

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date : 17.08.2020

**Misc. Application No. 244 of 2020
(Urgent Application)**

And

**Misc. Application No. 245 of 2020
(Stay Application)**

And

Appeal Lodging No. 245 of 2020

Anugrah Stock & Broking Pvt. Ltd.

..... Appellant

Versus

National Stock Exchange of India Ltd.

... Respondent

Mr. Darius J. Khambata, Senior Advocate with Mr. Somasekhar Sundaresan, Mr. Vinay Chauhan, Mr. Abishek Venkataraman, Mr. K. C. Jacob, Advocates i/b Corporate Law Chambers India and Mr. Paresh Kariya, Managing Director of the Appellant.

Mr. Venkatesh Dhond, Senior Advocate with Mr. Vikram Trivedi, Mr. Rashid Boatwalla, Mr. Rahul Jain, Mr. Pruthvi Dhinoja, Advocates i/b M/s. Manilal Kher Ambalal & Co. for the Respondent.

ORDER :

1. The present appeal has been filed against an ex-parte order dated August 3, 2020 restraining the appellant from taking any fresh

position in Futures & Options segments, Currency Derivatives segment and Commodity Derivatives segment with immediate effect.

2. We find that prior to the passing of the impugned ex-parte order, the appellant was served with a show cause notice dated July 17, 2020 directing the appellant to submit its reply by July 27, 2020. It also transpires that on July 26, 2020, the appellant prayed for further time to file a reply. Instead of considering the request of the appellant the impugned order dated August 3, 2020 was passed ex-parte in which apart from the restraint order the appellant was directed to file a reply to the show cause notice as well as objection, if any, to the impugned order.

3. The primary reason for passing the impugned order is, that the appellant was alleged to be dealing in unauthorized Derivatives Advisory Services (DAS) since May 2017 which was subsequently closed in 2019 and thereafter it was being operated through a sister agency Om Shri Sai Investments (OSSI). It is alleged that during this period approximately Rs. 165.10 crores have been collected from the investors and accordingly, in order to ensure no further damage was caused to the investors assets, the impugned order was passed.

4. We have heard Shri Darius Khambata, the learned senior counsel assisted by Shri Somasekhar Sundaresan, the learned counsel

for the appellant and Shri Venkatesh Dhond, the learned senior counsel assisted by Shri Rashid Boatwalla, the learned counsel for the respondent through video conference.

5. Having heard the learned senior counsel for the parties at some length, *prima-facie*, we are of the opinion that once a show cause notice was given and a reply was called for, there was no tearing hurry / urgency for the respondent to pass an ex-parte interim order restraining the appellant from trading business on the stock exchange platform in all segments which, *prima-facie*, appears to be too harsh at this ex-parte stage especially when this unauthorized DAS, if any, has been continuing for quite a period of time.

6. There is no doubt that the respondent has a right to pass an ex-parte order but such ex-parte orders are required to be passed in case of extreme urgency as has been held in North End Foods Marketing Pvt. Ltd. vs. SEBI and in Udayant Malhoutra vs. SEBI case. In the instant case , the violation is alleged to be continuing since 2017.

7. In North End Foods Marketing Pvt. Ltd. vs Securities and Exchange Board of India in Appeal No. 80 of 2019 decided on March 12, 2019, this Tribunal held :-

“13. Having heard the learned senior counsel at length, we find that it is no more *res integra* that SEBI has power to pass *ex-parte* interim orders, pending investigation, which power flows from Section 11 and 11B of the SEBI Act. A plain reading of Section 11 and 11B shows that SEBI has to protect the interests of the investors in securities and to regulate the securities market by such measures as it thinks fit and such measures may be for any or all of the matters provided in sub-section 2 of Section 11 of the Act. SEBI has power to pass interim orders and such interim orders can also be passed *exparte*. Interim orders are passed in order to prevent further possible mischief of tampering with the securities market. If during a preliminary enquiry, it is found *prima-facie*, that the person is indulging in manipulation of the securities market, it would be obligatory for SEBI to pass an interim order or for that matter an *ex- parte* interim order in order to safeguard the interests of the investors and to maintain the integrity of the market. Normally, while passing an interim order, the principles of natural justice has to be adhered to, namely, that an opportunity of hearing is required to be given. Procedural fairness embodying natural justice is to be applied whenever action is taken affecting the rights of the parties. At times, an opportunity of hearing may not be pre-decisional and may necessarily have to be post-decisional especially where the act to be prevented is imminent or where action to be taken brooks no delay. Thus, pre-decisional hearing is not always necessary when *ex-parte ad-interim* orders are made pending investigation or enquiry unless provided by the statute. In such cases, rules of natural justice would be satisfied, if the affected party is given a post-decisional hearing.

14. However, it does not mean that in every case, an *ex-parte* interim order should be passed on the pretext that it was imminent to pass such interim order in order to protect the interest of the investor or the securities market. An interim order, however, temporary it may be, restraining an entity/person from pursuing his profession/trade may have substantial and serious consequences which cannot be compensated in terms of money.

15. Thus, ex-parte interim order may be made when there is an urgency. As held in *Liberty Oil Mills & Ors. vs. Union of India & 18 Ors.* [AIR (1984) SC 1271] decided on May 1, 1984, the urgency must be infused by a host of circumstances, viz. large scale misuse and attempts to monopolise or corner the market. In the said decision, the Supreme Court further held that the regulatory agency must move quickly in order to curb further mischief and to take action immediately in order to instill and restore confidence in the capital market.”

8. In *Udayant Malhoutra* case, this Tribunal held:

“11. there is no real urgency in the matter to pass an ex-parte interim order especially during the pandemic period. There is no doubt that SEBI has the power to pass an interim order and that in extreme urgent cases SEBI can pass an ex-parte interim order but such powers can only be exercised sparingly and only in extreme urgent matters. In the instant case, we do not find any case of extreme urgency which warranted the respondent to pass an ex-parte interim order only on arriving at the prima-facie case that the appellant was an insider as defined in the SEBI (Prohibition of Insider Trading) Regulations, 2015 („PIT Regulations“ for short) without considering the balance of convenience or irreparable injury.”

9. In the light of the aforesaid, we direct the respondent to file a reply within three weeks from today. Rejoinder may be filed within three weeks thereafter. The matter would be listed for admission and for final hearing on October 14, 2020.

10. In the meanwhile, we direct that the effect and operation of the impugned ex-parte order dated August 3, 2020 shall remain stayed with immediate effect subject to the following :-

- (i) We restrain the appellant to continue with its business of DAS as well as in its sister concern OSSI with immediate effect during the pendency of the appeal.
- (ii) We further restrain the appellant from enrolling any fresh client in the derivatives segment during the pendency of the appeal.
- (iii) We direct the appellant to deposit a sum of Rs. 165 crores before the respondent within two weeks from today. The amount so deposited shall be kept in an interest bearing account by the respondent and shall be subject to the result of the appeal.
- (iv) The appellant will file a reply to the show cause notice within three weeks from today. The respondent will fix a date thereafter and, after giving an opportunity of hearing, will decide the matter in accordance with law.

11. Parties are directed to seek instructions from the Registrar 48 hrs. before the date fixed in order to find out as to whether the appeal would be heard through video conference or through physical hearing.

12. 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

17.08.2020

PTM