(2023) 02 SEBI CK 0037

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 990, 991 Of 2022

Balwan Chauhan And Others APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 21-02-2023

Acts Referred:

Citation : (2023) 02 SEBI CK 0037

Hon'ble Judges : Tarun Agarwala Presiding Officer;Meera Swarup Technical Member

Bench : Division Bench

Advocate : ?Altamash Qureshi, Renjith Nair, Richa Phulwani, Karan Vin, Pradeep Sancheti, Rashid Boatwalla, Juan D?Souza

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. Two appeals have been filed against the order of the Member and Core Settlement Guarantee Fund Committee (‘MCSGFC / Committee’ for short) of the National Stock Exchange of India Limited (‘NSE’ for short) dated October 7, 2022 wherein the claims of the appellants under the Investor Protection Fund was rejected.

2. The facts leading to the filing of the present appeal is, that the trading activities of Allied Financial Services Private Limited (‘Allied’ for short) were disabled on March 1, 2019.

3. The appellant Balwan Chauhan opened a Trading Account with Allied on April 27, 2018 and deposited an aggregate amount of Rs. 23 lakh in various tranches. One trade was executed by the appellant on December 24, 2018. It was an intraday trade which was executed on the Stock Exchange platform wherein he bought 2,300 shares of a value of Rs. 23,00,023/- and sold the said quantity for Rs. 22,99,977/-and, thus, incurred a loss of Rs. 46/-. The claim of the appellant was rejected on the ground that the single trade was a sham for the purpose of

getting relief from Investor Protection Fund Trust and consequently held that the claim of the appellant is inadmissible because that single trade was a non-genuine transaction undertaken in bad faith simply to make the claim eligible. The finding that the trade was made prior to the disablement of the broker's terminal was suggestive of the mala fide intention of the appellant for making the claim eligible for compensation out of the Investor Protection Fund and consequently the trade executed on December 24, 2018 was a non-genuine transaction.

4. We have heard Shri Altamash Qureshi assisted by Renjith Nair, Richa Phulwani and Karan Vin, the learned counsel for the appellant and Shri Pradeep Sancheti, the learned senior counsel assisted by Shri Rashid Boatwalla and Shri Juan D'Souza, the learned counsel for the Respondent.

5. To support the impugned order, Shri Pradeep Sancheti, the learned senior counsel placed reliance upon Chapter XII and Chapter XIII of the Bye-laws of NSE, SEBI Circular dated October 28, 2004, 35th Meeting of the Defaulter's Committee of NSE dated July 2, 2010 and SEBI Circular dated February 23, 2017.

6. Chapter XII of the Bye-laws of NSE deals as to how a default of a broker has to be dealt with. Under By-laws 24 of Chapter XII of the Bye-laws certain claims against the defaulter cannot be entertained by the Defaulters' Committee. For facility, Bye-laws 24(d) is extracted here under:-

"24) The Defaulters' Committee shall not entertain any claim against a defaulter:

(d) which is in respect of a loan with or without security;"

7. The 35th Meeting of the Defaulters' Committee of NSE dated July 2, 2010 deals with guideline for loan transactions for the purpose of entertaining claims against a defaulter under Bye-laws 24(d) of Chapter XII.

8. In our opinion, Chapter XII deals with a situation where a trading member is declared a defaulter and certain claims against a defaulter can be entertained by the Defaulters' Committee except claims which is in respect of a loan with or without security. In our opinion, claim under Clause 24(d) of Chapter XII is not applicable in respect of a claim made under Investor Protection Fund which claim is made under Chapter XIII of the Bye-laws.

9. Chapter XIII of the Bye-laws deals with claim by a constituent of a trading member who suffers a loss arising from the said trading member being declared a defaulter by the Stock Exchange under Chapter XII. In the instant case, the trading member was declared a defaulter and subsequently expelled with effect from November 4, 2019. His terminals were disabled on March 1, 2019. Thus a constituent of the defaulter / trading member can file a claim under Chapter XIII for compensation from the Investor Protection Fund.

10. Claims under the Investor Protection Fund can be entertained under Clause 18 of Chapter XIII of the Bye-laws. For facility, Clause 18 is extracted here

under:-

“(18) The claims of the claimants arising out of speculative transactions or which are sham or collusive shall not be eligible for compensation from the IPF.”

11. In furtherance of the Bye-laws SEBI issued a Circular dated October 28, 2004. The eligible claims could be filed under Clause 12 to 15 of Annexure to the Circular dated October 28, 2004. For facility, Clause 12, 13, 14, and 15 of Annexure to the Circular dated October 28, 2004 is extracted here under:-

“Eligible Claims

12. The claims received against the defaulter members during the specified period shall be eligible for compensation from the IPF/CPF.

13. The IPF/CPF Trust however, may, if it is satisfied that the claims could not have been filed during the specified period for reasons beyond the control of the claimant, entertain claims received even after the specified period.

14. The claims of the investor/clients shall be eligible for compensation from the IPF/CPF and in no case the claims of a broker or an associate of the member broker of the Stock Exchange shall be eligible for compensation out of the IPF/ CPF.

15. The claims of the investor/clients arising out of speculative transactions shall not be eligible for compensation from the IPF/CPF. The claim should not be a sham or collusive.”

12. A perusal of the aforesaid clauses indicates that claims against defaulter members would be eligible for compensation from the Investor Protection Fund and that claims arising out of speculative transactions shall not be eligible for compensation from the Investor Protection Fund and further the claim should not be a sham or collusive one.

13. SEBI further issued a circular dated February 23, 2017. Clause 2(D) of the said Circular is extracted here under:-

“2(D). Admissibility of claim for making payment out of IPF in Stock Exchanges

In the event of default by the member, all transactions executed on exchange platform shall be eligible for settlement from IPF (subject to maximum limit), subject to the appropriate norms laid down by the Defaulter’s Committee.”

14. A perusal of a combined reading of Clause 18 of Chapter XIII of the Bye-laws read with the Circular dated October 28, 2004 and February 23, 2017 makes it apparently clear that claims against a defaulter member can be filed for compensation from the Investor Protection Fund. However, the claims arising out of speculative transactions or which are sham or collusive shall not be eligible for compensation.

15. Thus, the Committee while considering the claim, if it holds that the claimant

is not eligible for compensation under Investor Protection Fund, in that case, it should be give a finding that the claim arose out of speculative transaction or that it was a sham transaction or that it was a collusive transaction and only then the claim could be rejected.

16. In the light of the aforesaid, the Committee has rejected the claim of Balwan Chauhan on the sole ground that only a single trade was carried out which was a sham transaction and that the single trade was carried out only for the sole purpose of getting a relief from the Investor Protection Fund and therefore it was a non-genuine transaction and the claim was therefore ineligible.

17. In our opinion, this finding is perverse. Clause 2(D) of the Circular dated February 23, 2017 clearly indicates that a transaction executed on the Exchange platform shall be eligible for settlement from the Investor Protection Fund. Therefore, whether it a single trade or a number of trades is an irrelevant consideration. What is relevant that that there is a transaction on the Stock Exchange platform for the purpose of claiming compensation under the Investor Protection Fund.

18. The single trade carried out by the appellant was executed on December 24, 2018 much before the trading member was declared a defaulter. The trades were executed on December 24, 2018 and the trading member was declared a defaulter on November 4, 2019. A perusal of the trades indicates that he had placed buy orders for Rs. 23 lakh and squared off the trades on the same day and incurred a loss. By no means could such a trade be declared a sham transaction. In our opinion the finding that the single trade was a sham transaction is based on no evidence.

19. Further, the finding that a single trade was made for the sole purpose of getting relief from the Investor Protection Fund and therefore there was a mala fide intention is purely based on surmises and conjectures. The appellant could not have knowledge that the trading member would become a defaulter nor had a premonition that the broker would become a defaulter. Therefore, the finding that the transaction was made only for the purpose of making a claim eligible is a perverse finding given by the Committee solely for the purpose of defeating the claim of the claimant.

20. In view of the aforesaid, we are of the opinion that the trade carried out by the claimant was not a sham transaction and therefore his claim application was eligible for compensation under the Investor Protection Fund. The order passed by the Committee cannot be sustained.

21. Insofar as the appeal of Shefali Chauhan is concerned, the impugned order indicates that she had deposited Rs. 25 lakh in various tranches between October 29, 2018 and November 8, 2018 and did not execute any trades on the Stock Exchange platform. Since no trade was executed on the Stock Exchange platform she is not eligible to file any claim for compensation under the Investor Protection Fund. In our view, the controversy involved in the instant case is

squarely covered by a decision of this Tribunal in Appeal no. 700 of 2021 in Balwan Chauhan vs NSE decided on November 25, 2021.

22. For the reasons stated aforesaid, the impugned order dated October 7, 2022 passed by the Committee in Appeal no. 990 of 2022 (Balwan Chauhan vs NSE) is set aside. The appeal is allowed. The appellant is eligible for compensation under the Investor Protection Fund. The matter is remitted to the Committee to pass consequential orders. Appeal no. 991 of 2022 (Shefali Chauhan vs NSE) is dismissed. In the circumstances of the case, parties shall bear their own costs.

23. 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.