BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 136 of 2010

Date of decision: 13.12.2010

Kaynet Finance Limited
24 B, 1st Floor,
Khatau Building,
A.D. Modi Marg, Fort,
Mumbai – 400 001. …Appellant

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex,
Mumbai – 400 051.

2. The National Stock Exchange of India Limited
Exchange Plaza,
Bandra Kurla Complex,
Bandra (E),
Mumbai – 400 051.

3. Mr. M. Sundararaman
Flat No.2, Ganesh Pratap Society,
31, Aundh Road, Khadki,
Pune – 411 003.

4. Mr. Swapnil Gandhi
Sole Proprietor of M/s. Kanchan Investments
8, Phule Corner, Parvati,
Above Hotel Panchami,
Satara Road,
Pune – 411 009. …Respondents

Mr. Bharat Merchant, Advocate for the Appellant.
Ms. Daya Gupta, Advocate with Ms. Harshada Nagare, Advocate for Respondent no.1.
Mr. Sachin Chandrana, Advocate with Ms. Pranika Bhatia, Advocate for Respondent no. 2.
Mr. M. Sundararaman, Respondent no. 3 in person.
None for Respondent no. 4.

CORAM : Justice N.K. Sodhi, Presiding Officer
Samar Ray, Member
P.K. Malhotra, Member

Per : Justice N.K. Sodhi, Presiding Officer

This is the second round of litigation between the parties before us. In the first round, the appellant had challenged a communication dated May 22, 2009

received from the National Stock Exchange of India Limited (NSE) in which a direction had been issued to the former to resolve the complaint filed by respondent no. 3 herein regarding the transfer of 1100 shares of Videsh Sanchar Nigam Ltd. (VSNL) to the complainant alongwith corporate benefits accrued thereon.. Swapnil Gandhi respondent no. 4 herein was not a party in the first round of litigation. When Appeal no. 94 of 2009 filed by the appellant came up for hearing on July 7, 2009, counsel for the parties agreed that NSE be directed to pass a fresh order after affording a common hearing to the appellant and respondents 3 and 4 and we ordered accordingly. In pursuance to our direction, NSE gave a common hearing to the appellant and respondents 3 and 4 on January 21, 2010 when their statements were recorded. After hearing the parties, NSE reserved its orders. By letter dated April 20, 2010, the appellant was communicated the decision by NSE the relevant part of which is reproduced hereunder for ease of reference.

> "After hearing the parties, it is opined that you should return 1100 shares of VSNL along with corporate benefits to Mr. M Sundararaman. As per circular no. NSE/INSP/2003/21 dated September 1, 2003, delivery of securities in demat mode should be directly to/from the beneficiary accounts of the clients. You had confirmed that Mr. M Sundararaman was not registered as your client on the Exchange, but you accepted 1100 shares of VSNL towards margin for the trades executed in the Futures & Options segment by Mr. Swapnil Gandhi, who is your client registered on the Exchange. Subsequently, the said shares were returned by you to Mr. Swapnil Gandhi at his request.
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> In view of the above, you are advised to return 1100 shares of VSNL along with the corporate benefits to Mr. M Sundararaman and resolve the complaint by May 03, 2010, failing which an amount of Rs. 5,82,780.00 being the value of 1100 shares of VSNL (closing price as on June 16, 2009 along with corporate benefit of the shares) is proposed to be blocked from your deposits available with the Exchange."

Since the appellant failed to return 1100 shares of VSNL to respondent no. 3, NSE blocked an amount of ₹ 5,82,780 from the deposits made by the appellant and sent a communication dated May 5, 2010. The present appeal is directed against these communications dated April 20, 2010 and May 5, 2010.

2. The appellant, a public limited company is a stock broker registered with the Securities and Exchange Board of India (for short the Board) and a member of NSE. One Samir Gandhi who is a director of the appellant company is the brother of respondent no. 4 who is a client of the appellant. Respondent no. 3 filed on March 25, 2003 a complaint with NSE alleging that Samir Gandhi and respondent no. 4 together took a Delivery Instruction Slip (DIS) from him on August 3, 2002 for transferring 1100 shares in the pool account of the appellant and they represented that they were associated with the appellant and that they could execute transactions on behalf of constituents of the appellant in the Futures and Options segment of NSE as they had a terminal. His grievance is that 1100 shares were transferred in the demat account of the appellant with Janata Sahakari Bank Ltd. but no transaction / trade was executed on behalf of the complainant. He, therefore, demanded the return of his 1100 shares from the appellant and respondent no. 4. When summoned by the NSE, the appellant took the stand that it had received 1100 shares from the complainant (respondent no. 3) but denied that he was a client of the appellant. The case of the appellant is that Swapnil Gandhi, respondent no. 4 was its client and he brought the DIS from the complainant by way of margin for the trades to be executed on behalf of the 4th respondent. Respondent no. 4 was also summoned by NSE and he submitted a letter dated January 21, 2010 stating that his name was being unnecessarily dragged in and that NSE had no jurisdiction over him. He also stated that the complainant (respondent no. 3) was not a client of the appellant and requested that the complaint be dismissed. Upon hearing the parties, NSE gave its decision which has been reproduced hereinabove requiring the appellant to return 1100 shares of VSNL to respondent no. 3 failing which an amount representing the value of the shares together with corporate benefits shall be blocked, which has since been done.

3. We have heard the learned counsel for the appellant and respondent no. 2 and also respondent no. 3 in person. Respondent no. 4 has been served in the appeal and he sent a letter dated August 27, 2010 addressed to the Registrar of this Tribunal stating that he has no role to play in the matter as all the reliefs sought are against

NSE. He has sought leave of absence. The fact that 1100 shares of VSNL belonging to respondent no. 3 had been transferred in the demat account of the appellant is not in dispute. It is also not in dispute that the appellant as a stock broker did not execute any trade for and on behalf of respondent no. 3, the complainant. As a matter of fact the appellant in its statement before NSE has admitted that respondent no. 3 was not a client of the appellant. The plea of the appellant that it received these shares from respondent no. 3 as margin obligation for the trades it executed on behalf of respondent no. 4 cannot be accepted in view of the circular dated August 27, 2003 issued by the Securities and Exchange Board of India in exercise of its powers under section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Section 10 of the Securities Contracts (Regulation) Act, 1956. This circular which lays down the mode of payment and delivery of securities amplifies the instructions issued earlier in November 1993 on the same subject and prescribes that "in the case of securities also giving / taking delivery of securities in "demat mode" should be directly to / from the "beneficiary accounts" of the clients except…….". This circular makes it abundantly clear that securities in demat mode when taken by a broker even as margin on behalf of a client must necessarily come from his beneficiary account. In the case before us, it is the appellant's own case that the security by way of margin came from respondent no. 3 and it never executed any trade on his behalf. The shares transferred by respondent no. 3 could not have been used as margin money on behalf of the trades allegedly executed by the appellant on behalf of respondent no. 4. In this view of the matter NSE was right in directing the appellant to return 1100 shares of VSNL alongwith corporate benefits to respondent no. 3. Since this direction was not complied with, NSE was further justified in blocking the amount representing the value of these shares together with the corporate benefits. What is contended by the learned counsel for the appellant is that the transfer made by respondent no. 3 in favour of the appellant was much prior to the circular of August 27, 2003. This is so but the circular in question lays down the procedure for the transfer of securities between clients and brokers and being procedural, shall operate retrospectively. This has to be so because the earlier guidelines issued in the year 1993 which are now being amplified could not lay

down the procedure for the demat mode as that mode came into existence much later. Since the shares had gone from the demat account of respondent no. 3 to the demat account of the appellant which did not execute any trade on behalf of the former, the shares must go back to respondent no. 3. We do not, therefore, find any infirmity in the orders passed by NSE.

In the result, the appeal fails and same is dismissed. We make no order as to costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

Sd/-
P.K. Malhotra
Member

13.12.2010
Prepared and compared by:
msb