BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 08.04.2022
Date of Decision : 11.08.2022

Misc. Application No. 283 of 2021
And
Misc. Application No. 284 of 2021
And
Appeal No. 145 of 2021

Stampede Capital Ltd.
402 to 404, 4th Floor, Saptagiri Towers,
Begumpet, Above Pantaloons,
Hyderabad, Telangana. ….. Appellant

Versus

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

With
Appeal No. 494 of 2021

Stampede Capital Ltd.
402 to 404, 4th Floor, Saptagiri Towers,
Begumpet, Above Pantaloons,
Hyderabad, Telangana. ….. Appellant

Versus

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

Mr. Somasekhar Sunderasan, Advocate with Mr. Abhishek Venkatraman, Mr. Vishwajeet Deb, Ms. Sabeena Mahadik, Mr. Sagar Hate, Mr. Aayush Kothari, Ms. Sanjana Salvi, Advocates i/b Visesha Law Services for the Appellant.

Mr. Janak Dwarkadas, Senior Advocate with Mr. Ankit Lohia, Mr. Rashid Boatwalla, Ms. Priya Diwadkar, Ms. Samiksha Rajput, Advocates i/b MKA & Co. for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member
Ms. Meera Swarup, Technical Member

Per : Justice M. T. Joshi, Judicial Member

1. Aggrieved by the decision of the respondent National Stock Exchange Board of India Ltd. (hereinafter referred to as 'NSE') dated March 8, 2021 disabling the trading terminals of the appellant until further direction, Appeal No. 145 of 2021 is preferred. This interim direction of the respondent suspending the appellant was stayed by this Tribunal vide order dated March 9, 2021. It appears that the respondent NSE thereafter conducted forensic audit of the appellant and finally passed another impugned order dated July 14, 2021. Vide this impugned order, the appellant is expelled from the membership of the exchange with a direction that the appellant shall close out any open position in the exchange traded derivative

contracts within a period of three months and settle the pay-in and pay-out obligations in respect of transactions which have taken place before the date of the impugned order. This order is challenged before us vide Appeal No. 494 0f 2021. This final order was also stayed by this tribunal vide order dated July 27, 2021. In all 3 show cause notices (SCN) were issued to the appellant.

2. The principal allegations against the appellant are as follows :-

First SCN

(a) the appellant has made change in the promoter causing change in the control of the appellant without obtaining prior approval of the exchange.

Second SCN

(b) Misuse of clients funds,

(c) Non-reconciliation of securities,

(d) Submission of incorrect data towards weekly monetary clients funds,

(e) non-compliance of the erstwhile Internal Committee for Minor Action (ICMA) directions.

Third SCN

(f) tampering of records,

(g) fixed / monthly pay-out to the clients,

(h) excess pay out despite insufficient funds in the clients ledger,

(i) shortfall in the net worth,

(j) engaging in a business other than securities involving personal financial liability,

(k) non-issuance of the statements of the funds, non-settlement of the clients funds,

(l) Non-reconciliation of the securities recorded in the back office in the beneficiary account,

(m) non-reporting of all bank accounts to the exchange,

(n) incorrect data uploaded in the weekly statement,

(o) false reporting of margin collected from the clients,

(p) discrepancies in the books of accounts maintained by the appellant.

3. These three notices were issued to the appellant are dated December 7, 2020 (1st SCN), December 15, 2020 (2nd SCN) and May 14, 2021 (3rd SCN). After considering the reply of the appellant and submissions made by it, the final impugned order dated July 14, 2021 was passed.

4. We have heard Mr. Somasekhar Sunderasan, the learned counsel with Mr. Abhishek Venkatraman, Mr. Vishwajeet Deb, Ms. Sabeena Mahadik, Mr. Sagar Hate, Mr. Aayush Kothari, Ms. Sanjana Salvi, the learned counsel for the appellant and Mr. Janak Dwarkadas, the learned senior counsel with Mr. Ankit Lohia, Mr. Rashid Boatwalla, Ms. Priya Diwadkar, Ms. Samiksha Rajput, the learned counsel for the respondent.

5. All the necessary extracts of the rules, regulations, bye-laws, clauses of the schedule of the regulations are extracted in the impugned order dated July 14, 2021 in paragraph no. 4.

A. Change of directors and share holding :-

6. As regards the charge of change of directors / promoters causing change in control without obtaining prior approval of the exchange, the respondent found that the appellant on 41 occasions had undertaken change in directors since February 2012 and caused change in the shareholding on 64 occasions since March 2015 without obtaining prior approval of the exchange.

7. The appellant had applied for the approval of the present change in the directorship as well as in the shareholding on September 20, 2019. The record would show that the respondent NSE has asked for further details from time to time and till October 15, 2020 the documents were submitted. Some more documents remained to be filed. From these documents, the respondent NSE found the above history and observed that it was an obligation of the appellant as listed company to get prior approval as prescribed.

8. The appellant under the present management has submitted that the appellant under the immediately preceding management has applied for seeking prior approval on September 20, 2019. Thereafter, the present promoters acquired the equity shares of the company after completing the necessary procedure required under Securities and Exchange Board of India (Substantial Acquisition of

Shares and Takeovers) Regulations, 2011 (hereinafter referred to as 'Takeover Regulations'). The present promoters in November 2020 realized that compliances were not made by the earlier management. They had asked the earlier promoters to continue in the board of directors for some time to complete process. However, those promoters did not agree with the same and resigned from the board of directors. Therefore, the present directors / promoters were appointed in emergent circumstances without prior permission of the respondent NSE as required by the Regulations. These new promoters were not aware of the historical non-compliances caused by the earlier management. Therefore, according to them, the respondent NSE ought to have considered the above circumstances.

9. Respondent NSE however observed that the filing of the information and seeking approval is an obligation of the appellant as a listed company, the present management also had without obtaining the prior approval has taken over the control over the appellant and thus, the appellant had violated the provisions of the NSE's circular dated January 22, 2010 and June 8, 2010.

10. The learned counsel for the appellant submitted before us that when on earlier multiple violations were caused by the earlier management as detailed (supra), respondent NSE was in dark about

the same. It was the management preceding the present management had approached the respondent for regularizing its acquisition of the management. The present management is penalized by the respondent NSE for the fault of earlier managements holding that the appellant has committed the violations of the rule and circulars.

11. Upon hearing both the sides, in our view, it cannot be gainsaid that the new management of the appellant had obtained the control without getting prior approval as provided by the relevant provisions. The reasons forwarded by them as detailed (supra), cannot be a ground for violation at the time of acquisition had due diligence be followed. Certain covenant / conditions could have been put forth before the earlier management while agreeing to take over the appellant. In our view the violation of the Rule has therefore is caused.

B. Misuse of client funds

12. It appears that in the month of October 2020, the appellant has used the settlement obligation of debit clients or own purpose to the tune of around Rs. 5 crore i. Further, securities and funds worth around Rs. 3 crore were also used during the same period. Additionally, the funds of credit balance clients were used for

meeting the margin obligations of debit balance clients and of proprietary trading of the appellant to the tune of around Rs. 1,50,00,000/- in the same period. The appellant had accepted this inspection observation and gave some reasons as regards the use of funds of credit balance clients. As regards the use of securities for meeting proprietary margin, the appellant had not given a detailed reply and explained that it had stopped the proprietary trading. As regards the use of meeting margin obligations of debit balance clients and proprietary trading from the funds of credit balance clients, the appellant accepted the inspection observation and stated that this shortfall has occurred due to the use of funds for non-individual clients who were unable to meet their funds pay-in obligation. It was claimed that the shortfall was recouped.

13. It appears that after the issue of the second notice in which the above charges are made the respondent has conducted minimum purpose inspection in February 2021 and found that again shortfall of clients funds as detailed in paragraph no. 6 of the impugned order had occurred in the month of January 2021 to the tune of around Rs. 11 crores. According to the respondent, the appellant has accepted this shortfall also.

Upon hearing both the sides, in our view, so far as the misuse of clients fund in the month of October 2020 is concerned, the same is apparent as admitted by the appellant.

C. Non-reconciliation of securities recorded in the back-office

14. In the second notice, it was alleged that the appellant has not reconciled the securities recorded in the back office as detailed in the paragraph no. 6.2 of the impugned order. The appellant did not report excess securities in the weekly holding statements. It was also found that the appellant has not carried out periodic reconciliation recorded in the back office which caused this deficiency. The appellant did not refute these incidents. This charge is therefore established.

D. Incorrect data submitted towards the weekly monitoring of client's funds

15. The issue in this regard, was explained by the appellant as a typographic error in making incorrect statement of data. The respondent accepted the same to be typographic error as regards the one instance. However the appellant did not provide any specific response for the incorrect submission in other five areas. This charge also, therefore, is partly proved.

E. non-compliance of erstwhile ICMA directions

16. The appellant has not complied with earlier directions given by the Internal Committee for Minor Action (ICMA). The appellant did not refute this charge which means that the directions issued by the ICMA earlier were not complied. This charge, therefore, is also proved.

F. Tampering of records :-

17. The respondent alleged that during the forensic audit the forensic auditor had instructed the Whole Time Director of the appellant i.e. Mr. Shrinivas Maya not to delete any files from the digital record. However, Mr. Shrinivas Maya from the hard disk of his laptop deleted 8,947 files on March 2, 2021. Mr. Maya contended that the most of the files were personal and related to his previous company and no data of the appellant was deleted. Forensic auditor however reported that it had recovered certain files which showed that certain investment strategies of the appellant calculating pay-out to 12 clients for fixed percentage was found. Respondent, therefore, alleged that the act of Mr. Maya amounted to destruction and tampering of the records.

18. The appellant submitted that though the forensic auditor did not have any authority, Mr. Maya handed over the laptop after deleting only some personal files. The forensic auditor report deals only with 5-6 deleted files out of more than 8000 deleted files. Those files were also made for appellant's internal product development and were never shared with anybody.

19. Respondent in the situation observed that when the forensic auditor after issuing notice as sought for laptop, Mr. Maya should not have deleted the files and more particularly the files about investment strategy relating to assured return. Respondent therefore, concluded that the appellant is in violation of Rule 3(g) under Chapter IV of National Stock Exchange of India Ltd. Rules (hereinafter referred to as 'NSE Rules').

20. Learned counsel for the appellant submitted before us that personal laptop of Mr. Maya was sought and, therefore, naturally he deleted his personal files or some files which were about the strategy to be implemented. He alternatively submitted that as per the relevant circular of the respondent NSE dated February 25, 2021 at the most a monetary penalty of Rs. 1 lac can be imposed.

21. From the record, however, it is clear that Mr. Maya had deleted certain files regarding the appellant while dealing his own personal files. The charge therefore stands proved.

G. Fixed / monthly pay outs made to clients :-

22. An internal email of the appellant showed that a pay-out of Rs. 7,500/- was made to a client in reference to the term ‘capital’ having amount of Rs. 5 lac. Further, in trail mail the list of clients pay outs was shared for November 2020 wherein it was mentioned that it was 2% of the capital against 2 clients. Additionally, email regarding the monthly pay out to the clients from the November 2020 recorded the amount received from the clients under the head capital was found. Further, emails between personnel of the appellant dated October 5, 2020 showed that there was a reference to ‘monthly dividend plans’ whereby a client would invest Rs. 5 lac could be assured to pay him a fixed amount per month. The forensic auditor had reviewed the ledger of the concerned clients and it was found that the said clients had invested Rs. 5 lacs each and amount of Rs. 7,500/- per month was being paid them. Beside this, it was found that the appellant was offering assured minimum return of 20% per year.

23. The appellant submitted that these payments were made to the clients on their requests. There was no assured pay-out. The appellant had also submitted a copy of the pay-out request emails from 55 clients. In support of the charge, the respondent NSE, however, in the findings gave all the details of the pay outs made in fixed percentage by the appellant; it highlighted the terms 'capital' made in the email exchanges between the personnel of the appellant, gave the specific examples of the clients and ultimately held that the appellant had engaged in this activity in violation of the provisions of Rule 8(3)(f) of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as 'SCRR').

24. As regards the emails submitted by the appellant wherein the clients had requested for pay-outs, the respondent NSE contended that so far as the specific cases as detailed in the example are given in the impugned order, it is clear that the appellant has assured pay-outs to those specific client in fixed amount against capital and, therefore, the violation is caused.

25. The learned counsel for the appellant submitted that there were number of emails which showed that the clients had asked for fixed pay-out without having any assured payment plan. Alternatively, he submitted that since the amount involved in the

violation is less than Rs. 5 crore at the most penalty at the rate of 1% for the amount involved would have been imposed by the respondent for the above violations.

26. The specific examples given by the respondent in the impugned order; the internal emails with the personnel of the appellant would show that the appellant was indulging into assured payment plan. The violation, therefore, is established.

The examples given in the impugned order would show that the emails for the pay-outs were in the month of October 2020, November 2020 and January 2021, etc. i.e. after present management has taken the charge of the appellant company.

H. Excess pay-outs made to the clients :-

27. As regards the charge of excess pay-outs, it was found that the appellant had made excess pay-out to three clients amounting to Rs. 4.90 crore despite the clients having a debit balance. Besides this, the client's ledger showed that the appellant had made excess pay-outs to the 17 clients on 37 times amounting to Rs. 9.40 crore. The appellant accepted making of excess payment to one client of Rs. 4.66 Crores, with an explanation that due to insufficient liquidity in the securities market the securities of the clients could not be fully

sold. Therefore, based on the stock collateral on the request of the clients pay-outs were made. As regards the other 17 clients as detailed (supra), the appellant submitted that no such excess pay-outs were made. However relevant documents were not provided. In the circumstances, the respondent observed that the appellant had made the excess pay-outs.

Learned counsel for the appellant submitted before us that for the above violations at the most, a penalty of Rs. 25,000/- can be imposed vide NSE's circular dated February 25, 2021.

I. Shortfall in net worth

28. As per Schedule VI of the Securities and Exchange Board of India (Stockbrokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as 'Stockbrokers Regulations'), if any amount advanced remains unpaid for more than 90 days, then it is required to be deducted from the capital and free reserves while computing the net worth. Upon examining the reply of the appellant, the respondent found that since this exercise was not carried the appellant's net worth remained negative of Rs. 4.74 crore on the relevant date. The learned counsel for the appellant submitted before us that due to

mistake, the amount to be recovered is not deducted from statement that this mistake can be penalized by imposing a monetary penalty.

J. Engagement in a business other than that of securities involving personal financial liability

29. The appellant had admitted before the respondent that as a one-time transaction, it had extended a short-term inter-corporate loan to Agri Tech (India) Ltd. at the rate of 13% interest p. a. repayable on demand and no other loan activity was carried by it. The respondent found that the appellant beside this transaction, had not extended any loan to any other entities in the amount of Rs. 4 crore from the above. Thus, this violation is also proved. It was submitted that a monetary penalty would have been imposed for such violation.

K. Violation regarding settlement of clients' funds and securities

30. The details of non-settlement of the clients' funds securities are given in paragraph no. 7.7 of the order. The learned counsel for the appellant submitted that this was in fact the procedural violation under the circular dated February 25, 2021.

L. Non-reconciliation of the securities recorded in the back office with the securities available in the beneficiary account

31. The learned counsel for the appellant submitted before us that this is also a procedural violation under the circular dated February 25, 2021.

M. Non-reporting of the bank accounts to the exchange

32. The respondent alleged that the appellant did not disclose 24 out of 34 bank accounts with the exchange. The appellant submitted that four of the accounts were dormant. As regards other bank accounts, it has given the details of the same in reply, but did not explain as to why those bank accounts were not disclosed to the exchange. The learned counsel for the appellant submitted that this is also a procedural violation for which a penalty of Rs. 5,000/- per annum and warning should have been issued by the respondent as provided by circular dated February 25, 2021.

N. Incorrect data reported in the weekly holding statement

33. This violation was found to be repeated by the appellant for February 2021 and is subject matter of 3rd SCN. The appellant has explained that incorrect data was reported in the weekly holding due

to software issues in its back office. The securities worth around Rs. 20 crore were not recorded. The learned counsel for the appellant submitted that this is also a procedural violation calling upon imposition of penalty only.

O. False reporting of the margin collected from clients

34. The respondent during inspection in February 2021, found in sample scrutiny that wrong reporting of collection of margin was made in the amount of Rs. 32 lacs. The appellant submitted that the same has occurred due to software malfunction. Further the appellant was found to be not maintaining books of accounts properly. This also according to the learned counsel for the appellant would call only for monetary penalty to the extent of Rs. 15 lacs under the circular.

P. Failure to give necessary information

35. In the impugned order in the paragraph no. 7.13 various instances were given where the forensic auditor has reported that the appellant did not provide the documents during audit. The appellant had provided certain explanation like due to back office issues, due to non-deployment of pre-order confirmation system and software problem. Some of the documents were regarding the 17 bank

statements, etc. The learned counsel for the appellant submitted that the said violation also may call for monetary penalty and nothing else.

36. The thrust of the argument of the learned counsel for the appellant was that the present management cannot be blamed for not seeking prior approval in change of promoters, directors, etc. The application for the same was made by the earlier management in the year 2019 well in advance. However, due to earlier frequent changes without prior approval, the corresponding ensued between the earlier management, in the meanwhile, the new management was constrained to acquire the appellant and to take control of it without any support from the earlier management. Other violations enumerated above would merely call for monetary penalty. No reasons are recorded in the impugned order as to why the monetary penalty is insufficient. These violations are not of any repetitive character or grave one calling for a drastic action of expelling the appellant from the membership of the exchange.

37. On the other hand, the learned counsel for the respondent submitted that the appellant would have stayed back till approval for change in promoter is approved by the respondent. However, in a hurry, they have caused the change in the promoters and took the

control. Further, the appellant under the present management committed most of the serious violations which are part of the 3rd SCN. Further, while it was carrying it's business under the protection of the stay order dated March 19th 2021, of this Tribunal in Appeal no. 145 of 2021 the appellant has thereafter brazenly indulged into making fixed monetary pay-outs of the clients, non-settlement of client's securities, etc. Therefore, according to the respondent, the grave violations committed by the appellant call for expelling it from the membership of the exchange.

38. The present management without waiting for prior approval took over the appellant. It did not put any safeguard i.e. certain pre-conditions for acquiring the appellant.

39. For misuse of clients funds caused in October 2020 the present management cannot be blamed for earlier violation. But so far as the misuse of clients funds later on in the month of January 2021 is concerned, it particularly occurred under the present regime.

40. As regards the next of the serious charge of tampering of records, the appellant claimed that Mr. Maya had deleted his personal files before handing over his laptop to the auditor. The respondent had found that one recovered files showed that the calculation of

clients pay outs ranging in percentage was found meaning thereby that assured return was given to the clients. This file cannot be termed as a personal file of Mr. Maya.

41. Next of the serious charge is of making fixed monthly pay out as detailed (supra) which has been already held to be proved.

42. The appellant relied on number of cases decided by this Tribunal wherein for some violations by the brokers, the respondent besides the monetary penalty had imposed suspension of trading membership for certain days. In the facts of those cases, the present Tribunal found such enhanced penalty, to be highly disproportionate, though circular dated November 6, 2017 would allow the respondent to take such a drastic disciplinary action depending on the specific cases of frequency and gravity of the violations.

43. In the case of ***Bezel Stockbrokers Pvt. Ltd. vs. NSE Appeal No. 294 of 2018 deiced on January 30, 2019***, the circular dated November 6, 2017 is extracted as under :-

> *"To All Members*
>
> ***Sub: List of violations and applicable penalties (CM, F&O and CD segments)***

This has reference to the Exchange Circular No. 163/2013; Download Ref. No: NSE/INSP/23768 dated June 27, 2013.

The existing penalty structure has been reviewed and revised in consultation with all the Stock Exchanges and SEBI.

The common violations are grouped in three categories namely, violations with financial implications, procedural violations and other procedural violations. In addition to the above, the penalties/ disciplinary action(s)/ charges for non-compliance with the provisions of Enhanced Supervision Guidelines have also been included.

The revised list of common violations and the applicable penalties/disciplinary action(s) charges including escalation of penalties for repeat violations as given in ***Annexure 1 and Annexure 2.***

Revised penalty norms as mentioned in Annexure 1 shall be applicable in respect of inspections commenced on or after the date of this Circular and the penalties/ disciplinary action(s)/ charges as mentioned in Annexure 2 shall be applicable for all forthcoming submissions.

It may be noted that the penalties/ disciplinary action(s) charges are indicative in nature and could undergo change in specific cases depending on frequency and gravity of the violations. The penalties/ disciplinary action(s)/ charges actually levied are decided by the Relevant Authority of the Exchange. Penalty/ disciplinary action in respect of violations having high impact would be dealt with on case to case basis depending on seriousness and gravity of such violations.

Members are advised to take note of the same and put in place systems and procedures so as to ensure adherence to the compliance requirements."

44. There are more cases like ***Alankit Assignments vs. NSE Appeal No. 406 of 2018 decided on November 8, 2019, Kaynet Capital vs. BSE Appeal No. 245 of 2019 dated June 12, 2019, R. K. Stockholding vs. NSE Appeal No. 106 of 2020 dated February 9, 2021, Reflection Investments vs. NSE Appeal No. 36 of 2020 dated January 1, 2020, Shree Naman Securities vs. NSE Appeal No. 290 of 2020 dated January 15, 2021, Kamlesh R. Shah vs. SEBI Appeal No. 192 of 2011 dated February 15, 2012 and Samkit Share and Stock Brokers vs. SEBI Appeal No. 53 of 2003 dated August 31, 2004***. In the facts of these cases, this Tribunal though upheld the monetary penalty, modified the disciplinary action taken by the respondent of suspension for some specific days.

45. The facts of the present case would however show that while the present appellant came under the control of the present management, it continued to commit violations as detailed supra. Some are caused brazenly once protected by the interim stay order granted by this Tribunal in Appeal No. 145 of 2021 dated March 9, 2021. Therefore in the facts and circumstances of the present case, no interference in the impugned order is warranted. In the result, the following order :-

ORDER

46. The appeals are therefore dismissed without any order as to costs.

Since the appellant is continuing with the business, we grant further three months period to the appellant to close out / square off open position, etc. as detailed in paragraph no. 19 of the impugned order.

47. 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. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Justice M. T. Joshi
Judicial Member

Ms. Meera Swarup
Technical Member

11.08.2022
PTM

RAJALAKSHMI H NAIR
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