

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 05.01.2018

Date of Decision : 31.01.2018

Appeal No. 375 of 2016

Mr. Bipin Vijaykant Mehta, HUF
Through Bipin Vijaykant Mehta (Karta),
B-605, Kamla Vihar,
Poinsur Gymkhana Road,
Kandivali (West),
Mumbai – 400 067.

.....Appellant

Versus

Assistant General Manager,
Bombay Stock Exchange Limited,
Phiroze Jeejeebhoy Towers,
Dalal Street, Fort,
Mumbai – 400 001.

.....Respondent

Mr. Ankit Lohia, Advocate with Ms. Ashwini Pawar, Advocate i/b Akshar
Laws for the Appellant.

Mr. Aditya Chitale, Advocate with Mr. Vivek Shah, Advocate for the
Respondent.

CORAM : Justice J.P. Devadhar, Presiding Officer
Dr. C.K.G. Nair, Member

Per : Dr. C.K.G. Nair, Member

1. This appeal has been preferred by the appellant aggrieved by the order of the BSE Limited ('BSE' for short) dated June 29, 2016 whereby the claim of the appellant arising from his trading with Unicon Securities Pvt. Ltd. ('Unicon' for short) has not been considered for payment from the Investor Protection Fund ('IPF' for short) of BSE on account of delayed submission of the claim by the appellant.

2. Appellant is a small investor who had a trading account with Unicon, a member / broker of the BSE during relevant time. On September 10, 2014 BSE declared Unicon as a defaulter and informed the public as per usual process and advised the investors to file Arbitration Reference with the BSE within 120 days from the date of the public notice, failing which the claim will not be eligible for compensation from the IPF. Further, adhering to the procedure laid-down by the Securities and Exchange Board of India ('SEBI' for short) circulars dated October 28, 2004 and June 16, 2011, BSE issued public notice in the form of an advertisement dated September 15, 2014 in two dailies to the same effect. On January 22, 2015, pursuant to the receipt of the complaint filed by the appellant in the SEBI SCORES System, BSE advised the appellant to file an Arbitration Reference with the BSE. The appellant filed the Arbitration Reference against the Unicon, the defaulter member of BSE on March 3, 2015 which was beyond the 120 days "Specified Period" given by the public notice issued by the BSE on September 15, 2014. The Arbitral Tribunal passed an ex parte award (because the Unicon did not appear before the Arbitrator) dated September 24, 2015 directing the defaulter member to pay a sum of Rs. 3,18,080/- with interest thereon to the appellant herein. On October 2, 2015 the appellant requested the BSE to pay the amount as awarded at the earliest. On October 14, 2015 the BSE wrote to the appellant asking why the appellant failed to submit the Arbitration Reference to the BSE within 120 days from the public notice dated September 15, 2015. On October 31, 2015 appellant reiterated the stand which was already informed to BSE that they were not aware about the declaration of Unicon as a defaulter as they were privy to neither the notice on the website of BSE nor the public notice in newspapers / dailies. The appellant reiterated their request to BSE for payment vide various communications dated December 31, 2015, June 20, 2016 etc. On

July 4, 2016 the appellant received the impugned communication / order whereby the claim of the appellant has been rejected by the BSE.

3. Shri Ankit Lohia, Learned Counsel appearing on behalf of the appellant strenuously argued that the appellant was in fact not aware of either Unicon being declared as defaulter by the BSE nor about the public notice seeking claim from the investors to be filed within a prescribed time limit. That is the reason why the appellant continued to correspond with Unicon on various dates. The appellant had been repeatedly requesting and reminding Unicon to transfer the various equity shares in their account balance. Since no response has been received from Unicon, a letter was issued through advocate of the appellant to Unicon to transfer the securities lying with the Unicon to the demat account maintained by the appellant with HDFC Bank on August 21, 2014. This letter which was sent to the Delhi office of Unicon was returned with the postal remark 'left'. Subsequently, on September 6, 2014 the appellant again wrote a letter through their advocate to the registered office of Unicon at Noida which was delivered on September 9, 2014. On January 22, 2015 BSE wrote to the appellant referring to the SCORES complaint placed on the SEBI website stating that "all the clients having claims against the defaulter are required to file their claims in arbitration under Rules, By-laws and Regulations of the Exchange and in case you have claim outstanding against defaulter Unicon for transaction executed at BSE, you can file arbitration at BSE. The time period to file arbitration cases will be governed by the Law of Limitation Act, 1963 which is 3 years from the date of arising of claim." So only on receipt of this communication the appellant came to know that Unicon was declared as defaulter by BSE and he was not aware about the public notice. Soon thereafter on March 3, 2015 appellant lodged their claim with the BSE

under Arbitration and requested the Arbitration Committee of BSE to appoint Arbitrator etc. and finally got the award in his favour on September 24, 2015. Since then the appellant has been trying to get the amount of Rs. 3,18,080/- through the IPF of BSE without success. BSE rejected the claim vide impugned communication dated June 29, 2016.

4. The Learned counsel for the appellant also pointed out that the guidelines relating to IPF under “Eligible Claims” state the following:-

“Eligible Claims

13. The IPF/CPF Trust however, may, if it is satisfied that the claims could not have been filed during the specified period for reasons beyond the control of the claimant, entertain claims received even after the specified period.

Determination of Legitimate Claims

16. The IPF/CPF Trust may adopt the arbitration mechanism at the Stock Exchange to determine the legitimacy of the claims received from the claimants.”

Emphasising the above guidelines the Counsel for the appellant submitted that his claim has been undisputed and legitimate which, on account of ignorance of the fact relating to the declaration of the broker as a defaulter he by himself and through his Attorney has been unsuccessfully corresponding with Unicon and thereafter with SEBI and then BSE. If he was aware that the broker was declared as defaulter in September 2014 there was no reason for him to engage an Attorney to correspond with Unicon instead of following the normal procedure of claiming from the IPF. Immediately on informing that the said broker Unicon had been declared a defaulter by BSE, claim has been filed with BSE as per the suggested Arbitration process. Being a small investor he was not in know of all the developments in the market and hence missed the public notice etc. and this is a genuine reason for condoning the delay under IPF Guidelines.

5. Shri Aditya Chitale, Learned Counsel appearing on behalf of the BSE stated that the appellant can enforce the claim through the Arbitration process. However, under the IPF Guidelines the claim had to be submitted within 120 days as published through the website of BSE on September 10, 2014 and through public notices in newspapers on September 15, 2014. Since the claim was not submitted within 120 days and no reliable reason has been provided for the delay in submission of claim, the Investor Grievances Committee has rejected the claim from IPF.

6. We do not find any merit in the argument of the Learned Counsel for the BSE. Guideline 13 relating to the IPF, as reproduced in para 4 above, clearly provides the power for relaxing the 120 days claim period to the IPF Trust / Committee. The argument that no legitimate reason for delay has been provided by the appellant is not correct in the instant case because the basis of the appellant's argument is that he was not aware of Unicon being declared a defaulter and hence pursuing transfer of securities from the trading account of the appellant maintained with Unicon to his demat account being maintained with HDFC Bank. The letters from the advocate of the appellant issued to Unicon in their Delhi office address and registered address in Noida are on record. Further, on January 21, 2015 the appellant lodged a complaint in the SCORES System of SEBI. All these facts support the argument of the appellant that he was in fact not aware of the declaration of Unicon as defaulter by BSE nor about the public notice issued by BSE. We do not find any reason for the appellant to adopt these time consuming complaint routes when he could have legitimately lodged his claim with the BSE on learning about Unicon being declared a defaulter. So in the facts and circumstances and based on the supporting documents produced before us we agree with the prayer of the appellant that he was in fact not aware of

Unicon being declared a defaulter by BSE till he got the reply from the BSE dated January 22, 2015 asking the appellant to file the claim under the Arbitration mechanism. We further note that the IPF Committee / Trust has power to relax the condition of 120 days limit for filing the claim.

7. Accordingly, impugned order is set aside and appeal is allowed with no order as to costs. BSE is directed to pay the amount payable under the arbitral award to the appellant within a period of 30 days from the date of this order.

Sd/-
Justice J.P. Devadhar
Presiding Officer

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

31.01.2018

Prepared and compared by:msb