(2019) 11 SEBI CK 0011

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No.471 Of 2018

KSBL Securities Ltd APPELLANT

Vs

National Stock Exchange Of India Limited RESPONDENT

Date of Decision : 26-11-2019

Acts Referred:

Citation : (2019) 11 SEBI CK 0011

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

Bench : Full Bench

Advocate : Prakash Shah, Chinmay Paradkar, Nimay Dave, Shreya Anuwal, Manilal Kher Ambalal

Final Decision : Partly Allowed

Judgement

Dr. C.K.G. Nair, Member

1. This appeal has been preferred against the order of the Disciplinary Action Committee (â??DACâ? for convenience) of the National Stock

Exchange of India Limited (â??NSEâ? for convenience) dated November 28, 2018, whereby the application to review the earlier order of the DAC

dated August 02, 2018 was rejected. In the result, the impugned order reiterates the monetary penalty of Rs.15 lakhs and suspension of trading

membership of the appellant from all segments of NSE for 5 days.

2. Facts relating to the matter have been brought out in an inspection conducted by respondent NSE on the appellant who is a trading member of NSE.

The said inspection was conducted for the period from January 01, 2017 to September 07, 2017. Apart from imposing a consolidated monetary penalty

of Rs.50,000/- for the minor violations a show cause notice dated May 07, 2018 was issued to the appellant alleging a number of major violations and asking why penalty should not be imposed on the appellant for those alleged violations. The stated violations are:-

a) Unexplained use of funds raised by pledging client securities with NBFCs and Banks to the tune of Rs.19.23 crores belonging to 515 clients.

b) Acceptance of deposits by offering fixed returns from more than 200 entities and to the tune of Rs.21.56 crores and not reflecting such receipts of

funds in the financial ledgers/ trial balance of the appellant.

c) Discrepancy in computation of networth and misrepresentation of data submitted to the Exchange.

Because of the aforesaid violations, it was held that the appellant has failed to abide by the Code of Conduct for trading member prescribed under

Regulation 4.5.1 and 4.5.2 of CM and F&O Segments relating to adherence to SEBI Code of Conduct and general principles of professionalism,

adherence to trading principles, honesty and fairness.

3. Learned counsel Shri Prakash Shah, appearing for the appellant submits that securities belonging to some clients were pledged with NBFCs etc.

because of margin shortfall from those clients. Appellant had enough liquid funds available with it to meet the full obligations. Learned counsel for the

appellant also relied on certain orders passed by SEBI in respect of Sharewealth Securities Limited (decided on June 28, 2013) and JRG Securities

Ltd. (decided on December 12, 2013) whereby only a small amount of penalty of Rs.50,000 was imposed in the former matter and no penalty was

imposed in the latter matter.

4. The learned counsel for the appellant further submitted that the allegation relating to accepting deposits from clients promising assured returns is not

correct because it was short term unsecured loans taken from external sources to promote appellantâ??s proprietary arbitrage and ALGO trading

business. Regarding the third allegation it was submitted by the learned counsel for the appellant that a revised networth certificate has been produced

which the DAC has noted in the impugned order itself and therefore no action is called for on the same. As regards the allegation of misrepresentation

of data submitted to the stock exchange pertains to an earlier period also CA Certificate has been furnished certifying that no securities belonging to

credit balance of the clients have been pledged.

5. Further submissions are that because of all actions as above the appellant has

complied with whatever requirements as directed by DAC and no

violation has been committed and hence the appellant is not liable for any penalty and in any case not a harsh penalty of Rs.15 lakhs and 5 days

suspension. To emphasise this point further the appellant relied on the order of the Honâ??ble Supreme Court of India in M/s Prrsaar vs. NSE (Civil

Appeal No. 3260 of 2017 decided July 22, 2019) whereby the matter has been remanded to this Tribunal to decide afresh the quantum of punishment.

Learned counsel for the appellant also relied on the order of this Tribunal in Bezel Stock Brokers Pvt. Ltd. (Appeal No. 294 of 2018 decided on

30.01.2019) and pleaded that the impugned order violates â??Doctrine of proportionalityâ?? and needs to be set aside.

6. The learned counsel for the respondent NSE, Shri Nimay Dave, on the other hand, stated that the allegations against the appellant are very serious

as is clear from the show cause notice as well as the impugned order. It is clearly shown that funds to the tune of Rs.19.23 crores was raised which

was in excess of respective clientâ??s obligation by pledging the securities belonging to those clients. More than 350 out of 515 clients did not have

any obligation/ debit balance but still their securities were pledged by the appellant. Because of such adverse findings, which are serious offence,

finding in the impugned order that the appellant has failed to abide by the Code of Conduct under the relevant regulations cannot be faulted and the

appellantsâ?? arguments to the contradictory has no merit. On the issue of the penalty which includes a 5 days suspension, apart from a monetary

penalty of Rs.15 lakhs, the learned counsel for the respondent submitted that the magnitude of the offence in totality has been considered by the DAC

and the reasons given for imposing such a penalty in paragraph 9 of the order of DAC dated August 02, 2018.

7. Having heard the learned counsel for the parties and having perused various documents produced before us we note that there is sufficient

evidence against the appellant to prove that certain violations have been committed by it. The magnitude of money involved is also large in terms of

Rs.19 crores worth of client securities being pledged, acceptance of deposits to the tune of Rs.21.56 crores and non-settlement of funds belonging to

601 clients etc. However, since the appellant has complied with some of the directions issued by the DAC such as submission of CA Certificate,

fulfillment of the networth criteria, we are of the considered view that the penalty imposed on the appellant is disproportionate in the given facts and

circumstances. However, we are also of the considered view that the violations are not light enough to let off the appellants scot-free as contended by

them. Reliance on the orders of Sharewealth and JRG (Supra) are distinguishable on facts. In the result, while upholding the monetary penalty of Rs.

15 lakh imposed on the appellant we modify the direction relating to suspension of the appellant from all segments of the exchange NSE for 5 days to

that of a direction not to enroll or register any fresh clients for a period of one month. This period of one month shall commence from the seventh day

of the date of this order.

8. Appeal is partly allowed as above, no orders on costs.