

M/S PRRSAAR THROUGH ITS PROPRIETOR
VED PRAKASH GUPTA

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v.

NATIONAL STOCK EXCHANGE OF INDIA LTD.

(Civil Appeal No.3260 of 2017)

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JULY 22, 2019

[A.M. KHANWILKAR AND DINESH MAHESHWARI, JJ.]

Stock Exchange: Disciplinary Action Committee of National Stock Exchange of India Ltd. found the appellant guilty of indulging in financial irregularities and misconduct in conduct of business and imposed fine/penalty of Rs.10 lakhs with suspension from trading membership for five trading days – Before the appellate authority, appellant had specifically raised the issue about the appropriateness of the order suspending his trading membership and also quantum of penalty imposed by the appropriate authority – According to appellant, as per circular dated 27.06.2013, suspension of trading is not contemplated for violations allegedly committed by him and penalty in terms of circular dated 27.06.2013 could not exceed an amount of Rs.1 lakh or 0.1% of the value of misuse, whichever is higher – Appellate Authority, however, did not examine these contentions but proceeded to reject the appeal on the ground that the penalty imposed by appropriate authority cannot be said to be unreasonable or excessive – Therefore, impugned order is set aside and appellant is relegated to Appellate Tribunal by restoring the appeal for reconsideration only on the issue of quantum of punishment.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3260 of 2017

From the Judgment and Order dated 20.02.2017 of the Securities Appellate Tribunal at Mumbai in Appeal No. 53 of 2017

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Mukesh M. Goel, R. C. Kaushik, Advs. for the Appellant.

V. Giri, Sr. Adv., Rabin Majumder, Sumit Nagpal, Muthucharan S., Advs. for the Respondent.

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A The following Order of the Court was passed:

ORDER

1. Appeal admitted.
2. Heard learned counsel for the parties.

B 3. This appeal takes exception to the order dated 20.02.2017 passed by the Securities Appellate Tribunal at Mumbai in Misc. Application No.49 of 2017 and in Appeal No.53 of 2017, whereby the Appellate Tribunal rejected the appeal preferred against the order dated 03.02.2017 passed by the Disciplinary Action Committee of National Stock Exchange of India Ltd. which found the appellant guilty of indulging in financial irregularities and misconduct in conduct of business, and for which a fine/penalty of Rs.10 lakhs with suspension from trading membership of the appellant for five trading days came to be imposed.

C 4. The argument of the appellant before this Court is that the penalty/fine could be imposed only in the context of Circular dated 27.06.2013. The relevant part of the circular read thus:

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| <p>E “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.</p> <p>Mis-utilization of clients’ funds and/or securities.”</p> | <p>Rs. 1,00,000/- or 0.1% of the value of misuse whichever is higher.</p> |
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F 5. Thus, the appropriate authority could not have issued suspension of trading membership of the appellant. Further, the authority could not have imposed penalty/fine more than quantified in the circular extracted above.

G 6. The respondent, however, relied on the bye-laws, Chapter IV Rule 1, which reads thus:-

“Disciplinary Jurisdiction

H (1) The relevant authority may expel or suspend and/or fine under censure and/or warn and/or withdraw any of the

membership rights of a trading member if it be guilty of contravention, non-compliance, disobedience, disregard or evasion of any of the Bye Laws, Rules and Regulations of the Exchange or of any resolutions, orders, notices, directions or decisions or rulings of the Exchange or the relevant authority or of any other Committee or officer of the Exchange authorized 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.”

7. The provision regarding suspension of business reads thus:

“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, or”

8. It is then submitted that ample power is bestowed on the appropriate authority to suspend the trading membership of a member who indulges in prescribed misconduct. It is contended that no fault can be found with the order passed by the appropriate authority and has been rightly affirmed by the Appellate Tribunal.

9. After considering the rival submissions, it is noticed that the appellant had specifically raised the issue about the appropriateness of the order suspending the trading membership of the appellant and also regarding the quantum of penalty imposed by the appropriate authority. That can be discerned from the contention recorded in paragraph 3 of the impugned order which, inter alia, reads thus:

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A “... He submitted that the decision of the DAC of NSE is in violation of NSE Circular dated June 27, 2013, because, as per that circular suspending the trading is not contemplated for the violations allegedly committed by the appellant...”

B 10. The Appellate Tribunal, however, has not examined this contention but proceeded to reject the appeal on the specious ground that the penalty imposed by the appropriate authority cannot be said to be unreasonable or excessive. The argument of the appellant was that even though the appropriate authority can suspend the trading membership of the member indulging in misconduct, it can be resorted to only when it falls within the concerned Bye-law such as Bye-law 8(a) C relied upon by the respondent - which envisages that the trading member must conduct business “in a manner prejudicial to the Exchange” etc. Further, the penalty could not have exceeded an amount of Rs. 1 lakh or 0.1% of the value of misuse, whichever is higher. These arguments have not been dealt with by the Appellate Tribunal at all.

D 11. Resultantly, we deem it appropriate to set aside the impugned order and relegate the appellant before the Appellate Tribunal by restoring appeal No. 53 of 2017 to the file of the Securities Appellate Tribunal, Mumbai for reconsideration only on the issue of quantum of punishment awarded to the appellant. Indeed, while passing the final order, it will be E open to the Tribunal to pass appropriate order with regard to the amount deposited by the appellant pursuant to order dated 27.02.2017 passed by this Court.

F 12. We make it clear that the Appellate Tribunal will not go into technicalities of the effect of withdrawal of the appeal by the appellant bearing No. 60/2017. The Appellate Tribunal must decide the restored appeal on the issue of quantum of punishment afresh expeditiously.

13. The Civil Appeal is allowed in the above terms. No order as to costs.

G 14. Pending applications, if any, stand disposed of.