

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 02.12.2019

Date of Decision : 03.12.2019

Appeal (L) No. 585 of 2019

Bajaj Finance Limited
3rd Floor, Panchshil Tech Park,
Plot 43/1, 43/2 and 44/2, Viman Nagar,
Pune – 411 014 (Maharashtra).

..... Appellant

Versus

1. Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051.

2. Karvy Stock Broking Limited
Karvy House, 46,
Avenue 4, Street No. 1,
Banjara Hills,
Hyderabad – 400 034.

.... Respondents

Mr. Janak Dwarkadas, Senior Advocate with Mr. Sandeep Parikh, Mr. Rashid Boatwalla, Ms. Deepika Goyal, Mr. Rahul Jain and Mr. Pruthvi Dhinoja, Advocates i/b Manilal Kher Ambalal & Co. for the Appellant.

Mr. Rafique Dada, Senior Advocate with Mr. Anubhav Ghosh and Ms. Rashi Dalmia, Advocates i/b The Law Point for Respondent No. 1.

Mr. Vikram Nankani, Senior Advocate with Mr. KRCV Seshachalam, Ms. Sabeena Mahadik, Mr. Pankaj Uttaradhi, Mr. Sagar Hate and Mr. Aayush Kothari, Advocates i/b Vishesha Law Services for Respondent No. 2.

CORAM : Dr. C.K.G. Nair, Member
Justice M.T. Joshi, Judicial Member

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

1. Not on Board. Mentioned by the learned Senior Counsel for the appellant for urgent hearing.

2. This appeal has been filed by Bajaj Finance Limited, a Non Banking Financial Company ('NBFC' for short) aggrieved by the interim order of the Whole Time Member ('WTM' for short) of the Securities and Exchange Board of India ('SEBI' for short) dated November 22, 2019 in the matter of M/s. Karvy Stock Broking Ltd. ('Karvy' for short). Appellant is particularly aggrieved by direction no. (iv) in the said order which reads as follows:-

“(iv) The Depositories shall not allow transfer of securities from DP account no. 11458979, named KARVY STOCK BROKING LTD. (BSE) with immediate effect. The transfer of securities from DP account no. 11458979, named KARVY STOCK BROKING LTD. (BSE) shall be permitted only to the respective beneficial owner who has paid in full against these securities, under supervision of NSE;”

3. It is the contention of the appellant that Karvy has an outstanding obligation of Rs. 3,44,49,81,609/- + applicable interest and other charges towards the appellant and its said

rights got destroyed by the impugned order. Hence, this appeal.

4. Learned Senior Counsel Shri Janak Dwarkadas appearing for the appellant submits that the appellant is in the normal business of an NBFC including lending against pledged securities. Accordingly, by way of a Loan Against Securities Arrangement with Karvy it has been lending funds towards working capital requirements against pledge of securities since December 2014. Further, there has been an undertaking from Karvy that such pledged securities were owned by Karvy itself and not from clients' accounts. Citing various circulars issued by SEBI relating to maintenance of clients accounts and securities vis-à-vis brokers accounts and securities, it was emphasized that given the increasingly tightened regulatory approach to this issue the appellant has had no reason to doubt the pledges made by Karvy for obtaining loans because the standard operating procedure for such accounts and securities was rigorous and monitored by the Depositories, Exchanges and above all SEBI.

5. It was further contended that since Karvy violated certain clauses of the loan agreement and withdrew beyond the sanctioned amount a Loan Recall Notice was issued to

Karvy on November 20, 2019 seeking refund of the full outstanding loan of Rs. 345 crore (approximately) along with interest and charges. In the event of failure by Karvy to refund the same the appellant was planning to invoke the pledge. However on account of the impugned order dated November 22, 2019 which inter alia prohibited transfer of securities from DP account no. 11458979; named KARVY STOCK BROKING LTD. (BSE) with immediate effect the appellant could not invoke the pledge. At the same time before passing such an order which affected its rights the appellant was not given any notice or opportunity of being heard in any manner. On becoming aware of the impugned order, immediately on November 23, 2019 despite being a Saturday the appellant sent a representation to SEBI raising all these issues which, however, remain unanswered even today. Such unilateral action by SEBI has left the appellant to face the consequences of the impugned order despite no fault of the appellant. In this background given that the rights of the appellant are seriously affected and not providing an opportunity by SEBI has seriously prejudiced the appellant, the appellant seeks to quash the impugned order or in the alternative atleast a direction to be heard by SEBI along with stay on the direction to transfer the shares held by the

appellant in the form of pledge to respective beneficial owners.

6. Learned Senior Counsel Shri Rafique Dada representing SEBI, Respondent No. 1 submits that the order is dated November 22, 2019; the account concerned is not a pool account but a beneficiary client account; appellant has not done proper due diligence; NSE and NSDL have been directed to release the shares to the beneficial owners as per direction no. (iv) in the impugned order but they have not been made party in the appeal; the appellant lent to Karvy on the basis of share pledges even after the latest SEBI circular ring fencing client securities and funds has been issued; and most of the pledged shares are reportedly transferred to beneficial owners, the exact information on which is not available because neither NSE nor the Depositories have been arrayed as parties in this appeal. In any case it was contended by the learned senior counsel that the appellant has recourse to the civil remedy.

7. Learned Senior Counsel Shri Vikram Nankani representing Karvy, Respondent No. 2 submits that he has no instructions on the matter.

8. Having heard the parties we find that the impugned order notes that Karvy had raised funds pledging securities from banks and NBFCs and therefore was aware that rights of those entities would be impacted by the said order. As such, even if they could not be heard while passing the impugned order at least on their representation they were entitled to be heard. It is on record that the appellant wrote to SEBI on November 23, 2019 (received by SEBI on November 25, 2019, 23rd and 24th being Saturday and Sunday). It is also an undisputed fact that lending against securities is a normal and permitted business activity of banks and NBFCs and SEBI is fully aware of the same. Therefore, we are of the considered view that the impugned order has prejudiced and adversely affected the rights of the appellant as a bonafide lender. Since it is the impugned order which has impacted the rights of the appellant, not arraying NSE and NSDL as parties, though their arraying might have brought in more facts on table, does not impact the maintainability of this appeal.

9. Accordingly, without commenting on the merit of the case, we direct the WTM of SEBI to hear the appellant on the basis of their representation dated November 23, 2019 and / or any other additional representation which they may like to

make. If the appellant is desirous to make any additional representation it shall be made latest by December 4, 2019. Thereafter, the WTM of SEBI shall consider the representation(s) of the appellant and, after giving an opportunity for personal hearing, pass an order as per law latest by December 10, 2019. In the interim further transfer of securities shall remain suspended from DP account no. 11458979, named KARVY STOCK BROKING LTD. (BSE) in terms of direction no. (iv) of the impugned order (supra).

10. Appeal is disposed of on above terms at the stage of admission itself. No order on costs.

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

Sd/-
Justice M.T. Joshi
Judicial Member

03.12.2019

Prepared and compared by:msb