

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On : 31.10.2023

Date of Decision : 06.11.2023

Misc. Application No. 1245 of 2023

And

Appeal No. 818 of 2023

Choice Equity Broking Private Limited
Shree Shakambari Corporate Park, 156-158,
Chakravarti Ashok Society,
J. B. Nagar, Off Sahar Road,
Near Cambridge School,
Andheri (E), Mumbai- 400 099 ...Appellant

Versus

Multi Commodity Exchange of India Limited
Exchange Square, Suren Road,
Andheri (E), Mumbai- 93 ...Respondent

Mr. Rushin Kapadia, Advocate with Mr. Robin Shah, Advocate
i/b Bodhi Legal for the Appellant

Mr. Zerick Dastur, Advocate with Ms. Archana Uppuluri and
Mr. Anubhav Sinha, Advocates i/b Zerick Dastur Advocates for
the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per: Justice Tarun Agarwala, Presiding Officer

1. The appellant has challenged the order dated May 25,
2022 passed by the Multi Commodity Exchange of India

Limited (“MCX” for convenience) imposing a penalty of Rs. 18,93,750/- in terms of Circular dated August 20, 2018 as well as the order of MCX dated June 23, 2023 wherein the waiver application has been filed by the appellant was rejected.

2. The facts leading to the filing of the present appeal is, that the appellant is the trading member of MCX. The appellant onboarded a client on February 08, 2023. Pursuant thereto, the client of the appellant executed trades in six contracts on a single day on February 14, 2023; three on the buy side and three on the sell side and made some profit. The client executed the trades on her own using the online trading application of the appellant. The appellant had no role to play in the execution of the impugned trades and that the orders were placed by the client within the daily price range / limit, as fixed by the respondent MCX.

3. By the email dated February 15, 2023 MCX informed the appellant that the trades of the relevant client appears to be in the nature of abnormal / non-genuine trades as per the Circular dated August 20, 2018 and, therefore, directed the appellant to supply the details of the trades made by his clients and, further advised the appellant to verify the genuineness of the

transactions. Pursuant to the aforesaid email, the appellant vide email dated February 16, 2023 sought details from the client and also sought the rationale for executing the impugned trades. On February 20, 2023, the appellant supplied the relevant information to MCX.

4. After more than 3 months, MCX without issuing a show cause notice and without seeking an explanation from the appellant passed the impugned order dated May 25, 2023 imposing a monetary penalty of Rs, 18,93,750/- in terms of the Circular dated August 20, 2018. The said amount was subsequently debited from the account of the appellant by MCX. The appellant filed an application for waiver of the fine which was duly rejected. Hence the appeal.

5. We have heard Shri Rushin Kapadia, the learned counsel for the appellant and Shri Zerick Dastur, the learned counsel for the respondent.

6. The contention of the learned counsel for the appellant is, that the impugned order was passed in gross violation of the principles of the natural justice. No show cause notice was issued nor any explanation was sought from the appellant nor

any opportunity of hearing was granted and, therefore, the impugned order was passed without providing an opportunity of hearing in gross violation of the principles of natural justice as embodied under Article 14 of the Constitution of India. It was further contended that the rationale for imposition of the monetary penalty was that the alleged trades executed by the client of the appellant were found to be artificial, non-genuine and reversal in nature.

7. On the other hand, the learned counsel for the respondent contended that a show cause notice was issued and explanation was sought and that the relevant authority passed the impugned order under the Bye-laws and the Rules of the MCX which was in accordance with the principles of natural justice and in accordance with its Bye-laws and Rules. It was also stated that the penalty was imposed as per the Circular dated August 20, 2018.

8. In this regard, the learned counsel has placed reliance on Clause 3.1 of the Bye-laws which is extracted hereunder:-

“3.1 Subject to the provisions of these Bye-laws, the Articles of Association and Rules of the Exchange, Relevant authority shall have powers to frame Business Rules/ Regulations from time to time for efficient functioning and

*operations of the Exchange and to regulate the functioning and activities of the Members of the Exchange, their authorized representatives or persons, approved users, Clearing House, [***] Clearing Banks, and all other persons operating under or through them or dealing with them both inter-se and in relation to the Exchange and, determine trading and delivery specifications for contracts in commodities [/ securities] and price indices and their derivatives permitted for trading on the Exchange, including method of trading, clearing, settlement, [spot price polling mechanism] and other operations related thereto [and administration of penalties, fines and other consequences, including suspension/ expulsion for defaults or violation and media policy]. The Relevant Authority, from time to time, amend, add to, alter, modify, delete or repeal any of the provisions of the Business Rules/ Regulations, as may be deemed necessary or appropriate or if so desired or directed by the SEBI. Without prejudice to the generality of the Bye-laws of the Exchange, Rules, Business Rules/ Regulations shall provide inter alia for necessary*

authorization for taking care of operational requirements, which need to be enforced with immediate effect.

Without prejudice to the generality of the foregoing, the Relevant Authority so

appointed and empowered, may from time to time prescribe the Business Rules/ Regulations with a view to organize, facilitate, maintain, manage, control and regulate the operations, functions and supervision of the Exchange and to regulate the activities and functioning of the Exchange Members, participants, authorized representatives and authorized persons, and approved users, as may be necessary or expedient, and provide for necessary authorization whenever requirements are operational in its nature and such requirements need to be enforced with immediate effect in the following matters.

The Business Rules/ Regulations made or prescribed by the Relevant Authority under the provisions of these Bye-laws, the Articles of Association and Rules of the Exchange shall be subject to the directives, if any, received from the SEBI from time to time and shall be deemed to have been amended, modified or deleted accordingly. The provisions of the Business Rules/ Regulations amended, added to, altered, modified, deleted or repealed by the Relevant Authority shall also be subject to the directives, if any, received from the SEBI from time to time and the same shall be deemed to have been amended, modified, or deleted accordingly.”

9. A perusal of the aforesaid provision indicates that the relevant authority has been given the power to impose a penalty.

10. Reliance was also made to Rule 43(a), 45 and 52 of the Rules of MCX which has been framed under Section 4 of the Securities Contracts (Regulation) Act, 1956 ("SCRA"). For facility, Rule 43, 45 and 52 are extracted hereunder:-

"43. Power of the Board to define the grounds of suspension/expulsion

- a. The Board or relevant authority may, subject to the provisions of the SCRA/ SEBI Act and the Rules or Regulations made thereunder from time to time, make Bye-Laws, Rules and Regulations for defining the conduct or acts or omissions which renders a Member of the Exchange, liable to expulsion, suspension, fine or withdrawal or suspension of rights and privileges of membership of the Exchange and other consequences.*
- b. If any Member of the Exchange is guilty of such conduct or act or omission that under the aforesaid Bye-Laws, Rules and Regulations made in that behalf render him liable to suspension, expulsion or other consequences, the Board or the relevant authority shall*

suspend, expel or impose other consequences as the Board or the relevant authority may deem fit.

c. In exercising the said powers, the Board or the relevant authority shall observe and follow the procedure respectively set out in that behalf in the aforesaid Bye-Laws, Rules and Regulations.

45. Opportunity of being heard, mandatory

No resolution of the Board expelling or suspending a Member of the Exchange shall be passed or voted upon until and unless the Member of the Exchange has been given an opportunity to explain the charges against him. Such Member of the Exchange may appear at such meeting or state his case in writing addressed to the Exchange.

52. Failure to pay fine attracts suspension/expulsion

If a Member of the Exchange fails to pay any fine or penalty imposed upon him within fourteen (14) days after notice in writing has been served upon him by the Exchange, he may be suspended by the Board or the relevant authority until he makes payment, and if within a further period of thirty (30) days he fails to make such payment, he may be expelled by the Board.”

11. Under Rule 43(a) the Board or the relevant authority has the power to make Bye-laws, Rules and Regulations with regard to expulsion, suspension, fine or withdrawal or suspension of rights and privileges of membership of the Exchange and other consequences. Rule 43(c) indicates that while exercising the powers, the Board or the relevant authority shall follow the procedure set out in the Bye-laws, Rules and Regulations. Rule 45 provides, that the opportunity of hearing is mandatory while expelling or suspending a member and Rule 52 provides, that upon failure to pay fine or penalty the member could be suspended.

12. From a perusal of Clause 3.1 of the Bye-laws, it is clear that the relevant authority has been given the powers to impose a penalty. Rule 42 of the Rules clearly provide that the Board or the relevant authority is required to frame Rules or Regulations with regard to expulsion, suspension, fine or other consequences. According to the learned counsel for the respondent, the word “other consequences” would include penalty.

13. Assuming that the relevant authority has been given power to frame Rules with regard to imposition of penalty, we find that

no such Rules or Regulations or procedure has been framed under the Bye-laws or the Rules for imposition of penalty.

14. The contention of the respondent that a show cause notice was issued and contended that the email dated February 22, 2023 should be treated as the show cause notice. In our view, this email does not partake the nature of the show cause notice. This email is in response to the information sent by the appellant pursuant to the email sent by the respondent on February 15, 2023. The email of February 22, 2023 only indicates, that the trades made by the clients of the appellant gives an inference of unusual trading activity and that the trades appeared to be in the nature of abnormal/ non-genuine trades as described in the Circular dated August 20, 2018 and advised the appellant to do due diligence at his end. This email does not in any manner purports to be a show cause notice directing the appellant to show cause why penalty should not be imposed.

15. In *Gorkha Security Services vs. Government (NCT of Delhi) & Others (2014) 9 SCC 105* the Supreme Court held that the purpose of the show cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. The Supreme Court further held that in order to

fulfill the requirements of the principles of natural justice, the show cause notice should meet two requirements, namely, (a) material / grounds to be stated which according to the debarment necessitates an action; (b) particular penalty / action which is proposed to be taken.

16. In the instant case, we find that the alleged show cause notice which is the email dated February 22, 2023 does not show the grounds on which the action is proposed to be taken against the appellant. No grounds have been stated in the email nor the particular penalty action proposed to be taken has been indicated. Therefore, in our opinion, the email dated February 22, 2023 cannot be treated as a show cause notice.

17. In view of the aforesaid, we are of the opinion, that the imposition of penalty without issuing a show cause notice and without giving an opportunity of hearing is in gross violation of the principles of natural justice and cannot be sustained. The impugned orders are accordingly quashed. The appeal is allowed. The amount debited from the appellants' account is required to be credited forthwith by the respondent.

18. Before parting, we may observe that the Bye-laws and the Rules which have been produced before us provides imposition of penalty by the relevant authority but no procedure has been evolved for imposition of penalty. We accordingly direct the MCX to make such procedure for initiating proceedings for imposition of penalties against its members. In the circumstances of the case, parties shall bear their own costs. The misc. application is disposed of accordingly.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

06.11.2023 PRERNA Digitally signed
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