(2021) 03 SEBI CK 0207

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No.78 Of 2021, Appeal No.12 Of 2021

K. Venkatraman — APPELLANT

Vs

Securities & Exchange Board Of India — RESPONDENT

Date of Decision : 25-03-2021

Acts Referred:

Citation : (2021) 03 SEBI CK 0207

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

Bench : Division Bench

Advocate : Keshav Borhade, Abhiraj Arora, Karthik Narayan, Rashi Dalmia

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. The appellant has challenged the order dated June 9, 2009 passed by the Adjudicating officer (hereinafter referred to as ' AO') whereby a penalty of Rs. 5 lac was imposed for violation of 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'). The appellant has also challenged the recovery certificate issued by the Recovery Officer (hereinafter referred to as 'RO') dated December 11, 2017 for recovery of the amount pursuant to the order of the AO. Since there is a delay in the filing of the appeal an application for condonation of delay has been filed. The ground urged is that the appellant was never aware of the adjudication proceedings as he was never served with the show cause notice nor any opportunity of hearing was provided to him. Further, the recovery certificate dated December 11, 2017 was also never served upon him and that the appellant came to know about this matter for the first time when the RO sent an email on November 17, 2019 and soon thereafter the present appeal was filed.

2. The respondent admits that show cause notice could not be delivered / served upon the appellant in spite of their level best in trying to get the same served

through various means. The learned counsel for the respondent however contended that one of the notices for hearing was duly served on the address of the appellant. However, this fact has been denied by the appellant who has filed proof of the fact that during the time when this notice was allegedly served, the appellant was out of the country. We also find that the impugned order was never served nor the recovery certificate was served.

3. Considering the aforesaid admitted position, we are of the opinion that the impugned order dated June 9, 2009 is violative of the principles of natural justice. The delay in the filing of the appeal is validly explained. We accordingly condone the delay and allow the application.

4. Since the impugned order was passed ex-parte without serving the show cause notice, the said impugned order cannot be sustained and is quashed. The recovery certificate dated December 11, 2017 issued pursuant to the said order is also quashed.

5. The appeal is allowed. The matter is remitted to the AO who will issue a show cause notice and proceed from there onwards in accordance with law after giving an opportunity of hearing. For this purpose, the appellant will appear before the AO on April 15, 2021 on which date a show cause notice will be served upon the appellant.

6. Since the bank account has been attached pursuant to the impugned order of the AO and the recovery certificate, and since the said recovery certificate and the order of the AO has been quashed we direct SEBI to intimate the bank forthwith to remove the attachment order.

7. 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.