(2020) 09 SEBI CK 0033

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No.278 Of 2020

M/s. Prrsaar APPELLANT

Vs

National Stock Exchange Of India Ltd RESPONDENT

Date of Decision : 18-09-2020

Acts Referred:

Citation : (2020) 09 SEBI CK 0033

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

Bench : Full Bench

Advocate : Mukesh Mohan Goyal, Rashid Boatwalla, Rahul Jain, Pruthvi Dhinoja, Manilal Kher Ambalal

Final Decision : Partly Allowed

Judgement

â??19. Improper use of

funds raised by placing

of clients securities with

bank/any other

financial institutions

viz. funds not used for

respective client

obligation/ margins.","Rs. 1,00,000/- or

0.1% of the

value of misuse

whichever is

higher.",

Mis-utilization of

clientsâ?? funds

and/or securities.",,

Sr. No,Details of contravention,Penalty (in rupees)

19.,"Improper use of funds

raised by placing of clients

securities with bank/any

other financial institutions

viz. funds not used for

respective client obligation/

margins.","Rs. 1,00,000/- or 0.1%

of the value of misuse

whichever is higher.

Mis-utilization of clientsâ?? funds

and/or securities.â??",,

authority or of any other Committee or officer of the Exchange authorised in that behalf or of any conduct, proceeding or method of",,

business which the relevant authority in its absolute discretion deems dishonourable, disgraceful or unbecoming a trading member of the",,

Exchange or inconsistent with just and equitable principles of trade or detrimental to the interests, good name or welfare of the Exchange",,

or prejudicial or subversive to its objections and purposes.â??,,

Further the provision relating to suspension of business is also extracted hereunder:-,,

â??Suspension of Business:,,

(8) The relevant authority may require a trading member to suspend its business in part or in whole:,,

(a) Prejudicial Business: When in the opinion of the relevant authority, the trading member conducts business in a manner prejudicial to the",,

Exchange by making purchases or sales of securities or offers to purchase or sell securities for the purpose of upsetting equilibrium of the,,

market or brining about a condition of demoralization in which prices will not fairly reflect market value, orâ??",,

It was thus contended that the DAC has ample power to suspend the business. Be that as it may. The impugned order does not refer to this,,

bye-laws and has only considered the Circular dated June 27, 2013 which does not provide for suspension of trading.",,

7. In the light of the aforesaid, the impugned order of the DAC dated October 25, 2016 as well as order dated February 03, 2017 cannot be",,

sustained and are quashed in so far as it relates to the quantum of penalty. The appeal is allowed to that extent. The matter is remitted to the,,

DAC to reconsider the quantum of penalty in the light of the Circular dated June 27, 2013 and applicable bye-laws as existing on the date",,

when the violation had occurred. The DAC will decide the matter within three months from today after giving an opportunity of hearing to,,

the appellant. In the circumstances of the case, party shall bear their own costs.â??",,

5. Based on the direction of the Supreme Court and of this Tribunal the committee by the impugned order dated 25th August, 2020 again imposed the",,

same penalty of Rs.10 lakhs and suspension of 5 trading days. The appellant being aggrieved has filed the present appeal.,,

6. At the outset, the Supreme Court as well as this Tribunal had made it apparently clear that penalty has to be calculated under the circular dated",,

27th June, 2013 and that suspension can be resorted only if it falls within the ambit of the Rule 8(a). Instead of calculating the penalty, the committee",,

has dwelled at length giving reasons to support its earlier order and justifying the need to impose a penalty of Rs.10 lakhs over and above the,,

maximum penalty prescribed under the circular dated 27th June, 2013. The committee has also observed that suspension was also justified under Rule",,

1 Chapter IV and Rule 3 of Chapter IV of the Bye-laws in order to given a deterrent effect which in the wisdom of the committee would act as a,,

credible deterrence.,,

7. In this regard, we find that the committee has unnecessarily used the word â??blatantly misusedâ? or that the circumstances in the capital market",,

at that time was very precarious in so far as the clients assets were concerned and has also held that it was serious default and for misappropriation or,,

misuse stringent action should be taken by exchange which is necessary so that the appellant does not indulge in these violations again. Reasons were,,

also given as to why the penalty should be in proportion to the gravity of the violations. It was held that using the securities of the client was a grievous,,

and serious misconduct under Rule 6 Chapter IV of the Bye-laws. Based on the aforesaid the committee in its wisdom passed the impugned order to,,

give a deterrent effect.,,

8. In the first instance, only a simple calculation was required to be given and no justification was required to be given. We are of the opinion that the",,

committee has gone over board and has clearly misunderstood the directions of the Supreme Court and/or of this Tribunal.,,

9. We also find that the committee while making the aforesaid observations also found that the amount misused by the appellant from client securities,,

was recouped and that no loss was caused to the investor or the client. The committee further found that under clause 19 of the circular dated 27th,,

June, 2013 the penalty if calculated at the rate of 0.1% of the value would come to Rs.54,300. The committee also found that it was a first time",,

violation committed by the appellant and was not a repeated violation.,,

10. In the light of the aforesaid, it would be best to peruse the circular dated 27th June, 2013. For facility, the covering page of the circular and certain",,

clauses which have a bearing to the case are extracted hereunder:,,

â??NATIONAL SOTCK EXCHANGE OF INDIA LIMITED,,

DEPARTMENT : INSPECTION,,

Download Ref. No.NSE/INSP/23768 Date: June 27, 2013",,

Circular Ref. No.163/2013,,

To All Members,,

Sub: List of violations and applicable penalties (CM, WDM, F&O and CD Segments)",,

This is in reference to the Exchange Circular No.139/2012; Download Ref. No:NSE/INSP/20854 dated May 28, 2012.",,

Further to the above, please find enclosed herewith revised list of common violations and the applicable penalties including escalation of",,

penalties for repeat violations as given in Annexure 1.,,

The penalties are decided by the relevant authority of the Exchange from time to time. It may be noted that the penalties are indicative in,, nature and could undergo change in specific cases depending on frequency and gravity of the violations. Actions in respect of violations,,

having high impact would be dealt on case to case basis depending on seriousness and gravity of such violations.,,

Members are advised to take note of the same and put in place systems and proceedings so as to ensure adherence to the compliance,,

requirements.,,

For and on behalf of,,

IV- Dealings with intermediaries,,

,,

IV- Dealings with

intermediaries","Dealing with

unregistered

intermediaries","Rs.1,00,000 per

unregistered intermediary

,,"Also, members to be

advised to ensure that the

entities stop dealing as

unregistered

intermediaries and be

directed to withdraw the

terminal(s), if any, allotted

to such entities

immediately.

In addition to monetary

penalty suspension of the

trading membership may

also be considered

depending upon the

gravity of the violation, in

cases where dealings with

more than 5 unregistered

intermediaries (in the Cash

Segment) and/or

intermediaries (in the

Derivatives Segment) are

observed

Applicable Penalty,Penalty for repeat violations,

Advice,Warning,

Warning,"Rs.5,000/-",

Monetary Penalty,Increase penalty amount by 50%,

(f) Failure to submit to or abide by Arbitration: If it neglects or fails or refuse to submit to arbitration or to abide by or carry out any,,

award, decision or order of the relevant authority or the Arbitration Committee or the arbitrators made in connection with a reference",,

under the Bye Laws, Rules and Regulations of the Exchange.",,

(g) Failure to testify or give information: If it neglects or fails or refuses to submit to the relevant authority or to a Committee or an officer,,

of the Exchange authorised in that behalf, such books, correspondence, documents and papers or any part thereof as may be required to",,

be produced or to appeal and testify before or cause any of its partners, attorneys, agents, authorised representatives or employees to",,

appear and testify before the relevant authority or such Committee or officer of the Exchange the relevant authority or such Committee or,,

officer of the Exchange or other person authorised in that behalf;,,

(h) Failure to submit Special Returns: If it neglects or fails or refuses to submit to the relevant authority within the time notified in that,,

behalf special returns in such form as the relevant authority may from time to time prescribe together with such other information as the,,

relevant authority may require whenever circumstances arise which in the opinion of the relevant authority make it desirable that such,,

special returns or information should be furnished by any or all the trading members;,,

(i) Failure to submit Audited Accounts: If it neglects or fails or refuses to submit its audited accounts to the Exchange within such time as,,

may be prescribed by the relevant authority from time to time.,,

(j) Failure to compare or submit accounts with Defaulters: If it neglects or fails to compare its accounts with the Defaultersâ??â??,,

Committee or to submit to it a statement of its accounts with a defaulter or a certificate that it has no such account or if it makes a false or,,

misleading statement therein;,,

(k) False or misleading Returns: If it neglects or fails or refuses to submit or makes any false or misleading statement in its clearing forms or,,

returns required to be submitted to the Exchange under the Bye Laws, Rules and Regulations;",,

(l) Vexatious complaints: If it or its agents brings before the relevant authority or a Committee or an officer of the Exchange or other person,,

authorised in that behalf a charge, compliant or suit which in the opinion of the relevant authority is frivolous, vexatious or malicious;",,

(m) Failure to pay dues and fees: If it fails to pay its subscription, fees, arbitration charges or any other money which may be due by it or",,

any fine or penalty imposed on it.â??,,

17. There is no doubt that the aforesaid provision gives power to the committee to suspend a member from his trading activity for which purpose,,

disciplinary proceedings have to be initiated under the heading,,

â??Disciplinary Proceedingsâ?. Rule 8(a) specifically provides for suspension which was the bone of contention which the respondent raised before,,

the Supreme Court. For facility Rule 8(a) is extracted as under:,,

â??Suspension of Business:,,

(8) The relevant authority may require a trading member to suspend its business in part or in whole:,,

(a) Prejudicial Business: When in the opinion of the relevant authority, the trading member conducts business in a manner prejudicial to the Exchange",,

by making purchases or sales of securities or offers to purchase or sell securities for the purpose of upsetting equilibrium of the market or brining,,

about a condition of demoralization in which prices will not fairly reflect market value, orâ??",,

18. A perusal of the aforesaid clearly indicates that the suspension can be

resorted only if the violation is prejudicial to the exchange (emphasis is,,

ours). The committee in the instant case has totally ignored Rule 8(a) and has nowhere considered as to how the violation is prejudicial to the,,

exchange. The only consideration which we find is under paragraph 14(i) of the impugned order wherein a finding has been given that the acts of the,,

appellant not only amounts to a breach of the regulation of the exchange but the circumstances also indicate that the conduct of the appellant was,,

undesirable. Nothing has been stated as to how the action of the appellant was prejudicial to the interest of the exchange.,,

19. In view of the aforesaid cumulative analysis we are of the opinion that the suspension order cannot be sustained under any circumstance and the,,

same is set aside. The imposition of penalty of Rs.10 lakhs in the given circumstances is wholly arbitrary and cannot be sustained. We find that the,,

appellant is only entitled for payment of maximum penalty as per clause 19 of the circular dated 27th June, 2013 which is Rs.1 lakh. Considering the",,

fact that the matter has come to this Tribunal thrice and the matter went to the Supreme Court, we are of the opinion that the appellant is also entitled",,

for the cost of litigation which we assess at Rs.50,000.",,

20. In the light of the aforesaid, the appeal is partly allowed. A maximum penalty of Rs.1 lakh is imposed upon the appellant under the circular dated",,

27th June, 2013. The appellant has already deposited a sum of Rs.10 lakhs pursuant to the order of the Supreme Court dated 27th February, 2017. The",,

appellant is therefore entitled for a refund of Rs.9,00,000 which amount shall be paid by the respondent alongwith simple interest at the rate of 6% p.a.",,

within 4 weeks from today. The interest will be calculated from the date of deposit till the date of refund to the appellant. In addition of the aforesaid,",,

the appellant is also entitled for costs of Rs.50,000 which shall also be paid to the appellant by the respondent within the same period.",,

21. 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.,,

