

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Date of Hearing : 15.03.2021**

**Date of Decision : 22.03.2021**

**Appeal No. 494 of 2019**

MLB Financial Services Ltd.  
315, Pratap Chambers,  
Gurudwara Road,  
Karol Bagh,  
New Delhi – 110 005.

..... Appellant

Versus

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

... Respondent

Mr. Neerav Merchant, Advocate with Mr. Nadeem Shama, Advocate  
i/b Thakordas and Madgavkar and Mr. Hari Om Maheshwari,  
Authorized Representative for the Appellant.

Mr. Anubhav Ghosh, Advocate with Mr. Ravishekhar Pandey,  
Advocate i/b The Law Point for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer  
Dr. C. K. G. Nair, Member  
Justice M. T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated June 20, 2019 rejecting the representation of the appellant on payment of interest and cost.

2. The facts leading to the filing of the appeal is, that one Mr. Manohar Lal Bansal was carrying on business as a member partner in a partnership firm M/s. Manoharlal Bansal & Co. on the Delhi Stock Exchange. This partnership firm was subsequently converted to a corporate entity known as MLB Financial Services Ltd. In October 2004, Securities and Exchange Board of India (hereinafter referred to as 'SEBI') sent a Fee Liability Statement under the Securities and Exchange Board of India (Interest Liability Regularization) Scheme, 2004 (hereinafter referred to as 'Regularization Scheme'). As per the Fee Liability Statement, the appellant was required to pay a sum of Rs. 3,32,016/-. The appellant had a credit balance of Rs. 1,19,095/- and, therefore, paid an amount of Rs. 2,12,921/- towards fee and interest after adjusting the credit balance. SEBI did not accept this payment as a complete payment under the Regularization Scheme and, therefore, denied the benefit of 80% of waiver of interest under the Regularization Scheme and accordingly directed the appellant to

pay the whole amount of Rs. 3,14,497/-. The appellant paid a further sum of Rs. 3,14,497/- under protest and filed appeal No. 68 of 2005 before this Tribunal for refund of the excess payment alongwith interest and cost.

3. This Tribunal vide an order dated May 9, 2006 found that the appellant had paid part of the fee and the matter regarding adjustment of the credit amount lying with SEBI was required to be sorted out by SEBI. The Tribunal accordingly by an order dated May 9, 2006 disposed of the appeal directing SEBI to reconsider the matter after taking into account the payment made by the appellant and pass a fresh order.

4. SEBI vide order dated October 8, 2009 came to the conclusion that the amount of Rs. 1,19,095/- lying towards credit of the appellant was required to be adjusted with the principal liability towards fee liability. Based on above, SEBI drew a revised Fee Liability Statement showing that an amount of Rs. 25,197/- was refundable to the appellant and accordingly tendered a cheque for the same amount on November 4, 2015 which cheque was not accepted by the appellant. The appellant being aggrieved filed appeal No. 272 of 2016 praying that SEBI should be directed to refund the principal

amount alongwith interest and cost. During the pendency of the appeal, SEBI made an offer to refund the amount of Rs. 3,14,497/- which was accepted by the appellant without prejudice to their right to claim interest and cost from SEBI. On the basis of this offer and acceptance by the appellant, appeal No. 272 of 2016 was disposed of by this Tribunal on June 19, 2018 by the following order :-

*“1. This appeal is filed to challenge the Fee Liability Statement of March 12, 2015 and also seeking refund of the excess amount paid to Securities and Exchange Board of India (‘SEBI’ for short) alongwith interest at the rate of 15 % p.a. from 28.3.2010 till payment.*

*2. In the peculiar facts and circumstances of this case counsel for SEBI on instruction states that without prejudice to SEBI’s rights and contentions an amount of Rs.3,14,497 will be refunded by SEBI to the appellant by cheque within a period of 2 weeks from the date of this order in full and final settlement of the principal amount claimed by the appellant. Counsel for the appellant accepts the refund offer made by SEBI without prejudice to the right of the appellant to claim interest from SEBI on the said amount with costs if any.*

*3. In these circumstances while accepting the statement made by counsel for SEBI we permit the appellant to withdraw the present appeal with liberty to file fresh appeal limited to the issue of interest and costs, if any, within a period of 8 weeks from today.*

*4. This order is passed in the peculiar facts of the present case and shall not be treated as a precedent.*

*5. Appeal is disposed of in the aforesaid terms with no order as to costs.”*

5. Thereafter, the appellant filed appeal No. 313 of 2018 praying that SEBI should be directed to pay interest at the rate of 15 % p.a. on Rs. 3,14,497/- from March 28, 2005 to June 29, 2018 at the rate of 15 % p.a. amounting to Rs. 6,25,062/-. Further, cost of Rs. 3,32,000/- should also be awarded. This appeal was disposed of by the Tribunal by an order dated February 1, 2019 directing the appellant to make representation to SEBI. Based on this direction, the representation was filed by the appellant which was rejected by the impugned order on June 20, 2019. The appellant has thereafter filed the present appeal.

6. We have heard Mr. Neerav Merchant, the learned counsel with Mr. Nadeem Shama, the learned counsel for the appellant and Mr. Anubhav Ghosh, the learned counsel with Mr. Ravishekhar Pandey, the learned counsel for the respondent through video conference.

7. The representation has been rejected on the ground that there is no provision for payment of interest on refund and that the circular dated April 23, 2002 only provides for refund of excess fee. It was

also contended that there is no direction of this Tribunal for payment of interest and, in any case, SEBI is not a commercial organization and, therefore, no interest is payable since there is no provision under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') for payment of interest.

8. From the aforesaid sequence of events, it is clear that based on the Fee Liability Statement, the appellant had paid the amount after adjusting the credit amount lying in his account. This adjustment was not accepted by SEBI and the benefit of waiver of interest was disallowed by SEBI and the respondent directed the appellant to pay the entire amount afresh which amount was paid under protest and, thereafter, the appellant filed an appeal for refund of the amount alongwith the interest and cost. This is the admitted position. During the pendency of the appeal before this Tribunal, the respondent themselves made an offer before this Tribunal which is recorded in the order dated June 19, 2018 passed in appeal No. 272 of 2016, namely, that the respondent will refund the entire amount of Rs. 3,14,497/- which was paid by the appellant in excess. This amount was accepted by the appellant subject to his right of recovering interest and cost.

9. The fact that there is no express provision for payment of interest under the SEBI Act on the refund of excess amount collected is immaterial. The respondent cannot shrug its obligations to reimburse the lawful monies alongwith the accrued interest for the period of undue retention of such monies. Admittedly, in the instant case, an illegal demand was raised by the respondent, based on which the amount was paid under protest. The money received by the respondent was without any legal basis. SEBI had retained and used the money and, therefore, was bound to make good the loss suffered by the appellant. Further, the obligation to refund the money so received and retained without right implies and carries with it the right to interest. This principle has been elucidated by the Hon'ble Supreme Court in *Union of India through Director of Income Tax vs. M/s. Tata Chemicals Ltd. [2014 (6) SCC 335]* which squarely covers the issue.

10. Similar view was reiterated by the Hon'ble Supreme Court in *Universal Cables Ltd. vs. Commissioner of Income-Tax, Jabalpur [(2020) 15 SCC 144]*, wherein the Hon'ble Supreme Court held that payment of interest is a kind of compensation for use and retention of money collected unauthorizably. The Hon'ble Supreme Court

further held that when the collection is illegal, there is an obligation to refund it alongwith interest in as much as they have retained it and enjoyed the money so deposited.

11. In *Dushyant N. Dalal & Anr. vs. SEBI [(2017) 9 SCC 660]*

the Hon'ble Supreme Court held :-

*“19. We are of the view that an examination of the Interest Act, 1978 would clearly establish that interest can be granted in equity for causes of action from the date on which such cause of action arose till the date of institution of proceedings.”*

And further held :-

*“32. We agree with the aforesaid statement of the law. It is clear, therefore, that the Interest Act of 1978 would enable Tribunals such as SAT to award interest from the date on which the cause of action arose till the date of commencement of proceedings for recovery of such interest in equity.”*

12. In *Clariant International Ltd. vs. SEBI [(2004) 8 SCC 524]*,

the Hon'ble Supreme Court held that :-

*“30. Interest can be awarded in terms of an agreement or statutory provisions. It can also be awarded by reason of usage or trade having the force of law or on equitable considerations. Interest cannot be awarded by way of damages except in cases where money due is wrongfully*

*withheld and there are equitable grounds therefor, for which a written demand is mandatory.”*

13. In *Thazhathe Purayil Sarabi & Ors. vs. Union of India & Anr.* [(2009) 7 SCC 372], the Hon’ble Supreme Court held that :-

*“30. As we have indicated hereinbefore, when there is no specific provision for grant of interest on any amount due, the court and even tribunals have been held to be entitled to award interest in their discretion, under the provisions of Section 3 of the Interest Act and Section 34 of the Civil Procedure Code.”*

14. The contention of the respondent that they are not a commercial organization and, therefore, cannot be charged for payment of interest on refund of the excess amount cannot be accepted as in the instant case, we find from the balance sheet of SEBI that they are making investments on surplus money collected by them. Further, the Hon’ble Supreme Court in *M/s. Tata Chemicals Ltd. case (supra)* has clearly held that any amount received without any legal rights and having retained and used, was bound to make good the loss suffered by making payment of interest. Thus, in our view, the respondent cannot get away with the payment of interest on the excess amount realized by respondent without any authority of law.

15. The appellant has prayed for payment of interest at the rate of 15% p. a. No evidence has been led show that this percentage of interest is payable. There is nothing on record to show that during the period in question 15% was the bank rate. Under the Civil Procedure Code, interest is payable at the rate of 6% p. a. In the absence of any provision and in the absence of any evidence on this issue, we are of the opinion that the respondent is liable to pay simple interest at the rate of 6% p.a. This Tribunal has the power to levy interest in the facts of this case.

16. The appellant has taken legal recourse for refund of the amount since the year 2005. The appellant's right was denied continuously by the respondent. Eventually, the principal amount was paid but interest was not paid. In our opinion, the appellant is entitled for cost of litigation which we compute notionally at Rs. 50,000/-. The quantum of cost claimed by the appellant is rejected since no evidence has been led to show actual cost incurred by the appellant.

17. For the reasons stated aforesaid, the impugned order cannot be sustained and is quashed. The appeal is allowed. The respondent is directed to pay simple interest on Rs. 3,14,497/- at the rate of 6% p. a. from March 28, 2005 to June 29, 2018. In addition, the

appellant is also entitled for payment of cost of Rs. 50,000/-. The aforesaid amount shall be paid by the respondent within four weeks from today.

18. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the Registry. In these circumstances, this order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala  
Presiding Officer

Dr. C. K. G. Nair  
Member

Justice M. T. Joshi  
Judicial Member

22.03.2021  
PTM