(2024) 01 SEBI CK 0004

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 1681 Of 2023 In Appeal No. 35 Of 2020

Axis Bank Limited APPELLANT

Vs

Securities And Exchange Board Of India And Others RESPONDENT

Date of Decision : 12-01-2024

Acts Referred:

Securities And Exchange Board Of India (Depositories And Participants) Regulations, 1996 — Regulation 58, 58(6)

Citation : (2024) 01 SEBI CK 0004

Hon'ble Judges : Meera Swarup, Technical Member

Bench : Single Bench

Advocate : Gaurav Joshi, Neville Lashkari, Shriraz Rustomjee, Sumit Yadav, Abhay Chauhan, Atul Kumar Agrawal, Mustafa Doctor, Kinjal Shah, Etika Srivastava, Rashmikant, Drishti Das

Final Decision : Disposed Of

Judgement

Meera Swarup, Technical Member

1. Axis Bank filed a Misc. Application No. 1681 of 2023 praying to this Tribunal that it may pass appropriate orders and directions directing the Respondents to forthwith ensure compliance with the directions passed in this Tribunal’s judgment dated December 20, 2023 and to forthwith remove all the lock-in and all other obstacles (including defreezing the Demat Account No. 19502787) in the invocation of pledge of shares and subsequent sale of the said shares by the Appellant to the extent of their entire dues. The operative part of this Tribunal’s order dated December 20, 2023 in the Appeal Nos. 35 of 2020, 50 of 2020, 113 of 2020, 70 of 2020 and 75 of 2020 filed by Axis Bank Limited, ICICI Bank Limited, Bajaj Finance Limited, HDFC Bank Limited and IndusInd Bank Limited respectively is extracted below:-

“81. In view of the aforesaid, the impugned orders dated January 14, 2020 and December 13, 2019 are quashed. The appeals are allowed. The appellant Axis Bank is permitted to invoke the shares pledged in its favour in Demat Account no. 19502787 in accordance with the provisions of the Depositories Act read with the DP Regulations. A direction is given to SEBI, NSE and NSDL to restore the pledge which was made in favour of the appellants within four weeks from today. In the alternative SEBI, NSE and NSDL are directed to compensate the appellants with the value of the underlined securities pledged in their favour along with interest @ 10% p.a. within the same period. In the circumstances of the case, parties shall bear their own costs."

2. The learned senior counsel for the Applicant (Axis Bank) urged that two distinct issues were dealt by this Tribunal in its order dated December 20, 2023. First one was in relation to Axis Bank and second one in relation to ICICI Bank, HDFC Bank, IndusInd Bank and Bajaj Finance Ltd. These issues are stated in paragraphs 14 and 15 of this Tribunal's order dated December 20, 2023 and are extracted below:-

"14. Insofar as Axis Bank is concerned this Tribunal while disposing of their appeal by an order dated December 17, 2019 had directed the parties to maintain status quo in respect of the securities in DP Account No. 19502787. Axis Bank had also filed a claim petition before the DRT Hyderabad wherein a stay order was granted in respect of transfer of pledged shares. As a result of the interim order the pledged shares are still intact and has not been encashed. On the other hand, even though the shares were pledged in favour of the other appellants, namely, ICICI Bank, HDFC Bank, IndusInd Bank and Bajaj Finance Ltd., NSDL issued a press release dated December 2, 2019 stating therein:-

"SEBI has passed Orders

WTM/AB/SEBI/MIRSD/HO/35/2019 and WTM/AB/SEBI/MIRSD/HO/36/2019 in the matter of Karvy Stock Broking Limited (KSBL). As per the directions of SEBI and under supervision of NSE, securities have been transferred from the demat account IN300394-11458979 named Karvy Stock Broking Limited (BSE) to the demat accounts of respective clients who have paid in full against these securities. The number of such clients who have received securities are 82,559."

15. NSDL without revoking or cancelling the pledge in accordance with the Depositories Act and the DP Regulations 1996 transferred the pledged shares to the clients of the broker."

3. The learned senior counsel for Applicant urged that, accordingly, the operative part of the order in paragraph 81 should be viewed separately for two set of Appellants as the intention of the Tribunal was to mete out different treatments for these two set of appellants. Thus, the leeway of four weeks was given only in case of Appellants other than Axis Bank. For Axis Bank, the order of the Tribunal became effective immediately and therefore there is no restriction whatsoever on Axis Bank from invoking the pledge of shares created in its favour and selling the shares to the extent of its full and complete dues.

4. The learned senior counsel further urged that at the time of pronouncement of

the orders dated December 20, 2023, different periods of stay were sought by the various Respondents but the Tribunal did not allow any stay on the orders. Thus, the lock-in now imposed by NSDL on the pledged shares is arbitrary and violates the orders of this Tribunal. Accordingly, the prayer to the Tribunal now is for passing appropriate orders directing the Respondents to ensure compliance with the directions passed by this Tribunal in its orders dated December 20, 2023. Also, the Respondents may be directed to lift the lock-in imposed on the pledged shares and defreeze the Demat Account No. 19502787 so that the pledge on the shares could be invoked in Appellant’s favour and the shares could be sold by Axis Bank to the extent of its dues.

5. The learned senior counsel for Respondent, SEBI, stated that they have filed a Civil Appeal before the Hon’ble Supreme Court to challenge the order of this Tribunal dated December 20, 2023. The Misc. Application of the Appellant, if allowed, could result in the Civil Appeal before the Hon’ble Supreme Court becoming infructuous. Opposing grant of any relief to the Appellant, the Respondent stated that they have not committed any breach of the directions contained in the SAT order dated December 20, 2023 as period of four weeks given by this Tribunal to implement the order was applicable to all Appellants.

6. The learned senior counsel for SEBI further stated that they did not press for stay at the time of pronouncement of orders on December 20, 2023, as they were given to believe that this Tribunal had granted four weeks time for compliance of directions in the said order. The shares pledged to Axis Bank have not been redeemed and status quo has been maintained since 2019 therefore waiting for further two weeks is not going to make any difference to the Appellant.

7. The learned senior counsel for NSDL stated that maintaining status quo will not cause any prejudice in any manner to the interest of the Appellant. They have already preferred an Appeal before the Hon’ble Supreme Court and as the Hon’ble Apex Court is seized of the matter, no relief should be granted to the Appellant at this stage. Further, at the time of the pronouncement of the order on December 20, 2023 all parties were under the belief that the directions in the final order have to be complied within four weeks therefore they too did not press for stay of the order.

8. Having heard the learned counsel for the parties, the issue which needs to be decided is whether the four weeks allowed by this Tribunal, in its order dated December 20, 20023, for implementing the directions given would be applicable to Appellant Axis Bank too. In its order dated December 20, 2023 the Tribunal has basically dealt with the core issue as to whether the Respondents could have unilaterally transferred pledged shares without the consent of the pledgee. In this regard paragraph 72 of the order is extracted below:-

“72. We also find that the action of SEBI and NSDL to unilaterally transfer pledge shares to the clients of Karvy was wholly illegal and without jurisdiction. Such unilateral transfer of the shares without revoking the pledge is per se illegal and against the provisions of the Depositories Act and Regulation 58 of the DP Regulations. We are of the opinion that no revocation of pledge is permitted unless consent is obtained from the pledgee under Section 58(6) of the DP Regulations which in the instant case were the appellants. No such consent was taken. Regulation 58(6) of the DP Regulations states that no transfer of securities which is pledged shall be effected by a participant without the concurrence of the pledgee."

9. Having decided that the unilateral action on the part of the Respondents was illegal and without jurisdiction, the Tribunal went on to give separate directions for the Appellant Axis Bank and for other Appellants. The separate directions were required due to the status of pledged shares as for the shares pledged to Axis Bank this Tribunal had directed parties to maintain status quo vide its order dated December 17, 2019 while for the other Appellants the pledged shares had been transferred to the clients of the broker by the Respondents. The order needs to be read in totality. Accordingly, it is clarified that four weeks from the date of the order were available both to Appellant Axis Bank and to SEBI, NSE and NSDL to implement the directions given by this Tribunal in its order dated December 20, 2023. Further, while delivering the judgment, in the interest of justice, the Tribunal was conscious of not depriving the parties the right to challenge the order in the higher court, if so desired.

10. The Misc. Application is disposed off on the above terms with no order as to costs.

