(2020) 08 SEBI CK 0002

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 248 Of 2020, ?Appeal No. 248 Of 2020

Amrex Marketing Private Limited — APPELLANT

Vs

Securities And Exchange Board Of India And Others — RESPONDENT

Date of Decision : 31-08-2020

Acts Referred:

Securities And Exchange Board Of India (Listing Obligations. And Disclosure Requirements) Regulations, 2015 — Regulation 38

Citation : (2020) 08 SEBI CK 0002

Hon'ble Judges : Tarun Agarwala, Presiding Officer;M. T. Joshi, J

Bench : Division Bench

Advocate : Kazan Shroff, Swapna Roopavate, Gauri Sakhardande, Chirag Sarawagi, Vishal Kanade, Mihir Mody, Shehaab Roshan, K Ashar, Vinay Chauhan, K.C. Jacob, Anubhav Ghosh

Judgement

Tarun Agarwala, Presiding Officer

1. The appellant has filed the present appeal being aggrieved by the disposal of the complaints on the SCORES platform by order dated January 21,

2019 and March 25, 2019. The appeal is accompanied by an application for condonation of delay. The appellant who is the complainant is a private

limited company and had filed two complaints requesting Securities and Exchange Board of India (â??SEBIâ? for convenience) to carry out an

investigation with respect to the defaults committed by the respondent under Regulation 38 of the SEBI (Listing Obligations and Disclosure

Requirements) Regulations 2015 (â??LODR Regulationsâ? for convenience). The second complaint was whether respondent no. 1 could issue an

open offer during the pendency of the complaint filed by the appellant. Both the complaints were disposed of by a computer generated order.

2. There is delay of 460 days in filing the appeal. The ground urged is, that the appellant was under a bonafide belief that the communication sent by

the respondent SEBI disposing of the complaints on the SCORES platform was not appealable and therefore had pursued the remedy by filing a

Petition before the National Company Law Tribunal, Kolkata Bench where the matter is pending. It was further urged that in January/February 2020

the appellant came to know that the disposal of the complaints could be challenged by filling an appeal before the Securities Appellate Tribunal (SAT)

and after consulting the Advocate the appeal was filed after the easing of the lockdown during the pandemic period.

3. The controversy involved in the present appeal is squarely covered by a decision of this Tribunal in Ashok Dayabhai Shah & Ors Vs. SEBI & Ors.

2019 SCC OnLine SAT 248 which was affirmed by the Supreme Court in Civil Appeal No. 363 of 2020 2020 SCC OnLine SC 82 as well as a

decision of this Tribunal in Appeal No. 144 of 2020 in Manish Mittal and Ors Vs. SEBI and Ors. decided on June 25, 2020. Even though, the delay

condonation application in the case of Manish Mittal (supra) was rejected by the Tribunal, the facts in the present case are distinguishable. For the

reasons stated in the application for condonation of delay, we find that sufficient cause has been explained for condoning the delay. We are of the

opinion, that the appellant was under a bonafide belief that the communication given by the respondent was not appealable and therefore in order to

advance substantial justice when no negligence or inaction or want of bonafide is imputable to the appellant, we condone the delay. The delay

condonation application is allowed.

4. Since the controversy involved is squarely covered by a decision of this Tribunal in Ashok Dayabhai Shah and Manish Mittal (Supra) we

accordingly set aside the communication/ order passed by SEBI on the SCORES platform. The appeal is allowed. In view of the observation given by

this Tribunal in the case of Manish Mittal (supra) that a fresh complaint could be filed on the SCORES platform we dispose of the appeal with a

direction that the appellant shall file a fresh complaint before SEBI annexing the earlier complaint within two weeks from today. If such a complaint is

filed, SEBI will decide the same by reasoned and speaking order within two months thereafter. In the circumstances of the case there shall be no order on the costs.

5. 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 Presiding Officer 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.

