(2022) 04 SEBI CK 0049

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 191, 192 Of 2022, Appeal No. 155, 156 Of 2022

Devendra Kapil And Others — APPELLANT

Vs

Defaulters Committee — RESPONDENT

Date of Decision : 20-04-2022

Acts Referred:
Code Of Criminal Procedure, 1973 — Section 34, 420

Citation : (2022) 04 SEBI CK 0049

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

Bench : Division Bench

Advocate : Somasekhar Sundaresan, Abishek Venkataraman, Akansha Jain, Vikas Bengani, Shiraz Rustomjee, Rashid Boatwalla, Juan D?souza

Judgement

Tarun Agarwala, Presiding Officer

1. There is a delay in the filing of the appeals. For the reasons stated in the application, the delay in filing of the appeals are condoned. The applications are allowed.

2. The present appeals have been filed against the impugned order dated June 16, 2021 in Appeal no. 155 of 2022 and order dated April 5, 2021 in Appeal no. 156 of 2022 passed by the Member and Core Settlement Guarantee Fund Committee (‘Committee / MCSGFC’ for short) of National Stock Exchange of India Limited (‘NSE’ for short) by which the appellants claim application have been rejected. The appellants are also aggrieved by the rejection of their review application by communication dated September 15, 2021. Since the issue involved is common, both the appeals are being decided together.

3. The facts leading to the filing of the present appeal is, that the appellant in Appeal no. 155 of 2022 is an ex-army man. Upon his retirement he and his wife opened a demat and trading account in 2014 with BMA Wealth Creators Limited (‘BMA’ for short) through its authorized persons Mr. Kulwant Kumar and Ms.

Suchita Nagar. On the advice given by the authorized persons the appellants invested a sum of Rs. 32,01,000/- and Rs. 18,35,000/- over a period of time to be invested in blue chip companies. Physical shares held by the appellants were also dematerialized.

4. From time to time appellant used to receive holding statements from the authorized persons showing the appellants’ money being invested in the shares of blue chip companies. The appellant used to rely on these statements.

5. In 2017 the appellants required some money and decided to sell some of the invested stocks. To their horror, the appellants found that their account showed Nil balance in their account. The broker nor the authorized persons co-operated and did not provide details of the activities of the appellants’ accounts. Upon coming to know of the fraud and upon closure of the accounts, the appellants decided to lodge a FIR and after making several efforts and visits to the Police Station, a FIR was lodged on April 11, 2019 under Section 420 and 34 of the Criminal Procedure Code. It further transpires that the authorized persons filed an anticipatory bail application which was rejected by the Sessions Court and thereafter by the Bombay High Court on August 3, 2021.

6. It further transpires that on October 1, 2019 BMA was suspended and thereafter on October 7, 2019 an ex parte interim order was passed by SEBI against BMA which was followed by a confirmatory order dated January 2, 2020. On February 13, 2020 NSE declared BMA as a defaulter and expelled it from the Stock Exchange.

7. While proceedings were going on against BMA by SEBI and NSE, the appellants were pursuing their remedy and filed investor complaint before SEBI as well as before other authorities and also intimated to the Stock Exchange that the appellant was duped and cheated by BMA and its authorized persons for doing unauthorized trading without their consent from their trading accounts. The respondents were also informed that the last trading activity that was done from the appellant’s account was September 13, 2017.

8. After the BMA was declared a defaulter and expelled from the Stock Exchange, the appellants during Covid 19 pandemic and lockdown filed a claim against the defaulter trading member (BMA) and its authorized persons on December 3, 2020 before the Committee of NSE. The said claim was rejected by the Committee of NSE by the impugned orders on the ground that the appellants had failed to withdraw the credit balance from the defaulter (BMA) for a substantial period of time for 24 months from the last date of trading activities and therefore the claim was found to be inadmissible for compensation out of Investor Protection Fund.

9. Being aggrieved, the appellants filed a review which was rejected by an order dated September 15, 2021 intimating that the claim cannot be entertained against a defaulter which in respect of a loan with or without security.

10. We have heard Shri Somasekhar Sundaresan, the learned counsel along with Mr. Abishek Venkataraman, Ms. Akansha Jain, Mr. Vikas Bengani, the learned counsel for the appellants and Shri Shiraz Rustomjee, learned senior counsel with Shri Rashid Boatwalla and Shri Juan D'souza, the learned counsel for the respondent.

11. Having heard the learned counsel for the parties, we find that the impugned orders does not contain any reason nor has considered the issues raised by the appellants. The Committee has rejected the claim on the ground that the appellants have failed to withdraw the credit balance from the defaulter within 24 months from the last trading activities. In the first instance, it is not known as to where 24 months comes into the picture. No rule or regulation has been cited to show that if there is no trading activity for 24 months then the claim cannot be entertained. Even otherwise, we find that according to the appellant the last trading activity conducted was till September 13, 2017 and, since then, the appellants were running from pillar to post to get their money back and when eventually they could not succeed from the trading member the appellant had to lodge a FIR pursuant to which the anticipatory bail application of the authorized persons were rejected. These factors has not been taken into consideration by the Committee which in our opinion is a relevant factor to show that the appellants had taken steps to recover their money but were facing road blocks. Prima facie, the finding that since the appellants failed to withdraw the money within 24 months from the last trading activities, the claim of the appellants cannot be accepted appears to be absurd.

12. The review application was rejected on the ground that the defaulters committee does not entertain any claim against a defaulter which in respect of a loan. In the instant case, it is not known as to how the committee has reached a conclusion that the amount invested by the appellant with the defaulter was a loan and not an investment. No reason whatsoever has been given.

13. Further, the trading activity which the defaulter had disclosed to the appellants showed trading activities and therefore the finding that the investments made by the appellants was a loan is erroneous and is not based on any reasons.

14. In this regard we are constrained to observe that an investor like the appellants are running from pillar to post to get their hard earned money back and the appellants are facing road blocks throughout. The respondent, being Regulators are required to protect the interest of the investors. In the instant case we find that instead of helping the appellants, the claim is being rejected on untenable and non-existing grounds. In this, regard the learned senior counsel for the respondent fairly conceded that various issues raised by the appellant have not been considered and which does requires reconsideration by the Committee.

15. In view of the aforesaid, the impugned orders dated June 16, 2021 and April

5, 2021 passed by the Committee of NSE and order dated September 15, 2021 rejecting the review application cannot be sustained and are quashed. The appeals are allowed at the admission stage without calling for a reply. The matter is remitted to the Committee of NSE to decide the claim application of the appellants within three months after giving an opportunity of hearing. In the circumstances of the case, parties shall bear their own costs.

16. 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.

