

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved On: 11.11.2020**  
**Date of Decision : 7.01.2021**

**Appeal No. 267 of 2020**

M/s Excel Stock Broking Private Limited  
309, Centre Point, 3<sup>rd</sup> Floor,  
21, Hemanta Basu Sarani, BBD Bag,  
Kolkata- 700 001 ...Appellant

Versus

National Stock Exchange of India Limited  
Exchange Plaza, Bandra-Kurla Complex,  
Bandra East,  
Mumbai- 400 051 ...Respondent

Mr. Jaikishan Lakhwani, Advocate i/b J L Legal Advisors for  
the Appellant.

Mr. Vishal Kanade, Advocate with Mr. Sachin Chandarana,  
Mr. Rashid Boatwalla and Mr. Pruthvi Dhinoja, Advocates i/b  
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: Justice M. T. Joshi, Judicial Member

1. Aggrieved by the decision of the Member Core and  
Settlement Guarantee Fund Committee (hereinafter referred to  
as “MCSGFC”/”The Committee”) of the respondent National  
Stock Exchange of India Limited (hereinafter referred to as

“NSE”) dated February 28, 2020 imposing a penalty of Rs. 10 lakhs (Rupees Ten Lakhs Only) for not finding 10 terminal of the appellant at the reported location against the rules and circular the present appeal is preferred.

2. During the inspection of the appellant’s premises in the month of July 2018, some irregularities/ discrepancies were noted by the inspecting team. Minor irregularities were satisfied by imposing a penalty of Rs. 10,000/- by the Internal Committee of Minor Action. The major issue of user of 10 terminals by the appellant from the places other than designated was handled by the MSCGFC vide the impugned order. Upon considering the reply of the appellant to the show cause notice as well as upon personal hearing the MSGFC found that the appellant had operated 10 terminal at the locations other than reported to the respondent NSE. Therefore, the penalty came to be imposed at the rate of 1 lakh per terminal.

3. The appellant is a stock broker. It has obtained 102 trading terminals for two locations at Kolkata as detailed in the order. While some of the terminals were found closed or were having negligible tradings, with respect to disputed 10 terminal according to the respondent the appellant was unable to provide

the details and location of these 10 trading terminals. Therefore, the show cause notice dated May 07, 2019 was issued.

4. The appellant *inter-alia* replied that on the date of inspection, there was an alarm call from Exchange with respect to order-to-trade ratio and therefore the appellant had to log off some of its terminals to keep the order-to-trade ratio in order. It was further explained that when the officials of the respondent NSE checked the premises of the appellant they did not check the entire sections of their office. Some of the sections were overlooked by the inspecting teams which were simultaneously carried out by 5 inspection teams. Lastly it was contended that as the inspecting team visited the office premises approximately at 3:20 p.m. some of the dealers of the appellant had already completed their job for the day and therefore they had wrapped-up their terminal for the day.

In view of the above explanations additional show cause notice dated January 07, 2020 was issued to the appellant, thereby giving the details of the trading time from all the terminals. It pointed out that even after 3:20 PM the trades were executed from the 6 out of 10 disputed terminals. Exhibit-A, annexing the details was provided to the appellant.

5. The appellant replied that on that day the alarm call was received by Bombay Stock Exchange with respect to order-to-trade ratio and therefore the appellant was required to log off some of its active terminals. Further as the inspecting team had visited the office at Salt Lake of the appellant it was already 3:20 p.m, and therefore as some of the dealers of the appellant had completed their trades, they had closed their terminals.

6. Vide the impugned decision the Committee of the respondent held that while in the earlier reply it was vaguely stated that the alarm call was from a stock exchange, in the next of the reply however it was explained that it was the alarm call from the Bombay Stock Exchange. Therefore not naming a particular Exchange in the earlier response was branded by the respondent's Committee as a mischievous explanation. As regards the timing, that at 3:20 p.m some of the dealers of the appellant had completed their work and closed the terminals, the respondent's Committee observed that vide the additional show cause notice it was brought to the notice of the appellant that post 3:20 p.m 6 terminal out of those 10 terminals were found executing trades as proved by the log annexed to the additional show cause notice as Annexure A. The Committee therefore concluded that the appellant was unable to demonstrate the

availability of the terminals as well as the usages of the terminal from the declared locations of the appellant, during the inspection. The appellant was therefore held liable for the penalty for acting against the Circular No. NSE/MSD/34638 dated April 13, 2017. The Committee further observed that the appellant failed to adhere to the professionalism and the trading practices. It further found that there was a contravention of the following Regulations/ circular:-

- “i. Regulation 4.2 of NSEIL CMFO Regulations require members to establish, maintain, and enforce procedures to supervise its business and to conduct periodic review/ inspection of their offices and records of the operations carried out by them*
- ii. Exchange circular no. NSE/INSP/28434 dated December 24, 2014 which state that the members are required to ensure adequate monitoring and control over the trading terminals operated from the offices including sub broker and AP location of the members.*
- iii. Exchange circular no. NSE/MA/22732 dated February 13, 2013 inter alia states that: “..Trading members shall report the details of L2 digit CTCL/IBT/DMA/STWT terminals to the*

*Exchange before routing any order through such terminals to avoid mismatches. Failure to upload the details, by member, if observed shall render such terminals unauthorized and shall consequently attract disciplinary action as prescribed by the Exchange from time to time...”*

- iv. *Exchange circular no. NSE/MA/22732 dated February 13, 2013 inter alia states that: “...trading members can carry out their order activity on the same day subsequent to the upload of terminals through ENIT...”*

In the circumstances, the penalty as detailed above came to be imposed.

7. Heard Shri Jaikishan Lakhwani, learned counsel for the appellant and Shri Vishal Kanade, learned counsel for the respondent through video conference. The learned counsel for the appellant submitted that a joint inspection was conducted by NSE/BSE/MSEI/MCX AND NCDEX on the fateful day. In fact all the terminals were located at the Salt Lake office of the appellant. The Inspecting Officer reached the Salk Lake office only at 3:20 p.m. around which time the market closed. The

Inspecting Officer did not ask for the said terminals. The Inspecting Officer failed to carry the inspection completely and in proper manner. Further on that day as there was an alarm call from the Bombay Stock Exchange as detailed above some of the terminals were required to be closed and therefore the finding of the Committee are wrong.

8. Without prejudice to the above submission, it was contended that the respondent was not able to establish that the terminals were located at any other premises. The only findings are that the terminals were not found at the designated location. As per the Circular No. NSE/INSP/28434 dated December 24, 2014 the penalty can be imposed only for using the terminal at a location other than designated location.

9. Further, as regards the quantum of the penalty it was submitted that the Circular No. NSE/INSP/36248 dated November 06, 2017 on the basis of which the penalty is imposed itself provides that the penalties indicated therein are only indicative in nature and could undergo change in specific cases depending on the frequency and gravity of the violations. Admittedly, the present violation is the first violation.

Therefore, according to him, the penalty of Rs. 10 lakh imposed upon the appellant is excessive.

10. On the other hand, the learned counsel for the respondent NSE submitted that the appellant has shifted his stand from time to time. While in the first reply it was vaguely stated that there was an alarm call from an Exchange, in the subsequent reply it was changed to the alarm call from the Bombay Stock Exchange. Further no specific reply could be given as against the definite details given of the log at Exhibit-A to the supplementary show cause notice wherein it was shown that 6 out of these 10 terminals were used for trading purposes beyond 3:20 p.m. as against the appellant's claim that by 3:20 p.m., the work of some of the dealers were completed and therefore they had closed their terminals. In the circumstances, it was submitted that there is no merit in the appeal.

11. As regards the use of terminal at the different locations. The respondent NSE submitted that once it is proved that the terminals were not found at the premises and were used during the said period, there is no need to prove that those were operated from different locations than designated. As regards the quantum of penalty it was submitted that the reliance placed

by the appellant on the circular to show that the penalties are indicative in fact further shows that in cases of repeat violators the penalty can be more than prescribed by the circular.

12. Upon hearing both the sides, in our view, the explanation given by the appellant cannot be accepted. It is to be noted that while in the first reply the appellant merely gave a vague explanations that an alarm call from certain exchange required closing of certain terminals, In subsequent reply the appellant added that it was an alarm call from the Bombay Stock Exchange. Even, if we ignore this anomaly as trivial one, the fact remains that after 3:20 p.m., out of the 10 disputed absent terminals, 6 terminals were still found functioning after that time, as against the explanation of the appellant that when the inspecting team arrived at 3:20 p.m., some of the dealers had completed their transactions and closed those terminals. In view of the above fact, we do not find any merit in the factual submissions of the appellant. The appellant has clearly violated the Circulars.

13. On the question of penalty the respondent has issued a circular dated November 06, 2017 providing various penalties for different violations. Under the heading “ Penalties/

disciplinary action for procedural violations” the penalty for not finding the terminal at the location has been provided at Sr. no.

8. For facility, the said provision is extracted hereunder:-

Sr. No.	Details of contravention	Penalty/Disciplinary Action
8	Unauthorized extension of NEAT/ Trading terminal/ Non-upload of CTCL Trading terminals to the Exchange/ Location of terminal at a place other than main/ branch office and the location of the offices of registered sub brokers/ authorized persons of the member not uploaded to Exchange	Rs. 1 Lac per location  In cases where non-upload of details of more than five CTCL terminals are observed and such CTCL terminals are also observed to be operated by entities acting as unregistered intermediaries in the CM segment or as intermediaries in the F&O segment and/ or such terminals are observed to be used for carrying out illegal trading activity, suspension of the trading membership may also be considered depending upon the gravity of the violation.

14. A perusal of the aforesaid indicates that if the terminal is not found at the location then the penalty is Rs. 1 lakh per location. In the instant case, we find that there is no finding that the 10 terminals were found at different locations. In the absence of this kind of finding, the penalty of Rs. 10 lakh is wholly excessive and against Sr. no. 8 of the Circular dated November 06, 2017. Since the Committee has not given any finding that the terminals were found at different locations, we are of the opinion that a maximum penalty of Rs. 1 lakh can be imposed, coupled with the fact that there is no finding of repetitive violation by the appellant.

**ORDER**

15. In view of the aforesaid, while affirming the violation committed by the appellant we reduce the penalty from Rs. 10 lakhs to Rs. 1 lakh which shall be paid by the appellant within four weeks from today. Appeal is partly allowed. In the circumstances of the case parties shall bear their own costs.

16. 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 Private Secretary 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