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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 25th February, 2025

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CRL.M.C. 1213/2017, CRL.M.A. 2187/2020

SPIRE MARKETING (P) LTD.

Having Registered Office at :

AD-19, Plot No.3,

Sector-5, Dwarka,

New Delhi.

.....Petitioner

Through: Mr. C.D. Mali and Mr. Mukesh
Sharma, Advocates.

versus

1. **STATE (NCT OF DELHI)**

2. **NDA SECURITIES LTD.**

Having Registered Office at:

1002A, Arunachal Building,

19, Barakhamba Road,

New Delhi.

.....Respondents

Through: Mr. Shoaib Haider, APP for the State
with SI Shiwangi, PS Barakhamba
Road.

Mr. Murari Tiwari, Ms. Suruchi
Mittal, Ms. Nimisha Gupta, Mr.
Ujjwal Singh and Mohd. Umar,
Advocates for R2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)



1. A Petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C"*) has been filed for setting aside the impugned Order dated 08.12.2016 vide which the learned ASJ has upheld the Order of the learned M.M dated 19.06.2016 denying release of the sum of Rs.15 lakhs as payment of approx. 72000 Shares, which has been withheld by Bombay Stock Exchange Limited (BSE) in the aforesaid case.
2. ***Briefly stated***, the Petitioner/Spire Marketing (P) Ltd. had put 70000 Shares of M/s Ashutosh Paper Mills on 01.04.2013 on sale which were bought online by the officials of Respondent No.2/NDA Securities Ltd. However, since Respondent No.2 failed to comply with SEBI regulations regarding such trade, the Respondent No.2 contacted their client who claimed that they had not given any authorization for such trade.
3. Subsequently, Respondent No.2/NDA Securities Ltd. filed a Police complaint with P.S. Barakhamba Road alleging that some fraudulent transaction has been executed on 01.04.2013 in regard to the scrips of M/s Ashutosh Paper Mills. The Police officials of P.S. Barakhamba Road directed Bombay Stock Exchange Limited to withhold release of payout of funds to counter-party members in view of Complaint lodged by Respondent No.2. Thereafter, the Petitioner got a communication from BSE that out of the total traded scrip, the payment for approx. 70000 Shares is being withheld due to the aforesaid Complaint.
4. A Notice of Inquiry in the aforesaid Complaint was served upon Director of Petitioner, who duly appeared before the I.O and submitted the detailed Reply. The Petitioner has explained that Respondent No.2 had bought a total of more than 1 lakh Shares of the said scrip from open market



on that day which shows that Shares had been bought from other seller entities for the same script. The Petitioner further stated in the written Reply to the I.O., that its Company was nowhere related to M/s NDA Securities Ltd. or to any of its employees in any way and also submitted the trading sheets of its Brokerage houses. A letter was also addressed to the SHO, P.S. Barakhamba Road, detailing the entire facts.

5. It is claimed by the Petitioner that his money has got stuck in Bombay Stock Exchange to which he is entitled. He has written letters to BSE as well as SEBI, but SEBI in its letter dated 11.01.2014 has stated that the payout has been withheld on the directions of the Police.

6. More than four years have elapsed, but because of the callous attitude of the Police and for no fault of his own, he has been unnecessarily deprived of his money, which has been withheld.

7. The Respondent No.2/NDA Securities Ltd. had filed a Petition under Section 156(3) of Cr.P.C before the learned M.M in which an ATR was submitted, wherein it was stated that employees of Respondent No.2 were at fault. While the Petition was pending before the concerned M.M, FIR No.97.2015 under Section 420/120B of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*) P.S. Barakhamba Road, has registered and the investigations are still pending as the key accused persons are absconding.

8. The Petitioner has submitted that he has no involvement in the aforesaid case despite which the amount has been frozen. He had moved an Application for *Superdari* before the learned M.M who in a summary manner, dismissed the Application *vide* Order dated 16.09.2016.



9. This Order was challenged in the Revision, but the learned M.M also dismissed it *vide* impugned Order dated 08.12.2016. It is submitted that the Petitioner is nowhere responsible in this entire transaction and is entitled to release of money on *superdari*. Hence, the present Petition has been filed.

10. *The Counter-Affidavit has been filed on behalf of the Respondent No.2, M/s NDA Securities Ltd.,* wherein preliminary objections have been taken that it is the Directors of Petitioner Company who have perpetrated fraud on Respondent No.2 and are now trying to take away the hard earned money and flee, by using the process of law.

11. It is claimed that there is no illegality or perversity in the Orders of learned Trial Court and learned ASJ, and the Petition is liable to be dismissed.

12. The amount deposited with Bombay Stock Exchange cannot be claimed by the Petitioner since it has been deposited by Respondent No.2, though the Petitioner is at liberty to seek return of his share. It is claimed that the investigations are in progress. The main accused, Amit Jain is absconding against whom proceedings under Section 82 of Cr.P.C have been initiated. It is further claimed that while in the Petition, the Application is stated to be a *Superdari* Application, but nowhere in the Application was it stated to be so. The only relief sought was that “*property can be released to person from whose possession it was taken*”.

13. It is further stated that proceeds of Shares of M/s Ashutosh Paper Mills Ltd. is not ‘property’; rather was paid by Complainant. The payout proceeds of Shares of M/s Ashutosh Paper Mills Ltd., which had been given by the Petitioner, cannot be released on *Superdari*, and only the Shares can



be released on *Superdari* for which BSE has not been made a party. It is further stated that Shares of M/s Ashutosh Paper Mills Ltd. are not easily saleable in market being a penny stock of average price of Rs.2 to Rs.2.5 on the day of commission of offence i.e. 01.04.2013. The said Shares had attained the price of Rs.15.90 and there was a Seller Freeze in the market, as there were only sellers and no buyers.

14. The Complainant is a listed Stock Broking Company and has been in trading for more than three decades and never trades in such penny stocks. The customer from whose I.D the cheating has been effected, is out of India and had not been traced in the Stock Market from past many months. The only persons who stand to benefit from this cheating or can have a motive, is the Petitioner before this Court and his mother-in-law who sold the balance 30,000 Shares on the day of commission of offence. The other accused have merely acted on the instructions of the Petitioner and if any pay-out or proceeds of Shares are released to the Petitioners, he will escape and Complainant would not be able to recover its hard earned money.

15. It is further submitted that Petitioner is a Company without any assets or capital and does not have any fixed assets or property under its name. It has huge loans to pay under its liability. Moreover, the Petitioner had advanced money to two Brokerage houses i.e. Religare Securities Limited and Royal International, with whom the Petitioner had an account and main accused-Amit Jain was working (who had made a fraudulent call to the Complainant's office to commit cheating). The Petitioner has concealed and misrepresented the facts before this Court.

16. The Respondent No.2 has been cheated to the tune of Rs.15.90 lakhs



on account of criminal conspiracy between the Directors of the Petitioner and Amit Jain, Rajneesh Kumar and Smt. Vinita Loomba (Directors of Spire Marketing Pvt. Ltd.), Smt. Kaushalya Devi (mother-in-law of Sh. Rajneesh Kumar) and Shri Jyoti Prakash (brother of Rajneesh Kumar) and Narender Shekhawat (ex-employee of the Complainant whose job has been terminated for misappropriating the funds) and Sh. Ashish Aggarwal (trader, under training with the Complainant) who received the fraud call and executed the trade without any authority, in collusion and connivance with the Petitioner.

17. It is, therefore, submitted that there is no ground for release of money to the Petitioner/Accused and the present Petition is liable to be rejected.

18. The ***Status Report has been filed on behalf of the State***, wherein it has been explained that while conducting investigations in FIR No.97/2015 registered on the Complaint of the Respondent No.2, Notice under Section 91 of Cr.P.C was served on the Complainant Company to provide all the relevant information as well as all material evidence in their possession for further investigations. In response to the Notice, Complainant Company has provided documents including Appointment Letter of Ashish Agrawal, Client Registration Form and Account Statement of Mr. Brij Mohan Gagrani and recording of this transaction.

19. As per the allegations, the prima facie suspect Ashish Aggarwal was interrogated at length. It emerged that a phone call was made from a PCO which was attended by Mr. Pankaj (employee of Complainant Company). From the other side, the caller desired to talk to Ashish Aggarwal to whom the call was transferred. During the conversation, the Client Code was confirmed to Ashish Aggarwal and on the request of the caller, 1 lakh



Shares @ Rs.15.90 per Share of M/s Ashutosh Paper Mills Ltd. were purchased in the account of Mr. Brij Mohan Gagrani.

20. The Complainant provided the voice matching details which resemble to the accused Amit Jain who had been working with one Trading Company/Royal International Shares Pvt. Ltd. situated in Shakarpur, Delhi. The IP address used to log on 08.03.2013 and the Server of the Complainant Company, also belongs to that Company.

21. On asking about the job duties and capacity of Ashish Agarwal, the Complainant Company provided the information *vide* its Letter dated 18.03.2016 that Ashish Agarwal joined the complainant Company in January, 2012 and he was on probation for six months. The complainant Company also provided him a Terminal to give response to client's queries related to market movement. So, he was there to assist the other authorized dealers and was not authorized to trade in any client code.

22. Ashish Agarwal on the other hand, denied these allegations and he stated that he was there to trade in client's accounts. He further submitted that as per his bio-data provided by the Complainant Company, he was a Terminal operator in different Share trading Companies. The assertions of the Complainant Company that Ashish Agarwal was not assigned to do client code trading, was not substantiated by the documents.

23. Further, during the course of investigations, Rajneesh Sharma, Director of Petitioner Company was also interrogated and he told that he also is a Share broker having account with Royal International Shares Pvt. Ltd. The alleged 1 lakh Shares sold in the market belonged to Petitioner Company, out of which 85000 Shares were owned by him Rajnish Kumar



as Director, while 15000 Shares belonged to his mother-in-law, Kaushalya Devi who were the ultimate beneficiaries.

24. During the investigations, Complainant Company claimed that their ex-employee, Narender Shekhawat has been terminated as he has misappropriated the Company funds. He had filled the KYC form of Mr. Brij Mohan Gagrani and was aware of the amount of margin money in his account. Ex-employee, Narender Shekhawat was directed to join the investigations. He clearly denied that he knew Rajneesh Sharma and disclosed that he had been working with the Complainant Company till July, 2012. He acknowledged knowing about Mr. Brij Mohan Gagrani but denied that he knew the accused Amit Jain.

25. The whereabouts of main accused-Amit Jain, despite all possible efforts, could not be traced and has never joined the investigations. He has been declared a Proclaimed Absconder by learned M.M on 30.11.2017 and the P.O. Chargesheet of the case has been filed before the Trial Court on 16.01.2019.

26. In the end, it is submitted that the role of main beneficiary, Rajneesh Kumar, Director of M/s Spire Marketing Pvt. Ltd. i.e. the present Petitioner, cannot be ruled out in the present case.

27. **Submissions heard and the record perused.**

28. The *brief facts* are that a FIR No.97/2015 dated 07.08.2015 under Section 420/120B of IPC was registered at Police Station Barakhamba Road on the directions of learned M.M under Section 156(3) of Cr.P.C.

29. Shri Sanjay Aggarwal, Managing Director of M/s NDA Securities Ltd./Respondent No.2 had filed a Complaint alleging that his Company is a



member of Bombay Stock Exchange and had been dealing in trading of Shares and Certificates and his Membership code was 3082. Shri Brij Mohan Gagrani was their esteemed customer, who opened an open Account with their Company on 25.01.2012 with deposits of Rs.15 lakhs as margin money. His unique Client Code was with the Complainant Company. He maintained Deemat Account with IL&FS Securities Limited.

30. On 01.04.2013, he received a telephonic call at his office, allegedly from Shri Brij Mohan Gagrani who placed a Purchase Order of 1 lakh Shares of M/s Ashutosh Paper Mills Ltd., which were purchased by Mr. Ashish Aggarwal, an employee of the Complainant Company (respondent No.2). The purchase of Shares was confirmed to the caller, as per practice of BSE and Broker. The conformation was also sent to the client about the purchase and sale of Shares, by SMS.

31. As the transaction was large, the Complainant contacted the concerned client Mr. Brij Mohan Gagrani, who denied having made any call for the purchase of 1 lakhs Shares of M/s Ashutosh Paper Mills Ltd. This raised a suspicion that their employee Ashish Aggarwal has connived with the seller of Shares to defraud the Organization. The BSE was requested to stop the payment to the seller Broker as the transaction was fraudulent.

32. From the averments made by the Complainant, it is evident that the Petitioner had approached the Respondent No.2 for sale of 1 lakh Shares of M/s Ashutosh Paper Mills Ltd. The employee of Respondent No.2 was contacted by one person who is claimed to have placed an Order for purchase of 1 lakhs Shares of M/s Ashutosh Paper Mills Ltd. for an on behalf of Brij Mohan Gagrani. Accordingly, 1 lakh Shares were purchased



in his account.

33. However, subsequently it was found that Brij Mohan Gagrani had not placed any such Order, but there was some fraud committed by Amit Jain, an employee of Royal International Shares Pvt. Ltd. who had contacted Ashish Aggarwal employee of the Complainant Company by impersonating as Brij Mohan Gagrani.

34. From this entire narrative, it is evident that the Petitioner had genuinely put its Shares in market for sale through Respondent No.2. The alleged fraud has been played at the end of Respondent No.2, by one Amit Jain from Royal International Shares Pvt. Ltd. and allegedly with some involvement of Ashish Aggarwal Jain, who is an employee of the Respondent No.2 Company.

35. There may have been a fraudulent call received by Respondent No.2 placing an Order for purchase of the Shares of M/s Ashutosh Paper Mills Ltd. and consequently the Shares got purchased, but in this entire alleged fraud, the role of the Petitioner as being a party to this fraud cannot be deciphered. The Petitioner being the owners of the Shares, had made them available for sale. Therefore, for the alleged fraud committed on the Complainant, the Petitioners whose value of shares of Rs.15.90 lakhs got sold in the market, cannot be denied to him.

36. It is pertinent to observe that the Shares are not in the possession of the Petitioner, but have been handed over to the concerned Agency/SEBI for being sold in the market. On a query, it has been explained that these Shares do not have any market value as on date, for which reason the Respondent No.2 is not inclined to take responsibility of these Shares which



he had admittedly purchased for and on behalf of Brij Mohan Gagrani. There may have been some fraud committed at the level of Respondent No.2, since allegedly, no Shares were directed to be purchased by Brij Mohan Gagrani and Respondent No.2 may have suffered some financial loss on account of some fraud committed at its end, but that cannot be foisted on the Petitioner who in no way is a party to the alleged fraud.

37. There has been some argument raised that in the Statement of the Petitioner recorded during the further investigations as directed by the learned M.M, he has not been consistent about the number of Shares. However, learned counsel on behalf of the Petitioner has explained that inadvertently the correct number of Shares has not been mentioned, though the entire transaction has been truthfully stated by Shri Rajneesh Kumar, Director of the Petitioner Company.

38. There being no denial of the Shares originally belonged to Petitioner which he had put in the market for sale and which also got sold, *the Petitioner is entitled to release of Rs.15.90 lakhs realized on sale of the Shares in the market.*

39. It is, therefore, directed that without prejudice to the merits of the case, it is hereby directed that this amount of Rs.15.90 lakhs be released to the Petitioner on *Superdari* subject to him furnishing a Guarantee of the same amount, before the learned M.M. It is hereby clarified that there is no finding on the actual ownership of the Shares/amount which is subject to adjudication on the merits of the case.

40. The Petition is accordingly allowed and disposed of along with the pending Application(s).

2025:DHC:1438



**(NEENA BANSAL KRISHNA)
JUDGE**

FEBRUARY 25, 2025

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