

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved: 23.10.2020

Date of Decision:17.11.2020

Appeal No.226 of 2020

Wellindia Securities Limited
A 78, Sector 2,
Noida – 201301.

...Appellant

Versus

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

2. BSE Limited
25th Floor, PJ Towers, Dalal Street, Fort,
Mumbai 400001.

...Respondents

Mr. Kunal Katariya, Advocate with Mr. Ravi Ramaiya,
CA and Mr. Sahebrao Buktare, Advocate i/b. Shah &
Ramaiya Chartered Accountants for the Appellant.

Mr. Vishal Kanade, Advocate with Mr. Sachin
Chandarana, Mr. Rashid Boatwalla and Mr. Rahul Jain,
Advocates i/b. MKA & Co. for Respondent No.1.

Mr. Tomu Francis, Advocate with Mr. Arka Saha,
Advocate i/b. Khaitan & Co. for Respondent No.2.

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 and Core
Settlement Guarantee Fund Committee (hereinafter

referred to as 'MCSGFC') of the respondent no.1 dated 23rd April, 2020 where under the appellant was expelled from the membership of the respondent exchange and also declared as a defaulter the present appeal is filed. The consequential notices dated 29th April, 2020 and 1st May, 2020 calling for claim from the investors are also challenged.

2. The appellant was a registered trading member of respondent no.1. National Stock Exchange of India Ltd. (hereinafter referred to as 'NSE') as well as respondent no.2 BSE Ltd. (hereinafter referred to as 'BSE'). Respondent no.1 had carried the inspection of the records and papers of the appellant from time to time and more particularly of the period 2017-18, 2018-19 and 2019-20. During the inspection, irregularities like misuse of client securities, non-maintenance of required net worth, use of client's funds for meeting margin obligation of the debit balance of other clients were noted. The appellant's license therefore was suspended with effect from 31st May, 2019.

3. The appellant in fact has admitted all the lapses after taking time to reply to the show cause notices. It ultimately submitted that due to huge loss suffered by the company in proprietary trading activity because of mischief of one of their trader there was shortage of the working capital which caused the discrepancy. The appellant has sought for time to rectify the same time and again. The Committee of the respondent no.1 granted time to the appellant on several occasions. The Committee finally found that after satisfaction of some complaints over this period by the appellant still there were nine investor's complaints pending against the appellant as on March, 2020 having a claim of Rs.5,90,922. It was further noted that the appellant had tried to settle investor complaints in earlier few months however the investor complaints were not settled fully. The Committee of the respondent no.1 therefore came to the conclusion that it was proved beyond doubt that the appellant is not in a position to fulfill its obligations.

4. The Committee of respondent no.1 came to the following conclusion:-

“The Committee, is therefore of the view that in the facts and circumstances of the instant case the Noticee is:

- a. Unable to fulfill its obligations towards investors*
- b. Has failed to demonstrate its ability to fulfil/discharge its financial obligations and liabilities*
- c. Misused client assets*
- d. Repeat Violator*
- e. Continuation of the Noticee as a member of the Exchange would pose serious threat to the Exchange and would be detrimental to the market and the interest of investors.”*

5. In view of the same the order of expulsion with a declaration of the appellant as a defaulter was passed.

Hence the present appeal.

6. We have heard Mr. Kunal Katariya, Advocate assisted by Mr. Ravi Ramaiya, CA and Mr. Sahebrao Buktare, Advocate for the Appellant, Mr. Vishal Kanade, Advocate assisted by Mr. Sachin Chandarana, Mr. Rashid Boatwalla and Mr. Rahul Jain, Advocates for the Respondent No.1 and Mr. Tomu Francis, Advocate assisted by Mr. Arka Saha, Advocate for Respondent No.2.

7. Learned counsel for the appellant submitted that the appellant in fact was the victim of the circumstances as due to the mischief of one entity it had suffered huge

losses. The appellant wanted to surrender the license issued by the both the respondents. Besides this the amount of Rs. 36.25 lacs is due from respondent no.2 BSE but the same has not been returned. During the pendency of the proceedings before the Committee of the respondent no.1 and, thereafter also the appellant continued to resolve the complaints of the investors. 99.9% of the total complaints were settled. Only complaints worth Rs.5.9 lakhs remained pending as on the date of hearing that can be found from the finding of the Committee of the respondent no.1. The impugned order, according to him, is harsh and unreasonable.

8. It was further submitted that in the case of Karvy Stock Broking as well as one Allied wherein misuse of clients funds and securities in large number was involved. The respondent however did not expel them. It was further submitted that respondent no.2 BSE is withholding an amount of Rs.36.25 lakhs. If the said amount is utilized for payment of the investor complaints then no complaint would have remained pending. During the pendency of the appeal, the

respondent no.1 came with a case that it had received 21 claims. The learned counsel for the appellant submitted that no details of the same are given. The intention of the appellant is to resolve all the complaints and thereafter to surrender the license. In the circumstances he submitted that the appeal be allowed.

9. On the other hand, the learned counsel for the respondents took us through the details of the violations committed by the appellant for last three financial years as noted in the inspection as admitted by the appellant. Those would show that in the year 2017-18 the appellant has misused client funds and securities to the tune of Rs.12.57 crores. In the year 2018-19 again the client funds and securities worth Rs.63.03 lakhs were misused. Additionally, 15.72 crores of clients' funds was used for margin obligations of the proprietary trading of the appellant. There was non settlement of clients' funds and securities worth Rs.80.71 lakhs as regard active clients and Rs.3.82 crores as regards inactive clients. Besides this the appellant had received an amount of Rs.75,000



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from third parties in client bank account against the rules and regulations. The appellant has also met clients obligation from his own securities in one instance amounting to Rs.67,429. Unreconciled balance lying in suspense account amounting to Rs.534 lakhs was also noted during that year. As regards the discrepancy in computation of net worth during the said year it was found that by not debiting the balance amount which was not recovered within three months the net worth of the appellant was eroded. Besides this the appellant was found operating trading terminal in derivative and currency segment without a valid certification. The fund balances of 28 clients submitted by the noticee did not match with the back office books and records maintained by the noticee.

So far as inspection year 2019-20 is concerned as on 5th May, 2019 client securities amounting to Rs.6.02 crores were not available with the appellant. Value of securities worth Rs.0.61 lakh available in the DP account was not recorded in the register of securities. Shortfall in clients securities in the value of Rs.10,75,58,796 was noted. Further, misuse of client



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securities worth Rs.9,14,38,496 was noted. In weekly submissions also shortage of client funds as noted in the order was found.

10. In the above circumstance, the learned counsel submitted the Committee of the respondent no.1 concluded that the appellant is the repeat violator. It was recorded that monetary penalty on earlier three occasions for the years 2015-16, 2016-17 and 2017-18 respectively was levied against the appellant. Disciplinary Action Committee of the respondent no.1 had also levied a monetary penalty of Rs.10 lakhs. Besides, suspension of the trading membership for the period of 5 days was also directed for violation as recorded in the inspection conducted for the year 2015-16. Time and again the respondent no.1 issued letters to the appellant requesting it that such event should not reoccur in future. In the circumstances, the respondent no.1 came to the conclusion that that the appellant is a repeat violator and the violations are serious in nature. The Committee of the respondent no.1 also noted that as on 27th March, 2020 the complaints of nine investors in the value of Rs.5,90,922 remained to be resolved.



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The appellant was found unable to settle the pending complaints and in the circumstances the order was passed.

11. It was further submitted that during the pendency of the appeal, as pointed out in the affidavit in sur rejoinder, more complaints were received from the investors for misuse of clients securities worth an amount of Rs.19,99,166.10 as detailed in exhibit 'A' of this sur- rejoinder.

12. Respondent no.2, BSE submitted that during the hearing before the Committee of the respondent no.1 no plea regarding any amount due to this respondent was taken and new plea as an afterthought has been taken in the appeal regarding amount of Rs.36.25 lakhs lying with this respondent. As detailed in the affidavit in reply, as per the applicable rules, regulations and circulars, once a member of one exchange is declared defaulter another exchange is also required to automatically follow the suit and deposits if any are required to be withheld for satisfaction of investors claims for a period of three years.. On 31st

May, 2019, the respondent no.2 received an email from

respondent no.1 of appropriating an amount of Rs.73 lakhs and odd from the membership deposit of the appellant and 16 more complaints were received by the respondent no.2. The respondent no.2 had therefore issued show cause notice to the appellant however the response to the same is still awaited from the appellant. Further the respondent no.2 had also received 21 claims afresh against the appellant. Out of those up to date only 12 claims are satisfied. Further claims would be received as per the rules upto 31st August, 2020 and in view of the pandemic the time is extended for a period of three years in this regard. In the circumstances, the respondent no.2 also wanted that the appeal be dismissed.

13. Upon hearing both sides it is an admitted fact that since year 2015 till the date of the impugned order the appellant continuously remained the violator indulging in serious act of misusing client's securities etc. as detailed supra.. All the violations are admitted by him. No reply was submitted to the show cause notice issued regarding violation noted in the inspection for the year 2017-18. Considering the request of the appellant

that he wanted to surrender his license after redressing the complaints of the investors, the Committee of respondent no.1 time and again granted him time in hearing of the proceedings. However, ultimately finding that the complaints were not resolved completely the impugned order was passed. It can further be seen that after declaration of the appellant as a defaulter more complaints of the investors are pouring in with the respondent nos.1 and 2. The appellant was earlier penalized for similar violations for the financial years 2015-16, 2016-17 and 2017-18. In the circumstances in our considered view the appellant is a continuous violator much less a repeat violator. Besides respondent no 1 had already granted more than sufficient opportunity to redress the complaints of the investors, as it pleaded that it wanted to surrender the license. Therefore in our view this is not a fit case for interference in the impugned order. Hence the appeal is hereby dismissed without any 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.



**TARUN
AGARWAL**

Digitally signed by TARUN AGARWAL

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**Justice Tarun Agarwala
Presiding Officer**

**Dr. C. K. G. Nair
Member**

**Justice M.T. Joshi
Judicial Member**

17. 11.2020
RHN