

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved On: 31.07.2020**

**Date of Decision : 03.08.2020**

**Misc. Application No. 167 of 2020**

**(Interim Relief)**

**And**

**Appeal No. 157 of 2020**

Astitva Capital Market Private Limited

3<sup>rd</sup> Floor, New Delhi House,

Barakhamba Road, New Delhi,

New Delhi- 110 001

...Appellant

Versus

National Stock Exchange of India Limited

Exchange Plaza, Bandra- Kurla Complex

Bandra (East),

Mumbai - 400 051

...Respondent

Mr. Mukesh Goel, Advocate i/b RG Lawz for the Appellant.

Mr. Rashid Boatwalla, Advocate with Mr. Rahul Jain and

Mr. Pruthvi Dhinoja, Advocates i/b M/s 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: Dr. C.K.G. Nair

1. This appeal has been filed challenging the order passed by

the Member and Core Settlement Guarantee Fund Committee

(“MCSGFC” for convenience) of the respondent National Stock Exchange of India Limited (“NSE” for convenience) dated June 06, 2020. A review application filed by the appellant was also rejected on June 09, 2020. By the impugned decision the appellant has been suspended from all segments of the market and has been directed to pay a penalty amount of Rs. 1,74,13,600/- (Rupees One Crore Seventy Four Lakhs Thirteen Thousand and Six Hundred Only). Aggrieved by this decision the appeal has been filed along with a Misc. Application seeking interim relief.

2. We have heard Sri Mukesh Goel, learned counsel for the appellant and Sri Rashid Boatwalla, learned counsel assisted by Sri Rahul Jain and Sri Pruthvi Dhinoja, Advocates for the respondent through video conference.

3. It is the contention of the learned counsel for the appellant that the impugned order has been issued in haste, without providing an opportunity of hearing and without considering the available documents on record. It was contended that the Show Cause Notice was issued on March 20, 2020 on the eve of declaring the nationwide lockdown on account of the COVID-19 Pandemic and when the appellant was not in a position to

obtain/retrieve the relevant documents from its office. Though, the appellant has sought further time on account of the lockdown related factors, the impugned order was passed by the MCSGFC of NSE in a hurry. Moreover, in response to the inspection observations provided by NSE the appellant provided detailed responses to the queries raised by the NSE on September 17, 2019 which is in the possession of the respondent which was not considered while passing the impugned order. One of the important documents therein is relating to the accounts of Sri Yadvendra Sharma, on which a penalty of about Rs. 1,11,00,000/- (Rupees One Crore Eleven Lakhs) has been imposed only on the ground that the said Sharma did not have sufficient balance in his margin account with the appellant and therefore appellant had falsely reported the amount in the said account. The learned counsel emphasized that this particular client also had a deposit account with the appellant apart from a trading account, the relevant details were forwarded to NSE. If the deposit account of Sri Yadvendra Sharma was considered by the MCSGFC it would have been clear that there was indeed a surplus of more than Rs. 4.7 lakh after providing for the required margin. However, since the MCSGFC did not use the information which was available to the NSE and passed the order in a hurry this fact was not considered and by imposing a

huge penalty of Rs. 1.1 Crore on this ground alone injustice has been done to the appellant.

4. In response, while defending the impugned order, the learned counsel for the respondent Sri Boatwalla contended that the appellant did not provide the details relating to the two accounts maintained by Sri Yadvendra Sharma in response to the SCN. In any case, the trading account itself should contain all the details of the client, including the availability of funds; that is the requirement of the regulatory provisions.

5. Though we have been told and we also note from the documents that there are a number of other charges against the appellant and certain penalties have also been imposed for those violations; without going into those details and proceeding from the dispute emanating from sufficiency or otherwise of funds in the account of Sri Yadvendra Sharma, we are of the considered view that the matter needs to be re-examined by the MCSGFC. Though, the appellant did not submit the relevant documents relating to the account of Shri. Sharma, in response to the SCN it is on record that certain details had been submitted by the appellant to the NSE prior to the SCN. When the respondent did not agree to the request of the appellant to provide extra time to

produce the documents particularly in the context of difficulties relating to the Pandemic, it was incumbent on the respondent to provide a reasonable opportunity or in the absence of which to at least to consider all the documents available with the respondent on the subject irrespective of whether it was provided by the appellant in response to the show cause notice or otherwise since the proceedings, including the SCN, in the matter emanated from the inspection itself. If comingling accounts, as in this case, is against regulatory provisions as stated by the learned Counsel for NSE, that factor also needed to be examined by the MCSGFC. A failure to do so, in our opinion, has caused prejudice to the appellant particularly when an extreme punishment of disabling the appellant from trading in all segments of the market has been imposed on it apart from a heavy penalty of more than Rs. 1.74 Crore.

6. In view of the above reasons, we quash the impugned Order and remit the matter back to the MCSGFC of the NSE to reconsider the matter *de novo*. The appellant shall give a detailed reply to the show cause notice, with supporting documents to NSE, on or before August 21, 2020. After providing an opportunity of hearing, if sought by the appellant, a fresh order may be passed by the MCSGFC of the NSE within

three months thereafter. In the interim, the trading terminals of the appellant shall be enabled subject to the appellant depositing an amount of Rs.75 lacs [Rupees Seventy Five lac only] with the NSE and also subject to the condition that no fresh clients shall be enrolled by the appellant. The amount so deposited shall be kept in an interest-bearing account by the NSE.

7. The appeal as well as the Misc. Application No. 167 of 2020 seeking interim relief are disposed of on aforesaid terms with no orders on costs.

8. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the Registry. In these circumstances, this order will be digitally signed by the Presiding Officer on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala  
Presiding Officer

Dr. C.K.G. Nair  
Member

Justice M. T. Joshi  
Judicial Member

03.08.2020  
PK