
(2019) 12 SEBI CK 0014

In the Securities Appellate Tribunal Mumbai

Case No : Appeal (L) No. 588, 589, 590 Of 2019

HDFC Bank Ltd And Others

APPELLANT

Vs

Securities And Exchange Board Of India And Others

RESPONDENT

Date of Decision : 04-12-2019

Acts Referred:

Depositories Act, 1996 — Section 12

Citation : (2019) 12 SEBI CK 0014

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

Bench : Division Bench

Advocate : Gaurav Joshi, Sameer Pandit, Krina Gandhi, Wadia Ghandy, Rafique Dada, Anubhav Ghosh, Rashi Dalmia, Somasekhar Sundaresan, Kinjal Shah, Etika Srivastava, Etc.

Final Decision : Disposed Of

Judgement

Dr. C.K.G. Nair, Member

1. These three appeals have been filed challenging the ex parte ad interim order dated November 22, 2019 passed by the Whole Time Member

(W.T.M. for short) of the Securities and Exchange Board of India (SEBI for short) in the matter of M/s. Karvy Stock Broking Ltd.

(Karvy for short). Since all these appeals challenge the same impugned order and the basic issues are common, by consent of the parties, all

these appeals are heard together and disposed of by this common decision.

2. Appellants are banks who lent varying amounts of money to Karvy on the basis of pledged securities. The issues covered in these appeals are the

same as in the matter of Bajaj Finance Limited vs SEBI, Appeal (L) No. 585 of 2019 decided on December 3, 2019 by this Tribunal. Accordingly, we

do not propose to deal with the details of the background as the same are

covered in the said order. However, for convenience, we reproduce direction no. (iv) as contained in paragraph 21 of the impugned order as follows, since it is the basic issue of contention.

“(iv) The Depositories shall not allow transfer of securities from DP account no. 11458979, named KARVY STOCK BROKING LTD. (BSE)

with immediate effect. The transfer of securities from DP account no. 11458979, named KARVY STOCK BROKING LTD. (BSE) shall be

permitted only to the respective beneficial owner who has paid in full against these securities, under supervision of NSE;”

3. The additional submissions brought out in these appeals are (i) an ex parte ad interim order can only maintain status quo with regard to the securities

and that too when a forensic audit is underway and (ii) the relevant provisions of the Depositories Act gives possession of the securities to the

beneficial owner which in this case is Karvy. By pledging those securities to the Appellants and borrowing money, vested rights for the pledgees in

those securities have been created. Therefore, pending determination of rights, securities in the disputed account should not have been transferred

back to the clients account. In short, the ex parte ad interim order should have been used only in disabling Karvy who alleged to have played fraud and

all other activities relating to transfer of securities as contained in direction no. (iv) quoted above should have waited for the completion of forensic

audit and exact determination of rights of the parties. It was also argued that the second sentence in direction no. (iv) was only an advisory and not a

direction and hence NSDL should not have transferred the securities back to the clients accounts. Therefore, transferring the securities, while a

forensic audit is pending, and through an ex parte ad interim order is a clear over reach by the Respondents SEBI, NSDL and NSE and beyond the

provisions of law.

4. We have heard the learned Senior Counsel and Counsel appearing for the three Appellants as well as for the four Respondents. The learned senior

counsel and counsel appearing for the Appellants emphasized Section 12 of the Depositories Act, 1996 which deals with pledge or hypothecation of

securities held in a depository and the details relating to the same in the SEBI (Depositories and Participants) Regulations, 1996. They also explained

how NSDL implements the above provisions in actual practice through certain

provisions of their bylaws and business rules. It was also emphasized that various circulars relating to these provisions have been issued only to Stock Exchanges, Depositories and other related intermediaries regulated by SEBI and not to the Appellants and hence the mandate of due diligence and compliance with the provisions falls squarely on those entities. Given these provisions of law the lenders lend money on the basis of pledged securities bonafide believing that the securities belong to Karvy since the account namely Karvy Stock Broking Ltd. (BSE) did not indicate that it was a client account. Therefore, by means of the pledge and as provided under the Depositories Act and Regulations thereunder, when the pledge was created by Karvy, the pledgees had the right over the securities pledged. Even if, it is assumed that some of these securities were belonging to clients those clients through a power of attorney had delegated those rights to Karvy and hence those securities were with Karvy. Therefore, given the provisions in the Depositories Act and the Regulations relating to hypothecation and pledge and the rights of such pledgees those securities could not have been alienated without full determination of facts and ownership rights through an ex parte ad interim order. It was also contended that the transfer of securities back to the clients has been done when the matter was pending before this Tribunal, pre-empting the Tribunal action.

5. Learned Senior Counsel representing Respondent No. 1, SEBI contended that the June 20, 2019 circular of SEBI clearly emphasized that the clients' securities could not be pledged by the brokers and an elaborate mechanism was provided for ring fencing the clients' securities and funds and these directions had to be implemented latest by August 31, 2019. Therefore, it was incumbent on the part of the Appellants / lenders to revisit their due diligence while continuing with or taking fresh pledges of securities and lending against them, particularly when the account in question was a 'non-house beneficiary' account. It was also contended that in any case the rights of the pledgee is not above the rights of the pledger. Moreover, Respondent Karvy does not say anything relating to who owns those pledged securities.

6. Learned Senior Counsel and Counsel representing NSE and NSDL have submitted that whatever transfers have been done to the accounts of the actual shareholders has been done on the basis of thorough verification of

payment and ownership. They also produced on record a letter from NSE to NSDL confirming full payment by 83862 clients and a correspondence of NSDL with WTM of SEBI also informing the approval of the Board of Directors of NSDL relating to such action. All these correspondences are dated November 30, 2019. So, effectively as directed by WTM of SEBI in the second part of direction no. (iv) the NSDL and NSE were doing their due diligence and in consultation with SEBI effected the transfer of securities to the clients who have paid in full and who were the real beneficial owners of those securities. Learned Senior Counsel for Respondent Karvy does not wish to make any statement.

7. Having heard the learned Senior Counsel and Counsel for the parties, without going into the merit of the case, we are of the considered view that beyond the directions passed in our order of Bajaj Finance Ltd. (supra) no further relief can be granted at this stage. We have no dispute with the interpretations of the provisions of the Depositories Act and Regulations thereunder. However, while dealing with a case of alleged fraud the implications of the same have to be factored in. The very purpose of an ex parte ad interim order is to deal with the eventualities arising from such alleged fraud or similar major violations. This ex parte ad interim order was issued on November 22, 2019. Even an oral mentioning was made by the Appellants before this Tribunal only on December 2, 2019 by which time a lot of water has flown under the bridge. Now it is on record before us that after a due diligence by NSE and NSDL securities have been transferred to the account of the clients. Therefore, further rights have been created / restored involving more than 80,000 investors. In this context, a prayer to recall the same or to retain the same as frozen accounts of those clients becomes untenable. As ordered in the matter of Bajaj Finance Ltd. (supra), Appellants are at liberty to approach SEBI. If any representations from the Appellants are pending or filed on or before December 6, 2019 before SEBI, the WTM of SEBI, after providing an opportunity of hearing to the Appellants, shall pass an order in accordance with law latest by December 12, 2019.

8. All these three appeals are disposed of on above terms with no order on costs.