

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No.191 of 2011

Date of Decision: 9.11.2011

1. Pan Asia Advisors Limited
International Corporate Finance
Minster House, 42 Mincing Lane,
London, United Kingdom

2. Mr. Arun Panchariya
Villa No.29, Street no.2,
The Meadows-6,
Emirates Hills Living III
Dubai, UAE

..... Appellants

Versus

Securities and Exchange Board of India
SEBI Bhawan, Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051.

.....Respondent

Mr. Navroz Seervai, Senior Advocate with Mr. Zal Andhyarujina and Mrs. Henal Vakharia,
Advocates for the Appellants.

Mr. Rafique Dada, Senior Advocate with Mr. Prateek Sakseria, Mr. Mihir Mody and
Mr. Mobin Shaikh, Advocates for the Respondent.

CORAM : Justice N. K. Sodhi, Presiding Officer
P.K. Malhotra, Member
S.S.N. Moorthy, Member

Per : Justice N. K. Sodhi, Presiding Officer (Oral)

This appeal is directed against an ex-parte order dated September 21, 2011 passed by the whole time member of the Securities and Exchange Board of India (for short the Board) whereby some directions have been issued, among others, to the appellants. The appellants have been debarred with immediate effect from rendering services in connection with securities in the Indian market or dealing with them in any way. The registered intermediaries with the Board have also been directed not to deal with the appellants in any capacity with regard to or in connection with dealings in the Indian securities market. The ex-parte order has been treated as a show cause notice and the appellants have been called upon to file their replies. Since the matter is at the show cause notice stage, we are not inclined to interfere lest any observation made by us prejudices the case of either party. The appellants have yet to respond to the show cause notice and the Board would then be passing a final order after considering their replies. The appellants have challenged the jurisdiction of the Board to initiate proceedings against them and it is contended on their behalf that it has no extra territorial jurisdiction to issue directions to them who operate outside the

country. Since we are leaving it to the Board to pass a final order, the learned senior counsel appearing for the appellants wants us to issue a direction to the whole time member to decide the question of jurisdiction as a preliminary issue and only if the Board comes to the conclusion that it has jurisdiction, it should proceed to decide the issues on merits. This, according to the learned senior counsel, is a well settled principle of law. The learned senior counsel appearing for the respondent, however, disputes this proposition and states that in the facts and circumstances of the present case, the question of jurisdiction is a mixed question of law and fact.

2. Having regard to the facts and circumstances of this case, we are not inclined to adopt the course as suggested by the learned senior counsel for the appellants. The matter herein is quite delicate and pertains to the integrity of the securities market and all issues including the issue of jurisdiction of the Board need to be decided expeditiously. We, therefore, direct the Board to pass a final order within four weeks from today on the issues raised by the appellants including the question of jurisdiction. We are adopting this course only to avoid the possibility of a remand in case the Tribunal were to disagree on the findings recorded by the Board on the issue of jurisdiction. The appellants are directed to file their replies along with all the supporting documents within a week from today. The Board is directed to afford an opportunity of hearing to them within a week thereafter and then pass a final order within two weeks. It is, however, made clear that in case the appellants file their replies on merits, the same shall be without prejudice to their right to question the jurisdiction of the Board to initiate proceedings against them. The appellants have already asked for inspection of the records for which November 17, 2011 has been fixed. The learned senior counsel for the Board informs us that the date of inspection would be advanced suitably.

The appeal stands disposed of as above with no order as to costs.

Sd/-
Justice N.K.Sodhi
Presiding Officer

Sd/-
P.K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

9.11.2011

Prepared and compared by
RHN

