

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 26.04.2019

Date of Decision : 03.05.2019

Appeal No. 171 of 2018

Satish Vasant Gadkari
204, Amanda-B,
Hiranandani Meadows,
Thane (W) - 400 610

...Appellant

Versus

Bombay Stock Exchange Limited
Phiroze Jeejeebhoy Towers,
Dalal Street, Fort,
Mumbai - 400 051

...Respondent

Mr. Ronak Desai, Advocate for the Appellant.

Mr. P. N. Modi, Senior Advocate with Mr. Vivek Shah and
Mr. Abhiraj Arora, Advocates i/b ELP for the Respondent.

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

Per: Dr. C.K.G. Nair

1. This appeal has been filed to challenge the order/
communication dated February 26, 2018 issued by the Investor
Protection Fund ("IPF" for convenience) of the BSE Limited

("BSE" for convenience), whereby only a small part of the amount sought by the appellant was allowed by the IPF.

2. The appellant is an investor who opened a trading account with M/s. Dreams Broking Private Limited ("Broker" for convenience) and a demat account with IL&FS ("DP" for convenience) on July 30, 2013. On December 31, 2015 the BSE declared M/s. Dreams Broking Private Limited as a defaulter. On January 29, 2016 the appellant submitted an Arbitration Award Application to the Secretary of the Arbitration Committee of BSE at the concerned arbitration center against the Broker claiming an amount of ₹ 15,45,111.20/- along with the relevant documents etc. On August 23, 2016 the Arbitral Award was passed for the same amount as claimed by the appellant. On February 26, 2018 the IPF of BSE issued the communication impugned in this appeal recommending for a payment of ₹ 61,843/- from IPF out of which ₹ 60,440/- towards non-receipt of 100 shares each of Oil and Natural Gas Corporation Limited ("ONGC") and ITC and ₹ 1,403/- towards credit balance. As regards the remaining amount claimed by the appellant, the impugned communication, further states that since these relate to shares of Hindustan Unilever Limited ("HUL"), Reliance Industries and Merck Ltd.

which have been fraudulently transferred from the demat account of the appellant and not purchased or sold through BSE, the appellant was advised to take up the matter with the Depository Participant and Depository as fraudulent transfers from the demat account is a matter with the Depository and not with the Exchange.

3. The appellant collected the amount of ₹ 61,843/- vide cheque dated 01.02.2018 on account of compliance and settlement of their claim in Arbitration Award Reference No. 228/2016.

4. It is the submission of the learned counsel appearing on behalf of the appellant Shri Ronak Desai, that the very objective of the IPF is to reimburse claims of the investors affected by defaulter brokers. Accordingly, and as advised by the BSE after the appellant's Broker was declared a defaulter, the appellant filed an Arbitration Award Application on January 28, 2016 and got an Award in his favour on August 23, 2016. Despite the fact, that a legitimate award for ₹ 15,45,111.20/- has been given to the appellant, the respondent BSE/IPF has given him only ₹ 61,843/-. It is further contended that as per the relevant Circulars issued by Securities and Exchange Board of India

("SEBI") on October 28, 2004 and February 23, 2017 the appellant is entitled to get the full Arbitral Award since the claim of the appellant falls under the eligible claims as stated in these Circulars. According to the appellant only speculative transactions shall not be eligible for compensation from the IPF and the appellant's transactions were not speculative. It was further contended by the learned counsel for the appellant that a total of 943 Arbitration Orders against the said Broker have been issued and the respondent BSE/IPF has settled many of those awards. He further submitted that as advised by the respondent the appellant has also approached the Depository Participant, IF&FS as well as the Depository, Central Depository Services Limited ("CDSL") requesting them to help him in resolving the matter. However, apart from giving some replies, the matter has not been resolved by them.

5. Learned counsel for the appellant also relied upon the orders passed by this Appellate Tribunal in the following matters *Mr. Bipin Vijaykant Mehta, HUF V/s Assistant General Manager, Bombay Stock Exchange Limited (Appeal No. 375 of 2016 decided on 31.01.2018); M/s Emmel Financial Services V/s Bombay Stock Exchange Limited and Ors. (Appeal No. 148 of 2010 decided on 28.06.2011) and*

Harinarayan G. Bajaj V/s The Investors Protection Fund of Stock Exchange, Mumbai and Anr. (Appeal No. 153 of 2008 decided on 15.07.2009) and submitted that his claims of getting the full amount of the Arbitral Award is supported by these orders.

6. We have heard Shri P. N. Modi, learned senior counsel appearing on behalf of the respondent BSE/IPF who submitted as follows:-

- a) It is the appellant's own submission that certain shares of the appellant were fraudulently transferred from the demat account of the appellant on July 07, 2014.
- b) Though, the appellant, while opening the demat account has opted for obtaining SMS and Email alerts relating to his demat transactions by providing mobile telephone number as well as Email ID, the appellant never took up the matter with the Depository Participant or the Depository. All transactions indicated in the demat statement provided by CDSL relating to the disputed shares are off market and not

through the platform of the Exchange. Only transactions done through the platform of the Exchange is eligible for compensation from the IPF.

- c) Moreover, the appellant is raising dispute about the off market transactions only in respect of three securities (HUL, Merck and Reliance Industries) while there were a few other transactions also effected off market in the CDSL statement on which the appellant is not forthcoming with any explanation.
- d) Reiterating the Circulars of SEBI dated October 28, 2004 and February 23, 2017 and the norms for eligibility of claims of compensation from the IPF of BSE, the learned senior counsel emphasised that only transactions that have been executed on the BSE platform shall be eligible for compensation from the BSE/IPF subject to a maximum specified limit. The details of such norms are also part of the affidavit in reply filed by the respondent BSE/IPF.

7. In addition to the submissions made by the learned counsel for the parties, we have also perused the papers produced before us. In the SEBI Circular dated October 28, 2004, the relevant one as far as the present matter is concerned the eligibility conditions are too broad, though, it is clearly stated that claims arising out of speculative transactions are not eligible. However, the Circular dated February 23, 2017 clearly states that only transactions executed on the Exchange platform shall be eligible for settlement from IPF subject to a maximum limit and subject to the appropriate norms laid down by the Defaulters Committee. The norms laid down by the BSE/IPF also specifically states that only transactions done on the Exchange platform are eligible subject to other norms and conditions which are detailed.

8. The present dispute is about fraudulent transactions done by the Broker through the Depository Participant whereby allegedly certain shares were transferred from the account of the appellant without his knowledge. Admittedly, power of attorney was given by the appellant to his Broker. The Depository Participant also has replied to the appellant that the same power of attorney was used in transferring the shares from the account of the appellant. The appellant is claiming

ignorance of the fraudulent transactions till January 2016 when he received the statement from the Depository, though, he had opted for Email and SMS alerts from the Depository in his application. In appeal memorandum he submitted that since he had not placed any orders in regards to these shares, he did not check Emails or SMSes. However, the appellant was conscious of delayed payment of dividend and had approached his Broker multiple times during 2014-2015 and got certain amount of monies credited to his account. It is inexplicable, and no explanation is coming from the appellant, as to why he did not take up the matter despite his 'suspicion' for a long time during 2014-2015, till the Broker was declared a defaulter on December 31, 2015. The alleged fraudulent transactions have taken place on July 07, 2014; hence the period involved is one and half years. The appellant had no time to check SMSes and Emails for such a long period. Apart from stating that the power of attorney given by the appellant to the Broker was only for normal market transactions and not for off market transactions and off market transaction was done behind his back there is nothing on record to show the veracity of these statements.

9. Accordingly, we do not find any merit in the submissions made by the appellant. The orders (supra) relied on by the appellant are distinguishable as they relate to normal transactions on the Exchange platform and not involving fraudulent transactions as in the present matter.

10. However, we note that the present matter involves fraudulent transactions from the demat account of the appellant for which the right forum to approach is the Depository. We also note that similar Investor Protection Funds have been set up under Depositories Regulations. Appellant is at liberty to approach the forum set up under the Depositories Act and Regulations. Alternatively, he is also at liberty to approach relevant forum to get his Arbitral Award implemented against the Broker.

11. Appeal is dismissed with no order on costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M. T. Joshi
Judicial Member