

**IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING  
TO TRANSACTIONS IN SECURITIES) ACT, 1992 AT BOMBAY**

**MISCELLANEOUS APPLICATION NO. 63 OF 2019**

Shrenik Jhaveri .. Applicant

Vs.

The Bombay Stock Exchange Ltd. & Anr. .. Respondents

Mr. Shanay Shah a/w Darshan Mehta, Drishti Gudhaka i/b. Dhruve Liladhar & Co. for the Applicant.

Mr. Gandhar Raikar a/w Ms. Shilpa Bhate i/b. Leena Adhvaryu & Associates for the Custodian.

**CORAM : A. K. MENON,  
JUDGE, SPECIAL COURT  
DATED : 9TH JULY, 2021  
(THROUGH VIDEO CONFERENCE)**

**P.C. :**

1. By this application, the applicant-notified party seeks a direction against respondent no.1-Bombay Stock Exchange Ltd. (BSE Ltd.) to allot 10,000 shares of respondent no.1 along with accruals thereunder and dividend thereon, if any, pursuant to a Scheme of Corporatisation and Demutualisation. The 2<sup>nd</sup> respondent is the Custodian. The application proceeds on the basis that at all material times the applicant was a trading member of the Bombay Stock Exchange and is now entitled to

the allotment of shares pursuant to the said Scheme. The applicant has contended that he was an active member till October 1994 when he discontinued Stock Market Operations voluntarily but he continues to be a member. The applicant was later notified under Section 3(2) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (TORTS) on 6<sup>th</sup> October, 2001.

2. It is the case of the applicant that on 30<sup>th</sup> October, 2006 he was informed by respondent no.1 that allotment of 10,000 equity shares of Re.1/- each which would have been allotted to the applicant was kept in abeyance since he has been suspended on account of his being notified under the aforesaid TORTS Act. Although he claims that he has not received a notice of suspension, today there is no dispute that the applicant has been suspended. There cannot be a dispute that the applicant has been suspended since the respondent no.1 has filed an affidavit in reply of its Company Secretary wherein the fact of suspension is reiterated.
3. According to the respondent, the applicant was issued a notice on 17<sup>th</sup> October, 2001 informing him that in view of his

notification his membership rights were suspended. According to the respondent no.1 on the "Due Date" as envisaged under the Scheme of Corporatisation and Demutualisation the applicant's membership stood suspended and as a result no shares were allotted to him.

4. According to the deponent, since the suspension has not been challenged and the applicant continues to be a notified person, the suspension continues to be in operation. Furthermore, under the SEBI's Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012, a person eligible for acquiring or hold shares should be a fit and proper person and the criteria for being a fit and proper person under the said regulations required the person to be of a general reputation and record of financial integrity and one who had not incurred any disqualification set out therein. Thus, the notification of the applicant and the consequent suspension comes in the way of the shares being allotted to the applicant.
5. On behalf of the Custodian, an affidavit has been filed wherein they have made reference to order dated 25<sup>th</sup> February, 2010

passed by the Special Court wherein the Court had permitted the temporary lifting of the suspension for the limited purpose of issuing shares. It is contended that one issue that was kept open was whether the shares of the BSE Ltd. would be present or future assets of notified parties and that issue has since been decided by this court by judgment dated 11<sup>th</sup> December, 2020 in Misc. Application no.48 and 49 of 2019. The Custodian therefore has contended that the shares are attached property and may be released to the Custodian A/c Notified Party.

6. Mr. Shah appearing on behalf of the applicant fairly submits to the orders of the court in view of the order passed in Misc. Application no.48 and 49 of 2019. The Custodian likewise submits to the orders of the court.
  
7. Having considered the reply of the BSE Ltd., I am of the view that the application is liable to be allowed but subject to the clarification that the shares shall be issued in the name of the Custodian A/c Notified Party. Suspension therefore will have to be technically lifted for the purpose of issuing such shares and for no other reason. Since the other issue of the nature of the asset is already covered by the detailed order in Misc.

Application no.48 and 49 of 2019 and for the reasons recorded therein, these shares will constitute attached property of the notified party in the hands of the Custodian.

8. In view of the above, I pass the following order;
- (i) Misc. Application no.63 of 2019 is made absolute in terms of prayer clause (a) subject to the following clarification;
    - (a) It is clarified that the shares will be issued in favour of “Custodian A/c Shrenik Jhaveri.”
    - (b) Dividend and accruals, if any, shall also be remitted to the Custodian A/c Shrenik Jhaveri and invested along with other funds in the usual course.
  - (ii) BSE Ltd. to act on a certified copy of this order.
  - (iii) In order to subscribe these shares the subscription money is to be paid out of the notified parties account. In the event any fixed deposits are required to be prematurely encashed the Custodian shall do the needful.
  - (iv) Application is disposed in the above terms.

**(A. K. MENON, J.)**