
(2021) 05 SEBI CK 0182

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No.385 Of 2021, Appeal No.334 Of 2021

Rajesh Pavithran

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 21-05-2021

Acts Referred:

Citation : (2021) 05 SEBI CK 0182

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

Bench : Division Bench

Advocate : Mutahhar Khan, Jitendra Sharda, Kumar Desai, Mihir Mody, Misra, Mayur Jaisingh, K. Ashar

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated January 25, 2015 passed by Adjudicating Officer (AO for convenience) imposing a

penalty of Rs. 1 crore. There is a delay of 5 days in the filing of the appeal and accordingly an application for condonation of delay has been filed. For

the reasons stated in the application, the delay in the filing of the appeal is condoned. The application is allowed.

2. We have heard the learned counsel for the parties, we find that the entire proceedings were done ex-parte. The contention of the appellant is that

the proceedings were ex-parte and that the show cause notice was never served nor was the appellant aware of the proceedings before the AO. This

fact has been dealt with in the reply filed by the respondent.

3. We have perused the reply as well as the impugned order and we find that the notices were sent to the appellant at the address Flat No. 202,

B-Wing, Bliss Building, LBS Marg, Mulund West, Mumbai- 400 080? whereas the correct address was ??Flat No. 202, D-Wing, Bliss Building,

LBS Marg, Mulund West, Mumbai- 400 080?. This fact that the respondents were sending the notices at the wrong address is fortified by their own

document, namely, that against the WTM?s order the matter came up before this Tribunal which was disposed of by an order dated October 30,

2017, against which the respondents filed a Civil Appeal before the Supreme Court of India in which the correct address of the appellant namely

??Flat No. 202, D-Wing, Bliss Building, LBS Marg, Mulund West, Mumbai- 400 080? was disclosed.

4. In view of these glaring facts which has come on record, we are of the confirmed opinion that the show cause notice and the hearing notice was

sent at the wrong address. The appellant was never served with the impugned order and consequently all proceedings emanating therefrom are void in

violation of the principle of natural justice.

5. In the light of the aforesaid, the impugned order dated January 25, 2021 being violative of the principle of natural justice is set aside. The appeal is

allowed. The matter is remitted to the AO to pass a fresh order in accordance with law after serving the show cause notice to the appellant and after

giving him an opportunity of hearing. In this regard, the appellant will appear before the AO on June 10, 2021 on which date the AO will serve the

show cause notice to the appellant and from there onwards the matter will proceed in accordance with law.

6. In the circumstances of the case, parties shall bear its own costs.

7. 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.