**(2018) 07 CAL CK 0149**

**In the Calcutta High Court**

**Case No :** Writ Petition No. 11912 (W) of 2018

Guiness Securities Ltd. APPELLANT

Vs

National Stock Exchange of India Limited RESPONDENT

**Date of Decision :** 25-07-2018

**Acts Referred:**

Securities Contract (Regulation) Act, 1956 — Section 23L

**Citation :** (2018) 07 CAL CK 0149

**Hon'ble Judges :** TAPABRATA CHAKRABORTY, J

**Bench :** Single Bench

**Advocate :** Prabal Mukherjee, Sailesh Mishra, Yash Vardhan Deora, P. Kumar, Syamantak Banerjee

## Judgement

The present writ petition has been preferred primarily praying for the following relief:

a) â??Writ of and/or in the nature of Mandamus do issue commanding the respondents, their men, agents and servants and/or assigns to forthwith; -

(i) Quash, rescind, recall and set aside the Circular ref No.0080/2018 dated May, 15, 2018 issued by the Respondents;

(ii) Quash, rescind, recall and set aside directions made in the letter No.NSE/INVG/004 dated June 25, 2018 issued by the Respondent;â??

Mr. Mukherjee, learned senior counsel appearing for the petitioner submits that the petitioner is engaged in the business of share trading as a trading

member of the National Stock Exchange (in short, NSE). On 17th November, 2017, a letter was issued to all NSE members informing inter alia that

unsolicited messages are being sent to induce investment or sale of the stock of certain listed companies, indicating target prices by unregistered or

unauthorised entities and by the said letter all the trading members were requested to advise their clients to remain cautious.

Thereafter a memo dated 13th April, 2018 was issued intimating all the trading members of the NSE that an additional surveillance margin of 25%

shall be levied on the trading members who have substantial trading activity in scripts having unsolicited SMSs. Subsequent thereto, a memo dated

15th May, 2018 was issued cautioning the trading members and issuing certain instructions and advising the members to ensure compliance with the

same. Thereafter by a memo dated 25th June, 2018 an additional surveillance margin of 25% has been directed to be directed to be imposed with

effect from 2nd July, 2018.

Drawing the attention of this Court to a document annexed at page 26 of the writ petition, Mr. Mukherjee submits that the SMSs stocks which were

published in the website of NSE as â??Current Listâ? are not enlisted in the trading list of NSE and as such the same had never been traded on

NSEâ??s platform. The petitioner had not executed any trade in any SMSs stocks on the respondentâ??s platform and as such, the question of

imposition of additional surveillance margin of 25% does not occasion.

The petitioner is being penalized through imposition of additional surveillance margin though there had been no fault on its part. A representation to that

effect was submitted to the respondent with a request to withdraw the additional margin of 25% but the same has also not been responded to. In

support of his contention, Mr. Mukherjee has placed reliance upon an order passed by the Honâ??ble Delhi High Court. Let a copy of the said order,

as produced, be kept on record.

Mr. Banerjee, learned advocate appearing for NSE submits that the additional margin has been imposed as a part of surveillance measure at the

instance of the regulatory body, being the Securities and Exchange Board of India (in short, SEBI). Even in the event there had been no execution of

any trade by the petitioner in any SMS stocks on the NSEâ??s platform, the NSE is bound to follow the decision taken by the SEBI.

He further submits that the writ petition itself is not maintainable since Section 23L of the Securities Contract (Regulation) Act, 1956 provides an

alternative remedy. Such contention has, however, been disputed by Mr. Mukherjee. Heard the learned advocates appearing for the respective parties

and considered the materials on record.

 

In the writ petition the SEBI has not been made a party. By the memo dated 17th November, 2018 the trading members were requested to advise their clients to remain cautious on the unsolicited SMSs being circulated by unregistered/unauthorised entities. Subsequent thereto, in a joint meeting of SEBI and the Stock Exchanges, it was decided that in stocks wherein unsolicited SMSs have been found to be circulated and have resulted in an increased trading activity, an additional surveillance margin of 25% shall be levied on the trading members. It is explicit from the memoranda dated 13th April, 2018, 15th May, 2018 and 25th June, 2018 that such decision has been taken by SEBI, the regulatory body, in consultation with the stock exchanges and the same is a preventive action adopted after cautioning the intermediaries about such unsolicited messages since the month of November, 2017.

In the said conspectus, the interim order as prayed for by the petitioner for stay of operation of the decision contained in the memoranda dated 15th May, 2018 and 25th June, 2018 is refused. The respondent is directed to file its affidavit-in-opposition within four weeks from date. Reply thereto, if any, be filed within two weeks thereafter. The point of maintainability of the writ petition, as raised by Mr. Banerjee, is kept open to be decided at the time of final hearing of the matter. The parties would be at liberty to mention the matter for final hearing after expiry of the period as fixed above towards exchange of affidavits.