

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

DATE : 12.04.2019

Appeal No. 466 of 2018

Kotak Commodity Services Pvt. Ltd.
Nirlon House, 1st Floor,
Dr. Annie Besant Road, Opp. Sasmira,
Near Passport Office,
Mumbai - 400 030.

.....Appellant

Versus

National Commodity & Derivatives
Exchange Ltd.
Ackruti Corporate Park, 1st Floor,
L. B. S. Marg, Kanjur Marg (West),
Mumbai - 400 078.

..... Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Rahul Karnik,
Ms. Yugandhara Khanwilkar, Mr. Bankim Mehta, Ms. Jinal Rathi,
Advocates for the Appellant.

Mr. Aayush Singhvi, Advocate with Mr. Mahaveer Rajguru,
Advocate i/b Regstreet Law Advisors for the Respondent.

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

Per : Justice Tarun Agarwala, Presiding Officer (Oral)

1. We have heard Shri Somasekhar Sundaresan assisted by
Ms. Yugandhara Khanwilkar, the learned counsel for the appellant
and Mr. Aayush Singhvi with Mr. Mahaveer Rajguru, the learned
counsel for the respondent.

2. A show cause notice dated July 31, 2018 was issued by National Commodity & Derivatives Exchange Ltd. (hereinafter referred to as, 'NCDEX') for violation of open interest limits in Guar seed or Guar gum contracts. The appellant was directed to show cause as to why a penalty of Rs.77,17,06,599/- should not be imposed. The show cause notice relied upon various entries in the bank statements, ledgers, trade-data and demat account, the extracts of which were depicted in the annexure to the show cause notice. Subsequently, a supplementary show cause notice dated August 16, 2018 was issued by which the appellant was asked to show as to why financial penalty of Rs. 8,25,35,302/- should not be imposed. The list of documents that were specified on which the respondent was relying upon was indicated in Annexure III to the supplementary show cause notice. For facility, the same is extracted hereunder :-

- “1. Exchange circular no. NCDEX/TRADING-095/2006/195 dated July 31, 2006.*
- 2. Exchange circular no. NCDEX/TRADING-107/2006/223 dated August 29, 2006*
- 3. Exchange letter no. NCDEX/2011-12/MWS-1360 dated January 05, 2012.*
- 4. Exchange circular no. NCDEX/TRADING-003/2012/010 dated January 10, 2012.*
- 5. Exchange circular no. NCDEX/RISK-001/2012/011 dated January 11, 2012.*
- 6. Exchange letter no. NCDEX/2011-12/MWS-1438 dated January 14, 2012.*
- 7. Bank Statement of the clients as received from FMC.*
- 8. Ledger account of the clients as received from the respective member(s).*

9. Caution letter no. NCDEX/2017/ENF/56 dated June 02, 2017.”

3. The appellant applied for a host of documents, some of which was supplied and others were rejected on the ground that it was confidential and privileged. The appellant being aggrieved by the non supply of certain documents has filed the present appeal.

4. Having heard the learned counsel for the parties at some length, we find that some of the documents which have been sought by the appellant amounts to a roving and fishing enquiry. We are, therefore, confining the present appeal to only a certain set of documents which in our opinion at this stage appears to be relevant.

5. As per the supplementary show cause notice the respondent is relying on the following documents which are mentioned at serial nos. 7 and 8, namely, bank statement of the clients as received from FMC and ledger account of the clients as received from the respective members. The extract of the bank accounts and the ledger entries have been indicated by the respondent in their show cause notice dated July 31, 2018. We find from the extract of the bank statements and ledger entries that reference has also been made to certain demat accounts of certain members as well as trade-data. In our opinion, the law requires that if the respondent is relying upon those entries/data which have been indicated in the show cause

notice and the supplementary show cause notice, it is obligatory for the respondent to allow inspection of that entries/data to the appellant.

6. We accordingly dispose the appeal directing the respondent to allow inspection of redacted entries as indicated in the show cause notice dated July 31, 2018 and supplementary show cause notice dated August 16, 2018 with regard to bank statements, ledger entries, trade-data relied upon in the show cause notice and reference to the demat accounts of the various members.

7. The Appeal is accordingly disposed of.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M. T. Joshi
Judicial Member

12.04.2019
Prepared & Compared by
PTM