
(2021) 05 SEBI CK 0231

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No.567 Of 2021, Appeal No.206 Of 2021

KKDIL Nidhi Ltd And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 04-05-2021

Acts Referred:

Citation : (2021) 05 SEBI CK 0231

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

Bench : Division Bench

Advocate : Ramesh Chandra Mishra, Lokanath Mishra, Anubhav Ghosh,
Ravishekhar Pandey

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated 28th October, 2016 issued by the Whole Time Member (WTM for short)

directing the appellants to refund the amount collected through the issuance of equity shares. The appellants were also restrained from accessing the

securities market. The appellants have also challenged the order of the attachment dated 29th December, 2020 which was issued pursuant to the

impugned order dated 28th October, 2016.

2. There is a delay of 1508 days in the filing of the appeal and, accordingly, an application for condonation of delay has been filed. The ground urged is

that the husband of appellant no.2 Mr. Baman Chandra Dash was the main person behind the incorporation of the Company and was whole and sole

incharge. Appellant no.2 was only a homemaker and appellant no.3 is the father in law of appellant no.2 and is an aged person and had nothing to do

with the day to day affairs in the running of the Company. It was contended that appellant nos.2 and 3 alongwith appellant nos.4 and 5 were made

Directors in the Company but had no role to play. It was also contended that the respondent issued an ex-parte ad-interim order dated 25th March,

2015 pursuant to which the appellants requested for an opportunity to be heard at Bhubaneswar in Orissa and, thereafter, the confirmatory order dated

28th October 2016 was passed. Since no compliance was made the attachment order was passed. It was contended that the appellant no.2's

husband was the main person who was incharge of the affairs of the Company and unfortunately died on 9th February, 2018 under mysterious

circumstances. In such circumstances, the appellants have prayed that the delay is not deliberate but on account of the aforesaid circumstances the

delay may be condoned and the matter may be heard on merits.

3. On the other hand, the learned counsel for the respondent contended that he has the requisite proof which he can file, namely, that the notices were

duly served upon the appellants, the acknowledgement due cards are proof of this fact. Apart from the aforesaid, publications were made in the

newspapers and the appellants appeared and filed their replies and participated in the proceedings. It was contended that no sufficient cause has been

shown and, therefore, the application for condonation of delay should be rejected.

4. Having heard the learned counsel for the parties we find that there is an inordinate delay in the filing of the appeal. No sufficient cause has been

shown to condone the delay. The appellants were aware of the order and participated in the proceedings but took no steps to challenge the order after

the impugned order was passed. The fact that the appellants were unaware of the proceedings is an afterthought and cannot be believed. The fact

that the appellant no.2's husband was whole and sole person who was in charge cannot be relied upon. The appellants were Directors and had a

responsible role to play and they cannot shy away from the fact that they were unaware of the day to day affairs of the Company.

5. We are of the opinion that the reasons given are not bonafide and, in any case, sufficient cause has not 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 "sufficient cause" 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 "sufficient cause" means the

presence of legal and adequate reasons. The decisions cited by the learned counsel for the appellant 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. In the light of the aforesaid, the learned counsel for the appellant referred to the case of *Collector, Land Acquisition vs. Mst. Katiji and Ors.*

MANU/SC/0460/ 1987 which is distinguishable and is not applicable. In the said case Supreme Court was considering the impersonal machinery of

the State Government. The bureaucratic red tapism in pushing the files and passing the buck to others and in that scenario held that "sufficient

cause" is adequately elastic to enable the courts to apply the law in a meaningful manner which subserve the ends of justice. The said decision is,

however, not applicable in the instant case.

11. For the reasons stated aforesaid, we do not find any sufficient cause being shown for condoning the inordinate delay of 1508 days in filing the

appeal. The application is rejected as a result of which the appeal is also dismissed.

12. 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.