BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Date of Decision: 18.07.2014

Misc. Application No. 63 of 2014
And
Appeal No. 122 of 2014

Mrs. Dina Parikh
43, Shreeji Shopping Arcade,
M.G. Road, Borivali (E),
Mumbai- 400 066 …Appellant

Versus

1. Inter Connected Stock Exchange of India Ltd. (ISE)
International Infotech Park,
Tower-7, 5th Floor,
Above Vashi Station,
Sector 30A, Vashi,
Navi Mumbai- 400 703

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

3. National Stock Exchange of India Limited
Exchange Plaza, Plot No. C/1, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai- 400 051 …Respondents

Mrs. Dina Parikh, Appellant in person.

Mr. Shachindra Dube, Authorized Representative with Mr. Sageer Khan, for Respondent No. 1

Mr. Kumar Desai, Advocate with Mr. Pratham V. Masurekar, Advocate for Respondent No. 2

Mr. Rashid Boatwalla, Advocate with Ms. Shaznin Unwala, Advocate for Respondent No. 3

CORAM: Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
A.S. Lamba, Member

Per: Justice J.P. Devadhar (Oral)

Misc. Application No. 63 of 2014

1. By this Miscellaneous Application applicant/appellant seeks condonation of approximately1000 days delay in filing the appeal.

2. For the reasons set out in the Miscellaneous Application, delay is condoned. Accordingly, Miscellaneous Application is allowed with no order as to costs.

Appeal No. 122 of 2014

1. Appellant herein basically seeks following two reliefs:

   i) Direction to the respondent to pay interest at the rate of 12% on ₹ 66,924/- from March 1, 2005 till final disposal of appeal.

   ii) Direct the respondent to pay balance amount of ₹ 33,076/- alongwith interest at the rate of 12% per annum from April 1, 2005 till final payment.

2. Facts relevant for the purpose of the present appeal are as follows:

   (a) Respondent No. 1 is a holding company of ISE Securities and Services Limited. ISE Securities and Services Limited (“ISS” for short) is wholly owned subsidiary of the Respondent No. 1.

   b) On January 18, 1999 appellant was registered as a trading member of respondent subject to depositing Base Minimum Capital amount and other charges.

Appellant was also registered as a sub-broker with ISS which enabled the appellant to execute trades on NSE & BSE through the trading terminal provided by ISS.

c) On April 4, 2005 terminal of appellant who was carrying on business as a sub-broker from year 1999 was deactivated as the appellant failed to maintain minimum level of net worth inspite of several reminders.

d) By letters dated April 5, 2005 and April 7, 2005 appellant requested respondent to release the amounts that were deposited as Base Minimum Capital and also by way of fixed deposits.

e) It is not in dispute that though the trading terminal was deactivated on April 4, 2005, trading membership of the appellant continued and in fact during the period from 2005 to 2009, appellant has paid annual fees payable to the respondent in relation to the trading membership of the appellant. With a view to transfer the above said trading membership appellant on February 9, 2009 sought prior approval from Securities and Exchange Board of India (“SEBI” for short) and on June 4, 2009 SEBI granted its approval for sale/transfer of membership of the appellant subject to conditions set out therein.

f) During the period when transfer of membership application dated February 9, 2009 was being processed, appellant declined to pay annual subscription fees towards membership inter alia on ground that since transfer of trading membership is under consideration there is no question of paying annual subscription fee and further there is zero trading due to deactivation of the trading terminal.

g) SEBI in its approval letter dated June 4, 2009, had specifically stated that security deposit of the appellant-transferor shall not be released by the respondent until the registration was granted to the transferee-broker. It appears that appellant could not complete sale/ transfer of membership and accordingly appellant sought refund of the amount deposited as Base Minimum Capital and as fixed deposit by cancelling the membership of appellant with the respondent. However, membership of appellant could be cancelled by respondent, only after registration of appellant as sub broker of ISS was cancelled. Admittedly on receiving approval for cancellation of registration of appellant as sub broker by competent authority on September 20, 2010, ISS addressed a letter to the appellant on October 11, 2010 specifically stating therein that the cancellation

process would be subject to clearing annual fees of respondent amounting to ₹ 30,826/-.

h) Thereupon, appellant on October 29, 2010 and on December 2, 2010 submitted various documents for cancellation of membership registration with the respondent, but failed to make payment towards arrears of annual subscription fees.

i) Notwithstanding, non-payment of dues for the Financial Year 2009-2010 and 2010-2011, respondent forwarded cancellation application of the appellant to SEBI seeking their approval. By a letter dated July 20, 2011, SEBI approved cancellation of trading membership of the appellant with effect from June 29, 2011.

j) Accordingly, the respondent by its letter dated August 2, 2011 intimated appellant about the cancellation of the membership of the appellant and forwarded a cheque for ₹ 66,924/- after deducting ₹ 33,076/- from the Base Minimum Capital deposit amount of ₹ 1 lac. Amount of ₹ 33,076/- deducted by respondent represented ₹ 13,788/- (inclusive of service tax) for each Financial Year 2009-2010 and Financial Year 2010-2011 plus interest on delayed payment of ₹ 5,500/- (₹13,788 + ₹13788+ ₹ 5500 = ₹ 33,076)

k) After receiving cheque for ₹66,924/- under protest, appellant have moved various authorities from time to time and ultimately has filed present appeal before this Tribunal seeking to challenge the amount of ₹33,076/- deducted by the respondent.

3. Mrs. Dina Parikh, appellant appearing in person submitted that on deactivating the terminal of the appellant in April 2005, business of the appellant came to stand still. Immediately thereafter on April 7, 2005 had sought refund of the amount deposited as Base Minimum Capital with the respondent. Since the said amount was not refunded, appellant met officers of respondent from time to time, however, officers of respondent instead of guiding the appellant properly went on wasting time on some pretext or the other. Since there was no transaction since April 2005, respondent is not justified in demanding annual subscription fees. It is further contended that even in the matter of refunding fixed deposit amount of ₹50,000/-, ISS had declined to refund entire amount and therefore appellant had to initiate arbitration proceedings, wherein appellant has succeeded. Therefore, in respect of refund of Base Minimum Capital amount, since the respondent has unduly delayed in making refund, it is just and proper to direct the respondent to refund the amount with interest as claimed in the memorandum of appeal.

4. We see no merit in the above contentions.

5. Appellant’s terminal was deactivated in April 2005 on account of failure on part of appellant to maintain minimum level of net worth.

Deactivating the terminal does not ipso facto amount to cancellation of the membership of the appellant as registered trading member of the respondent. Consequently, so long as the membership subsists, appellant was obliged to pay yearly membership subscription.

6. Although, immediately after deactivation of the terminal, appellant had sought refund of amount deposited as Base Minimum Capital, the said demand was without seeking cancellation of membership and therefore, appellant was not entitled to receive the amounts deposited at the time of obtaining trading membership of the respondent and was liable to continue to pay annual membership fee payable thereon. Admittedly, appellant has paid yearly membership subscription fees from 2005 till 2009.

7. It is only when the yearly membership subscription fee was enhanced by respondent with effect from April 1, 2009, appellant applied for transfer of membership on February 9, 2009 so that liability to pay enhanced yearly membership subscription fees with effect from April 1, 2009 is that of the transferee-broker. SEBI by its communication dated June 4, 2009 granted approval for sale/transfer of membership of appellant subject to the condition, inter alia, that the security deposit of the transferor-broker (appellant) shall not be released until the registration is granted to the transferee-broker.

8. Admittedly, appellant could not effect transfer of membership and consequently sought cancellation of membership by submitting requisite documents on October 29, 2010 and December 2, 2010. It is relevant to

note that appellant was repeatedly informed prior to and subsequent to making application for cancellation of membership, that payment of annual subscription fees for membership was mandatory. However, appellant failed and neglected to pay the same. In these circumstances, decision of the respondent in refunding the Base Minimum Capital amount on receiving approval of SEBI for cancellation of membership, after deducting the annual subscription amount payable upto the date of making application on October 29, 2010 (i.e., Financial Year 2009-2010 & 2010-2011) cannot be faulted.

9. First contention of appellant in seeking interest on the amount of ₹ 66,924/- already paid to the appellant is unjustified, because, the said amount has been paid on August 2, 2011 immediately after receiving approval from SEBI for cancellation of the registration of the appellant with effect from June 29, 2011. Since there is no undue delay in refunding that amount from the date of receiving approval of SEBI for cancellation of membership, appellant is not justified in demanding interest on the refunded amount of ₹66,924/-

10. Second contention of appellant in relation to demand of ₹ 33,076/- with interest is equally unsustainable, because, the said amount has been deducted towards yearly subscription payable towards membership fees till the date of making cancellation application on October 29, 2010, as enhanced with effect from April 1, 2009.

11. Whether the respondent is justified in enhancing the membership fees with effect from April 1, 2009 is neither the question raised in this

appeal nor can be gone into in these proceedings. Although appellant had protested against enhancement of membership fees since inception, in the absence of any stay granted by any competent authority appellant cannot escape liability from paying membership fees at the enhanced rate so long as the membership subsists.

12. No doubt that in view of transfer application made on February 9, 2009, appellant would not have been required to pay enhanced annual membership fees for Financial Year 2009-2010 commencing from April 1, 2009 if transfer of the said membership had taken place, because, in such a case liability to pay membership fees at enhanced rate with effect from April 1, 2009 would have been that of the transferee-broker and not the transferor-appellant.

13. Admittedly, inspite of approval granted by SEBI, appellant could not complete sale/transfer of membership and hence sought cancellation of membership by making an application on October 29, 2010. Having failed in her venture to transfer the membership, appellant cannot blame the respondent for charging enhanced membership fees from April 1, 2009 till the date of making application for cancellation of membership on October 29, 2010.

14. Argument of appellant that officers of respondent have not guided her properly is unacceptable, because, a member trading on the exchange cannot feign ignorance in complying with the obligation to pay annual membership fees so long as the membership exists and also obligation to make requisite application for cancellation of membership as and when

deemed fit. Therefore, in the facts of present case, where appellant even after deactivation of her trading terminal in April 2005 chose to continue her membership from 2005 till 2009 by paying yearly membership fees from time to time and chose to seek transfer the membership prior to enhancement of membership fees effective from April 1, 2009, is not justified in blaming the respondent in charging annual membership fees for the period from April 1, 2009 because, admittedly transfer deal did not go through and application of cancellation of membership was made on October 29, 2010. Instead of seeking approval for transfer of membership on February 9, 2009 if appellant had sought cancellation of membership by submitting requisite documents, then appellant would not have been required to pay membership fees for the period commencing from April 1, 2009, because, if transfer had taken place, appellant would not have been required to pay annual membership fees from April 1, 2009. Unfortunately, transfer of membership did not go trough and hence appellant chose to make application for cancellation of membership belatedly on October 29, 2010. In these circumstances, no fault can be found with the decision of respondent in demanding annual membership fees till the date of appellant making application for cancellation of membership on October 29, 2010.

15. Reliance placed by appellant on orders passed in arbitration proceedings is wholly misplaced, because, firstly, in the arbitration proceedings claim of appellant in relation to refund of ₹ 33,076/- has been expressly excluded (see para 1 of the Award at page 65 of appeal memorandum) and therefore orders passed in arbitration proceedings

have no bearing in the present case. Secondly, liability to pay annual membership fees to the respondent cannot be compared with the annual charges payable to the broker, because, liability to pay annual membership fees continues so long as the membership continues, irrespective of any trade is carried or not. Therefore, fact that the appellant has succeeded in the arbitration proceedings or that the annual charges payable to the broker have been waived cannot be a ground to hold that the appellant is not liable to pay annual membership fees at least till the date applied for cancellation of membership, because liability to pay annual membership fees is irrespective of whether trade is actually carried on or not.

16. For all aforesaid reasons, we see no merit in the appeal and same is hereby dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A S Lamba
Member

18.07.2014
Prepared & Compared By: PK

As amended pursuant to order dated 25.07.2014.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A S Lamba
Member

25.07.2014
Prepared & Compared By: Pk

BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Date of Decision: 25.07.2014

Misc. Application No. 63 of 2014
And
Appeal No. 122 of 2014

Mrs. Dina Parikh
43, Shreeji Shopping Arcade,
M.G. Road, Borivali (E),
Mumbai- 400 066 …Appellant

Versus

1. Inter Connected Stock Exchange of India Ltd. (ISE)
International Infotech Park,
Tower-7, 5th Floor,
Above Vashi Station,
Sector 30A, Vashi,
Navi Mumbai- 400 703

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

3. National Stock Exchange of India Limited
Exchange Plaza, Plot No. C/1, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai- 400 051 …Respondents

None for Appellant.

None for Respondent No. 1

Mr. Mihir Mody, Advocate with Mr. Pratham V. Masurekar, Advocate for Respondent No. 2

Mr. Rashid Boatwalla, Advocate for Respondent No. 3

CORAM: Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
A.S. Lamba, Member

Per: Justice J.P. Devadhar (Oral)

1. By a praecipe it is brought to our notice by counsel for Respondent No. 3 that paragraph 2(a) of our order dated July 18, 2014 contains certain factual errors and therefore it would be just and proper to substitute paragraph 2(a) in the order as follows:-

> *"2(a) Respondent No. 1 is a holding company of ISE Securities and Services Limited. ISE Securities and Services Limited ("ISS" for short) is wholly owned subsidiary of the Respondent No. 1.*

2. Although the matter is placed on board for speaking to the minutes, none have appeared on behalf of appellant and Respondent No. 1. Since the error pointed out is only a factual error which does not affect the merits of the decision, we deem it proper to direct the Registry to substitute paragraph 2(a) of our order as stated above with immediate effect.

3. Accordingly, the praecipe filed by Respondent No. 3 is disposed off with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A S Lamba
Member

25.07.2014
Prepared & Compared By: PK