

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Date of Decision : 03.07.2020**

**Appeal No. 146 of 2020**

Axis Bank Ltd.  
Trishul”, 3<sup>rd</sup> Floor,  
Opposite Samartheshwar Temple,  
Near Law Garden, Ellisbridge,  
Ahmedabad 380-006.

..... Appellant

Versus

1. Securities and Exchange Board of India  
SEBI Bhavan, Plot No. C-4A, G Block,  
Bandra Kurla Complex, Bandra (East),  
Mumbai - 400 051.
2. Modex International Securities Ltd.  
507, Padma Tower-II, 22,  
Rajendra Place,  
New Delhi- 110 008.
3. National Securities Depositories Ltd.  
4<sup>th</sup> Floor, “A” Wing,  
Trade World, Kamala Mills Compound,  
Senapati Bapat Marg, Lower Parel,  
Mumbai – 400 013.
4. Central Depository Services (India) Limited  
Marathon Futurex, A-Wing, 25th Floor,  
N M Joshi Marg, Lower Parel,  
Mumbai - 400 013
5. National Stock Exchange of India Ltd.  
Exchange Plaza, Plot No. C/1, G  
Block, Bandra Kurla Complex,

Bandra (E), Mumbai – 400 051.

6. NSE Clearing Ltd.

Exchange Plaza, Plot No. C/1, G Block,  
Bandra Kurla Complex,  
Bandra (E), Mumbai – 400 051.

... Respondents

Mr. Gaurav Joshi, Senior Advocate with Mr. Neville Lashkari, Mr. Chaitanya D. Mehta, Ms. Sonali Aggarwal and Mr. Bhanu 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 the Respondent Nos. 1.

Mr. Nimay Dave, Advocate with Mr. Ankur Loona and Ms. Aparna Wagle, Advocates i/b Alliance Law for the Respondent Nos. 2.

None for the Respondent Nos. 3.

Ms. Amita Paunikar, Advocate with Ms. Shilpita Sahoo, Advocate i/b VP – Legal & Secretarial for the Respondent Nos. 4.

Mr. Venkatesh Dhond, Senior Advocate with Mr. Rashid Boatwalla and Mr. Rahul Jain, Advocates i/b M/s. MKA & Co. for the Respondent Nos. 5.

Mr. Tushar Ajinkya, Advocate with Mr. Vivek Shah, Advocate i/b ELP for the Respondent Nos. 6.

CORAM : Justice Tarun Agarwala, Presiding Officer  
Dr. C. K. G. Nair, Member  
Justice M. T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer (Oral)

1. The appellant has filed the appeal in the capacity of the Professional Clearing Member who cleared the trading of Modex International Securities Ltd. (Respondent No. 2) who is a trading member. The appellant was aggrieved by the orders dated May 28, 2020 and June 8, 2020 issued by the National Stock Exchange of India Ltd. - Respondent No. 5 (hereinafter referred to as 'NSE') directing the appellant to release certain securities which were held as security for the trading of Respondent No. 2. The contention of the appellant was that the directions issued by NSE were wholly illegal and arbitrary and that the appellant could not be directed to release certain securities for which the appellant was the true actual owner since it had been legally transferred to its account.

2. By our order dated June 19, 2020, we issued the following 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 atleast 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.”*

3. Based on the aforesaid directions, NSE held a meeting on June 24, 2020 and again on June 29, 2020. Minutes of the meeting dated June 29, 2020 has been annexed as ‘Exhibit D’ to the Limited Affidavit dated July 2, 2020 filed by the appellant.

4. The minutes of the meeting of June 29, 2020 of NSE (Exhibit D) has not been disputed by the Mr. Venkatesh Dhond, the learned senior counsel for NSE. The relevant minutes of the meeting dated June 29, 2020 are extracted hereunder :-

- “1. *All parties have understood that reconciled list of securities/ISIN, shared by Modex and forwarded by NSE to all parties vide email dated June 27, 2020, consists of details of securities available with Axis Bank (Clearing Member) duly bifurcated between i) securities required to be transferred to zero/credit and debit clients in excess of their debits balance (column D), ii) securities related to PRO*

*(column E) and iii) securities related to debit clients to the extent to their debit balance (column G).*

2. *It was confirmed in the meeting by Modex and NSE that the securities mentioned in Column G entirely represents the debit balance clients.*
3. *It has been decided that Axis Bank may appropriate the securities listed in the column E and G i.e. Securities related to PRO and Securities related to debit clients to the extent to their debit balance to recover their dues towards obligation.”*

5. A perusal of the aforesaid minutes indicates that the securities were reconciled and it was decided that the appellant can appropriate the securities listed in column E and G.

6. In the light of the aforesaid, we have heard Shri Gaurav Joshi, the learned senior counsel alongwith Mr. Neville Lashkari, Mr. Chaitanya D. Mehta, Ms. Sonali Aggarwal and Mr. Bhanu Chopra, the learned counsel for the appellant and Shri Venkatesh Dhond, the learned senior counsel for NSE and Mr. Nimay Dave, the learned counsel for the respondent No. 2 and Mr. Rafique Dada, the learned senior counsel alongwith Mr. Anubhav Ghosh, the learned counsel for SEBI through video conference.

7. The learned senior counsel for the appellant contended that without prejudice to their rights on the issues raised in the appeal, the appellant is willing to appropriate the securities mentioned in column E and G and the appeal could be disposed of on that front leaving the issues to remain open. Mr. Nimay Dave, the learned counsel for the respondent No. 2 contended that the appellant may be allowed to sell the securities first which are shown in column G and, thereafter if there is a shortfall, the securities mentioned in column E may be sold with the further stipulation that the shares of Modex may be sold as a last resort. This contention was vehemently opposed by the learned senior counsel for the appellant who contended that they have a right to sell any scrip and the choice is not left in the hands of the respondent no. 2 who is a defaulter. Shri Dada, the learned senior counsel alongwith Shri Anubhav Ghosh contended that the surplus shares depicted in a column E and G should be sold in a time bound manner and only to extent of the recovery of Rs. 21.61 crores and the surplus, if any, should be given back to the clients by the appellants. It was also contended that the securities mentioned in column D should be released forthwith by the appellant. The learned senior counsel Mr. Venkatesh Dhond for NSE also contended that the securities shown in column D should be released at the earliest by the appellant.

8. After hearing the learned senior counsel for the parties at some length, we dispose of the appeal at the admission stage in the following manner, without calling for a reply, leaving all grounds raised by the appellant open to be questioned if required at an appropriate stage :-

1. Securities mentioned in column E and G in the minutes dated June 29, 2020 ('Exhibit D') to the limited affidavit may be sold by the appellant for the purpose of recovery of their dues amounting to Rs. 21.61 crores within one month from today.
2. After recovery of Rs. 21.61 crores, the surplus, if any, would be returned to the clients immediately thereafter.
3. Securities shown in column D to the minutes of the meeting dated June 29, 2020 (Exhibit D) to the limited affidavit shall be released by the appellant within a week from today.

9. In the circumstances of the case, there shall be no order as to costs.

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

03.07.2020  
PTM