

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 36 of 2011

Date of Decision : 11.03.2011

KNA Securities Pvt. Ltd.
626, P.J. Towers, 6th Floor,
Dalal Street, Fort,
Mumbai 400 001.

...Appellant

Versus

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

...Respondent

Mr. Zal Andhyarujina, Advocate with Mr. A.A. Mukri, Advocate for the Appellant.

Dr. Poornima Advani, Advocate with Mr. Ajay Khaire and Ms. Amrita Joshi,
Advocates 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)

The dispute herein is in regard to the payment of broker fee and interest thereon. As per the show cause notice issued to the appellant, a sum of ₹ 17,72,580/- as principal amount was due from it as broker fee for the period from 1991-92 to 1996-97 and a further period of 15 years consisting of three block periods. The respondent Board in the show cause notice also claimed a further sum of ₹ 24,17,359/- as interest due. Feeling aggrieved by this action of the Board, the appellant has come up in appeal. We have heard the learned counsel for the parties. The fact that the appellant defaulted in the payment of broker fee is not in dispute and, therefore, according to the Securities and Exchange Board of India

(Stock Brokers and Sub-brokers) Regulations, 1992 it was liable to pay interest thereon at the rate of 15 per cent. Counsel for the parties are agreed that the principal amount has since been paid. It is not in dispute that in the year 2004 the respondent Board had come out with an Interest Liability Regularisation Scheme 2004, enabling the stock brokers to pay the principal amount and 20 per cent of the interest due from them in installments upon which 80 per cent of the interest stood waived. The appellant could not avail the benefit of this scheme as K.N. Amerchand who is holding more than 48 per cent of the share capital in the appellant and is its whole time director had been declared a notified party on November 20, 2001 under the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. K.N. Amerchand applied to the Special Court that he had been wrongly notified under the aforesaid Act as he had no concern with Harshad Mehta scam. His application was accepted and it was only on March 19, 2009 that he was de-notified. It is common ground between the parties that during the period from November 20, 2001 and March 19, 2009 the appellant did not carry on any trading activity. The reason is obvious. The appellant is a one man show of K.N. Amerchand and on his being declared a notified party, his entire assets stood attached and vested in the custodian. Since K.N. Amerchand was de-notified under the aforesaid Act, it is clear that the initial declaration of his being a notified party was not justified. Be that as it may, the fact remains that the appellant could not avail of the amnesty scheme for regularising his interest liability for no fault of his and the circumstances were beyond his control.

2. The learned counsel for the respondent refers to the provisions of the Stock Broker and Sub-brokers Regulations to contend that the respondent Board has no power to waive the interest since the amnesty scheme referred to above has since come to an end. She further states that in terms of the aforesaid Regulations, the appellant is liable to pay interest at the rate of 15 per cent and that the amount that could be waived is only upto ₹ 100/-. She also points out that no mercy need be shown to the appellant as K.N. Amerchand was declared a notified party in

November 2001 whereas the dues were for the period prior thereto. That may be so, but the fact remains that the benefit of the aforesaid scheme could not be availed by the appellant. We are of the view that a sympathetic view needs to be taken. In the peculiar circumstances of this case and with a view to secure the ends of justice, we are inclined to exercise our powers under Rule 21 of the Securities Appellate Tribunal (Procedure) Rules, 2000 and reduce the interest liability to 20 per cent of the amount claimed from the appellant provided the same is deposited within four weeks from today. We order accordingly.

The impugned order stands modified and the appeal is disposed of as above.

No costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
P.K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

11.3.2011

Prepared and compared by:

msb