

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 67 of 2011

Date of decision: 13.6.2011

J. Balraman Iyer, Karta J. Balraman Iyer (HUF)
A/28 Shankar Nagar, Sector 1, Raipur,
Chhatisgarh- 492 001

.....Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra Kurla Complex,
Mumbai-400 051

..... Respondent

Mr. Sean Wassoodew, Advocate, for the Appellant.

Mr. Shiraz Rustomjee, Advocate with Ms. Harshada Nagare, Advocate for the Respondent.

CORAM : Justice N.K. Sodhi, Presiding Officer
P.K. Malhotra, Member
S.S.N. Moorthy, Member

Per : Justice N.K. Sodhi, Presiding Officer (Oral)

By order dated January 14, 2011, the adjudicating officer has imposed a penalty of ` 5 lacs on the appellant for non compliance of the summons issued to him during the course of the investigations. The appellant claims that on receipt of the summons dated 9.12.2009, he sent his reply giving all the information to the investigating officer on December 16, 2009. According to the appellant, the response was sent by courier. The respondent Board claims that it did not receive the reply sent by the appellant. The respondent Board was investigating the scrip of Alka Securities Limited and was gathering information from all those who traded in that scrip including the appellant. There were large number of entities who did not respond to the summons issued to them and the respondent Board published the notice in all editions of Hindustan Times requiring them to furnish the information asked from them. Despite the publication of the notice in the newspapers, it appeared to the Board that as many as nineteen entities including the appellant had not responded. It is common case of the parties that the other eighteen entities had also taken the same stand that they had filed their replies in

response to the summons issued to them. As already observed, the appellant too had taken a similar stand. The respondent Board then called upon all the nineteen entities including the appellant to produce proof of delivery. The other eighteen entities did produce the proof and the proceedings against them were dropped. The appellant could only produce a receipt from the courier service through which he had sent his reply but could not produce the proof of service. It is the appellants' case that when he approached the courier service to provide him with the proof, he was told that the courier service did not maintain records beyond six months. It was due to lapse of time that the proof of service could not be furnished by the courier company to the appellant. The learned counsel appearing for the Board points out that when the aforesaid nineteen entities had raised the plea that they had already filed their replies, the respondent Board made an internal check and found that only eighteen of those replies had been received and there was no reply on the record from the appellant. Since we have on record a copy of the receipt from the courier service and having regard to the facts and circumstances of this case, we are inclined to give the benefit of doubt to the appellant. Moreover, the response of the appellant has been received by the Board though, according to it, belatedly and it has not found anything lacking therein. It is not the case of the Board that the information was not adequate as per the summons. In these circumstances, we have no hesitation to hold that it has not been established that the appellant had not filed his response and giving him the benefit of doubt, we allow the appeal and set aside the impugned order. There is no order as to costs.

Sd/-
Justice N.K.Sodhi
Presiding Officer

Sd/-
P.K.Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

13.6.2011

pmb
Prepared & Compared By: Pmb