

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 12.12.2019

Date of Decision : 17.12.2019

Appeal Lodging No. 597 of 2019

Axis Bank Limited
Trishul", 3rd Floor,
Opposite Samartheshwar Temple,
Near Law Garden, Ellisbridge,
Ahmedabad- 380 006

...Appellant

Versus

1. Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051
2. Karvy Stock Broking Ltd.
Karvy Millennium, Plot No. 31-P,
Nanakramguda Financial District,
Gachibowli,
Hyderabad- 500 032
3. National Securities Depositories Ltd.
4th Floor, "A" Wing,
Trade World, Kamala Mills Compound,
Senapati Bapat Marg,
Lower Parel,
Mumbai- 400 013
4. Central Depository Services (India) Limited
Marathon Futurex, A-Wing,
25th Floor, NM Joshi Marg,
Lower Parel,
Mumbai- 400 013
5. National Stock Exchange of India Ltd.
Exchange Plaza, Plot No. C/1,
G Block, Bandra Kurla Complex,
Bandra (E),
Mumbai- 400 051

...Respondents

Mr. Gaurav Joshi, Senior Advocate with Mr. Neville Lashkari, Mr. Chaitanya D. Mehta, Ms. Sonali Aggarwal, Mr. Bhanu Chopra and Ms. Sarika Raju, Advocates i/b M/s Dhruve Liladhar & Co. for the Appellant.

Mr. Rafique Dada, Senior Advocate with Mr. Anubhav Ghosh and Ms. Rashi Dalmia, Advocates i/b The Law Point for Respondent No. 1

Mr. KRCV Seshachalam, Advocate with Ms. Sabeena Mahadik and Mr. Aayush Kothari, Advocates i/b Vishesha Law Services for Respondent No. 2

Mr. Somasekhar Sundaresan, Advocate with Mr. Rohan Dakshini, Ms. Aakanksha Saxena, Ms. Kinjal Shah and Ms. E. Srivastava, Advocates i/b Rastrukent & Partners for Respondent No. 3

Mr. Somasekhar Sundaresan, Advocate with Ms. Shruti Rajan, Mr. Aditya Sikka and Mr. Pratham Masurekar, Advocates i/b Cyril Amarchand Mangaldas for Respondent No. 5

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M. T. Joshi, Judicial Member

Per: Dr. C.K.G. Nair

1. This appeal has been filed aggrieved by the communication dated November 23, 2019 issued by the National Securities Depository Limited (“NSDL” for convenience), Respondent No. 3 whereby preventing the appellant from accessing the securities pledged with the appellant by Karvy Stock Broking Limited (“Karvy” for convenience), Respondent No. 2. Since the said communication was issued pursuant to an ex-parte ad-interim order dated

November 22, 2019 and a related order dated November 29, 2019 both passed by the Whole Time Member (“WTM” for convenience) of Securities and Exchange Board of India (“SEBI” for convenience) in the matter of Karvy the said orders also have been impugned.

2. The order dated November 22, 2019 was passed by the WTM of SEBI following a report from the National Stock Exchange of India Limited (“NSE” for convenience) relating to pledging of client securities by Karvy by allegedly misutilizing the power of attorney granted by the clients. The said order *inter alia* directed the following in paragraph 21(iv) of the said order:-

“(i) KSBL is prohibited from taking new clients in respect of its stock broking activities;

(ii) The Depositories i.e. NSDL and CDSL, in order to prevent further misuse of clients’ securities by KSBL, are hereby directed not to act upon any instruction given by KSBL in pursuance of power of attorney given to KSBL by its clients, with immediate effect;

- (iii) *The Depositories shall monitor the movement of securities into and from the DP account of clients of KSBL as DP to ensure that clients' operations are not affected;*
- iv) *The Depositories shall not allow transfer of securities from DP account no. 11458979, named KARVY STOCK BROKING LTD (BSE) with immediate effect. The transfer of securities from DP account no. 11458979, named KARVY STOCK BROKING LTD (BSE) shall be permitted only to the respective beneficial owner who has paid in full against these securities, under supervision of NSE; and*
- (v) *The Depositories and Stock Exchanges shall initiate appropriate disciplinary regulatory proceedings against the Noticee for misuse of clients' funds and securities as per their respective bye laws, rules and regulations;.....”*

Thereafter, an appeal filed by Karvy before this Tribunal seeking flexibility in using the power of attorney was remanded to SEBI which was disposed of by the WTM of SEBI by order dated November 29, 2019. Further a number of lenders who were impacted by the order dated November 22, 2019,

particularly direction no. (iv) in paragraph 21 of the said order approached this Tribunal by filing Appeal Lodging Nos. 585 of 2019, 588 of 2019, 589 of 2019 and 590 of 2019 which were also disposed of vide our orders dated December 03, 2019 and December 04, 2019.

3. The appellant is a bank who has lent money to Karvy on the basis of securities pledged by Karvy. It is the contention of the appellant that its position viz-a-viz other lenders who came on appeal before this Tribunal earlier is different in the sense that while the other lenders/ appellants were directly impacted by direction no. (iv) in paragraph 21 of the November 22, 2019 order of the WTM of SEBI, it is the illegal extension of that order by NSDL that has impacted the appellant. This is because vide direction no. (iv) (Supra) only a particular account of Karvy was frozen; there is no such direction relating to freezing or restricting in any manner the account relevant to the appellant. As on December 07, 2019 an aggregate amount of about ₹ 81 crores and further interest etc. are due to the appellant from Karvy which was given in the form of overdraft against shares (“OAS”) from time to time. It is the contention of the appellant that providing credit against pledged securities is an approved business of the appellant and its business is in

conformity with the Circulars issued by SEBI from time to time regarding providing loans/ funds against pledged securities.

4. Shri Gaurav Joshi, learned Senior Counsel appearing on behalf of the appellant submits that the ex-parte ad-interim order dated November 22, 2019 passed by the WTM of SEBI did not contain any direction preventing the appellant from operating Demat Account No. 19502787 which is named “Karvy Stock Broking Limited- Client Account-NSE CM”. Because vide direction contained in para 21(iv) of the said order restriction was imposed only on DP Account No. 11458979, named KARVY STOCK BROKING LTD (BSE). Therefore, other DP Account Numbers of Karvy including Account No. 19502787 was not under any restrictions. However, by the impugned communication, Respondent No. 3, NSDL has kept the said account in abeyance and hence the appellant could not invoke the pledge when tried to do so. The operational part of this communication of NSDL is as follows:-

“SEBI advised Depositories, as a proactive and interim measure, to take all immediate necessary actions to protect the interest of investors, whose shares have been pledged. Accordingly, based on the information provided by NSE, such client

securities that appear to be pledged are therefore under a state of abeyance.”

5. It is the submission of the learned Senior Counsel that the pledged account namely “Karvy Stock Broking Limited- Client Account-NSE CM” is clearly a client account but it is factually on record that this is an account of the client securities where the clients have outstanding obligations towards Karvy and as such Karvy has legitimately pledged those securities and borrowed funds from the appellant. Voluminous data was also produced to prove this contention wherein client wise details of the number and value of securities, outstanding obligation of each client and the value of pledge etc. are given. Further, this was not a secret account like DP Account No. 11458979, named KARVY STOCK BROKING LTD (BSE) and it was always under the supervision of the Depositories and Exchange who are respondents in this appeal. Therefore, it was contended that, in the absence of an explicit direction from SEBI, NSDL could not have frozen the account or kept the rights of the appellant in abeyance by the impugned communication.

6. The learned Senior Counsel further contended that under the provisions of the Depositories Act, 1996 the pledgee has

rights over the securities pledged and such rights could not be arbitrarily kept in abeyance or extinguished without following due process and in the instant case the appellant was not even given an opportunity of being heard by either NSDL or SEBI or any other respondents herein. Accordingly, appellant seeks reliefs as under:-

- a) Quashing of the communication dated November 23, 2019 and as well as the orders passed by the WTM of SEBI dated November 22, 2019 and November 29, 2019, if the later two orders are interpreted to cover the securities in Client ID No. 19502787.
- b) The respondents be restrained from in any manner preventing the appellant from invoking the pledge on shares in Demat Account having Client ID No. 19502787.

Further the appellant seeks various interim reliefs *inter alia* seeking stay of the impugned directions, restraining the respondents from preventing the appellant from invoking the pledge, maintaining *status quo* in respect of the shares pledged in favour of the appellant in the Demat Account No. 19502787 to prevent any further transfer of the said shares etc.

7. Learned counsel Shri Somasekhar Sundaresan, appearing on behalf of Respondent Nos. 3 and 5 (NSDL and NSE) raised a

preliminary objection contending that the impugned communication from Respondent No. 3 NSDL is not appealable before this Tribunal as the mandate of this Tribunal is restricted to appeals under Section 15T of the SEBI Act, 1992 and Section 23A of the Depositories Act, 1996. Further without prejudice to the above submissions, the learned counsel contended that as is made clear in the said communication itself such a measure was taken in order to protect the interest of investors and as advised by SEBI in its ex-parte ad-interim order dated November 22, 2019 in paragraph 21(ii), which reads as follows:-

“The depositories i.e. NSDL and CDSL, in order to prevent further misuse of clients’ securities by KSBL, are hereby directed not to act upon any instruction given by KSBL in pursuance of power of attorney given to KSBL by its clients, with immediate effect.”

8. Learned Senior Counsel Shri Rafique Dada, representing Respondent No. 1, SEBI submits that the appellant was aware of the Circulars issued by SEBI in relation to treatment of clients’ securities etc. The Circular dated June 20, 2019 regarding handling of clients’ securities by trading members/clearing members had categorically stated that under no

circumstances the trading members like Karvy could have pledged clients' securities beyond September 30, 2019. Clause 4.8 of the Circular makes it very clear that the securities pledged shall "either be unpledged and returned to the clients upon fulfillment of pay-in obligation or disposed off after giving notice of 5 days to the client". Therefore, the appellant wrote to SEBI on October 03, 2019, after the expiry of the said three months' transition time provided by the June 20, 2019 Circular, seeking advice as to whether Karvy could be permitted three more months time to unpledge the shares pledged with them. It was further submitted that Karvy in turn proposed to the appellant a swapping arrangement of collaterals provided against credit facilities availed by Karvy which the appellant did not accept due to their own commercial consideration.

9. The learned Senior Counsel for SEBI further submitted that a Forensic Audit as directed by SEBI into the operations of Karvy is under progress. Only after receiving that report, which may take another three months more, the factual position relating to whether securities in the account under question belong to clients or whether it is a mix of client securities and Karvy securities on account of default of clients etc can be ascertained. Therefore, right now, without any prejudice to the

fact that appellant is an affected party, the securities in the said account cannot be handed over to the appellant. What is stated in the impugned communication from NSDL is that, securities in the account are kept in abeyance; not that securities are alienated. According to the learned senior counsel there is no need of any intervention at this stage.

10. The learned counsel representing Respondent No. 2 Karvy, on a specific query from the bench, submitted that if they are allowed to operate their accounts and transfer the securities rightly belonging to them they will be able to pay up their dues towards the appellant.

11. Having heard the learned counsel for the parties, and having perused the documents, we are of the view that the preliminary objection regarding maintainability of the appeal is not sustainable since the appellant is an affected party impacted by all the impugned communications/ orders together which the appeal is also challenging. It is a fact that the appellant as a bank has lent funds to Karvy under a permitted Loan against Shares arrangement and under the Depositories Act, rights and sanctity are provided to such pledged accounts. Therefore, the appellant is an affected party is clearly undisputed. It is also a fact that the appellant was not heard either by SEBI or by the

Exchanges or Depositories before passing the impugned directions. Though, the account frozen explicitly by the WTM of SEBI by order dated November 22, 2019 is not the same account as that of the appellant implicitly the order has got extended to such accounts because of the sweeping nature of the WTM's directions to protect the interest of the investors. Hence the action by Respondent No. 3 NSDL is also a consequential one as clearly stated in their communication.

12. Though the learned Senior Counsel for the appellant seeks to suggest a solution stating that some of the investors in fact owe dues to Karvy and hence securities to the extent of such dues rightly belonging to Karvy at least could be used by the appellant to invoke the pledge so that at least part of the funds would be available to the appellant. We are not in a position to ascertain the veracity of the information as provided by Karvy to the appellant. Therefore, in view of the facts and circumstances of the case we direct the appellant to file an appropriate representation before SEBI. If such an application is filed SEBI will hear the appellant and other relevant entities and pass appropriate directions within 15 days from the date of this order. In the interim *status quo* shall be maintained in

respect of the securities in Account No. 19502787 named
“Karvy Stock Broking Limited- Client Account-NSE CM”.

13. Appeal is disposed of on above terms at the stage of
admission itself. No order on costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

Sd/-
Justice M. T. Joshi
Judicial Member

17.12.2019
Prepared & Compared By: PK