

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 02.03.2020

Date of Decision : 05.03.2020

Appeal No. 53 of 2017

M/s Prrsaar
Proprietor- Ved Prakash Gupta
17A/35, Vindyachal,
2nd Floor, Punjabi Bagh (West),
New Delhi- 110 026

...Appellant

Versus

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

...Respondent

Mr. Mukesh M. Goel, Advocate i/b R G Laws for the Appellant.

Mr. Rashid Roatwalla, Advocate with Ms. Shreya Anuwal,
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

1. The present appeal has been filed against the order of the Disciplinary Action Committee (“DAC” for convenience) of National Stock Exchange of India Limited (“NSE” for convenience) dated October 25, 2016 as well as the order dated February 03, 2017 passed by the same Committee rejecting the

Review Application. By the impugned orders a penalty of ₹ 10 lakhs has been imposed for two violations namely;

- (a) Difference in quantity in securities as per back office register of securities and holding statement of beneficiary accounts.
- (b) Receipt of securities not from respective clients.

2. It transpires that against the first order of DAC dated October 25, 2016, Appeal No. 60 of 2017 was filed which was dismissed as withdrawn. Subsequently after passing of the order on the Review Application, Appeal No. 53 of 2017 was filed which was dismissed by this Tribunal by an order dated February 20, 2017. Against the order of this Tribunal dated February 20, 2017 Civil Appeal No. 3260 of 2017 was filed before Supreme Court in which an interim order dated February 27, 2017 was passed directing the appellant to deposit the penalty of ₹ 10 lakhs. The Hon'ble Supreme Court however stayed the operation of suspension. Thereafter, the appeal was heard and allowed by the Hon'ble Supreme Court vide judgement dated July 22, 2019. The order of the Tribunal was set aside and the matter was remitted to the Tribunal to decide only on the issue of quantum of punishment afresh awarded to

the appellant. Accordingly, the matter is being heard again on the question on quantum imposed upon the appellant.

3. Before we proceed to decide the question of quantum of penalty we need to point out that this Tribunal while dismissing the appeal on merits found that the appellant had violated the Circulars and Regulations and, in that scenario, held that the imposition of penalty was neither unreasonable nor excessive. Before the Hon'ble Supreme Court, the appellant contended that the penalty of suspension as well as quantum of penalty being excessive could only be imposed as per Circular dated June 27, 2013. This aspect found favour with the Supreme Court. The Supreme Court held that the penalty imposed was as per the Circular or not was not considered by the Tribunal and, accordingly, the matter was remitted to this Tribunal to decide afresh only on the issue of quantum of penalty awarded to the appellant.

4. The relevant extracts of the Circular dated June 27, 2013 depicted at Sr. No. 19 is extracted hereunder:-

Sr. No.	Details of contravention	Penalty (in rupees)
19.	Improper use of funds raised by placing of clients securities with bank/ any other financial institutions viz. funds not used for respective client obligation/margins	Rs. 1,00,000/- or 0.1% of the value of misuse whichever is higher
	Mis-utilization of clients' funds and/or securities	

The covering letter of the Circular dated June 27, 2013 indicates the following which is extracted hereunder:-

“The penalties are decided by the relevant authority of the Exchange from time to time. It may be noted that the penalties are indicative in nature and could undergo change in specific cases depending on frequency and gravity of the violations. Actions in respect of violations having high impact would be dealt on case to case basis depending on seriousness and gravity of such violations.”

From the aforesaid, it indicates that the penalties so indicated in the column are indicative in nature and could undergo change in specific cases depending on frequency and gravity of the case. The penalty for improper use of funds raised by placing of client's securities and misutilization of client's funds and securities is ₹ 1 lakh or 0.1% of the value of misuse whichever is higher.

5. In the instant case, a sum of ₹ 10 lakhs has been imposed. How the calculation of ₹ 10 lakhs has been arrived at is a mystery and is not known nor do we find anything in the reply given by the respondent. The learned counsel for the respondent has also failed to give any plausible explanation with regard to the calculation of ₹ 10 lakhs. We also find that the

consideration of frequency and gravity of the violation was also not a factor considered in the impugned order. Thus, in our opinion, imposition of ₹ 10 lakhs is not based as per the Circular dated June 27, 2013 and thus cannot be sustained. We also do not find any material for this Tribunal to calculate the quantum of penalty.

6. In so far as the penalty of suspension of 5 trading days is concerned the respondent has relied upon their bye-laws, Chapter IV Rule 1, which relates to disciplinary jurisdiction. For facility, the said provision is extracted hereunder:-

“Disciplinary Jurisdiction

(1)The relevant authority may expel or suspend and/or fine under censure and/or warn and/or withdraw any of the membership rights of a trading member if it be guilty of contravention, non-compliance, disobedience, disregard or evasion of any of the Bye Laws, Rules and Regulations of the Exchange or of any resolutions, orders, notices, directions or decisions or rulings of the Exchange or the relevant authority or of any other Committee or officer of the Exchange authorised in that behalf or of any conduct, proceeding or method of business which the relevant authority in its absolute discretion deems dishonourable, disgraceful or unbecoming a trading member of

the Exchange or inconsistent with just and equitable principles of trade or detrimental to the interests, good name or welfare of the Exchange or prejudicial or subversive to its objections and purposes.”

Further the provision relating to suspension of business is also extracted hereunder:-

“Suspension of Business:

(8) The relevant authority may require a trading member to suspend its business in part or in whole:

(a) Prejudicial Business: When in the opinion of the relevant authority, the trading member conducts business in a manner prejudicial to the Exchange by making purchases or sales of securities or offers to purchase or sell securities for the purpose of upsetting equilibrium of the market or bringing about a condition of demoralization in which prices will not fairly reflect market value, or”

It was thus contended that the DAC has ample power to suspend the business. Be that as it may. The impugned order does not refer to this bye-laws and has only considered the Circular dated June 27, 2013 which does not provide for suspension of trading.

7. In the light of the aforesaid, the impugned order of the DAC dated October 25, 2016 as well as order dated February 03, 2017 cannot be sustained and are quashed in so far as it relates to the quantum of penalty. The appeal is allowed to that extent. The matter is remitted to the DAC to reconsider the quantum of penalty in the light of the Circular dated June 27, 2013 and applicable bye-laws as existing on the date when the violation had occurred. The DAC will decide the matter within three months from today after giving an opportunity of hearing to the appellant. In the circumstances of the case, party shall bear their own costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M. T. Joshi
Judicial Member