(2006) 05 AP CK 0001

In the Andhra Pradesh High Court

Case No : W.P.M.P. No. 11963 of 2006 in Writ Petition No. 9455 of 2006

Karvey Stock Broking Ltd. APPELLANT

Vs

Securities and Exchange Board of India RESPONDENT

Date of Decision : 02-05-2006

Acts Referred:

Depositories Act, 1996 — Section 19
Securities and Exchange Board of India Act, 1992 — Section 11, 11(4), 11B, 19, 29

Citation : (2006) 133 CompCas 335 : (2006) 67 SCL 427

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : Vedula Venkataramana, for the Appellant; A. Rajashekar Reddy, for the Respondent

Judgement

Goda Raghuram, J.—By the impugned order dated 27-4-2006 under the hand of the second respondent, a series of directives have been issued insofar as the petitioner is concerned including those contained in paragraphs 17.4 and 17.7 of the said order. Paragraph 17.18 of the second respondent''s order dated 27-4-2006 states that the order shall be treated as show-cause notice against the concerned entities (including the petitioner) and that these persons/ entities may file their objections, if any, to the order within 15 days from the date of the order and also avail themselves of an opportunity of personal hearing at the specified venue on a mutually convenient date and time and may also inspect the relevant documents for the said purpose.

Prima facie, a post interim decisional opportunity is provided pending final orders to be passed.

2. According to the learned Counsel for the petitioner Mr. Vedula Venkataramana, in a subsequent Press Release dated 28-4-2006, a clarification has been issued on the order dated 27-4-2006, which reads as under :

It is clarified that the directions not to buy, sell or deal in the securities market including in IPOs, directly or indirectly, till further directions'' in the interim order WTM/GA/60/ISD/04/06 relating to IPOs issued on 27-4-2006, in so far as they relate to brokers who are SEBI registered intermediaries would apply only in respect of transactions in the proprietary account of brokers and the transactions on behalf of clients would remain unaffected. The same clarifications apply to DP operations wherever they are depository participants.

It is clarified that the DP transactions of clients would remain unaffected only for 15 days, by which time switch over to another DP should take place in respect of directions against Karvey DP and Pratik DP.

3. A number of points have been urged on behalf of the petitioner, inter alia, that the directions in the order of the second respondent, dated 27-4-2006, had been issued in purported exercise of the powers under Sections 11, 11B, 11(4)(b) of the Securities and Exchange Board of India Act, 1992 (for short ''the 1992 Act'') and Section 19 of the Depositories Act, 1996 (for short ''the 1996 Act''); that while Section 19 of the 1992 Act enables the SEBI to delegate its powers under the Act to any particular officer of the Board or any other person (except the powers u/s 29), no such power to delegate is provided in the 1996 Act. It is contended that while the directions contained in para 17.4 of the order, dated 27-4-2006, directing the petitioner, inter alia, not to buy, sell or deal in the securities market including IPOs, directly or indirectly, till further directions are referable to powers under the 1992 Act, the directions contained in para 17.7 that Karvey DP shall not carry on activities as DP till the completion of enquiry and passing of final order, excepting for effecting transfer of BO account to another. SEBI registered DP on request, are directions referable to the powers u/s 19 of the 1996 Act. In the absence of any power to delegate contained in the 1996 Act, it is only the Board, i.e., SEBI which could issue the directions and not the second respondent. It is also contended that since the order, dated 27-4-2006, is in the nature of an interim direction to meet the assumed emergent situation, the interim directives are subject to modification, after hearing the petitioner, in accordance with the opportunity provided under para 17.18 of the order, dated 27-4-2006.

4. A direction in the clarificatory order, dated 28-4-2006, to the effect that the existing clients of Karvey DP should switch over to another DP within fifteen days constitutes effectually a final decision to liquidate this aspect of the business of Karvey DP and if all the clients are obligated to switch over to another DP even before the petitioner is heard, it could not only cause great prejudice but would also nullify the opportunity provided to the petitioner in para 17.18 of the order, dated 27-4-2006, to persuade the respondents to recall or modify the regulatory power exercised, even on due justification shown for rescinding the order, either dated 27-4-2006 or 28-4-2006.

5. The petitioner is for the notice aggrieved only by the directive in the second paragraph of the clarification, which mandates switching over the DP transactions currently with the petitioners to another depository participant even within the

15 days time available to the petitioner to submit objections against the order dated 27-4-2006.

6. In the considered view of this Court and at this stage of the matter, having regard to the comprehensive regulatory directives issued in the order dated 27-4-2006 to some extent modified by the clarification issued on 28-4-2006, it does not appear necessary to also direct that the DP transactions of the clients of the petitioners should switch over to another depository participant even before the time available to the petitioner to submit objections to the show-cause notice dated 27-4-2006 has expired.

7. For the aforesaid reasons, the directives of the respondents to the extent of the second paragraph of the clarification dated 28-4-2006, are suspended. However, the order dated 27-4-2006 and the first paragraph of the clarification dated 28-4-2006 shall operate proprio vigore unhindered by anything stated in this order. This order is applicable only in respect of the writ petitioner and pending final orders of the respondents.