IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 1553 of 2005
In SPECIAL CIVIL APPLICATION NO. 14355 of 2004
With
LETTERS PATENT APPEAL NO. 1554 of 2005
In SPECIAL CIVIL APPLICATION NO. 14351 of 2004
With
LETTERS PATENT APPEAL NO. 1557 of 2005
In SPECIAL CIVIL APPLICATION NO. 15183 of 2004
With
LETTERS PATENT APPEAL NO. 1559 of 2005
In SPECIAL CIVIL APPLICATION NO. 5792 of 2005
With
LETTERS PATENT APPEAL NO. 1560 of 2005
In SPECIAL CIVIL APPLICATION NO. 5793 of 2005
With
LETTERS PATENT APPEAL NO. 1561 of 2005
In SPECIAL CIVIL APPLICATION NO. 6095 of 2005
With
LETTERS PATENT APPEAL NO. 1808 of 2005
In SPECIAL CIVIL APPLICATION NO.2157 of 2005
With
LETTERS PATENT APPEAL NO. 1695 of 2005
In SPECIAL CIVIL APPLICATION NO. 15426 of 2004
With
LETTERS PATENT APPEAL NO. 1706 of 2005
In SPECIAL CIVIL APPLICATION NO. 14641 of 2004
With
LETTERS PATENT APPEAL NO.1562 of 2005
In SPECIAL CIVIL APPLICATION NO. 7544 of 2005

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AJAY SARABHAI....Appellant(s)
Versus
UNION OF INDIA (DELETED AS PERCOURT ORDER DT.18/01/06)
& 2....Respondent(s)

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Appearance:
MR SACHIN D VASAVADA, ADVOCATE for Appellant No. 1
DELETED for the Respondent(s) No. 1
SINGHI & CO, ADVOCATE for the Respondent(s) No. 2
MS JIRGA D JHAVERI, ADVOCATE for Respondent(s) No.3
MS VYOMA K JHAVERI, ADVOCATE for Respondent(s) No.3

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CORAM: HONOURABLE MR.JUSTICE ANANT S. DAVE
and
HONOURABLE MR.JUSTICE A.S. SUPEHIA

Date : 26/04/2016
ORAL (COMMON) ORDER
(**PER : HONOURABLE MR.JUSTICE ANANT S. DAVE**)

(1) All these appeals under Clause 15 of the Letters Patent, challenge CAV Judgment dated 11.10.2005 passed in Special Civil Application No.13946/2004 and allied matters whereby the scheme floated by Securities and Exchange Board of India (SEBI) viz. "SEBI (Interest Liability Regularisation), Scheme 2004", dated 15.07.2004 for waiver of 80% of the total interest liability of the share-brokers and the above scheme was incorporated in exercise of the powers under Sub-section (1) and Clause (k) of Sub-section (2) of Section 11 read with Section 12 of the Securities and Exchange Board of India Act, 1992 (the SEBI Act) in the context of contention raised failed into consideration.

(2) At the outset, while admitting all these appeals, common oral order dated 02.12.2005 came to be passed by this Court, which reads as under:

"The appeals are admitted.

2. Heard the learned counsel for the parties on the question of interim relief.

3. The appellant-petitioners are stock brokers who are registered with the Ahmedabad Stock Exchange. The stock brokers are liable to pay registration fees in accordance with the provisions of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992. The levy of registration fees under the Regulations was challenged by certain stock brokers in their individual and representative capacity. The litigation culminated into the decision of the Apex

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Court in BSE Brokers' Forum vs. Securities and Exchange board of India, (2001) 3 SCC 482. While disposing of the case, the Apex Court suggested that concessional rates of registration fees were required to be prescribed for certain types of transactions. The said suggestions were incorporated in Schedule III of the Regulations of 1992. According to SEBI, several circulars and reminders were sent to all stock brokers through the concerned Stock Exchange informing them that they have to submit turnover data with breakup of the transactions for which concessional rate of registration fee was claimed along with the auditors' certificate and that all this data was required to be submitted before the last date mentioned in such circulars/letters. According to SEBI, such last date was extended from time to time, but the appellants did not submit the relevant data along with the auditors' certificate and, therefore, the SEBI had no other alternative but to assess registration fee on the basis of the data earlier given by the appellants to the to the stock exchange without breakup of the turnover data. It was further submitted on behalf of SEBI that the remission of 80% interest on delayed payment of registration fee as per the provisions of SEBI (Interest Liability Regularization) Scheme 2004 was available only to those brokers who had submitted the turnover data with the breakup along with the auditor's certificate before the extended date and that the appellants having failed to do so, the appellants were not entitled to get any benefit of remission.

4. The appellants herein contending that they were not individually informed of such circulars or reminders filed writ petitions before the learned Single Judge praying for an appropriate writ, order or direction -

(a) quashing the decision of the respondents as stated in paragraphs No.2 and 3 of Part II of the Scheme to the effect and extent that “the stock brokers, who did not report turnover with breakup to exchanges and the exchange submitted the turnover data based on its record, will not be entitled to any concessional rate of fee” and that “no further data revision would, therefore, be permitted even if a stock broker wishes to submit an audited certificate at this stage, or if the exchange desires to revise its own data.”

(b) directing the respondent and in particular the second respondent to accept the turnover data with breakup given by the petitioner and to give effect thereof for the computation of the registration fee liability of the petitioner.

(c) directing the second respondent board to interpret the regulations in accordance with Schedule III and to calculate / compute the fees only in accordance with the

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regulations and in particular Schedule III read with regulation 10 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.

5. The learned Single Judge dismissed the petitions holding that the SEBI (Interest Liability Regularization) Scheme 2004 is in consonance with the provisions of the SEBI Act of 1992. Likewise the calculation of registration fees adopted by SEBI in absence of breakup turnover and in absence of auditors' report before a cut-off date is also legal and in consonance with the provisions of the Act and the Regulations. The Court further held that the Court cannot extend the benefit of the scheme after the cut-off date, especially in the facts of the present case when enough extensions have been given by SEBI and a large number of stock brokers of Ahmedabad Stock Exchange have already availed the benefit of the Scheme. The learned Judge further held that the cut-off date is an integral part of the benefit under the Scheme and that cut-off date in the facts of the present case is not arbitrary. The learned Judge held that the concession and conditions of the regularization Scheme cannot be segregated.

6. Having heard the learned counsel for the parties for some time, it appears to the Court that the finding given by the learned Single Judge that the cut-off date is an integral part of the benefit under the SEBI (Interest Liability and Regularization) Scheme 2004 appears to be in accordance with law and the stock brokers who failed to submit all the turnover data with the necessary breakup as certified by the auditor are not entitled to get the benefit of remission of interest on delayed payment of registration fees. Although that finding appears to be unexceptionable, it does not necessarily follow that the stock brokers will not be entitled to claim that registration fees on the excepted categories of transactions would be payable at the lower rates as provided in the amended Regulations, if they submit the turnover data with the necessary breakup along with the auditor's certificate now. The effect of delay in submitting the data with the break up is required to be examined vis-a-vis applicability of the rate of registration fee.

7. In fact the SEBI letter dated November 21, 2005 to the Ahmedabad Stock Exchange stating that since the petitions are dismissed on 11.10.2005, the 15 defaulting stock brokers who had filed the petitions before the High Court may be asked to pay up the outstanding registration fees by November 30, 2005, is itself an indication that without giving such stock brokers the benefit of remission in payment of interest, the stock brokers can

still pay the outstanding registration fees at the rates stipulated in the amended Regulations provided the turnover data submitted by them is certified either by the stock exchange or by the auditor. The Court has also of course noted the case of the stock exchange that in the past they had merely forwarded the turnover data submitted by the stock brokers and that they had never certified such data.

8. In view of the above discussion, in the facts and circumstances of the case, the following interim order is passed :-

A. By way of interim relief, it is directed that if, within one month from today, the appellants furnish auditors' certificate/s for data with the break-up in respect of the transactions attracting lower rate of registration fee and pay within one month from today, deficit registration fee, if any, along with interest for the delay in payment of any deficit registration fee in accordance with the Regulations, the respondents shall not take any adverse action against the appellants.

B It is clarified that -

(i) There is no stay of the finding given by the learned Single Judge that the appellants are not entitled to the benefit of waiver of interest under the Scheme known as the Securities and Exchange Board of India (Interest Liability Regularization) Scheme, 2004, meaning thereby the appellants having outstanding registration fee liabilities towards the Board are liable to pay the entire outstanding amounts including interest as per the Regulations.

(ii) Pendency of these appeals or the aforesaid interim relief does not preclude the respondent authorities from intimating to the appellants the amounts of the appellants' liability for registration fees plus interest in accordance with the Regulations and it will also be open to the appellants to pay such amounts with interest without prejudice to their rights and contentions in these appeals."

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(3) That in the facts and circumstances of this case and in view of affidavit dated 22.04.2016 filed by respondent No.2 viz. The Assistant General Manager, SEBI, it is not necessary to record further facts and grounds of appeal challenging the order of learned Single Judge

as learned counsels appearing for the appellants are not disputing the statement Annexure-A (Page Z/26) being fee details as on 30.04.2016 annexed to the said affidavit. For the sake of convenience, affidavit dated 22.04.2016 filed by respondent No.2 is reproduced hereinbelow:

"**AFFIDAVIT ON BEHALF OF RESPONDENT NO.2**

I, Prithwis Sarkar s/o. K.R.Sarkar, having office at Unit No: 002, Ground Floor, SAKAR I, Near Gandhigram Railway Station Opp. Nehru Bridge Ashram Road, Ahmedabad-380 009, do hereby solemnly affirm and state as under:

1. I am working as an Assistant General Manager with the Respondent No.2 herein. I am conversant with the facts of the present case and am authorized to file the present affidavit. I am filing the present Affidavit for a limited purpose of placing certain details on record.
2. I say that the Appellants have filed the present appeal challenging the order and judgment dated 11.10.2005 passed by the Hon'ble Court in Special Civil Application No.13946 of 2004 holding that the SEBI (Interest Liability and Regularisation) Schem, 2004 in consonance with the SEBI Act, 1992 and the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

3. I say that the Hon'ble Court vide order dated 2.12.2005 passed an interim order directing the Appellants to furnish auditor's certificate/s for data with break up in respect of the transactions attracting lower rate of registration fee and pay within one month, deficit registration fee, if any, along with interest for the delay in payment of any registration fee in accordance with the Regulations, the respondents shall not take any adverse action against the appellants.

4. I say that pursuant to the interim order dated 2.12.2005, some of the Appellants deposited the amount towards the registration fees and interest. I say that a Statement of outstanding is prepared by deponent organisation showing the details of the amount due and outstanding from each of the Appellants including fee and interest liabilities of transferors as on 30.4.2016 towards the registration fee and interest. A copy of the Statement of outstanding is annexed hereto and marked "**Annexure A**" (which includes fee and interest liabilities

of transferors in respect of sl.no.1 and 9).

5. I say that if the Appellants pay the amount as per the Statement of outstanding as on 30.4.2016, no further amount would be due and payable from the Appellant towards the registration fees and interest and the dispute between the parties shall stand resolved.

6. Since the Statement of outstanding at Annexure-A to this Affidavit is in respect of all the connected matters in the present group of LPA, separate Affidavits are not being filed in each of the connected matters to avoid burdening the record of the Hon'ble Court. In view thereof, the present Affidavit may also be treated as part of the other connected group matters."

(4) Mr.Sachin Vasavda, learned counsel, appears on behalf of the appellants in Letters Patent Appeal Nos.1553/05, 1554/05, 1557/05, 1559/05, 1560/05, 1561/05. Likewise, he has instructions to appear on behalf of the appellant of Letters Patent Appeal No.1808/05 where Mr.H.K.Patel, learned counsel, appears on record.

(5) Mr.A.S.Vakil, learned counsel appears on behalf of the appellants in Letters Patent Appeal No.1695/05.

(6) Mr.Amar Bhatt, learned counsel appearing on behalf of the appellants in Letters Patent Appeal Nos.1706/05 and 1562/05, and states that as on date he has no instructions to state anything about statement at Annexure-A (Page Z/26) to the affidavit-in-reply dated 22.04.2016 filed by respondent No.2.

(7) Mr.A.S.Vakil and Mr.Sachin Vasavda, learned counsels appearing for the respective appellants, as recorded hereinabove, state, on

instructions, that total outstanding dues, as shown in the last column of the statement at Annexure-A to the affidavit-in-reply dated 22.04.2016 filed by respondent No.2 pertaining to fees details as on 30.04.2016, qua their respective clients viz. where Mr.Sachin Vasavda, learned counsel appears i.e. at Sr. Nos.2, 3, 4, 7, 10, 11 and 13 and he states that outstanding dues shown in the said last column will be paid by demand draft on or before 30.04.2016.

7.1) So far as the appellant represented at Sr. No.6 of the aforesaid statement, instructions are received by Mr. A. S. Vakil, learned counsel, that total outstanding dues will be paid by demand draft on or before 30.04.2016, drawn in favour of the name and address so furnished by respondent No.2.

(8) For Letters Patent Appeal(s) arising out of impugned judgment dated 11.10.2005 passed in group of Special Civil Application No.13946/04 and allied matters barring the above appeals, for which instructions are received and statement is made on behalf of the learned counsels appearing for the appellants, other Letters Patent Appeals are disposed with a direction to the appellants to pay the total outstanding dues shown in the last column of

the statement at Annexure-A (Page Z/26) to the affidavit-in-reply dated 22.04.2016 filed by respondent No.2 by way of demand draft(s) on or before 30.04.2016, failing to which it will be open to respondent No.2 to take appropriate action in accordance with law.

(9) Mr.A.S. Vakil and Mr.Sachin Vasavda, learned counsels, appearing for the respective appellants are as such *ad idem* with what has been stated by the deponent in the above affidavit dated 22.04.2016, subject to payment of total outstanding dues reflected in the last column of the statement at Annexure-A (Page Z/26) to the affidavit-in-reply dated 22.04.2016 filed by respondent No.2, we dispose of all these appeals accordingly.

The amounts are payable by way of Demand Drafts drawn in favour of "SECURITIES AND EXCHANGE BOARD OF INDIA" payable at MUMBAI.

The said Demand Drafts should be sent to:
Shri Rajesh Kumar Dangeti,
DGM-MIRSD-I,
Securities and Exchange Board of India,
SEBI Bhavan, Plot No.C4A,
'G' Block, Bandra Kurla Complex,
Bandra (East), Mumbai-400 051.

The aforesaid Demand Drafts should reach SEBI, Mumbai within 30th of April, 2016, otherwise, interest for the month of May, 2016 @ 15 p.a.

Would be applicable on the amounts indicated in the chart (as on April, 2016.)

(10) Upon payment of total outstanding dues, as mentioned in the last column of the statement at Annexure-A (Page Z/26) to the affidavit-in-reply dated 22.04.2016 filed by respondent No.2, it will be open for the appellants to request respondent No.2 to issue No Due Certificate, etc. and the same may be considered by SEBI in accordance with law.

(11) Registry to place a copy of this order in all connected matters.

Sd/-
[ANANT S.DAVE, J]

Sd/-
[A.S. SUPEHIA, J]

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*Bhavesh-[pps]**

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THE HIGH COURT OF GUJARAT
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