

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 06.06.2016

Appeal No. 58 of 2016

Prebon Yamane (India) Limited
4th Floor, Kalpataru Heritage,
127 M.G. Road, 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. Somasekhar Sundaresan, Advocate with Mr. Abishek V. and
Mr. Dhaval Kothari, Advocates i/b J. Sagar Associates for the Appellant.

Mr. Minesh K. Shah, Advocate i/b P.V. Nelson Rajan, Advocate for the
Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer
Dr. C.K.G. Nair, Member

Per: Justice J.P. Devadhar

1. Appellant is aggrieved by the communication issued by the Assistant General Manager of Securities and Exchange Board of India ("SEBI" for short) on 29.02.2016 whereby the appellant is called upon to pay ₹ 1,09,65,164 towards the balance interest payable on the amount withdrawn by the appellant pursuant to Apex Court order dated 27.03.2006.

2. Facts relevant for the purpose of the present appeal are as follows:-

- a) By an order dated 27.08.2004 SEBI raised a demand of ₹ 4,64,17,206 (₹ 4,37,20,256 principal amount + ₹ 26,96,950 towards interest under SEBI (Interest Regularization Scheme 2003) as fees under the Brokers Regulations.
- b) Challenging the aforesaid order, appellant filed an appeal before this Tribunal and by an order dated 17.08.2005 this Tribunal allowed the appeal and directed SEBI to refund the aforesaid amount to the appellant which was already paid by the appellant to SEBI.
- c) Challenging the aforesaid order of this Tribunal, SEBI filed an appeal before the Apex Court. On 16.12.2005, the Apex Court by way of interim order directed SEBI to deposit with this Tribunal the amount which was deposited by the appellant with SEBI. Accordingly, on 03.01.2006 SEBI deposited the amount with this Tribunal which was invested in fixed deposit with the Corporation Bank Ltd.
- d) Subsequently, by its order dated 27.03.2006 the Apex Court permitted the appellant to withdraw the amount deposited with this Tribunal subject to the appellant furnishing a bank guarantee. By the said order it was

also made clear that if the appeal filed by SEBI is ultimately allowed, then, the appellant shall be liable to refund the amount withdrawn with interest that would have accrued on the amounts so withdrawn at the relevant bank rate/rates prevailing from time to time.

- e) Accordingly, some time in October 2006 the appellant withdrew ₹ 6,20,12,878 (₹ 4,64,17,206 being principal amount and ₹ 1,55,95,672/- representing interest accrued on ₹ 4,64,17,206/-).
- f) Ultimately by an order dated 03.11.2015, the Apex Court allowed the appeal filed by SEBI and reversed the order of this Tribunal dated 17.08.2005. As a result, appellant became liable to refund the amount withdrawn with interest as per the Apex Court order dated 27.03.2006.
- g) In implementation of above Apex Court order, SEBI by its letter dated 08.12.2015 called upon the appellant to refund ₹ 11,59,57,867.
- h) By a letter dated 30.12.2015 appellant informed SEBI that the appellant is liable to refund ₹ 6,20,12,878/- with simple interest on the principal amount of

₹ 4,64,17,206/- which comes to ₹ 8,15,11,450 and not ₹ 11,59,57,867 as claimed by SEBI and accordingly deposited the said amount of ₹ 8,15,11,450 with SEBI.

- i) By its letter dated 04.02.2016 SEBI informed appellant that interest on the principal amount of ₹ 6,20,12,878 comes to ₹ 3,04,63,737 and since the appellant had paid interest of ₹ 1,94,98,572, it was held that the appellant was liable to pay the balance amount of ₹1,09,65,164.
- j) By its letter dated 26.02.2016 appellant once again reiterated that SEBI was not justified in calculating compounded interest on the amount withdrawn and that the amount of ₹ 8,15,11,450 paid by the appellant on 30.12.2015 would represent the total amount payable by the appellant pursuant to Apex Court order dated 27.03.2006 read with Apex Court order dated 03.11.2015.
- k) By the impugned communication dated 29.02.2016 the Assistant General Manager of SEBI reiterated that the appellant was liable to pay balance interest amounting to ₹ 1,09,65,164 and further informed the appellant that if the said amount was not paid by

01.03.2016, appropriate action under Section 28A (1) and 11(2)(ia) of SEBI Act, 1992 shall be initiated against the appellant. Challenging the aforesaid communication dated 29.02.2016 present appeal is filed.

3. Basically two questions fall for consideration in this appeal. Firstly, when the Apex Court order dated 27.03.2006 clearly records that if SEBI appeal is ultimately allowed, the appellant shall refund the amount withdrawn with interest at prevailing bank rate, whether the appellant is justified in contending that the interest is payable only on the principal amount withdrawn by the appellant and not on the total amount withdrawn by the appellant. Secondly, whether SEBI is justified in contending that the appellant is liable to pay compounded interest on the amount withdrawn by the appellant.

4. As regards the first question is concerned it is not in dispute that pursuant to Apex Court order dated 27.03.2006, the appellant had withdrawn ₹ 6,20,12,878/- (₹ 4,64,17,206/- principal amount + ₹1,55,95,672/- towards interest) subject to conditions set out in the Apex Court order dated 27.03.2006 which reads thus:-

“ORDER

Subject to the respondent's furnishing a Bank Guarantee to the extent of the amount deposited by the appellant pursuant to the order of this Court, the

respondent will be at liberty to withdraw the deposited amount. The Bank Guarantee shall be of a Nationalised Bank and shall be kept renewed pending further orders of this Court. The Bank Guarantee shall contain a clause that in the event, the respondent does not take steps to renew the Bank Guarantee within the time specified therefor the Bank shall on its own and forthwith deposit the entire guaranteed amount in Court.

It is being made clear that in the event, the appeal is ultimately allowed, the appellant shall be liable to pay the interest that would have accrued on the amounts so withdrawn at the relevant bank rate/rates prevailing from time to time.

*Sd/-
(Usha Bhardwaj)*

Court Master

*Sd/-
(Madhu Saxena)*

Court Master”

5. Since the Apex Court by its order dated 03.11.2015 set aside the order of this Tribunal and restored the order of SEBI, as per the Apex Court order dated 27.03.2006 appellant became liable to refund the amount withdrawn i.e. ₹ 6,20,12,878/- with interest at bank rate prevailing from time to time.

6. Argument of the appellant that interest is payable only on the principal amount of ₹ 4,64,17,206/- and not on the total amount withdrawn cannot be accepted, because, the Apex Court order dated

27.03.2006 specifically records that if SEBI appeal is ultimately allowed, appellant would be liable to refund the amount withdrawn with interest at prevailing bank rate which obviously means that interest payable was on the entire amount withdrawn and not on any part thereof. It is relevant to note that the Apex Court, after permitting the appellant to withdraw 'the deposited amount', specifically recorded that if SEBI appeal is ultimately allowed, the appellant would be liable to pay interest on 'the amount withdrawn' at the bank rate/rates prevailing from time to time. When the Apex Court has directed that interest would be payable on 'the amount withdrawn' and not on 'the amount deposited' by the appellant, it is not open to the appellant to argue that interest is payable only on that part of the amount withdrawn which represents the principal amount and not on the entire amount withdrawn by the appellant.

7. Admittedly, the amount deposited was ₹4,64,17,206/- whereas the amount withdrawn was ₹6,20,12,878/- on account of interest component. Once the interest component and the principal amount form integral part of the amount withdrawn, it is not possible to segregate the interest component as the interest component loses the character of an 'interest' and forms part of the amount withdrawn. It is relevant to note that the Apex Court in the case of Hyder Consulting (UK) Ltd. v/s Governor, State of Orissa reported in (2015) 2 SCC 189, has held that where the 'sum directed to be paid by the Award' includes both the principal amount and the interest component, then the interest component loses its character as 'interest' and forms part of the total sum directed to be paid

under the Award and in such a case, obligation to pay interest would be on the total sum directed to be paid and not only on the principal component. Applying the ratio laid down by the Apex Court in the aforesaid case, we answer the first question by holding that the appellant is not justified in contending that interest is payable only on the principal component and not on the entire amount withdrawn by the appellant.

8. Second question that falls for consideration in this appeal is, whether SEBI is justified in contending that the appellant is liable to pay compounded interest on the amount withdrawn by the appellant pursuant to Apex Court order dated 27.03.2006. Nowhere in the Apex Court order dated 27.03.2006 it is stated that if SEBI appeal is ultimately allowed, appellant would be liable to pay compounded interest on the amount withdrawn. In fact, the Apex Court order dated 27.03.2006 specially records that the interest liability on the amount withdrawn would be at the bank rate prevailing from time to time which obviously means that the appellant would be liable to pay simple interest on the amount withdrawn at the relevant bank rate prevailing from time to time. It is contended by the counsel for SEBI, that since the amount deposited by the appellant was invested by this Tribunal in a fixed deposit on which compounded interest was paid, the appellant is liable to pay compounded interest on the amount withdrawn. We see no merit in the above contention because, firstly, the amount withdrawn by the appellant was not directed to be invested and reinvested on quarterly basis so as to earn compounded interest on the amount withdrawn. Secondly, when the

Apex Court order refers to the interest that would have accrued on the amounts withdrawn at the relevant bank rate, it obviously means that the Apex Court contemplated simple interest on the amount withdrawn at relevant bank rate and not compounded interest as wrongly contended by SEBI. In other words, the Apex Court order dated 27.03.2006 clearly envisages that the appellant is liable to pay simple interest on the amount withdrawn at the relevant bank rate/ rates prevailing from time to time. Second question raised in the appeal is answered accordingly.

9. In the result, we quash the impugned communication of SEBI dated 29.02.2016 by holding that the appellant is liable to pay simple interest on the entire amount withdrawn i.e. on ₹ 6,20,12,878/- with simple interest at the relevant bank rate prevailing from time to time from the date on which the amount was withdrawn till that amount is repaid with interest. SEBI is directed to recompute the simple interest payable on ₹ 6,20,12,878/- being the amount withdrawn by the appellant at the bank rate prevailing from time to time and recover the same from the appellant after giving credit to the amount already paid by the appellant.

10. Appeal is disposed of in the above terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member