(2020) 06 SEBI CK 0013

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 145, 146 Of 2020, Appeal (L) No.175 Of 2020

Axis Bank Limited APPELLANT

Vs

Securities And Exchange Board Of India & Ors RESPONDENT

Date of Decision : 19-06-2020

Acts Referred:

Citation : (2020) 06 SEBI CK 0013

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Dr. C. K. G. Nair, Member;M. T. Joshi, J

Bench : Full Bench

Advocate : Gaurav Joshi, Neville Lashkari, Chaitanya D. Mehta, Sonali Aggarwal, Dhanu Chopra, Dhruve Liladhar, Rafique Dada, Anubhav Ghosh, Nimay Dave, Ankur Loona, Aparna Wagle, Venkatesh Dhond, Rashid Boatwalla, Rahul Jain, Tushar Ajinkya, Abhiraj Arora

Final Decision : Disposed Of

Judgement

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 (â??NSEâ? 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 (â??Modexâ? for convenience) (Respondent No. 2) who is a trading member. Respondent Nos. 3 and 4

are National securities Depositaries 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 (â??SEBIâ? 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 appellantâ??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.