

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Appeal No. 103 of 2011**

**Date of decision: 29.06.2011**

M/s. Munoth Capital Market Limited  
101-102, Gala Argos,  
Behind Harikrupa Tower,  
Near Kalgi Char Rasta,  
Gujarat College Road,  
Ellisbridge, Ahmedabad – 380 006.  
Gujarat.

..... Appellant

Versus

1. The National Stock Exchange of India Limited  
Exchange Plaza, Bandra-Kurla Complex,  
Bandra (East),  
Mumbai – 400 051.

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

..... Respondents

Mr. Paras Parekh, Advocate with Ms. Delna Aga, Advocate for the Appellant.

Mr. Sachin Chandarona, Advocate with Ms. Jarsy Mai, Advocate  
for Respondent No.1.

Dr. (Mrs.) Poornima Advani, Advocate with Mr. Ajay Khaire and  
Ms. Amrita Joshi, Advocates for Respondent No.2.

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 only question that arises for our consideration in this appeal is  
whether the appellant had exercised its option in accordance with clause 2 in

Schedule IIIA to the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (for short the regulations) to be governed by the provisions of this schedule. The appellant claims that it exercised the option by its letter of January 2, 2007 which was sent to the National Stock Exchange Ltd. (for short NSE) through courier on January 9, 2007. The learned counsel appearing for NSE seriously disputes this position and has made a categorical statement before us that NSE did not receive this letter. The appellant claims that the letter was sent through a courier company by the name of Aramex India Pvt. Ltd. It has produced a copy of the courier receipt. A mere look at this receipt does not inspire confidence and it cannot be said with any certainty that it is genuine. The name of the addressee has been typed thereon through a computer and that name is Samir Enterprise (AMD/SRT). The name of the appellant has then been substituted with hand. Similarly, the account number and the shipper's reference have been altered and superimposed with hand written numbers. The receipt does not bear any stamp of the courier company. We cannot rely on this receipt to hold that the letter in question had been sent by the appellant. Admittedly, there is no acknowledgment on the record.

2. The appellant is a stock broker which has to pay broker fee in accordance with the regulations. Schedule IIIA was introduced with effect from October 1, 2006 and it prescribes yet another mode of calculating the broker fee to be paid by brokers. It is common ground between the parties that the appellant was registered as a stock broker in the year 2005 and Schedule IIIA on its own would have become applicable to it only upon completion of ten financial years from the date of registration with the Securities and

Exchange Board of India. That period has not expired yet. However, brokers who are not covered by this schedule can still make payment of broker fee in accordance therewith provided they exercise an option in terms of clause 2 thereof. We have noticed the bone of contention between the parties and their rival stands. Since we cannot rely upon the courier receipt which has now been produced, it cannot be held that the appellant had exercised its option in terms of clause 2. In this view of the matter, we find no fault with the action of NSE in asking the appellant to make payment in accordance with the other provisions of the Regulations.

In the result, there is no merit in the appeal and the same stands dismissed. No costs.

Sd/-  
Justice N. K. Sodhi  
Presiding Officer

Sd/-  
P. K. Malhotra  
Member

Sd/-  
S.S.N. Moorthy  
Member

29.06.2011

Prepared and compared by-ddg