

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 19.06.2020

**Misc. Application No.145 of 2020
(Urgency Application)**

And

**Misc. Application No.146 of 2020
(Interim Application)**

And

Appeal (L) No.175 of 2020

Axis Bank Limited

...Appellant

Versus

Securities and Exchange Board of India & Ors....

Respondents

Mr. Gaurav Joshi, Senior Advocate with Mr. Neville Lashkari, Mr. Chaitanya D. Mehta, Ms. Sonali Aggarwal and Mr. Dhanu Chopra, Advocates i/b M/s Dhruve Liladhar & Co. for the Appellant.

Mr. Rafique Dada, Senior Advocate with Mr. Anubhav Ghosh, Advocate i/b The Law Point for Respondent No. 1

Mr. Nimay Dave, Advocate with Mr. Ankur Loona and Ms. Aparna Wagle, Advocates i/b Alliance Law for Respondent No. 2

Mr. Venkatesh Dhond, Senior Advocate with Mr. Rashid Boatwalla and Mr. Rahul Jain, Advocates i/b M/s MKA & Co. for Respondent No. 5

Mr. Tushar Ajinkya, Advocate with Mr. Abhiraj Arora, Advocate i/b ELP for Respondent No. 6

None for Respondent Nos. 3 & 4

ORDER

1. This appeal has been filed aggrieved by the orders/communications dated May 28, 2020 and June 08, 2020 issued by the National Stock Exchange of India Limited (“NSE” for convenience) (Respondent No. 5) against the appellant. Given the urgency of the matter the appellant has also filed two Misc. Applications, No. 145 of 2020 and 146 of 2020, seeking urgent hearing and interim stay on the impugned directions.

2. Appellant Axis Bank Limited though a bank, has filed the appeal in the capacity of a Professional Clearing Member (PCM) who cleared the trading of Modex International Securities Limited (“Modex” for convenience) (Respondent No. 2) who is a trading

member. Respondent Nos. 3 and 4 are National securities Depositories Limited and Central Depository Services (India) Limited and NSE who passed the impugned directions is Respondent No. 5 and the Clearing corporation concerned, NSE Clearing Limited is Respondent No. 6

3. We have heard Shri Gaurav Joshi, learned Senior counsel appearing for the appellant, Shri Rafique Dada learned Senior counsel appearing for the Securities and Exchange Board of India (“SEBI” for convenience) (Respondent No. 1), Shri Venkatesh Dhond, learned Senior counsel appearing for NSE (Respondent No. 5) and Shri Nimay Dave, learned counsel appearing for Modex (Respondent No. 2) through video conferencing.

4. The basic contention of the learned senior counsel for the appellant is that the directions contained in the impugned orders passed by the Respondent No. 5 (NSE) are illegal and arbitrary as NSE directs the appellant to release certain securities for which the

appellant is the actual owner since those securities have been legally transferred to its account. Further, such arbitrary directions have been passed without either giving an opportunity of hearing to the appellant or even after a fair determination of the ownership of the securities which are directed to be transferred to certain clients, list of which was provided by the Modex (Respondent No. 2) whose alleged actions have led to the current *impasse* which, *inter alia*, has adversely affected the appellant who is not even a party to those proceedings .

5. It was further contended by the learned senior counsel that the *ex parte* order dated April 30, 2020 issued by SEBI against Respondent No.2, which is claimed to be the authorizing order based on which the NSE has passed the impugned directions, does not even contain any such direction against the appellant, nor the appellant was a party to those proceedings before SEBI. Therefore, the impugned directions by NSE (Respondent No. 5) do not have any legal basis to arbitrarily transfer the securities

rightfully belonging to the appellant to certain third parties. Therefore, the learned senior counsel sought intervention of this Tribunal to stay such orders as well as to allow the appellant to dispose of the securities worth Rs. 21.62 crores and thereafter releasing the remaining securities given by Respondent No. 2 to the appellant. In this context the appellant sought permission to dispose off the shares of the company Omaxe since there is no dispute relating to the ownership of those shares as rightfully belonging to Respondent No. 2. In addition, it was also submitted that the appellant had given a list of securities to NSE (Respondent No. 5) in the month of January, 2020 itself stating that those securities are given by clients of Respondent No. 2 and who have dues pending in favour of respondent No. 2. Therefore the appellant sought to liquidate the shares contained in that list to enable the appellant recover its entitled amount of Rs.21.62 crores and thereafter the remaining securities can be transferred.

6. Learned senior counsel Shri Dada and Shri Dhond, on the other hand stressed that the appellant is holding securities worth more than Rs.90 crores given by Respondent No. 2 and the impugned direction is relating to only securities worth Rs. 34 crores. Even assuming that the appellant's entitlement is about Rs. 22 crores still the appellant is holding excess securities which legitimately do not belong to the appellant. Since the impugned directions are not yet implemented the appellant is actually holding on to about Rs. 70 crores worth securities legitimately belonging to others. Therefore, the submission of the appellant that the impugned directions have adversely affected the appellant has no merit. Shri. Dave, learned counsel for Respondent No. 2 also submitted on similar lines.

7. Having heard the learned senior counsel/counsel for the parties and after perusing certain documents placed before us,

without going into the detailed legalities and merit of the matter, we pass the following interim directions:-

- a) The parties shall appear before NSE, either physically or through Video Conference, on June 24, 2020. NSE shall give the contact details and arrangements for the said meeting to the parties at least one day in advance.
- b) Based on the database of NSE and other parties rights in respect of the securities in question shall be reconciled/determined within one week thereafter.
- c) This Tribunal will hear the matter further on Friday, July 03, 2020. In the interim *status quo* shall be maintained by the parties i.e. there shall be no transfer of securities as directed in the impugned orders nor the appellant shall alienate any of the securities in question.

Misc. Application Nos. 145 & 146 of 2020 are disposed of on above terms.

8. 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