

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date : 05.11.2020

Misc. Application No. 420 of 2020
(Urgency Application)
And
Misc. Application No. 421 of 2020
(Stay Application)
And
Misc. Application 422 of 2020
(Exemption from filing certified copy)
And
Appeal (L) No. 441 of 2020

Edelweiss Custodial Services LimitedAppellant

Versus

NSE Clearing Limited & Anr. ...Respondents

Mr. Janak Dwarkadas, Senior Advocate with Mr. Gaurav Joshi, Senior Advocate, Mr. Sameer Pandit and Ms. Krina Gandhi, Advocates i/b Wadia Ghandy & Co. for the Appellant.

Mr. P.N. Modi, Senior Advocate with Mr. Neville Lashkari, Mr. Yogesh Chande and Ms. Preeti Kapany, Advocates i/b Shardul Amarchand Mangaldas & Co. for Respondent No. 1.

Mr. Venkatesh Dhond, Senior Advocate with Mr. Viraj Maniar and Ms. Sneha Patil, Advocates i/b Maniar Srivastava Associates for Respondent No. 2.

ORDER:

1. We have heard Shri Janak Dwarkadas with Shri Gaurav Joshi, the learned senior counsel for the appellant, Shri P.N. Modi, the learned senior counsel for respondent no. 1 and

Shri Venkatesh Dhond, the learned senior counsel for respondent no. 2 through video conference.

2. By the impugned order dated October 22, 2020 the appellant has been directed to reinstate an unspecified quantum of securities for the purpose of protecting end clients of Anugrah Stock & Broking Pvt. Ltd. ('Anugrah' for short), who is a trading member and whose securities were parked with the appellant, who is a professional clearing member. By the impugned order it was also directed that the quantum of securities would be determined later on pursuant to which an e-mail dated October 3, 2020 was issued intimating the appellant to reinstate securities as per list to the tune of Rs. 212 crore.

3. According to the appellant who is a professional clearing member called upon Anugrah a trading member to satisfy its obligations towards clearing and settlement as permitted by law and contract and, based on the instructions, sold securities amounting to Rs. 460.32 crore.

4. We find that based on the criminal proceedings initiated the appellant has given an undertaking before the CMM to the tune of Rs. 460.32 crore. In addition to the aforesaid Bombay High Court has passed various orders protecting the interest of the clients of Anugrah.

5. One of the issues which arises for consideration is, whether the NSE Clearing Limited ('NCL' for short) has a jurisdiction to pass such kind of an order directing reinstatement of securities of Anugrah by the appellant which is alleged to be without jurisdiction and contrary to the circulars of NCL which only allows a maximum penalty of Rs. 1 lakh.

6. On the other hand, we find that the clients securities parked by Anugrah can only be utilized for meeting the respective clients obligations which, in the impugned order indicates that without ascertaining as to whether these clients have a negative balance, the appellant, nonetheless, sold of the securities and also without any instructions.

7. In the light of the aforesaid, let a reply be filed by respondent no. 1 and 2 within three weeks from today. Two weeks thereafter to the appellant to file a rejoinder. The matter would be listed for admission and for final disposal on December 23, 2020.

8. In the meanwhile, we direct the appellant to give an undertaking before NCL stating therein that they will deposit a sum of Rs. 212 crore or such amount as directed by this Tribunal within two weeks. Such an undertaking shall be

given within a week from today. The urgency application as well as the stay application are disposed of.

9. Parties are directed to take instructions from the Registrar 48 hours before the date fixed in order to find out as to whether the matter would be taken up for hearing through video conference or through physical hearing.

10. 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

05.11.2020
msb