(2020) 01 SEBI CK 0032

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 413 Of 2019, Appeal No.349 Of 2019

Romit Mehta APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 02-01-2020

Acts Referred:

Securities And Exchange Board Of India (Procedure For Holding Inquiry And Imposing Penalties By Adjudicating Officer) Rules, 1995 — Rule 7(b)

Citation : (2020) 01 SEBI CK 0032

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

Bench : Full Bench

Advocate : Arka Saha, Kumar Desai, Shehaab Roshan, K Ashar

Final Decision : ?Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated May 31, 2018 passed by the Adjudicating Officer (â??AOâ?? for short) of Securities

and Exchange Board of India (â??SEBIâ?? for short) imposing a penalty of Rs. 2 lakh. The appellant has also challenged the order of attachment

dated March 12, 2019 as well as the Recovery Certificate dated February 15, 2019.

2. There is a delay in filing the appeal. Accordingly, an application for condonation of delay has been filed. According to the appellant there is a delay

of 94 days which has been opposed by the respondent contending that the delay is about one year. The impugned order dated May 31, 2018 was

passed ex parte and the submission of the appellant is that he was never served with the show cause notice or with the impugned orders. The issue in the application for condonation of delay and in the adjudicating order revolves on a common issue with regard to service of summons and therefore the

application as well as an appeal are being decided together.

3. The contention of the appellant is, that the show cause notice was never served upon him nor the impugned order dated May 31, 2018 passed by

the AO was ever served upon him. It was contended that the appellant came to know for the first time when he received this Recovery Certificate

dated February 15, 2019 after which he made due enquiries and lodged a First Information Report (FIR) and wrote several letters to SEBI to recall

this order and when no action was taken on his application the present appeal was filed on July 9, 2019 along with application for condonation of delay.

It was contended that since the applicant was unaware of the proceedings, the delay in filing the appeal should be condoned and that he may be

allowed to contest the matter on merits.

4. On the other hand, the respondent has contested the application contending that the applicant was served with a show cause notice dated

December 5, 2017 through e-mail after the show cause notice was sent by post returned undelivered on November 16, 2017. It was also contended

that the impugned order dated May 31, 2018 was also served by e-mail on August 3, 2018. It was contended that service of summons / orders through

e-mail is permissible under Rule 7(b) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995.

5. We have heard Shri Arka Saha, the learned counsel for the appellant and Shri Kumar Desai, the learned counsel for the respondent SEBI and

perused the material that has been filed on affidavits. Admittedly, the show cause notice sent by post came back undelivered and therefore the

respondent sent the show cause notice through e-mail on the following address:-

romithehta02@hotmail.co.uk

It was urged that subsequently the notice for hearing and the impugned order was also served upon the appellant by e-mail at the same address. It

was contended that sine the e-mails never bounced back it was presumed that show cause notice and the impugned orders were duly served upon the

appellant.

6. Having perused the e-mails we find that the show cause notice was sent at the following address:-

romithehta02@hotmail.co.uk

This address is incorrect. The correct address of the appellant is:-

romitmehta02@hotmail.co.uk

Consequently, the show cause notice was not served upon him. In Chandresh Narottam Mehta vs V.K. Chopra, Whole

Time Member SEBI, 2008 SCC OnLine SAT 216 this Tribunal has held that if show cause notice is not served the appellant was prejudiced in the

matter of putting up his defence. The impugned order was set aside and SEBI was directed to decide the matter afresh. Similar view was taken by

this Tribunal in Appeal No. 387 of 2017, Pagita Leasing & Finance Company Ltd. vs. Bombay Stock Exchange decided on May 3, 2019.

7. Further, we find that a categorical statement was made by the appellant that he was never served by e-mail through which the impugned order

dated May 31, 2018 was sent. Once a categorical statement was made it was obligatory upon the respondent to prove service which in the instant

case was not done. Merely presuming that service was done because the e-mail never bounced back is insufficient.

8. The appellant clearly stated that he only came to know of the proceedings when he received the Recovery Certificate dated February 15, 2019 and

thereafter not only he filed the FIR but also made request to SEBI and then thereafter filed the appeal. In our opinion, the delay in filing the appeal

from February 15, 2019 onwards has been sufficiently explained.

9. In the light of the aforesaid, we find that sufficient grounds have been made out for condoning the delay in filing the appeal. The Misc. Application

No. 413 of 2019 is accordingly allowed and the delay is condoned.

10. Admittedly, the impugned order was passed ex parte, the appellant was not given any opportunity of being heard.

We also find that the show cause notice which was sent by post came back undelivered and the show cause notice sent by e-mail was sent at the

wrong address. Consequently, the entire proceedings are vitiated on the ground of violation of the principles of natural justice. In our opinion, sufficient

service was not made.

11. Consequently, for the reasons stated aforesaid the impugned order passed by the AO, Notice of Attachment and the Recovery Certificate are all

set aside. The appeal is allowed on payment of costs of Rs. 25,000/- which shall be deposited by the appellant before SEBI on or before the date

fixed. The appellant will appear before AO on January 16, 2020 on which date the respondent will serve the show cause notice to the appellant and

will proceed thereafter in accordance with law.

