
(2020) 01 SEBI CK 0012

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 484, 485, 486, 487 Of 2019, Appeal No. 401, 402 Of 2019

Mukesh Shah And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 21-01-2020

Acts Referred:

Citation : (2020) 01 SEBI CK 0012

Hon'ble Judges : Tarun Agarwala, Presiding Officer; Dr. C. K. G. Nair, Member

Bench : Division Bench

Advocate : Rushin Kapadia, Rinku Valanju, Vishal Kanade, Mihir Mody, Shehaab Roshan

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. Appeal No. 401 of 2019 have been filed against the order of the Adjudicating Officer (AO) for convenience) of the Securities and Exchange

Board of India (SEBI for convenience) dated May 06, 2010 imposing a penalty of Rs. 5,00,000/- (Rupees Five Lakhs Only) for failure to

provide information/ documents to the investigating authority inspite of due notice. Appeal No. 402 of 2019 have been filed against the impugned order

dated December 02, 2010 passed by the AO of SEBI imposing a penalty of Rs. 2,00,000/- (Rupees Two Lakhs Only) for fraudulently creating

artificial volume and liquidity in the scrip of a company. Since the issues involved in both the appeals are common the same are been decided together

by a common order.

2. In Appeal No. 401 of 2019 there is a delay of 3349 days in filing the appeal. In Appeal No. 402 of 2019 there is a delay of 3154 days in filing the

appeal. Accordingly, the applications have been filed by the appellants in both the appeals for condoning the delay. The ground urged is that the appellant was totally unaware of the proceedings and was never served with the show cause notice or with the impugned order. The respondents in the reply have not filed any proof of service of the impugned order. Thus, we are of the opinion that the impugned order was not served and the appellant only came to know of the impugned order when they received a letter dated April 03, 2019 requiring the appellant to deposit the amount along with the interest. In the light of the aforesaid, since the appellants were never served with the impugned order the delay in filing the appeals are condoned. Misc. Application No. 484 of 2019 in Appeal No. 401 of 2019 and Misc. Application No. 486 of 2019 in Appeal No. 402 of 2019 are allowed.

3. On merits the learned counsel for the appellant urged that he was never served with any show cause notice and consequently the impugned order was passed ex-parte without giving an opportunity of hearing. It was thus urged that the impugned order should be set aside and the matter should be remitted to the AO to pass fresh order after giving an opportunity of hearing.

4. We find that the submission of the learned counsel for the appellant is misconceived and cannot be accepted. The reply filed by the respondent in Appeal No. 401 of 2019 indicates that the show cause notice was served through registered post. Thereafter, summons dated March 07, March 20, April 05 were served by hand delivery. The notice for the date of hearing was again served by hand delivery on December 24. Thus, we are of the opinion that the appellant had ample notices of the proceedings. It was alleged by the appellant that the signatures in the acknowledgment of the receipt of the show cause notice was not his signatures. We are of the opinion that this contention appears to be an afterthought and cannot be taken into consideration in the light of the facts, that subsequently summons was also served upon the appellant and thus the appellant had knowledge of the proceedings.

5. In appeal No. 402 of 2019 the record indicates that the show cause notice was refused. Subsequently the show cause notice along with a letter was served by affixation at his address on October 06. The notice issued for the date of hearing was also served by affixation. These facts have not been

refuted nor the fact that the appellant has been residing at the same address. The only contention raised that the report on affixation by the process

server cannot be relied upon as only one witness had countersigned the affixation notice. In our opinion, when the service of show cause notice was

refused the question of any alleged irregularity in the subsequent service becomes irrelevant.

6. In the light of the aforesaid, we are of the opinion that the appellant had ample notices of the two proceedings initiated by the AO. In spite of the

service of the show cause notice the appellant failed to appear or file a reply. Consequently, we do not find any error in the impugned orders passed

by the AO. Both the appeals fail and are dismissed. In view of the dismissal of the appeals, Misc. Application Nos. 485 and 487 of 2019 seeking stay

of notice of demand are also rejected.