(2020) 07 SEBI CK 0046

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 170, 171 Of 2020, Appeal (L) No. 190 Of 2020

Inventure Growth And Securities Limited APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 03-07-2020

Acts Referred:

Citation : (2020) 07 SEBI CK 0046

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

Bench : Full Bench

Advocate : P.N. Modi, Kunal Katariya, Ravi Vijay Ramaiya, Shardul Shah, Kanji Rita, Rafique Dada, Abhiraj Arora, Vivek Shah

Final Decision : Disposed Of

Judgement

1. The appellant is a public listed company and has 110 employees and approximately 400 sub-brokers and 2500 public shareholders constituting 72%

of the entire shareholding. The appellant is engaged in the business of proprietary trading and also intermediary client broking tradings. A show cause

notice dated April 30, 2015 was issued after a lapse of 7 years for the alleged trading during the investigation period of June 1, 2008 to December 20,

2008. A reply was filed immediately thereafter. The first hearing was fixed in 2016 but was cancelled by the Whole Time Member (â??WTMâ?? for

short) of the Securities and Exchange Board of India (â??SEBIâ?? for short) and thereafter the hearing took place on August 7, 2019 wherein it was

pointed out by the appellant that certain documents which were part of the show cause notice and which apparently were being relied upon was not

supplied. It transpires that SEBI vide their letter dated September 19, 2019 acknowledged this fact and supplied the documents but did not provide any

further opportunity of hearing and, eventually the impugned order was passed on June 23, 2020 restraining the appellant from accessing the securities

market for a period of two years. The WTM also directed the appellant to square off the open positions. Thereafter, one Assistant Manager of SEBI

by e-mail dated July 1, 2020 and July 2, 2020 intimated the National Stock Exchange of India Limited (â??NSEâ?? for short) that the restraint order

will also apply to the intermediary trading account of the appellant and that appellant is required to square off the open interest position immediately.

2. The appellant being aggrieved by the order of the WTM of SEBI and the communication vide e-mail dated July 1, 2020 and July 2, 2020 issued by

the Assistant Manager of SEBI has filed the present appeal along with an Urgency Application and Interim Application and also filed an urgent

praecipe for taking up the matter today.

3. We have accepted the urgency in the matter. The Urgency Application, and the praecipe are accordingly disposed of. We have heard the learned

senior counsel for the parties at some length through video conference. The submission of Mr. P.N. Modi, the learned senior counsel along with Mr.

Kunal Katariya, the learned counsel for the appellant is, that the impugned order is violative of the principles of natural justice. No opportunity of

hearing was provided after supplying the documents in September 2019. There is an undue delay in the issuance of the show cause notice on account

of which the entire proceedings are liable to be quashed. The Assistant Manager of SEBI had no authority to issue directions to the Stock Exchange

vide his e-mail dated July 1, 2020 and July 2, 2020 nor could he clarify or modify the order passed by the WTM. The Assistant Manager has no

authority in law to issue such directions through its e-mail.

4. It was also urged that the show cause notice and the entire order relates to the proprietary trading of the appellant and has nothing to do with the

intermediary trading of appellantâ??s client and therefore the debarment of the appellant as an intermediary of the clients was wholly illegal.

5. In response Mr. Rafique Dada, the learned senior counsel along with Mr. Abhiraj Arora, the learned counsel for SEBI submitted that the restraint

order passed by the WTM should not be disturbed nor any stay should be granted on the appellant acting as an intermediary in the stock market but fairly conceded that the e-mail dated 2.7.2020 issued by the Assistant Manager of SEBI appears to be without any authority of law which may be

stayed during the pendency of the appeal. The learned senior counsel for SEBI further submitted that the respondent will sufficiently explain in their

reply and justify that the show cause notice issued after 7 years was valid and that there was no violations of the principles of natural justice.

6. In the light of the aforesaid, we find that the appellant has been debarred from accessing the securities market for a period of two years for the

trades done in the year 2008. We also find that prima-facie the impugned order only relates to the trading account of the proprietary trading of the

appellant and does not relate to the appellantâ??s trading of its client as a registered trading member. At this stage, restraining the appellants in the

intermediary trading in the stock market would not be in the interest of the investors nor in the interest of the 2500 share holders of the appellant

company.

7. Considering the aforesaid, we grant six weeks time to the respondent SEBI to file a reply. Three weeks thereafter to the appellant to file a

rejoinder. List this matter for final disposal on September 21, 2020.

8. In the meanwhile, we direct that directions issued by the Assistant Manager of SEBI vide his e-mail dated July 1, 2020 and July 2, 2020 will not be

acted upon. We further make it clear that the restraint order passed by the WTM restraining the appellant from accessing the securities market for

two years shall be confined only to the proprietary trading account. The interim application is accordingly disposed of.

9. Parties are directed to contact the Registrar 48 hours before the date fixed to find out as to whether the hearing would take place through video

conference or through physical hearing.

10. 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.