

(2023) 02 SEBI CK 0025

Securities Appellate Tribunal Mumbai

Case No: Miscellaneous Application No. 199 Of 2023, Appeal No. 187 Of 2023

LFS Broking Private Limited

APPELLANT

Vs

National Stock Exchange Of India
Limited

RESPONDENT

Date of Decision: Feb. 23, 2023

Acts Referred:

- Securities And Exchange Board Of India Act, 1992 - Section 11, 11B, 11(2)

Hon'ble Judges: Tarun Agarwala Presiding Officer; Meera Swarup Technical Member

Bench: Division Bench

Advocate: P.N. Modi, Kunal Katariya, Ashok Singh, Janak Dwarkadas, Ankit Lohia, Rashid Boatwalla, Juan D♦Souza

Final Decision: Disposed Of

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order of the Member and Core Settlement Guarantee Fund Committee ("Committee" for convenience) of the National Stock Exchange of India Limited ("NSE" for convenience) dated January 31, 2023 suspending the trading membership of the appellant in all segments with immediate effect till further direction.

2. The facts leading to the filing of the present appeal is, that the Exchange received market intelligence that LFS Broking & PMS Services ('LFS-PMS' for short) was running a scheme assuring 2% monthly returns on a minimum investment of Rs. 25,000/-. The Exchange accordingly made the necessary investigation and observed that the appellant was engaged as a principal in a business other than securities involving personal financial liabilities. It was observed that LFS Broking & PMS Services and MOL Commodities (MOLC) were running unauthorized portfolio management services (PMS) without being registered as registered portfolio managers under the Securities and Exchange Board of India laws and that Mr. Saiyad Jiyajur Rahaman is running this business who is also a Dominant Promoter and Director of the appellant Company.

3. The Exchange accordingly initiated a forensic audit of the appellant for the period April 1, 2018 to July 7, 2021 to ascertain whether the appellant is engaged in providing assured returns to its clients. Based on the observation made in the forensic audit a show cause notice dated September 23, 2022 was issued alleging non-compliance of the regulatory provisions, namely, (a) that the appellant was engaged as a principal in a business other than securities involving personal financial liabilities and (b) failure to make arrangements for internal review of the business to detect and prevent violations and achieve compliance of the Byelaws, Rules and Regulations of the Exchange.

4. The appellant appeared before the Committee and submitted that LFS-PMS is the proprietorship firm of Mr. Saiyad Jiyajur Rahman and MOLC is the partnership firm in which Mr. Saiyad Jiyajur Rahman is the partner and that 87% of the shareholding of the appellant Company is controlled by Mr. Saiyad Jiyajur Rahman. It was contended that only the appellant is involved in the broking business and the partnership as well as partnership firms are engaged in real estate business, primary material supply etc. and are not involved in the securities market.

5. Since the charge of offering assured returns were specifically refuted by the appellant, the Committee during the course of hearing produced a video clip and some pamphlets indicating that the appellant was providing 2% monthly assured returns to its clients based on which the Committee came to the conclusion that there was sufficient evidence indicating that the appellant was involved in offering assured returns and therefore the Committee found that there was potential threat to the gullible investors from the appellant and therefore suspended the trading membership of the appellant (noticee) with immediate effect.

6. The Committee after considering the matter passed an order dated November 05, 2022 suspending the trading membership of the appellant with immediate effect. The appellant being aggrieved by the said decision filed Appeal No. 891 of 2022 which was allowed by an order dated 17.11.2022 directing the Committee to redetermine the matter. This Tribunal found that the Committee has acted in haste and in the absence of any cogent evidence the Tribunal held that the suspension order could not have been passed. This Tribunal further found that in the absence of any other evidence other than video clip and pamphlets which was yet to be proved the order of suspension of the appellant was done in haste.

7. We also observed that the Committee had fixed November 28, 2022 for final disposal and accordingly the Tribunal directed the Committee to redetermine the matter. We find that the Committee heard the matter on November 28, 2022 and thereafter passed an interim order on January 31, 2023 instead of deciding the matter finally.

8. The reason for only passing an interim order and not deciding the matter finally is apparent, namely, that the Committee is still finding evidence against the appellant and does not have the material to pass a final order.

9. In the instant case, the Committee has observed that the appellant is offering assured returns and that the Director of the appellant was misleading the investors by using the name of the appellant-company to collect funds from the public. The Committee further observed that the appellant was conducting its business in an unwarrantable and unjustified manner and that the appellant demonstrated lack of discipline and misconduct thereby creating an eminent threat to the interest of the investors and securities. The Committee further observed that the continuance of the trading membership of the appellant with the Exchange was detrimental to the interest of the investors and the securities market.

10. The reason for coming to the aforesaid conclusion that the appellant is offering assured returns is that Mr. Saiyad Jiyajur Rahaman is the dominant Promoter and Ex-Director of the appellant-company who is also a partner of MOLC and proprietor of LFS-PMS. From a perusal of the pamphlets, video clips, bank statements it is clear that Mr. Saiyad Jiyajur Rahaman is the brain behind PMS Services. The Committee further observed, that there is inflow and outflow of funds between the registered clients of the appellant and LFS-PMS and MOLC and that 333 registered clients of the appellant paid funds amounting to Rs. 2.01 crores to the accounts of LFS-PMS and MOLC. Further, 6219 registered clients of the appellant received funds amounting to Rs. 266

crores from the accounts of LFS-PMS and MOLC.

11. We have heard Shri P.N. Modi, the learned senior counsel for the Appellant and Shri Janak Dwarkadas, the learned senior counsel for the Respondent.

12. Having heard the learned senior counsel for the parties and having perused the record and the impugned order, we find that based on market intelligence that LFS Broking and PMS Services was running a monthly return scheme by assuring 2% monthly return on a minimum investment of Rs. 25,000/-, a forensic audit was conducted by NSE. Till date, the forensic audit has not come out with any evidence to show that the appellant was providing assured returns.

13. The video clip is relating to an awareness program wherein the main promoter Mr. Saiyad Jiyajur Rahaman has made a statement to the media personnel about a research team providing stock tips and minimizing the risk and providing good returns. Such statement prima-facie does not indicate that 'good returns' amounts to an 'assured return'. The transcript of the video clip points out to certain queries raised by the public and questions being asked by a reporter from the general public. Such statement so made by the public does not point out that the appellant is providing assured returns.

14. The video clip may indicate about investments and good returns being provided but such video clips cannot be made the gospel truth nor can it lead to a conclusion that the appellant is providing assured returns. Some more evidence is required to back the allegation of assured returns being provided by the appellant.

15. The pamphlets have not as yet been proved to be that of the appellant. The pamphlets indicate LFS Broking which is different to the name of the appellant which is LFS Broking Pvt. Ltd. There is no finding that LFS Broking and the appellant LFS Broking Pvt. Ltd. is one and the same.

16. The bank accounts which has been examined by the Committee is that of MOLC and LFS-PMS which indicates that some amounts have been paid to the registered clients of the appellant from the accounts of MOLC and LFS-PMS and similarly certain amounts have been given by some of the clients of the appellant to LFS-PMS and MOLC. This inflow and outflow of funds between some of the registered clients of the appellant and LFS-PMS and MOLC does not give any indication nor does it lead to any conclusion that the appellant was offering an assured return.

17. Thus, the finding of the Committee that the appellant is offering an assured return is purely based on surmises and conjectures. There is no shred of evidence at this stage to come to a conclusion that the appellant is involved in offering returns.

Consequently, the finding that the appellant is misleading the investors or that it is conducting its business in an unjustifiable manner and is creating an eminent threat to the interest of the investors and securities market cannot be sustained.

18. The pamphlets, and the video clips may at best create a suspicion but cannot give a prima facie opinion of the appellant offering assured returns. Further, the video clip is not a recent one.

19. In North End Foods Marketing Pvt. Ltd. vs. Securities and Exchange Board of India in Appeal No. 80 of 2019 decided on March 12, 2019 this Tribunal held as under:-

"13. Having heard the learned senior counsel at length, we find that it is no more res integra that SEBI has power to pass ex-parte interim orders, pending investigation, which power flows from Section 11 and 11B of the SEBI Act. A plain reading of Section 11 and 11B shows that SEBI has to protect the interests of the investors in securities

and to regulate the securities market by such measures as it thinks fit and such measures may be for any or all of the matters provided in sub-section 2 of Section 11 of the Act. SEBI has power to pass interim orders and such interim orders can also be passed ex-parte. Interim orders are passed in order to prevent further possible mischief of tampering with the securities market. If during a preliminary enquiry, it is found prima-facie, that the person is indulging in manipulation of the securities market, it would be obligatory for SEBI to pass an interim order or for that matter an ex- parte interim order in order to safeguard the interests of the investors and to maintain the integrity of the market. Normally, while passing an interim order, the principles of natural justice has to be adhered to, namely, that an opportunity of hearing is required to be given. Procedural fairness embodying natural justice is to be applied whenever action is taken affecting the rights of the parties. At times, an opportunity of hearing may not be pre-decisional and may necessarily have to be post-decisional especially where the act to be prevented is imminent or where action to be taken brooks no delay. Thus, pre decisional hearing is not always necessary when ex-parte ad-interim orders are made pending investigation or enquiry unless provided by the statute. In such cases, rules of natural justice would be satisfied, if the affected party is given a post decisional hearing.

14. However, it does not mean that in every case, an ex-parte interim order should be passed on the pretext that it was imminent to pass such interim order in order to protect the interest of the investor or the securities market. An interim order, however, temporary it may be, restraining an entity/person from pursuing his profession/trade may have substantial and serious consequences which cannot be compensated in terms of money.

15. Thus, ex-parte interim order may be made when there is an urgency. As held in *Liberty Oil Mills & Ors. vs. Union of India & 18 Ors.* [AIR (1984) SC 1271] decided on May 1, 1984, the urgency must be infused by a host of circumstances, viz. large scale misuse and attempts to monopolise or corner the market. In the said decision, the Supreme Court further held that the regulatory agency must move quickly in order to curb further mischief and to take action immediately in order to instill and restore confidence in the capital market."

20. Interim orders can be passed in case of emergency. The urgency must be infused by a host of circumstances such as large scale misuse, etc. Interim orders should be passed in order to curb further mischief. In the absence of any cogent evidence coming forward through forensic audit report or through any other evidence, we are of the opinion that at this stage there is no evidence to come to a conclusion that the appellant would create a potential threat to the gullible investors and, consequently, we are of the opinion that the interim order restraining the appellant from perusing his profession/ trade cannot be curbed.

21. In view of the aforesaid, the impugned order cannot be sustained and is set aside. The appeal is allowed. The misc. application for exemption is disposed of accordingly.

22. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Certified copy of this order is also available from the Registry on payment of usual charges.