

COMPETITION COMMISSION OF INDIA

July 07, 2011.

Case No. 13 of 2009

MCX Stock Exchange Limited

Informant

v.

National Stock Exchange of India Limited & Ors. Opposite Parties

ORDER

The opposite party No. 1 i.e. National Stock Exchange of India Limited (NSE) has moved application dated 4th July, 2011 under section 38 of the Competition Act, 2002 ('the Act') with a prayer that the order of the Commission dated 23rd June, 2011 passed in this case be rectified.

The applicant has reproduced the directions issued by the Commission in this order which are as under :-

- a) modify its zero price policy in the currency derivative market and ensure appropriate transaction costs are levied within sixty days of the date of the order.
- b) pay a penalty equivalent to 5% of the average of the opposite party's turnover over the past three years which amounts to INR 55.5 crores within thirty days of the receipt of the order.

It is stated in the application that it appears that there may have been a mistake in specifying the time periods for compliance of the directions. It is contended that as per the provisions contained in section 53B of the Act, the opposite party has a right to prefer an appeal to the Competition Appellate Tribunal within 60 days from the receipt of the order and, therefore, the period granted for filing an appeal cannot be curtailed. According to the applicant, curtailment of such a right could not have been the intention of the Commission as it would amount to violation of the Principles of Natural Justice and is against the spirit of the Act.

On the basis of the above contentions, it has been prayed that the Commission may rectify the mistake in its order and clarify that the opposite party will carry both the directions within a period of 60 days from the receipt of the order.

The Commission considered the application in its ordinary meeting held on 6th July, 2011. The contention that the same period should be granted for compliance which is available for filing the appeal under section 53B of the Act is not found to be tenable. The monetary penalty is imposed on an enterprise under section 27(b) of the Act and execution of orders of the Commission imposing monetary penalty is provided in section 39 of the Act. Further, section 53B of the Act relates, *inter alia*, to the time for filing an appeal before the Appellate Tribunal against the orders passed by the Commission. These provisions do not provide any period for execution of the directions/orders passed by the Commission imposing monetary penalty. Hence, it is left to the Commission to specify such period in the order imposing penalty.

In this regard, a reference can be made to regulation 3 of the Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011 which is as under :-

“3. Issuance of demand notice:

- (1) Where a penalty has been imposed on an enterprise by the Commission, the secretary shall issue a demand notice as set out in Form I appended to these regulations and shall serve it through the recovery officer to the enterprise concerned *after expiry of the period specified for the purpose in the order of imposition of penalty by the Commission* at its last address known to the Commission and in the case of a joint account to all the joint holders of such account at their last addresses known to the Commission
- (2) A demand notice issued under sub regulation (1) shall provide a time of thirty days from the date of service of the demand notice to the enterprise concerned to deposit the penalty in the manner specified in the said notice.

Provided that where the commission has any reason to believe that it will be detrimental if the full period of thirty

days aforesaid is allowed, it may direct the enterprise concerned that the sum specified in the demand notice shall be paid within such period being a period less than the period of thirty days aforesaid as may be specified by the Commission in the demand notice.

- (3) Upon receipt of demand notice the enterprise shall pay the penalty through challan as set out in Form II appended to these regulations, in favour of Pay & Accounts Officer (PAO), Ministry of Corporate Affairs, Head No. 1475.00.105.05, Sub Head 05 – Penalties imposed by Competition Commission of India’.
- (4) One copy of the challan shall be submitted by the enterprise to the recovery officer immediately but not later than seven days of the payment and the recovery officer shall make an entry in the penalty recovery register to the same effect.
- (5) The Commission may at any time, rectify any clerical or arithmetical mistake made in the demand notice.”

Thus, from the above regulation, it is clear that the Commission may specify the period in its order for the purpose of imposition of penalty.

It may be pointed out that the Commission has itself granted 60 days time to modify the zero price policy in the currency derivative market and to ensure appropriate transaction fee costs etc. and therefore, the prayer made in this regard i.e. for compliance of direction No. (a) appears to be misconceived.

So far as the prayer seeking 60 days time for paying the penalty is concerned, in the considered opinion of the Commission this time period does not require to be extended. Hence, the prayer made in this application is declined.

The Commission, however, notes that in the order a direction has been issued to the Secretary to issue a demand notice to the opposite party. As per the Recovery Regulations, the demand notice can be issued only after the expiry of the period specified for this purpose in the order of imposition of penalty by the Commission. Hence, in view of the regulations, the demand notice can be issued only after the expiry of the period of 30 days from the

date of receipt of the order by the opposite party No. 1. The direction contained in para 33.5 therefore, requires to be rectified under section 38 of the Act.

In view of the above, the application stands partly allowed. Para 33.5 of the Order of the Commission be, therefore, rectified/modified accordingly.

The Secretary is directed to inform the parties accordingly.

Sd —
Member (R)

Sd —
Member (P)

Sd —
Member (T)

Sd —
Chairperson