

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 09.05.2019

Misc. Application No. 87 of 2018
And
Appeal No. 94 of 2018

CPR Capital Services Limited
A-66, 2nd Floor, Guru Nanak Pura,
Laxmi Nagar, Vikas Marg,
Delhi – 110 092.

...Appellant

Versus

National Stock Exchange of India Limited
Plot No. C-1, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051.

...Respondent

Mr. Prakash Shah, Advocate with Mr. Chinmay Paradkar,
Advocate i/b Prakash Shah & Associates for the Appellant.

Mr. Rashid Boatwalla, Advocate i/b Manilal Kher Ambalal &
Co. 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 (Oral)

1. The present appeal has been filed questioning the veracity
and legality of the order dated February 8, 2018 passed by the

Disciplinary Action Committee ('DAC' for short) of the National Stock Exchange of India Limited ('NSE' for short) by which the appellant who is the broker has been expelled from the membership of the NSE. Since the expulsion order has far reaching consequences, the appellant filed a review application on February 27, 2018 and within 24 hours thereafter the review application was rejected by an order dated March 1, 2018. The appellant being aggrieved by the said order has filed the present appeal.

2. We have heard Shri Prakash Shah, the learned counsel for the appellant and Shri Rashid Boatwalla, the learned counsel for the respondent.

3. Clause 17 of the NSE Rules provides a provision for reconsideration / review of its orders. For facility, the said provision is extracted hereunder:-

(17) Subject to the provisions of the Securities Contracts (Regulation) Rules, 1957 the relevant authority may of its own motion or on appeal by the trading member concerned within 90 days from the date of communication of decision of the relevant authority to the member reconsider and may rescind, revoke or modify its resolution withdrawing all or any of the membership rights or fining, censuring or warning any trading member. In a like manner the relevant authority may rescind, revoke or modify its resolution expelling or suspending any trading member."

4. We find from the impugned review order dated March 1, 2018 that a note was placed by the office of the NSE before the DAC with a request to consider the review application of the appellant. Two boxes were placed before the DAC. In one box it was written 'Review Rejected' and in the other box it was written 'Review Accepted'. The DAC ticked the box which contained the message 'Review Rejected'.

5. In our view there is total lack of application of mind. Review application is required to be dealt after giving an opportunity of hearing to the appellant which in the instant case was not done. Any observation made by the NSE in the note placed before the DAC was required to be rebutted, if any, by the appellant which was also not done. We also are of the opinion that a reasoned and speaking order should have been passed by the DAC. There is total absence of expression or opinion giving reasons for rejecting the review application. The impugned order is, thus, violative of Article 14 of Constitution of India and cannot be sustained.

6. On this short ground we quash the review order dated March 1, 2018 and remit the matter again to the DAC to decide

the review application afresh after giving an opportunity of hearing within two months from today. Appeal is allowed with no order as to costs.

7. In view of the disposal of the appeal, the Misc. Application no. 87 of 2018 does not survive and the same is also disposed of as infructuous.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M.T. Joshi
Judicial Member

09.05.2019

Prepared and compared by:msb