(2023) 10 SEBI CK 0010

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 813 Of 2023

Rapid Capital Services APPELLANT

Vs

National Stock Exchange Of India Ltd RESPONDENT

Date of Decision : 18-10-2023

Acts Referred:

Citation : (2023) 10 SEBI CK 0010

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Meera Swarup, Technical Member

Bench : Division Bench

Advocate : Prakash Shah, Meit Shah, Pradeep Sancheti, Rashid Boatwalla, Juan D?Souza

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. The appellant has challenged the order dated August 8, 2023 passed by the Member and Core Settlement Guarantee Fund Committee (hereinafter referred to as 'Committee') of National Stock Exchange Board of India (hereinafter referred to as 'NSE') whereby a penalty of Rs. 20,46,300/- was imposed for misuse of clients' funds.

2. The facts leading to the filing of the present appeal is that the appellant is a trading member registered with NSE. The stock exchange conducted a regular inspection based on which a show cause notice dated 1st December, 2021 was issued for non-compliance of various regulatory provisions. The alleged violation in the show cause notice was with regard to misuse of clients' funds, non-settlement of clients' funds and securities, shortfall in net worth, incorrect reporting of margin collected from clients etc.

3. The Committee after considering the replies found that various relevant regulatory provisions were violated by the Committee and, accordingly, imposed different quantum of penalties under different head totaling Rs. 24,20,900/- by

an order dated September 8, 2022.

4. Against the order of the Committee dated September 8, 2023, the appellant filed an Appeal No. 813 of 2023. The penalties imposed under different heads was not questioned except the imposition of penalty of Rs. 20,46,300/- under the head misuse of clients' funds. This Tribunal by an order dated February 7, 2023 allowed the appeal and remitted the matter to the Committee to decide the imposition of penalty for misuse of client's funds afresh. The Tribunal held that the approach adopted by the Committee was patently erroneous and if the appellant had taken a loan from the clients and was paying interest on that loan and had also deducted tax at source, then such evidence should be considered instead of treating the said loan account as the funds of the clients' merely on the basis of some funds had moved from the trading account to the loan account.

5. Pursuant to the direction of this Tribunal, the Committee reconsidered the matter and passed the impugned order dated August 8, 2023 imposing a penalty of Rs. 20,46,300/- towards misuse of clients' funds. The Committee in paragraph nos. 15.1.3(c) of the impugned order has held as under :-

"c. The Committee notes that the Noticee improperly maintained the books of accounts viz, clients' ledgers and loan accounts whereby 248 journal voucher entries were passed interchangeably between clients' financial ledgers and clients' loan accounts. Therefore, the Committee noted that it was substantial grounds, and it deems appropriate to not place reliance on financial statements, loan confirmation letters and TDS returns which are based on such improper books of accounts."

6. We are of the opinion that merely because the book of account was not properly maintained and clients' ledgers and loan accounts contained 248 journal entries does not mean that the loan taken by the appellant from his clients' was not a loan or that the said loan was misused by the appellant. The failure of the Committee to take cognizance of the financial statement, loan confirmation letters and TDS returns is abdication of their duty to consider the material evidence and the same cannot be ignored on the pretext that the appellant had an improper books of accounts.

7. We find that the show cause notice alleged that the appellant had misused the clients' funds to settle the obligations of debit balance clients or used it for own proprietary purposes. If the books of accounts were not properly maintained, it does not lead to any conclusion that the appellant had misused the clients' funds to settle the obligation of the debit balance clients or use it for its own proprietary purposes.

8. The charge in the show cause notice is clear and specific which, in our opinion, has not been proved and the stand of the appellant has been rejected on the account that the books of account was not properly maintained and the appellant had failed to clearly demarcate the receipt of the funds as loan and the clients' funds which finding is also incorrect in as much as the evidence in the nature of

audited financial statement certified by the statutory auditor substantiating that the appellant had taken a loan from the clients' and further providing proof that the appellant was paying interest on such loan and deducted TDS thereon and as well as loan confirmation letters clearly demonstrates evidence of a loan.

9. Consequently, for the reasons stated aforesaid, since the respondent Committee failed to carry out the direction of this Tribunal contained in its earlier order dated February 7, 2023, coupled with the fact that sufficient evidence has been brought on record to show that the appellant had taken a loan from his clients, the charge against the appellant that he had misused clients' funds to settle the obligations of debit balance clients or use it for own proprietary purposes is not proved. The impugned order is, consequently, set aside. The appeal is allowed.