
(2023) 08 SEBI CK 0027

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 890, 891 Of 2023, Appeal No. 640 Of 2023

Madhukar Dubey

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 08-08-2023

Acts Referred:

Citation : (2023) 08 SEBI CK 0027

Hon'ble Judges : Tarun Agarwala, Presiding Officer; Meera Swarup, Technical Member

Bench : Division Bench

Advocate : Vikas Gupta, Ravishekhar Pandey, Shefali Shankar, Rasika Ghate, Amarpal Singh Dua

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. We have heard the learned counsel for the parties. The appellant has challenged the ex parte order dated February 25, 2022 passed by the Adjudicating Officer ('AO' for short) of the Securities and Exchange Board of India ('SEBI' for short) imposing a penalty of Rs. 10 lakh.

2. The ground urged is, that the impugned order was passed ex parte without serving a copy of the show cause notice and without giving an opportunity of hearing. This ground was opposed by the respondent and accordingly we had directed the respondent to file an affidavit with regard to the condonation of delay in filing the present appeal and on the issue of service of notice.

3. Having heard the learned counsel for the parties, we are satisfied that there is no fault on the part of the appellant in filing the appeal belatedly. The appellant came to know of the impugned order only when recovery proceeding was initiated and accordingly the appeal was filed. Thus, cause shown is sufficient. The delay in filing the appeal is condoned. The application is allowed.

4. Having perused the reply we find from a perusal of Annexure – B that the show cause notice was sent by registered post acknowledgement due which came back undelivered on January 27, 2018. The AO took no further steps to serve the appellant and proceeded ex parte and thereafter the impugned order was passed.

5. In our view there is a clear case of violation of principles of natural justice. The impugned order proceeded without serving the show cause notice and without giving an opportunity of hearing. Thus, on this short ground we are satisfied that the impugned order cannot be sustained and is quashed. The appeal is allowed. The matter is remitted to the AO to pass a fresh order after giving an opportunity of hearing. In this regard appellant shall appear before the AO on August 22, 2023 on which date the AO will serve the show cause notice upon the appellant and the matter will proceed from there onwards in accordance with law. The miscellaneous application is disposed of.

6. 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. Certified copy of this order is also available from the Registry on payment of usual charges.