(2021) 02 SEBI CK 0125

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 290, 291 Of 2019, Appeal No.233, 234 Of 2019

Jonaki Bakeri And Others — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 23-02-2021

Acts Referred:
Securities And Exchange Board Of India (Substantial Acquisition Of Shares And Takeovers) Regulations, 1997 — Regulation 11(2)

Citation : (2021) 02 SEBI CK 0125

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

Bench : Division Bench

Advocate : Somasekhar Sundaresan, Bijal H. Chhatrapati, Pulkit Sukhramani?, Vidhi Jhawar, J. Sagar, Kumar Desai, Abhiraj Arora, Rashi Dalmia

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. Two appeals have been filed against a common order dated 20th July, 2017 whereby the Adjudicating Officer (â??AOâ? for short) has imposed a

penalty of Rs.50,00,000 to be paid jointly and severally for violation of Regulation 11(2) of the Securities and Exchange Board of India (Substantial

Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the â??SAST Regulationsâ??)

2. There is a delay of 577 days in the filing of the appeal and, accordingly, an application for condonation of delay has been filed. The ground urged is

that a similar order in the case of Tarun Jiwarajka was passed by the Securities and Exchange Board of India (hereinafter referred to as â??SEBIâ?)

imposing a similar penalty for violation of Regulation 11(2) of the SAST Regulations which was set aside by this Tribunal in appeal no.265 of 2015

Tarun Jiwarajka & Ors. vs. SEBI dated 28th May, 2018 and, therefore, on this ground the delay should be condoned. In addition to the aforesaid, it

was also urged that the appellants were travelling and it took some time to engage an advocate, procure the documents and, thereafter, file the appeal

and, therefore, the delay should be condoned. The respondent has vehemently opposed the condonation of the delay on the ground that no sufficient

cause has been shown for condoning the delay.

3. In support of the contention raised by the learned counsel reliance was made on a decision of the Division Bench of the Delhi High Court in the

case of Prem Chand Bansal & Sons vs. Income Tax Officer, 1998 SCC Online Delhi 756 wherein the court found that sufficient cause was shown

for condoning the delay on account of change in view of the law by different judgments.

4. We have heard Mr. Somasekhar Sundaresan with Mr. Bijal H. Chhatrapati, Mr. Pulkit Sukhramani and Ms. Vidhi Jhawar, Advocates for the

appellants and Mr. Kumar Desai, Advocate with Mr. Abhiraj Arora and Ms. Rashi Dalmia, Advocates for the Respondent.

5. Having heard the learned counsel for the parties, we are of the opinion that sufficient cause has not been shown by the appellants. The grounds that

the appellants were travelling and took time to appoint an advocate and procure documents are totally vague grounds which have been asserted

without any documentary evidence. There is delay of 577 days which has not been explained. Further, we find that after the passing of the impugned

order the appellants paid the penalty amount though they now state that they have paid it under protest. We find that the judgment of the Delhi High

Court is totally distinguishable and is not applicable in the instant case in as much as the present appeal has been filed much after the decision of Tarun

Jiwarajka which was decided on 28th May, 2018 and the present appeal was filed on 2nd April, 2019. We are further of the opinion that merely

because a decision of the Tribunal has come into existence which may suit the appellants will not give a right to the appellants to file an appeal

belatedly. We are of the opinion that no due diligence was shown by the appellants in fighting his case and in filing the appeal within a reasonable time.

The appellants have abandoned his/her legal pursuit and submitted to the order of the authority. Considering the aforesaid, we find that no sufficient cause has been shown to condone the delay. The grounds urged are neither legal ground nor has sufficient cause been shown.

6. In Basawaraj and Anr. vs. Special Land Acquisition Officer, (2013) 14 SCC 81 the Supreme Court held that the discretion to condone the delay has

to be exercised judicially based on facts and circumstances of each case and that sufficient cause cannot be given a liberal interpretation if lack of

bonafide is attributed to a party. The Supreme Court further held that delay cannot be condoned on equitable ground beyond the limits permitted

expressly by statute.

7. The Supreme Court in Ram Nath Sao and Ors. (supra) held that the expression â??sufficient causeâ? should receive a liberal construction so as to

advance substantial justice when no negligence or inaction or want of bonafide is imputable to a party. The same view was reiterated by the Supreme

Court in Madanlal vs. Shyamlal, (2002) 1 SCC 535.

8. In Balwant Singh (Dead) vs Jagdish Singh & Ors, (2010) 8 SCC 685 Supreme Court held that the expression â??sufficient causeâ? means the

presence of legal and adequate reasons. The decisions cited by the learned counsel for the appellants are of no avail and, in any case, not applicable in

the present circumstance of the case.

9. This Tribunal is possessed with the exercise of judicial discretion in condoning the delay if sufficient or adequate reason is given. It is also a settled

proposition of law that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so

prescribes. The court has no power to extend the period of limitation on equitable grounds as held by the Supreme Court in Basawaraj and Anr.

(supra). In the instant case we do find any legal or adequate reasons to condone the delay.

10. For the reasons stated aforesaid, the applications for condonation of delay is rejected as a result of which the appeals are also dismissed with no

order as to costs.

11. 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.