

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 09.11.2020

Date of Decision : 17.11.2020

Appeal No. 390 of 2020

M/s Jitendra Pukhraj Jain
5, Kapadia Chambers, 599, J.S.S. Road,
Mumbai- 400 002 ...Appellant

Versus

National Stock Exchange of India Limited
B-1 Wing, Fifth Floor,
Exchange Plaza, Bandra Kurla Complex,
Bandra (East),
Mumbai - 400 051 ...Respondent

Mr. Rajesh Khandelwal, Advocate i/b Juris Link for the
Appellant.

Mr. Vishal Kanade, Advocate with Mr. Sachin Chandarana,
Mr. Rashid Boatwalla, 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, Member

1. This appeal has been filed challenging the order of the
Member and Core Settlement Guarantee Fund Committee
("Committee" for convenience) of the respondent National

Stock Exchange of India Limited (“NSE” for convenience) dated August 25, 2020. By the said order a penalty of Rs. 7,01,700/- (Rupees Seven Lakhs One Thousand Seven Hundred) has also been imposed on the appellant.

2. The appellant is a broker, a proprietary concern, and a member of the respondent NSE since 1995. In March 2019 NSE conducted an inspection of the books of the appellant for the calendar year 2019 and observed several deficiencies and violations in its functioning. Following a letter of observations/SCN, reply and personal hearing the impugned Order was passed on 25 August, 2020.

3. The allegations against the appellant are summarized at page 16 of the impugned order in a table indicating the details of violations as well as the penalty imposed. There are five violations on which monetary penalty has been imposed, such as non-settlement of client funds and securities, incorrect reporting of margin, non-issuance of statements etc. In addition, there are 3 violations on which the appellant has been given advise. The total amount of penalty imposed is Rs. 701700.

4. We have heard Mr. Rajesh Khandelwal, learned counsel for the appellant and Mr. Vishal Kanade, learned counsel along with Mr. Sachin Chandarana, Mr. Rashid Boatwalla, Mr. Rahul Jain and Mr. Pruthvi Dhinoja, advocates for the respondent through video conference.

5. The learned counsel Mr. Rajesh Khandelwal, appearing on behalf of the appellant submits that he is not seeking any relief on the penalty imposed on 4 of the charges; except on serial no. 7 in the table referred to above where a penalty of Rs. 5 lakhs has been imposed. The said violation is “Member has engaged as a Principal in a business other than that of securities involving personal financial liability”. It is also the submission of the learned counsel for the appellant that there is no prescribed penalty for this violation. Moreover, it was contended that the appellant did not give 4 loans totaling Rs.1.43Cr., as stated in para 3.4 of the impugned Order, as a business as the said amounts were given to members of the family which unintentionally got reflected in the accounts of the appellant. Being a proprietary concern it is difficult to maintain the broker account and the personal account separately at times, it was contended. It was also submitted that for shortfall in the Networth of the appellant a separate direction has been given at

serial no. 8 of the summary chart explaining the charges and penalty.

6. The learned counsel Mr. Vishal Kanade, appearing on behalf of the respondent NSE, on the other hand, submits that it is a combination of factors such as giving loans from the books of the appellant, consequent reduction in the Networth of the appellant etc. which led to the imposition of the said penalty amount of Rs. 5 lakhs. However, the learned counsel admits that there is no prescribed penalty but the Committee has considered the totality of the factors and imposed a penalty of Rs. 5 lakhs on this ground.

7. Having heard the learned counsel for the parties, and having perused details of the particular violation on which the appellant has sought leniency, we note that Rule 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957 imposes restrictions on the members of Exchange from conducting any business other than in securities. Hence the finding in the impugned order that by giving loans to other entities, including employees/ family members of the appellant, the appellant has violated the said Rule 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957. We also note that the intention

behind the said provision is to prevent negative impact on the balance sheet of a broker and to maintain the safety and integrity of the securities trading eco system.

8. At the same time, we are of the view that giving a one-time help in the form of a small amount of loan to family members/ employees etc. cannot be always taken as engaging in a business of providing loans. We also note the plea of the appellant that the said loan has been fully recovered and the appellant has given an undertaking to the Exchange not to repeat such violations in future as the same has occurred unintentionally only once during about 25 years' business of the appellant as a broker.

9. Considering all these factors, we are of the view that the appellant deserves leniency on this ground. However, at the same time since maintaining the integrity of the balance sheet of the broker is of paramount importance and therefore, irrespective of the motive behind lending certain amount to the family members/ employees of the appellant, we do not propose to exonerate or give full relief to the appellant on this ground.

In the given facts and circumstances of the matter, therefore, we are of the view that a penalty of Rs. 1 lakh for this particular violation is sufficient to serve the interest of justice.

10. Accordingly, the total amount of penalty of Rs.701700 imposed on the appellant is hereby reduced by an amount of Rs. 4 lakhs and the respondent is at liberty to recover the balance amount of Rs.301700/-. Appeal is partially allowed with no orders on costs.

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

17.11.2020
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