(2021) 10 SEBI CK 0011

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 1153, 1154 Of 2021, Appeal No. 615 Of 2021

Mrudula Bhikubhai Patel	APPELLANT
Vs	
Securities And Exchange Board Of India	RESPONDENT

Date of Decision : 01-10-2021

Acts Referred:

Citation : (2021) 10 SEBI CK 0011

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

Bench : Division Bench

Advocate : Nitin H. Parikh, Abhishek Khare, Samreen Fatima

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated April 27, 2020 passed by the Adjudicating Officer (hereinafter referred to as 'AO') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') imposing a penalty.

2. There is a delay in the filing of the appeal. The ground urged is, that she was never served with the copy of the impugned order. In response to the aforesaid, the learned counsel for the respondent submitted that the impugned order was served by email on the same date on April 27, 2020 at 3.32 p.m. However, considering the fact that the pandemic had crept in and in view of the order of Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No. (S) 3 of 2020 dated April 27, 2021, the delay in the filing of the appeal is liable to be condoned. The delay is condoned accordingly. The Misc. Application is allowed.

3. The impugned order has been passed ex-parte. The appellant did not appear. We find that the show cause notice dated February 11, 2020 was issued requiring the appellant to give a reply within 14 days. Subsequently, a show cause notice dated February 27, 2020 was issued fixing March 18, 2020 for personal hearing.

The contention of the appellant is that she could not appear on March 18, 2020 on account of fear of corona virus pandemic. Since the appellant did not appear, the AO proceeded ex-parte and passed the impugned order.

4. Considering the facts and circumstances that the pandemic had already crept in when the date was fixed by the AO on March 18, 2020 coupled with the fact that the lockdown was declared from March 25, 2020, we are of the opinion that an opportunity should be given to the appellant to contest the matter on merit and consequently, we set aside the order by giving an opportunity to the appellant to contest the matter on payment of costs of Rs. 30,000/-. The said amount shall be paid before SEBI on or before the next date that we are going to fix.

5. In this regard, we direct the appellant to appear before the AO on October 22, 2021 by which time the costs as imposed by us shall be deposited. The AO will proceed from there onwards in accordance with law. The appeal is allowed. Since the impugned order has been set aside, the freezing of the accounts vide attachment order are also set aside.

6. 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.

