

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Date of Decision: 3.12.2019**

**Misc. Application No.631 of 2019  
And  
Appeal Lodging No.587 of 2019**

Karvy Stock Broking Limited  
Plot No.31/P, Karvy Millenium,  
Nanakramguda, Financial District,  
Gachibowli, Hyderabad,  
Telengana – 500032. .... Appellant

Versus

National Stock Exchange of India  
Exchange Plaza, C-1 Block G,  
Bandra Kurla Complex,  
Bandra (East), Mumbai – 400051. .... Respondent

Mr. Vikram Nankani, Senior Advocate with Mr. KRCV Seshachalam, Mr. A. Rama Rao, Ms. Sabeena Mahadik, Mr. Pankaj Uttaradhi, Mr. Sagar Hate and Mr. Aayush Kothari, Advocates i/b. Vishesha Law Services for the Appellant.

Mr. Venkatesh Dhond, Senior Advocate with Mr. Somasekar Sundaresan, Ms. Shruti Rajan, Mr. Aditya Sikka, Mr. Pratham and Ms. Drishti Das, Advocates for the Respondent.

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

Per : Justice M.T. Joshi (Oral)

**Misc. Application No.631 of 2019**

Heard. For the reasons stated in the application, the application is allowed. The compilation of documents containing show cause notice and decision dated 2<sup>nd</sup> December, 2019 is accepted on record.

**Appeal Lodging No.587 of 2019**

1. By the present appeal the appellant is seeking quashment of the impugned order/circular dated December 2, 2019 issued by respondent National Stock Exchange of India Ltd. (hereinafter referred to as 'NSE').
2. Vide the said circular respondent NSE had suspended the present appellant from its membership due to the alleged non compliance of the regulatory provisions of the Exchange with effect from 2<sup>nd</sup> December, 2019.
3. Learned counsel for the respondent raised objection on the maintainability of the present appeal on the ground that the equally efficacious remedy is available to the appellant under National Stock Exchange of India Ltd. Rules (hereinafter referred to as 'the Rules'). He therefore submitted that the appeal be not entertained.

4. From the submission of both the sides and from the record it appears that on 22<sup>nd</sup> November, 2019 the Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') passed an ex-parte ad-interim order against the appellant.

5. The reading of the order would show that on the basis of the report dated 22<sup>nd</sup> November, 2019 forwarded by the present respondent NSE it was prima-facie found that the present appellant was misusing the clients' securities and various other misappropriation of the clients' securities as detailed in the said order. The WTM of the SEBI in the circumstances issued following directions:-

*(i) KSBL is prohibited from taking new clients in respect of its stock broking activities;*

*(ii) The Depositories i.e. NSDL and CDSL, in order to prevent further misuse of clients' securities by KSBL, are hereby directed not to act upon any instruction given by KSBL in pursuance of power of attorney given to KSBL by its clients, with immediate effect;*

*(iii) The Depositories shall monitor the movement of securities into and from the DP account of clients of KSBL as DP to ensure that clients' operations are not affected;*

*(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;  
and*

*(v) The Depositories and Stock Exchanges shall initiate appropriate disciplinary regulatory proceedings against the Noticee for misuse of clients' funds and securities as per their respective bye laws, rules and regulations;*

6. In view of these directions it appears that respondent NSE had passed the impugned.

7. Learned counsel for the respondent submits that the order is in the nature of a temporary suspension as provided in the Rule 13A(a) of the Rules. The relevant portion is extracted as under:

*Temporary Suspension*

*(13A) (a) Notwithstanding what is contained in clause (13) herein above if in the opinion of the Managing Director it is necessary to do so, he may, for reasons to be recorded in writing, temporarily suspend a trading member, pending completion of the proceedings for suspension under this chapter by the relevant authority, and no notice of hearing shall be required for such temporary suspension and such temporary suspension shall have the same consequences of suspension under this chapter.*

*(b) A notice to show cause shall be issued to the trading member within five working days of such temporary suspension.*

*(c) Any such temporary suspension may be revoked at the discretion of the Managing Director, for reasons to be recorded in writing, if the Managing Director is satisfied that the circumstances leading to the formations of opinion of the Managing Director to effect temporary suspension, have ceased to exist or are satisfactorily resolved.*

*(d) A trading member aggrieved by the temporary suspension may appeal to the relevant authority, provided that such appeal shall not automatically suspend the temporary suspension unless otherwise directed by the relevant authority.*

8. Adverting the attention of the Tribunal to sub-rule 13A(d) of the Rules he submits that the appellant ought to have filed an application before the relevant authority as established under Rule 24 of the Rules and, therefore, the present appeal is not maintainable.

9. On the other hand, Mr. Vikram Nankani, learned Senior counsel for the appellant submits that the appellant in law is entitled to prefer an appeal before this Tribunal as provided under Section 23L of the Securities Contracts (Regulation) Act, 1956. Relevant provision is as under:-

***Section 23L in The Securities Contracts (Regulation) Act, 1956***

*23L. Appeal to Securities Appellate Tribunal.—*

*(1) Any person aggrieved, by the order or decision of the recognised stock exchange or the adjudicating officer or any order made by the Securities and Exchange Board of India under section 4B, may prefer*

*an appeal before the Securities Appellate Tribunal and the provisions of sections 22B, 22C, 22D and 22E of this Act, shall apply, as far as may be, to such appeals.*

10. Mr. Vikram Nankani, learned Senior counsel for the appellant further submits that the Rules framed by respondent NSE cannot overrule the statutory provisions. He further submits that reading of the order of the learned WTM would show that the investigation in the alleged misconduct of the appellant was going on since long. The WTM of the SEBI under the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') could have very well issued the directions, if any, regarding the continuation or otherwise of the appellant as a trading member. However, the appellant is being unnecessarily involved in multiple proceedings. The long drawn investigation would show that there was no need of suddenly issuing a drastic direction of suspension of the appellant's rights vide impugned direction/circular. He took us through the details of the investigation and submitted that even if it is assumed that alternate remedy is available considering the above background the appeal may be allowed.

11. Upon hearing both sides, in our view, the Rules are framed by respondent NSE in exercise of the powers of the

Section 9 of the SCRA. The appellant has equally efficacious remedy to challenge the impugned order before the relevant authority of the respondent NSE. In that view of the matter, we do not find any reason to entertain the appeal. Mr. Venkatesh Dhond, learned Senior counsel for the respondent submits that the appeal, if any, filed by the appellant with the respondent, they would be heard expeditiously by convening meeting of the relevant authority. There is no need to bypass the statutory Rules. At this stage, learned counsel for the appellant submits that the appellant may be provided with liberty to seek documents from the respondent. We do not find any hitch in acceding to the said request. The respondent shall supply the documents or grant inspection of the same relevant to the dispute.

12. For the reasons stated above, the appeal is disposed of. Appellant would be at liberty to file an appeal as provided by Rule 13A(d) of the NSE Rules. In case, if such an appeal is filed, appellant shall be heard as expeditiously as possible and in any event shall be decided by December 6, 2019. In case the relevant authority would not be able to decide the appeal within the period, the decision on the temporary stay

to the impugned order may be taken by the relevant authority  
on or before December 6, 2019. No order as to costs.

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

Sd/-  
Justice M.T. Joshi  
Judicial Member

3.12.2019  
Prepared and compared by  
RHN