

(2020) 07 SEBI CK 0028

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 150 Of 2019

Anant R. Sathe

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 17-07-2020

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulation 3, 4
Securities And Exchange Board Of India Act, 1992 — Section 12A
Code Of Civil Procedure, 1908 — Section 105

Citation : (2020) 07 SEBI CK 0028

Hon'ble Judges : Tarun Agarwala, Presiding Officer; Dr. C. K. G. Nair, Member; M. T. Joshi, J

Bench : Full Bench

Advocate : Sabeena Mahadik, KRCV Seshachalam, Pankaj Uttaradhi, Sagar Hate, Aayush Kothari, Shyam Mehta, Mihir Mody, Shehaab Roshan

Final Decision : Dismissed

Judgement

1. The present appeal has been filed against the communication sent by the Assistant General Manager, Investigation Department, Securities and Exchange Board of India (hereinafter referred to as "SEBI") dated 27th February, 2020 refusing to provide documents asked for by the Appellant vide its letter dated 12th February, 2020.

2. The facts leading to the filing of the appeal is, that certain complaints were received by SEBI regarding insider trading and bad corporate governance practices in Kirloskar Brothers Limited (hereinafter referred to as "KBL"), based on which investigation was conducted by SEBI in the scrip of the company for the period 1st February, 2010 to 30th April, 2011. Based on the investigation report a show cause notice dated 11th

December, 2019 was issued against the Appellant and other Promoters and Directors alleging that the Appellant had induced and conspired with other

Promoters and Directors in order to dump the shares of KBL to Kirloskar Industries Ltd. (hereinafter referred to as "KIL") and thereby

committed a fraud violating Section 12A of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") read

with Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities

Market) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations").

3. Upon receiving the show cause notice, the Appellant vide letter dated 16th January, 2020 intimated that the Appellant had retired as the Director of

the Company in the year 2014 and has no access to the documents and, therefore, requested the Respondent to supply the documents as prayed for in

the letter. The Respondent vide letter dated 24th January, 2020 supplied certain documents and also allowed the Appellant to inspect the documents.

Notwithstanding the aforesaid, the Appellant vide letter dated 12th February, 2020 requested the Respondent to supply further documents, namely, the

show cause notice issued to the other noticees and the investigation report. The Respondent vide letter dated 27th February, 2020 communicated the

Appellant that the said documents cannot be supplied and that all the relevant documents relied upon by the Respondent had been duly supplied. The

Appellant was therefore directed to file the reply to the show cause notice within the stipulated period. The Appellant being aggrieved by the non-

supply of the aforesaid documents has filed the present appeal.

4. We have heard Ms. Sabeena Mahadik, Advocate with Mr. KRCV Seshachalam, Mr. Pankaj Uttaradhi, Mr. Sagar Hate and Mr. Aayush Kothari,

Advocates for the Appellant and Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody and Mr. Shehaab Roshan, Advocates for the Respondent

through video conference.

5. The learned counsel for the Appellant contended that the show cause notice alleges inducement and conspiracy on his part with other Promoters

and Directors of the Company for the purpose of dumping the shares of KBL to KIL and that the show cause notice further alleges fraud being

played by the Appellant. It was also contended that a bare perusal of the show cause notice would reveal that the Respondent heavily relied on the

investigation report. It was thus urged that a duty was therefore cast upon the Respondent to supply copies of all the documents which the

Respondents have gathered during the investigation so that an efficacious reply could be filed. It was also urged that the show cause notice issued to

the other Respondents is also essential so that the Appellant may get to know of his role that SEBI has alleged against the other noticees. The learned

counsel thus submitted that since the Appellant is facing an enquiry, an efficacious reply can only be given when he has the documents that he had

prayed for.

6. On the other hand, Shri Shyam Mehta, learned Senior Counsel for the Respondent strenuously contended that the appeal has been filed only to

delay the proceedings. It was contended that the request of the Appellant is neither bonafide nor justified. It was contended that the entire documents

which the Respondent has relied upon has been duly supplied to and, therefore the documents which are not relevant are not supplied and also not

required to be supplied. In support of his contention, the learned Senior Counsel has relied upon the decision of this Tribunal in Appeal Lodging No.28

of 2020 in Shruti Vora vs. SEBI decided on 12th February, 2020.

7. Having heard the learned counsel for the parties, we are of the opinion that the controversy involved in the present appeal is squarely covered by

the decision of this Tribunal in Shruti Vora's (supra) wherein the Tribunal held that:

“In the light of the aforesaid, we are of the opinion that concept of fairness and principles of natural justice are in-built in Rule 4 of the Rules of

1995 and that the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an

efficacious reply in his defence.”

8. The said principle elucidated in Shruti Vora's judgement is squarely applicable in the instant case. The authority is required to supply the

documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of

filing an efficacious reply in his defence.

9. In Natwar Singh vs Director of Enforcement and Another (2010) 13 SCC 255 the Supreme Court held that the fundamental principle remains that

nothing should be used against the person which has not been brought to his

notice. If relevant material is not disclosed to a party, there is prima-facie unfairness irrespective of whether the material in question arose before, during or after the hearing. The Supreme Court further held that the law is fairly well settled, namely that if prejudicial allegations are to be made against a person, he must be given particulars of that before hearing so that he could prepare his defence.

10. In the light of the aforesaid, the request of the Appellant for supply of documents which are in possession of the authority is misconceived and cannot be accepted. We are further of the opinion that the Appellant should take all grounds which are available to him while filing his reply, including the ground of non-supply of essential documents. Such grounds taken and raised at the time of hearing will be duly considered by the authority. We are further of the opinion that if the authority while passing the final order relies on any document which was not supplied, in which case, it would be open to the Appellant to challenge that finding by filing an appeal and taking it as a ground with regard to non-supply of an essential document. Such ground taken would be in consonance with the principles laid down in Section 105 of the Civil Procedure Code which provides that where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as ground of objection in the memorandum of appeal.

11. In the light of the aforesaid, we do not find any merit in the appeal and is dismissed at the admission stage without calling for a reply. In the circumstances of the case, there shall be no order as to costs.

12. We find that the Respondent issued an email dated 30th June, 2020 intimating the Appellant to file a reply to the show cause notice by 14th July, 2020 and further intimating that 22nd July, 2020 has been fixed for hearing. While reserving the judgment we had directed the Respondent not to proceed in the matter till the delivery of the judgment. Thus, while dismissing the present appeal we grant further opportunity to the Appellant to file a reply to the show cause notice on or before 15th August, 2020. If a reply is filed the Respondent shall intimate a date for hearing to the appellant and conduct the hearing either through physical hearing or through video conference as convenient to the parties.

13. 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.