extensions had been given by SEBI, whereby a large number of stock-brokers of Ahmedabad Stock Exchange had already availed the benefit of the Scheme. The Court refused to extend the cut-off date in this case. However, the facts of the present case are different because, in this case the individual stock brokers have not defaulted in providing the necessary data, but it is DSEAL which has failed to effectively submit the data in the prescribed format.

23. The Respondent also referred to certain interim orders passed on 2nd December 2005 by the Division Bench of the Gujarat High Court in LPA No.1553 of 2005 in the case of ***Ajay Sarabhai v. Union of India***. In this case, the SEBI assessed the registration fee on the basis of the data earlier given by the petitioners to the stock exchange without breakup of the turnover data and

SEBI did not give remission of 80% interest on delayed payment of registration fee as per the provision of SEBI Scheme, 2004, as the stock brokers of the Ahmedabad Stock Exchange did not submit turnover data with breakup of the transactions along with the auditors certificate before the cut off date. The petitioners contended that they were not individually informed of such circulars or reminders from SEBI, however, the Learned Single Judge had noted that a large number of stock brokers of Ahmedabad Stock Exchange had already availed the benefit of the Scheme. The Division Bench in this case passed an interim order that if the appellants furnished auditors certificates for data with the breakup in the respect of transaction attracting lower rate of registration fee and paid deficit registration fee, along with interest within one month, then the Respondent shall not take any adverse action against the petitioners. This case can similarly be distinguished as it refers to the default in case of individual stock brokers and not of the Ahmedabad Stock Exchange.

24. The above submission is countered by Mr.C.Mukumd, learned counsel for the Petitioner by pointing out that as far as the present case is concerned the Petitioners are not shying away from meeting their liability in terms of Clause (bb) of the Regulations. It is pointed out that the failure to furnish turnover data was not deliberate. It is urged that the SEBI has no option but to implement the Clause (bb) and charge interest only to the extent permissible.

25. In the counter affidavit filed by the SEBI the stand taken is that there

were three deadlines i.e. 15th July 2002, 10th April 2003 and 31st August 2003 set for the stock exchange to submit the turnover data. The circular dated 10th October 2003 gave a final deadline of 31st October 2003. Since sufficient time had been given, the SEBI could not be faulted for proceeding to calculate the fee liability on the basis of the gross turnover data. Reference is made to the Regulation 10 read with Schedule III 2 (b) which provides for manner in which fee is to be paid. The said Regulations read as under

“Regulation 10

Payment of fees and the consequences of failure of pay fees-

(1) Every applicant eligible for grant of a certificate shall pay such fees and in such manner as specified in Schedule III.

Provided that the Board may on sufficient cause being shown permit the stock-broker to pay such fees at any time before the expiry of six months from the date on which such fees become due.

(2) Where a stock-broker fails to pay the fees as provided in regulation 10, the Board may suspend the registration certificate, whereupon the stock-broker shall cease to buy, sell or deal in securities as a stock-broker.

Schedule III

2. Fees referred to in clauses (a) and (b) of paragraph 1 above shall be paid

(a) xxx

(b) in respect of the financial year beginning on the 1st day of April, 1993 and the following financial years on or before the first day of October of the financial year to which such payment relates, and such fees shall be computed with reference to the annual turnover relating to the preceding financial year.”

26. It is further stated that under the SILRS which came into effect 15th July

2004, no revision of data was permissible whereas the present case was one of data revision. Since the regularization had already come to an end on 30th November 2004, no relief could be granted to the Petitioners. Mr. Sanjay Jain, learned Senior counsel appearing for the SEBI submits that M/s. Doogar and Associates while re-submitting revised data stated that they did not vouch for the correctness and authenticity of the figures, therefore, said data could not be taken on record. Even otherwise the data furnished was not in accordance with the regulations.

27. The above submissions have been considered. The starting point for the present dispute is the judgment of the Supreme Court in ***B.S.E. Brokers' Forum, Bombay v. Securities Exchange Board of India*** which negated the challenge raised by the brokers to the power of the SEBI to collect from each of them a registration fee under Section 12 (2) of the SEBI Act. While negating that challenge, the Supreme Court took note of the recommendation of the Expert Committee appointed by the SEBI that there should be a change brought about in the definition of 'annual turnover'. In para 47 of the judgment it was observed as under:

“47. Therefore, it would be futile to contend that the impugned fee merely because it is levied on the basis of the turnover of the brokers would either amount to a turnover tax or a tax on income. While we accept the levy based on annual turnover of the brokers as valid, we have to notice that the Expert Committee appointed by the Board has in its report held that there should be certain changes brought about in the definition of 'annual turnover' as also in the quantum of the levy pertaining to certain specific transactions which are

treated as part of the turnover. It has recommended that for "jobbing transactions" the scale of fees may be reduced to One Two hundredth of 1 per cent, and in regard to carry forward, renewal or badla transactions, the off-setting entries made by the Exchange, may not be counted as part of the turnover, and further on Government securities, PSU bonds and units, the turnover will have to be calculated separately and a fee of one thousandth of one per cent may be charged on such turnover than the present scale of one hundredth of one per cent. It has also recommended that the activities such as underwriting and collection of deposits should not be taken into account for the purpose of calculating the turnover of the brokers. These recommendations of the Committee were, as a matter of fact, accepted by the Government of India also but as on date, the necessary changes have not been brought about by the Board in its Regulations. Consequently, to the extent of the recommendations made by the Expert Committee, we are of the opinion that the Board is bound to bring about corresponding changes so as to remove the anomalies pointed out by the Committee. This was pointed out to learned counsel for the respondents when it was submitted that the Board has accepted these recommendations and the proposed changes were not brought about because of the pendency of this petition and the necessary changes to incorporate the recommendations of the Bhatt Committee would be done after disposal of these petitions. We recorded this submission on behalf of the Board and direct that the said changes recommended by the Bhatt Committee will be incorporated in the Regulations. Subject to the above, we are of the view that the challenge made to the levy based on the measure of turnover has to be rejected."

28. Clause (bb) which was inserted in the Regulations consequent upon the judgment indicates the methodology for determining the levy and mode of payment of the registration fee by the stock brokers to the SEBI. This was a first-time exercise for both the SEBI and various stock exchanges. The manner of calculation of turnover data was an obviously cumbersome one. SEBI itself quickly realized that the verification of the turnover figures submitted by the various brokers to the stock exchanges and in turn by the stock exchanges to the SEBI was not going to be a simple exercise. This explains why there were several circulars and clarifications issued by the SEBI from time to time including the one concerning 'fee continuity benefit' to such of those stock brokers who had converted their individual membership into a corporate membership.

29. The bone of contention is the circular dated 10th October 2003 whereby SEBI gave a final deadline of 31st October 2003 for submission of the turnover data on the basis of which the fee liability was to be calculated. It was stipulated that if the brokers did not submit the breakup turnover data by the deadline that they would not be eligible for concessional rates and a fee at a flat rate of 0.01% would be levied on the gross turnover.

30. Clause (bb) is a non-obstante clause which was inserted precisely to factor in the suggestion made by the Expert Committee and which was taken note of by the Supreme Court. It was therefore not open to the SEBI to revert to computing the fee liability as a percentage of the gross turnover in terms of

Clause (b). The consequences of the failure to submit the breakup of the turnover data in terms of Clause (bb) are spelt out in Regulation 10 read with Schedule-III (2) (b) of the SEBI regulations. The failure to pay registration fees invites the consequence of suspension of the registration certificate. Moreover in Schedule III (2) (b), the fee was required to be paid on or before the first day of October of the financial year with respect to which such payments were to be made and, such fees shall be computed with reference to the annual turnover relating to the preceding financial year. In the circumstances, it was not open to the SEBI to compute the fee liability in terms of the gross turnover under Clause (b) of the Regulations. Therefore, the penalty clause inserted in the circular dated 10th October 2003 by which SEBI could resort to computation of the fee liability as a percentage of the gross turnover in terms of the Clause (b) was contrary to the very purpose and object to clause (bb). In the absence of a specific provision that permits the SEBI to resort to Clause (b) in the event of the failure to submit information relevant to Clause (bb), the aforementioned clause in the circular dated 10th October 2003 was unsustainable in law.

31. We next come to the SILRS 2004 Part I, Clauses 2 and 3. While the necessity for the introduction of the SILRS has been explained by the SEBI, and indeed it was beneficial to the brokers, the refusal to accept the revised data after the date of announcement of the scheme but before the final deadline for regularization i.e. 15th November 2004 does not appear to this Court to be rational or reasonable.

32. As far as the particular clause which is objected to by the Petitioners it is Clause 3 of Part II of SILRS 2004 which reads as under:

“3. In accordance with the above policy, the Board has been receiving turnover data from the Exchanges and taking them on record. No further data revisions would, therefore, be permitted – even if a stock broker wishes to submit an auditor certificate at this late stage, or, if the Exchange desires to revise its own data. This measure is absolutely necessary to ensure that the process of data revision does not remain open ended for ever. As sufficient advance notices and reminders have been sent to the Exchanges/stock brokers and the Board is taking on record the latest turnover data duly certified by the Exchange, no representations/complaints would be entertained by the Board.”

33. As far as the present case is concerned, no fault can really be found with the individual brokers if, DSEAL's first set of auditors, M/s. K.C. Khanna & Co. failed to furnish the data in the correct format. The revised data, as prepared by M/s. Doogar & Associates was submitted before the regularization period came to an end i.e. 15th November 2004. It is not in dispute that there was a delay in the submission of the correct turnover data. However, considering the facts and circumstances of the present case, where admittedly the initially data furnished did not meet the requirements of the SEBI Regulations, a lenient view ought to have been taken by the SEBI. In para 20 of the counter affidavit, SEBI has acknowledged that there were instances, where on account of Court orders or otherwise, the delay in submission of data has been condoned. The concern voiced by SEBI that the stock exchange cannot “go on revising the data indefinitely” cannot be

appreciated in the present case. It cannot be said that DSEAL was seeking to revise the data indefinitely.

34. The other reason given by the SEBI for not accepting the revised data compiled by the Doogar & Associates is that they did not vouch for its authenticity. SEBI could have sought clarifications if necessary from Doogar & Associates on any particular set of data which was of doubtful authenticity. There was no justification in rejecting the entire data only because of lack of authentication by Doogar & Associates. In a first-time exercise, where a large number of brokers are required to submit information first to the stock exchange which in turn has to submit it to the SEBI, there are bound to be some lapses in the collection and collation of data. The primary responsibility to submit the data lay with the DSEAL. The consequences of the failure by DSEAL to meet the time deadline, should not have to be suffered by the individual brokers who were themselves not responsible for such failure. Keeping in view these circumstances, this court finds merit in submission of the learned counsel for the Petitioners that SEBI has not acted reasonably in rejecting the data submitted with the certification of M/s. Doogar & Associates and in denying them the benefit of para 2.0 of Part I of the SILRS 2004.

35. Accordingly, a direction is issued to the SEBI to compute the fee liability of the individual stock brokers of the Petitioner No.1 Association by accepting the turnover data as certified by M/s. Doogar & Associate and

giving them the benefit of para 2.0 of Part I of the SILRS 2004. SEBI will in the above terms correct/revise the “Fee Liability Statements” issued under the SILRS in relation to the members of the Petitioner No.1 Association and give them credit of the payments already made by them on account of SEBI registration fees in the said ‘Fee Liability Statements’. If there is any amount owing to the members of the petitioner No.1 Association as a result of the above revision of the Fee Liability Statement, the said amount can be adjusted against the future dues of such stock brokers. It is made clear that this would be a onetime measure, which is not to be treated as a precedent. It is further clarified that in case of any failure hereafter on the part of the members of the Petitioner No. 1 Association to submit the turnover data in terms of Clause (bb) within the time prescribed, it will be open to SEBI to suspend the registration of such stock broker as provided in the Regulations.

36. The writ petition is accordingly disposed of with the above directions with no orders as to costs.

S. MURALIDHAR, J

JUNE 3, 2010

ps