(2020) 06 SEBI CK 0008

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 152, 153 Of 2020, Appeal No.144 Of 2020

Manish Mittal And Others — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 25-06-2020

Acts Referred:
Securities And Exchange Board Of India Act, 1992 — Section 15T

Citation : (2020) 06 SEBI CK 0008

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

Bench : Full Bench

Advocate : Gaurav Joshi, Anna Malhotra, Sagar Jadhav, Fredun De Vitre, Mihir Mody, Shehaab Roshan, K. Ashar, Kausik Chatterjee, Dhiraj Chakraborty, Gyanendra Kumar, Venkatesh Dhond, Vivek Shetty, Nishant Upadhyay, Prasad Shenoy, Etc

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed by the appellants against the order dated December 20, 2017 passed by the Securities and Exchange Board of

India (â??SEBIâ? for convenience) disposing of the complaint on the SCORES platform. The appeal is accompanied by an Urgency Application No.

152 of 2020 as well as a Misc. Application No. 153 of 2020 for condoning the delay. The Urgency Application is allowed and the Appeal along with

the Misc. Application for condoning the delay has been taken up for hearing through video conference.

2. We have heard Sri Gaurav Joshi the learned senior counsel for the appellants, Sri Fredun De Vitre the learned senior counsel for SEBI, respondent

no.1, Sri Kaushik Chatterjee the learned counsel for respondent no.2, Sri Gyanendra Kumar the learned counsel for respondent no.3, and Sri

Venkatesh Dhond the learned senior counsel for respondent no.4 at some length.

3. The application for condonation of delay indicates that there is a delay of 834 days. The ground urged is, that against the impugned order, the

appellants had filed Writ Petition No. 10982 / 2018 on October 10, 2018 before the Delhi High Court which the appellants withdrew with liberty to file

before the appropriate forum on November 29, 2019. Thereafter the appellants applied for a certified copy of the impugned order and, upon its

availability, preferred an appeal on February 28, 2020. Justification given by the appellants for not preferring an appeal before this Tribunal was that

the Tribunal was not properly functioning on account of non-availability of a judicial member and, on that account, had preferred a Writ Petition before

Delhi High Court on October 10, 2018.

4. On the other hand, the learned senior counsel Sri Fredun De Vitre for SEBI as well as the learned senior counsel Sri Venkatesh Dhond appearing

for respondent no. 4 and Sri Gyanendra Kumar for respondent no. 3 have vehemently opposed the application for condonation of delay contending that

no sufficient cause has been shown by the appellants for condoning the delay. It was contended that there is an inordinate delay which has not been

explained and the appeal filed is neither bonafide nor filed in good faith. It was also urged that the appellants are in a habit of forum hunting as and

when it suits them. No explanation has been given as to why the appeal could not be preferred before the Tribunal after passing of the impugned order

when admittedly the Tribunal was functioning.

5. Sri Gaurav Joshi the learned senior counsel for the appellants urged that an identical order was set aside by this Tribunal in the matter of Ashok

Dayabhai Shah & Ors Vs. SEBI & Ors. In Appeal No. 428 of 2019 decided on 14.11.2019 and therefore contended that the impugned order may be

set aside and SEBI may be directed to reconsider their complaint against the private respondents. The learned senior counsel Sri Gaurav Joshi further

submitted that SEBI had challenged the order of this Tribunal dated 14.11.2019 by filing Civil Appeal No. 363 of 2020 which was dismissed by the

Supreme Court by an order dated 27.01.2020 and that the order of this Tribunal was affirmed. Learned senior counsel Sri Joshi thus contended that a similar order may be passed in the present appeal.

6. In this regard Sri Kaushik Chatterjee learned counsel for Calcutta Stock Exchange Limited submitted that SEBI had directed the Calcutta Stock

Exchange to investigate the companies which included the private companies arrayed in the present appeal and, in this regard, the Calcutta Stock

Exchange (CSE) after investigating the matter has submitted a report to SEBI in December 2019.

7. Having heard the learned counsel for the parties at some length. We find that there is an inordinate delay of 834 days in filing the present appeal.

The impugned order is dated December 20, 2017 and the appeal has been preferred after more than 2 and Â½ years on February 20, 2020. The

limitation for filing the appeal under Section 15T of the SEBI Act is 45 days from the date of the order. The contention that the Tribunal was not

functioning properly as the members were not available is erroneous in as much as the Presiding Officer who was a Judicial Member along with the

Technical Member were functioning till July 10, 2018 and thereafter the Tribunal was entertaining the appeals which continued till December 2018 and

thereafter on January 01, 2019 a new Presiding Officer took charge. Thus, the appeal could have been filed during this period. The explanation given

is clearly an afterthought especially when we find that some of the present respondents had filed an Appeal No. 233 of 2017 against some order of the

Calcutta Stock Exchange wherein the appellants had filed an intervention application during the same period. Thus it is clear that the appellants were

aware that they could have filed an appeal against the impugned order before this Tribunal but for the reasons best known the appellants chose the

forum of a Writ Jurisdiction before the Delhi High Court.

8. We also find that in an identical matter in the case of Ashok Dayabhai Shah (supra) the Tribunal had set aside the order of SEBI on the SCORES

platform by judgement dated 14.11.2019. Considering this judgement, the appellants withdrew the writ petition from the Delhi High Court on

29.11.2019 and has now filed present appeal seeking a similar relief. The conduct of the appellants makes it clear that they are only interested in

forum shopping to suit their convenience.

9. In the light of the aforesaid, we are of the opinion that there is an inordinate delay in filing the appeal. No valid or bonafide explanation has been

given by the appellants as to why they could not prefer the appeal between January 2018 to October 2018. In the absence of any plausible

explanation, we are of the opinion the appellants have not shown any sufficient cause for condoning the delay. The appeal is neither bonafide nor has

been filed in good faith and is a clear case of forum hunting.

10. 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.

11. 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.

12. In Balwant Singh (Dead) vs Jagdish Singh & Ors, (2010) 8 SCC 68 5Supreme 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 appellant are of no avail and, in any case, not applicable in

the present circumstance of the case.

13. 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.

14. Thus for the reasons stated aforesaid, we do not find any reason to condone the inordinate delay in filing the appeal. The Misc. Application No.

153 of 2020 for condoning the delay is rejected on the ground of laches as a result of which Appeal No. 144 of 2020 is also dismissed with no order as

to costs.

15. We had made a query to the learned senior counsel for the respondents as to whether there is a bar for an investor to file a fresh complaint on the

SCORES platform. We find that there is no bar. Further, the impugned order did not resolve the issues raised by the appellants. The respondent no. 1

disposed of the complaint in a mechanical manner. Thus it is always open to the appellants to file a fresh complaint for resolution of its complaints.

Thus, while dismissing the appeal, we direct that in the event the appellants files a fresh complaint within four weeks from today before SEBI the

same shall be tagged with the complaint of Ashok Dayabhai Shah and others which is under investigation and SEBI will be under an obligation to

decide the complaint of the appellants in accordance with law.

16. 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.