

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved on: 28.02.2019**

**Date of Decision : 05.04.2019**

**Appeal No. 268 of 2018**

Jindal Dyechem Industries Pvt. Ltd.  
110 Babar Road,  
New Delhi – 110 001. ....Appellant

Versus

Multi Commodity Exchange of India Limited  
Exchange Square, Suren Road,  
Chakala, Andheri East,  
Mumbai – 400 093. ...Respondent

Ms. Nidhi Singh, Advocate i/b Vidhi Partners for the  
Appellant.

Mr. Sameer Pandit, Advocate with Ms. Madhupreetha  
Elango, Advocate i/b Wadia Ghandy & Co. for the  
Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer  
Dr. C.K.G. Nair, Member

Per : Dr. C.K.G. Nair, Member

1. This appeal has been filed challenging the order of the  
Disciplinary Action Committee ('DAC' for short) of the  
Multi Commodity Exchange of India Limited ('MCX' for  
short) dated June 19, 2017. By the said order the DAC

reaffirmed the penalty of Rs. 13,54,372/- on the appellant in accordance with the circular of MCX dated August 1, 2006 read with circular dated August 21, 2006 which provided for the quantum of penalty in cases of violation of limits on open position.

2. The appellant is a private company who is a Trading-Cum-Clearing member of the MCX. On the basis of a special audit directed by the then regulator of commodity derivatives market, the erstwhile Forward Markets Commission (FMC), the special audit was conducted by the PwC and based on their report it was alleged that the appellant breached the open position limits of its client M/s. Splendid Builders Private Ltd. during January 11, 2007 to January 27, 2007 in Mentha Oil January 2007 expiry contract. What is held in the impugned order is that during the period between January 11, 2007 and January 27, 2007 the appellant violated limits on client level open position in January 2007 Mentha Oil contract on 14 trading days. During these days M/s. Splendid Builders Private Ltd. traded with the appellant as well as with M/s. Indiabulls Commodities Ltd. another member broker of MCX. Accordingly, the DAC of the MCX, after hearing the parties and after obtaining written submissions etc. levied a

penalty of Rs. 13,54,372/- on the appellant for violation of position limits in terms of Exchange Circular dated August 1, 2006. This was decided by the DAC in its meeting held on December 3, 2014 and communicated to the appellant vide letter dated January 2, 2015 and the said penalty was subsequently recovered by the Exchange from the account of the appellant.

3. Aggrieved by the order of the DAC the appellant approached the High Court of Delhi through a Writ Petition but later on withdrew the Writ Petition with permission to file an appeal before this Tribunal. When the matter came up for hearing before this Tribunal on August 8, 2016 MCX sought permission to withdraw its impugned order communicated to the appellant on January 2, 2015 with liberty to pass a fresh order on merits and in accordance with law. The prayer was granted. After issuing a fresh notice and hearing by the DAC and providing documents sought etc. the impugned order was passed by MCX on June 19, 2017, reiterating the amount of penalty of Rs. 13,54,372/-.

4. Learned counsel for the appellant Ms. Nidhi Singh contended that the appellant never violated open position

limits of its client as alleged in the impugned order. The client was using the services of two brokers which the appellant was not aware of since the appellant had no role in its management. In any case, the open position with each broker is within limits of 20,000 kilograms and hence no violation is involved. Further, no action was taken by the MCX against the other broker. There was delay in returning the payment deducted by MCX based on the earlier order which was quashed by the Tribunal in August 2016 and the same amount of penalty reimposed by the impugned order is exorbitant. For similar violations other Exchanges impose lower penalties.

5. Learned counsel for the respondent MCX Shri Sameer Pandit submitted that the appellant and its client, M/s, Splendid Builders Private Ltd. are closely related entities. Mr. S.K. Jindal the promoter / director of the appellant company is also a shareholder in M/s. Splendid Builders Private Ltd. the client of the appellant. He held 8.48% shares in the latter as on December 10, 2016. Further, the appellant itself held 3.26% shares of this client. Moreover, the KYC form of the client filed by M/s. Splendid Builders Private Ltd. with M/s. Indiabulls Commodities Ltd. has the name and photo of Mr. S.K. Jindal as the contact person /

authorized managing partner. The correspondence address given in those KYC details is 110, Babar Road, New Delhi which is the same address of the appellant. So given these facts M/s. Splendid Builders Private Ltd. is just another face of the appellant with a distinct legal entity status. So the argument that the appellant and its client M/s. Splendid Builders Private Ltd. have no connection is absolutely devoid of merit. While M/s. Splendid Builders Private Ltd. filed detailed KYC documents with M/s. Indiabulls Commodities Ltd., the KYC details filed by this client with the appellant are mostly blank except the same address of 110, Babar Road, New Delhi, date of incorporation and PAN number. All these clearly show that the appellant and M/s. Splendid Builders Private Ltd. are not only closely connected entities but in fact controlled by Mr. S.K. Jindal, the promoter and director of the appellant. He further submitted that no action was taken against the other member broker M/s. Indiabulls Commodities Ltd. because that broker had no other connection with its client M/s. Splendid Builders Private Ltd. and independently the position limit taken by this client with them was within the permissible limits on all the 14 trading days. The appellant was punished with a penalty because the appellant and its client are closely connected entities and managed by the same

person and therefore the appellant knew that in addition to the position in Mentha Oil taken by M/s. Splendid Builders Private Ltd. with the appellant they were also trading with and having position with the other broker M/s. Indiabulls Commodities Ltd., in the same contract and therefore knowingly violated the open position.

6. On a specific query as to why trading by clients could not be monitored across brokers so as to generate total position taken by each client with multiple brokers, learned counsel submitted that during the relevant time, January 2007, such a system was not in position in commodity derivatives exchanges though the same was subsequently implemented after PAN was made as the sole identifier. Therefore, the Exchange was neither in a position to ascertain nor aware of the issue of position limits violation till the report of the PwC was made available to them in April 2014 consequent to the directions of the Forward Market Commission.

7. Learned counsel for the respondent further contended that both in terms of the erstwhile Forward Markets Commission Circular dated August 21, 2006 as well as the Circular of SEBI dated September 27, 2016 issued after regulation of commodity derivatives market was transferred

to SEBI, the quantum of penalty for such violation is specifically laid down. He also submitted that though the penalty could have been imposed from the date of violation and hence the interest thereon could have been charged actually the penalty has been imposed only from the date of the impugned order.

8. After hearing the counsel for the parties and after perusing the documents placed before us we find no merit in the contentions of the appellant. The entire argument of the appellant is based on the premise that the client in question M/s. Splendid Builders Private Ltd. is an independent entity which is like any other client of a broker. It is on record that the appellant and its client concerned M/s. Splendid Builders Private Ltd. are closely connected entities both in terms of ownership and management. Given this position the appellant cannot take shelter under ignorance of the behavior of its client. From the records it is also clear that the client M/s. Splendid Builders Private Ltd. and M/s. Indiabulls Commodities Ltd. were arm's length entities and as such the finding that M/s. Indiabulls Commodities Ltd. was not aware of the trading position being taken by this client with another broker (appellant) cannot be faulted. Accordingly, we hold

that the penalty imposed on the appellant for violation of open position limits in Mentha Oil contracts is justifiable. The submission that the penalty is on the higher side is also devoid of merit as penalty imposable under the instant Circulars is what is imposed and the same has been imposed only from the date of the impugned order though the violation was ten years earlier. It is also important to note that the open position violation was on 14 trading days and ranges from 15% to 45% more than 20,000 kilograms which is allowed; not marginal to claim any mitigation.

9. In the result, we find no merit in the appeal and the same is dismissed. Given the facts and circumstances of the case there is no order on costs.

Sd/-  
Justice Tarun Agarwala  
Presiding Officer

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

05.04.2019

Prepared and compared by:msb