

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 44 of 2008

Date of decision: 10.11.2008

M/s. Money Consolidates

..... Appellant

Versus

1. National Stock Exchange of India Ltd.
2. Praman Capital Market Services Ltd.

..... Respondents

Mr. Bharat Merchant Advocate with Mr. Hitesh Jain Advocate for the Appellant.

Ms. Sanaya Dadachanji Advocate for Respondent no.1.

None for Respondent no.2.

Coram: Justice N.K. Sodhi, Presiding Officer
Utpal Bhattacharya, Member

Per: Justice N.K. Sodhi, Presiding Officer (Oral)

Challenge in this appeal is to the communication dated October 11, 2007 addressed by the National Stock Exchange of India Limited (NSE) to the appellant informing the latter that her request for a review of the decision already taken rejecting her claim could not be acceded to. By an earlier letter of February 23, 2006 NSE had informed the appellant that her claim for Rs.12,41,559.80 from the Investor Protection Fund in respect of the dealings with respondent no.2 was inadmissible for the detailed reasons contained in that letter. It appears that on receipt of this letter the appellant made an application to the NSE to review its decision.

2. The appellant is the sole proprietorship concern of Ms. Rajani Prabhakar. She is a registered sub-broker of Praman Capital Market Services Limited, a trading member and broker of NSE. It is common case of the parties that respondent no.2, the broker has been declared a defaulter by NSE. The appellant who is a sub-broker is said to have executed a large number of trades through the broker, some of which were executed by the appellant in her proprietary account (as a client) and others on behalf of her clients.

The grievance of the appellant is based on non receipt of shares purchased by her on her own account and on behalf of her clients. On receipt of the claim from the appellant NSE called upon the former to submit accounts and documents to substantiate the claim. It may be mentioned that under Chapter XII of the bye-laws of NSE any person including a trading member or a constituent who suffers any loss from any trading member being declared as a defaulter by NSE could make a claim for its settlement from the Investor Protection Fund. It is the case of NSE that despite several letters written to the appellant she failed to produce all the relevant accounts and documents to substantiate her claim and that whatever documents and accounts were produced, they did not substantiate her claim and accordingly the same was held to be inadmissible.

3. We have perused the impugned communication dated October 11, 2007 and also the letter dated February 23, 2006 containing the detailed reasons for rejecting the claim of the appellant. We have also gone through the affidavit in reply filed by NSE and find that before rejecting the claim of the appellant the documents and the accounts furnished by her had been referred to M/s. C.C. Chokshi & Co., an independent chartered accountant to examine the claim as made by the appellant. The independent chartered accountant had furnished a detailed report giving reasons as to how the claim made by the appellant had not been substantiated on the basis of the material on the record. The primary grievance made by the appellant is that a copy of the report of the chartered accountant on which reliance has been placed by the Defaulters' Committee and the trustees of the Investor Protection Fund had not been supplied to her at any stage of the proceedings. The learned counsel appearing for NSE could not controvert this submission and stated that the appellant would be given inspection of the documents/record asked for when she could go through the report of the chartered accountant. That may be so, but the claim made by the appellant has been rejected relying upon that report a copy of which was never furnished to the appellant and she had no opportunity to rebut the same. In these circumstances, it is not necessary for us to examine any other contention raised by the appellant as we are of the view that the principles of natural justice stood violated when NSE rejected the claim on the basis of

the report which has so far been kept back from the appellant. The reasons given by NSE in the communication dated February 23, 2006 are almost the same which were furnished by the chartered accountant recommending the rejection of the claim made by the appellant. Since the principles of natural justice have been violated, we have no hesitation in setting aside the impugned communications which we hereby do and remit the case back to NSE to pass a fresh order in accordance with law after furnishing to her the relevant part of the report of the chartered accountant which pertains to the appellant.

3. After filing the present appeal the appellant had placed on record a compilation of documents which according to her had been furnished to NSE which fact is seriously disputed by the learned counsel for respondent no.1. The learned counsel for NSE contends that these documents were never furnished at any stage to the NSE and that they are being placed before us for the first time. Be that as it may, now that we are remanding the case back to NSE for passing a fresh order, it would be appropriate and also in the interest of justice that it should look into these documents as well while considering the claim of the appellant afresh.

In the result, the appeal is allowed as above with no order as to costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Utpal Bhattacharya
Member

10.11.2008
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