

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 02.11.2020
Date of Decision : 12.11.2020

Misc. Application No. 306 of 2020
(Grant of Additional Time)
And
Misc. Application No. 292 of 2020
(Delay Application)
And
Appeal No. 207 of 2020

Artha Vrddhi Securities Ltd.
Office No. 702, 7th Floor,
Kingston,
Tejpal Road,
Vile Parle (East),
Mumbai - 400 057.

..... Appellant

Versus

National Stock Exchange of India Ltd.
Exchange Plaza, Block G, C 1,
Bandra Kurla Complex,
Bandra (East),
Mumbai - 400 051.

... Respondent

Mr. Vinay Chauhan, Advocate with Mr. Kamal Agrawal, FCA for the Appellant.

Mr. Ventakesh Dhond, Senior Advocate with Mr. Sachin Chandarana, Mr. Rashid Boatwalla, Mr. Rahul Jain, Mr. Pruthvi Dhinoja, Advocates i/b MKA & 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, Presiding Officer

1. The present appeal has been filed against the order dated June 29, 2020 passed by the Committee disabling all the terminals from all segments till the shortfall of client's funds was recouped by the appellant. Further direction to unpledge all client securities and transfer the same to the client was also issued.

2. The facts leading to the filing of the present appeal is, that the appellant is a trading member of National Stock Exchange of India Ltd. (hereinafter referred to as 'NSE') in the Capital Market segment,

in Futures & Options segment and in Currency Derivatives segment. For the period January 1, 2017 to December 31, 2017, an inspection was conducted by NSE, based on which a penalty of Rs. 3 lacs was passed on July 9, 2019 for various violations such as non-settlement of clients' funds, funding of clients' transactions, etc.

3. On October 15, 2019, NSE issued a show cause notice indicating that there were unexplained use of funds raised by pledging client's securities in case of 225 clients amounting to Rs. 8.59 crores and not crediting the funds raised by pledging clients' securities in the clients' accounts. The show cause notice also alleged that the funds raised by pledging securities were credited to the own bank accounts of the appellant.

4. On January 6, 2020 an alert was issued by NSE intimating the appellant that its net worth has now less than Rs. 2 crore based on which a limited inspection was conducted by NSE in January 2020 relating to net worth, shortage of funds, non-reconciliation of the client securities, etc. Pursuant to the limited inspection, a show cause notice dated March 9, 2020 was issued with regard to unavailability

of funds to meet client payables amounting to Rs. 5.12 crore, shortfall in net worth, non-reconciliation of client securities, etc.

5. The Committee thereafter passed an interim direction dated March 23, 2020 directing the appellant to recoup the shortage of client funds and securities within one month and unpledge all securities and transfer the same to the client accounts. Since the same was not done the impugned order was passed on June 29, 2020.

6. We have heard Shri Vinay Chauhan, the learned counsel assisted with Shri Kamal Agrawal, FCA for the appellant and Shri Ventakesh Dhond, the learned senior counsel assisted with Shri Sachin Chandarana, Shri Rashid Boatwalla, Shri Rahul Jain, Shri Pruthvi Dhinoja, the learned counsel for the respondent through video conference.

7. At the time of entertaining the appeal, the learned counsel for the appellant contended that after the passing of the impugned order the appellant has infused Rs. 2.77 crores and reduced the shortfall of Rs. 5.12 cores. Based on such submissions, this Tribunal passed an interim order dated July 15, 2020 issuing certain directions to deposit

the balance amount within a stipulated period. The extract of the order dated July 15, 2020 is quoted hereunder for reference :-

“6. Considering the aforesaid, we direct that the effect and operation of the impugned order dated 29th June, 2020 disabling the trading terminals of the Appellant from all segments shall remain stayed subject to the following conditions:

a. The Appellant shall deposit a sum of Rs.50 lakhs towards recouping clients funds by 17th July, 2020.

b. Another sum of Rs.50 lakhs would be deposited on or before 30th July, 2020.

c. An amount of Rs.1 crore will be deposited by 31st August, 2020 and the balance amount should be cleared on or before 15th September, 2020. A detailed affidavit regarding deposit should be filed before the Tribunal on or before the next date.

d. The Appellant will also provide details to the Respondent with regard to the recouping of 2.77 crores within a week from today. This aspect would be verified by the Respondent and appropriate orders on that score would be passed within a week thereafter.

e. In the event of non compliance of any of the directions given above, the interim order passed by us will automatically come to an end and it would be open to the respondents to proceed in accordance with law.”

8. In spite of granting time to the appellant to recoup the shortage of client's funds, the same was not done. Further, the appellant failed to provide details of the infusion of Rs. 2.77 crore as submitted by them. Accordingly, the Committee passed an order on August 24, 2020 intimating the Tribunal that the appellant has not complied with directions dated July 15, 2020. Since the order of this Tribunal was not complied with, the interim order stood automatically vacated based on which NSE also disabled all the terminals of the appellant on September 4, 2020.

9. In this background, the learned counsel for the appellant submitted that the appellant is a small time broker and had appointed ILFS Securities Services Ltd. (hereinafter referred to as 'ILFS') as its clearing member. It was contended that in July 2019, ILFS was declared a defaulter due to their failure to complete the pay-in obligations of the exchange, as a result of which a sum of Rs. 2.47 crore parked by the appellant as margin security got blocked by NSE Clearing Ltd. It was submitted that as on date the appellant has recouped a substantial amount and has reduced the shortfall from Rs. 5.12 crore to Rs. 1.67 crore and if the amount of Rs. 2.47 which has been blocked by IFLS is ignored then the appellant is no longer a

defaulter and, therefore the terminals should be reopened. In the alternative, it was submitted that some further time may be given to recoup the shortfall but, in the meanwhile, the appellant's terminal should be opened so that the trading activities could start.

10. Having heard the learned counsel for the appellant, we find that time to recoup the client's funds was granted to the appellant since March 2020. More than seven months have elapsed and the shortfall of Rs. 5.12 crore has not been made good as yet. Admittedly, as on date, there is a shortfall of Rs. 1.67 crore. This Tribunal also granted time to the appellant to deposit the amount which they failed to do so.

11. In so far as the appellant is concerned, an amount of Rs. 2.17 crore and not Rs. 2.47 crore is stuck with IFLS. It is submitted that such amount has nothing to do with the present controversy involved. The claim of Rs. 2.17 crore has already been agitated by the appellant by way of arbitration proceedings. Such plea cannot be mixed up in so far as the present proceedings are concerned.

12. We are of the opinion that shortfall in client's funds is a serious violation and imposes a high risk situation to the settlement system. The appellant, as a trading member, is expected to exercise due diligence, while dealing with client's assets. We find that there has been a lack of financial discipline and the appellant has failed to maintain the high standard of integrity and fairness that was required. We find there is not only a lack of professionalism but even the directions of the Tribunal to infuse funds have failed.

13. In the light of the aforesaid, in view of the admitted violation committed by the appellant, we are not inclined to interfere in the impugned order. The appeal fails and is dismissed with no order as to costs.

14. 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

12.11.2020
PTM