

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved on: 09.04.2019**

**Date of Decision : 04.06.2019**

**Misc. Application No. 169 of 2016  
And  
Appeal No. 118 of 2015**

Rusoday Securities Limited  
1/1A, Biplabi Anukul Chandra Street,  
5<sup>th</sup> Floor, Room No. 5G, .....Appellant  
Kolkata – 700 027.

Versus

1. National Stock Exchange of India Limited  
Exchange Plaza, Plot No. C/1,  
G-Block, Bandra Kurla Complex,  
Bandra (East),  
Mumbai – 400 051.
2. ITC Limited  
“Virginia House”,  
37, Jawaharlal Nehru Road,  
Kolkata – 700 071. ...Respondents

Mr. Roibat Banerjee, Advocate with Mr. Pratim Dasgupta,  
Advocate for the Appellant.

Mr. V. Dhond, Senior Advocate with Mr. Rashid Boatwalla,  
Mr. Rahul Jain and Mr. Pruthvi Dhinoja, Advocates i/b  
Manilal Kher Ambalal & Co. for Respondent No. 1.

None for Respondent No. 2.

CORAM : Justice Tarun Agarwala, Presiding Officer  
Dr. C.K.G. Nair, Member  
Justice M.T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer

1. This appeal has been filed challenging the decision of the Defaulters Committee of National Stock Exchange of India Limited ('NSE' for short) dated December 4, 2014. By the said order the following directions have been passed by the Defaulters Committee:-

- 1. The withholding of the securities is fully in accordance with the relevant provisions referred to earlier and the said securities cannot be released and the same are liable to be realized in accordance with the provisions of Chapter XII of Byelaws of NSE for being dealt with in accordance with the provisions of Byelaw 23 towards meeting the dues of the various claimants including the dues of NSCC as one of the claimants under the said Byelaw 23.*
- 2. Without prejudice to the above, the Committee directs that the securities which have been withheld as per the list of securities given in Annexure – 2 of this Order may be released to RSL, on as is where is basis, to (i) enable it to remove the objections in respect of securities for which RSL is an introducing member and (ii) transfer the securities in its name in respect of securities for which RSL is a receiving member and return the securities to NSE in demat form, provided –*

- a. *RSL furnishes an undertaking that it has no other claim against NSE or NSCC and that it will return the securities within a period of one year from the date of release after duly removing the objections and transferring in RSL's name as the case may be.*
- b. *RSL provides a deposit of or a bank guarantee for Rs. 1,00,70,529.82 (i.e. the outstanding dues of RSL payable to NSCC of Rs. 1,07,72,098.17 less Rs. 7,01,568.35 being the value at closing price on NSE as on December 4, 2014 of securities already transferred in the name of NSCC – list enclosed as Annexure – 3) to protect NSE against failure to return the securities.*
- c. *RSL provides the undertaking and the deposit or bank guarantee within a period of three months from the date of receipt of this Order.*

2. The appellant, Rusoday Securities Limited ('RSL' for short), was a Trading Member of the respondent no. 1, National Stock Exchange of India Limited ('NSE' for short) as well as Clearing Member of the National Securities Clearing Corporation Limited ('NSCCL' for short) from 1994. Respondent no. 2 is ITC Limited. However, no one appeared on behalf of the respondent no. 2, ITC Limited. RSL was suspended with effect from February 16, 2005 and thereafter after due process expelled with effect from January 5, 2006 for failure to meet the deposit requirement for continued admittance to the trading membership of NSE.

3. This decision of expulsion was challenged before this Appellate Tribunal, in Appeal No. 84 of 2008. This Appellate Tribunal vide its judgment dated January 13, 2009 dismissed the appeal. The Civil Appeal filed by the RSL before the Apex Court against this order is pending.

4. RSL subsequently filed an appeal in 2014 before this Appellate Tribunal for releasing the securities withheld by NSE. This Appellate Tribunal remanded the matter to NSE vide order dated September 9, 2014 when the counsel for the latter offered to hear the appellant and pass a fresh order. In compliance of the direction of this Appellate Tribunal the Defaulters Committee provided an opportunity of hearing and after considering the written submissions filed by the appellant vide their letter dated October 9, 2014 passed the order impugned in this appeal.

5. The basic question raised in this appeal therefore is whether the respondent NSE is legally entitled to withhold the securities of the appellant who has been suspended / expelled with effect from 2005 / 2006.

6. The contentions of the learned counsel Shri Roibat Banerji appearing on behalf of the appellant are the following:-

- (a) NSE had no right to withhold the securities of the appellant.
- (b) Even as part of the settlement obligations NSE could not have withheld the securities because sufficient funds was available with NSE in the form of cash deposit and bank guarantee. As on October 30, 1997 the total settlement obligation was only Rs. 1.32 crore while the total deposit was Rs. 1.34 crore, including VSAT deposits of Rs. 5 lakh. The NSE could have utilized these deposits against the settlement obligations.
- (c) The total value of securities, including various corporate benefits accrued on these securities, withheld arbitrarily by the NSE as of now is more than Rs. 13 crore out of which Rs. 9.5 crore is only on account of the shares of ITC Ltd. Though ITC Ltd. has been made a party by this Tribunal in

2015 they never came up before this Appellate Tribunal.

- (d) The question relating to illegality of expulsion and hence that of the financial liability / obligation of the appellant to NSE is still not decided since the matter is before the Apex Court. As such also NSE could not have detained the securities of the appellant.
- (e) Though the High Court of Calcutta had ordered restoration of the trading facilities of the appellant on October 20, 1997 in Writ Petition No. 2242 of 1997 filed by the appellant, the trading facilities were never restored by the respondent no. 1, NSE. Given these facts respondent no. 1 NSE could not have withheld any of the securities of the appellant as they could have squared off the obligation using the deposits and bank guarantee of the appellant held with the respondent no. 1 NSE in October 1997 itself. Accordingly, the claim of the NSE for further interest has absolutely no basis as there is no principal amount to be paid to NSE. Given these reasons appellant deserves to get all the

securities illegally withheld by respondent no. 1 NSE with no other conditions attached.

- (f) The NSE had invoked and adjusted two bank guarantees of the appellant to the tune of Rs. 33.75 lakh. They could have also adjusted the other deposits of the appellant and settled the matter in 1997 itself.

7. Learned senior counsel Shri V. Dhond representing respondent no. 1 NSE submitted as follows:-

- (a) The appellant made a total deposit of 1,29,20,000/- and VSAT deposit of Rs. 5 lakh in 1994 with details as follows:-

<b>BASE CAPITAL</b>	
Interest Free Cash Deposit	Rs. 45,00,000
Bank Guarantee for Security Deposit	Rs. 25,00,000
Cash deposit towards Margin Money	Rs. 25,45,000
Two Bank Guarantees for Margin Money	Rs. 33,75,000
VSAT deposit of the appellant	Rs. 5,00,000
<b>GRAND TOTAL</b>	<b>Rs. 1,34,20,000</b>

- (b) The appellant failed to meet the settlement obligation relating to three settlement cycles during September 17, 1997 to October 14, 1997, as follows:-

- (i) Settlement No. N1997038 – from 17<sup>th</sup> September 1997 to 23<sup>rd</sup> September 1997.
  - (ii) Settlement No. N1997039 – from 24<sup>th</sup> September 1997 to 30<sup>th</sup> September 1997.
  - (iii) Settlement No. N1997040 – from 1<sup>st</sup> October 1997 to 14<sup>th</sup> October 1997.
- (c) In Settlement No. N1997038 there was a shortfall of Rs. 6585.
- (d) In Settlement No. N1997039 (trading period 24<sup>th</sup> September 1997 to 30<sup>th</sup> September 1997) appellant failed to meet its obligation and had delivered short due to which an amount of Rs. 45,56,513/- became outstanding.
- (e) In Settlement No. N1997040 (trading period 1<sup>st</sup> October 1997 to 14<sup>th</sup> October 1997) an amount of Rs. 29.10 lakh became due and payable by appellant towards margins of trade done on 10<sup>th</sup> October 1997).
- (f) In addition to the aforesaid three settlement obligations the appellant was required to furnish



Rs. 40.70 lakh to the NSCCL for exceeding the gross exposure limit. Similarly, details of other fees etc. to be paid to NSE / NSCCL have been issued to the appellant from time to time by the respondent NSE / NSCCL. At no point of time the appellant disputed those calculations though the appellant challenged other actions of NSE / NSCCL by filing a number of proceedings which include Civil Suit No. 429 of 2000, Writ Petition No. 2242 of 1997 before Calcutta High Court and Complaint Case No. 2220 of 2002 before the Metropolitan Magistrate. Because of these proceedings, respondent no. 1 could not invoke the deposits of the appellant which was finally (including the invoked bank guarantees of Rs. 33.75 lakh) returned on the orders of the Hon'ble Supreme Court in a SLP (Criminal) in 2017.

- (g) As far as restoring the trading facilities are concerned though the High Court of Calcutta ordered restoration of the said facility it was conditional upon the appellant depositing Rs. 50

lakh with the NSE which was never done by the appellant. Therefore, the trading facility was not restored and, on that count, the High Court dismissed that appeal.

- (h) In short, it was contended by the learned senior counsel for the NSE that dues are pending from the appellant on account of settlement obligation as well as on account of other charges and fees which are not related to settlement shortfall. In short, against the total deposit of Rs. 1.34 crore appellant had an obligation of Rs. 1.73 crore to NSE / NSCCL in October 1999 itself and therefore withholding the securities of the appellant was the only option available with the respondent to recover the dues. Such withholding of securities and funds of the brokers / members is as provided under the byelaws and Rules / Regulations of the respondent NSE as follows.
- (i) On June 19, 1995 the appellant gave a trading membership undertaking to NSE whereby it agreed to the following terms:-

*“...2 the Undersigned shall adhere to the Bye-laws, Rules and Regulations framed by NSEIL from time to time;*

*...10 the undersigned shall abide by the Bye-laws introduced / modified from time to time with / without prior notice...*

*...11 the Undersigned shall abide by and adopt the Rules and regulations of the clearing settlement systems of the NSEIL and any other agencies appointed by NSEIL for purpose and any amendments made thereto from time to time.*

*...19 without prejudice to the foregoing, NSEIL shall be entitled to forfeit any property, funds, amounts, deposits or other sums due to the Undersigned or to the credit of the Undersigned in such events or contingencies as may be stipulated in the Rules, Regulations and Bye laws of the NSEIL in force from time to time.”*

- (j) Further, on March 19, 1996 the appellant gave a

Clearing Membership Undertaking as follows:-

*“1 That we shall abide by, comply with and be bound by the Rules, Bye laws and Regulations of the Corporations as in existence or as modified / amend by the Relevant Authority, from time to time and also with any circular, order, direction, notice, instruction issued and as modified or amended from time to time by the relevant authority.”*

- (k) Similarly, Chapter 9 of the Regulations of NSCCL contained the following provisions relating to withholding the securities and funds:-

**“9.11 Withholding of Security and Funds**

*Notwithstanding anything contained in these regulations irrespective of whether the deals are depository deals or non-depository deals, the Exchange may withhold, for such period(s) as the relevant authority may decide from time to time, pay-out of any securities and any funds including securities and funds constituting margins, if (a) the clearing member has not delivered required securities on pay-in day or (b) there are no adequate funds in the NSE Clearing Account of the clearing member to meet the funds pay-in obligation on the pay-in day or (c) the clearing member fails to satisfy the margin requirements or (d) the clearing member fulfill any other obligations or (e) the relevant authority, otherwise, deems fit.”*

**“9.12 Withheld Securities and Funds – How dealt with:** *The securities and funds withheld pursuant to clause 9.11 above shall be dealt with by the Exchange at such times and in such manner as it may deem fit, which may include appropriating the withheld funds for the purpose of fulfilling the obligations of the clearing member, closing out of the withheld securities in the name of the Exchange or any other entity as decided by the Exchange. The funds received out of closing out of withheld or registered securities may be dealt with by the Exchange at such time and such manner as it may deem fit.”*

- (1) Therefore, the regulations explicitly provided for withholding the securities and funds both by NSE (respondent no. 1) and NSCCL and the agreement signed by the appellant with NSE and NSCCL obligates him to follow / abide by all these regulations. Therefore, the appellant cannot

challenge when the provisions of the regulations are legitimately invoked by NSE / NSCCL.

- (m) Finally, the learned senior counsel concludes that the amount due from the appellant as in October 1997 and the charges etc. imposed by NSCCL and informed periodically to the appellant was that of Rs. 1.07 crore after adjusting the gross amount of deposit. However, following the order of the Apex Court in SLP (Criminal) No. 750-751 of 2012 and SLP (Criminal) No. 9742-9743 of 2011 dated November 2, 2017 the gross amount of deposit of Rs. 1.34 crore has been returned to the appellant. Therefore, the total dues of the appellant works out to Rs. 1.07 crore plus Rs. 1.34 crore equals Rs. 2.41 crore. The value of shares which were transferred in the name of NSE and NSCCL as on January 5, 2018 stood at Rs. 1.56 crore. Therefore, even the securities withheld are not sufficient to fulfill the obligations of the appellant towards NSE and NSCCL.

8. This issue in appeal has a long and protracted course. This is particularly because the appellant has been using plural remedy in the guise of different challenges. Expulsion of the appellant vide order of the respondent dated January 5, 2006 was on the grounds of various default by the appellant. When it was challenged, however, the appellant chose not to raise the issue of withheld securities. However, the judgment of this Appellate Tribunal on Appeal No. 84 of 2008 dated January 13, 2009 makes it abundantly clear that it is obligatory on the part of the appellant to follow the bye laws, rules and regulations. Similarly, that judgment deals with the entire gamut of issues relating to security deposits, bank guarantees etc. and the obligations of the appellant and the rights of the respondent no. 1 NSE as well as NSCCL over such deposits and margins as well as on the liability on the appellant on account of exceeding the gross exposure limit etc. The detailed calculations relating to all these have been also provided in the said order. Therefore we are of the view that this question have been already answered by order of the Tribunal dated January 13, 2009 and the appellant has chosen to delineate the question relating to the withheld securities as a separate matter and filed another appeal in 2014 (Appeal No. 238 of 2014), which was remanded to the relevant

authority of NSE which passed the order impugned in this appeal.

9. In any case de hors this ground of multiple litigations, on merit we find that the question of dues owed by the appellant to NSE and NSCCL has been communicated to the appellant multiple times giving calculations etc. The appellant has never questioned the calculations except stating that sufficient funds were available with the respondent in October 1997 which could have been utilized towards settlement obligation. However, given the trajectory of the legal recourse resorted to by the appellant and thereby limiting the powers of the respondent in utilizing those deposits, this contention that the respondent could have utilized the money available does not stand any merit. It is a matter on record that the respondent had to return the entire deposit following the order of the Hon'ble Supreme Court in November 2017. The order of the Hon'ble Supreme Court is reproduced as follows:-

*“The main grievance of the respondent-complainant is that a sum of Rs. 1.34 crores deposited with the petitioners has not been returned. Since the amount was by way of security, this amounted misappropriation.*

*Learned counsel for the petitioners has fairly stated that the amount of Rs. 1.34 crores deposited will be returned within a period of six*

*weeks from today in full and final settlement of the claim of the respondent(s). In the peculiar facts and circumstances of the present case, we are of the view that there is no justification to continue the criminal proceedings against the petitioner. The same will stand closed.*

*This order will not affect any other proceedings which may be dealt with independently in accordance with law.”*

This order deals with only about return of deposits of the appellants and not about withheld securities. Neither the issue of withheld securities nor dues of the appellant to NSE / NSCCL was raised before the Apex Court.

10. Moreover, in the absence of any dispute relating to the calculation per se regarding the dues of the appellant in the form of settlement obligations and other fees and charges as communicated by NSE / NSCCL from time to time the appellant's contention of no obligation relating to any dues to NSE / NSCCL at this stage has no merit. Such communications dated October 22, 1997, November 1, 2004, February 16, 2005, October 20, 2005, December 16, 2005 and August 14, 2008 are on record. It is abundantly clear that the appellant owed Rs. 1.07 crore after adjusting for the deposits etc. in October 1997 and since the said deposit amount of Rs.



1.34 crore has been subsequently returned the unadjusted amount of dues stands at Rs. 2.41 crore.

11. This Tribunal does not want to get into the issue of valuation of securities withheld by the NSE. When the learned counsel for the appellant argued that the value, including corporate benefits, is more than Rs. 13.5 crore we specifically asked the appellant to deposit the amount of dues with the respondent NSE so that the appellant could get all these securities back. The appellant was not willing to do the same since its contention is that it does not owe anything to NSE / NSCCL.

12. After carefully perusing the documents and the submissions made by the parties we have no doubt that the appellant owe an amount of Rs. 2.41 crore to respondent NSE / NSCCL. Since the appellant is not ready to give this amount Respondent no. 1, is within its rights to use the securities of the appellant withheld by them, to the tune of Rs. 2.41 crore. Such calculations should also include corporate benefits such as bonus, dividends etc. if any accrued to NSE over the period as beneficial owner of the withheld securities. Needless to say that if any excess value is received or if the amount of Rs. 2.41 crore is received by disposing of part of the securities

withheld either the excess value or the remaining securities or both shall be returned to the appellant within one month from the date of this order.

13. Appeal is dismissed with the above directions to respondent NSE. In view of the disposal of the appeal, Misc. Application No. 169 of 2016 does not survive and the same is also disposed of accordingly. No order on costs.

Sd/-  
Justice Tarun Agarwala  
Presiding Officer

Sd/-  
Dr. C.K.G. Nair  
Member

Sd/-  
Justice M.T. Joshi  
Judicial Member

04.06.2019

Prepared and compared by:msb