
(2022) 03 SEBI CK 0085

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 112 Of 2022, Appeal No. 92 Of 2022

Rajib Rajbangshi

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 03-03-2022

Acts Referred:

Citation : (2022) 03 SEBI CK 0085

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

Bench : Division Bench

Advocate : Vikas Bengani, Abhiraj Arora, Harshvardhan Nankani, Shourya Tanay, Anshu Mehta, Misbah Dada

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. We have heard the learned counsel for the parties. The present appeal has been filed against the order dated November 29, 2019 passed by the Adjudicating Officer ("AO" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience).

2. There is a delay of 756 days in the filing of the appeal. The ground urged is, that the impugned order is an ex-parte order and that no notice or opportunity of hearing was given to the appellant and that the appellant came to know of the impugned order for the first time when recovery proceedings were initiated in February 2021. The appellant contends that he is not a trader in the securities market that his name was misused by one Devesh Upadhyaya who is known to have misused other names on the stock exchange platform.

3. We find that the show cause notice and opportunity of hearing was issued to the address as per the Know Your Client ("KYC") record which according to the appellant is incorrect and the correct address is something else as per his Aadhaar Card. We also find that affixation could not take place though the respondent took steps to publish a notice in three newspapers.

4. Considering the aforesaid, we are satisfied that the appellant was not given an opportunity to be heard. We are also satisfied that the delay in the filing of the appeal has been explained. Consequently, the delay is condoned. The application is allowed.

5. Having heard the learned counsel for the parties, we find that ex-parte proceedings were initiated against the appellant. We find that neither the show cause notice nor the notice for hearing was served upon the appellant. Consequently, the entire proceedings were initiated ex-parte. Thus, on this short ground we set aside the impugned order dated November 29, 2019. The appeal is allowed with no order as to costs. The matter is remitted to the AO to pass a fresh order in accordance with law after giving an opportunity of hearing to the appellant. In this regard, the appellant will appear either personally or through his authorised representative/ counsel before the AO on March 22, 2022 on which date the appellant would be served with the show cause notice and from there onwards the matter will proceed in accordance with law.

6. The present matters were 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.