
(2022) 11 SEBI CK 0006

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 1314 Of 2022, Appeal No. 828 Of 2022

Viju Babulal Jain

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 14-11-2022

Acts Referred:

Securities And Exchange Board Of India (Procedure For Holding Inquiry And Imposing Penalties By Adjudicating Officer) Rules, 1995 — Rule 7, 7(b)
Securities And Exchange Board Of India (Substantial Acquisition Of Shares And Takeovers) Regulations, 2011 — Regulation 3(1), 3(4), 13(1)
Securities And Exchange Board Of India Act, 1992 15H(ii)

Citation : (2022) 11 SEBI CK 0006

Hon'ble Judges : Tarun Agarwala Presiding Officer; Meera Swarup Technical Member

Bench : Division Bench

Advocate : Nishant Upadhyay, Jyoti Pandey, Karishma Motla, Daksha Kasekar

Final Decision : Dismissed/Disposed Of

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated March 30, 2022 passed by the Adjudicating Officer ("AO" for convenience) of the Securities and Exchange Board of India imposing a penalty of Rs. 20 lakhs under Section 15H (ii) of the SEBI Act, 1992 for violation of Regulation 13(1) read with Regulations 3(1) and (4) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("SAST Regulations, 2011" for convenience).

2. We have heard Shri Nishant Upadhyay, the learned counsel for the appellant and Ms. Karishma Motla, the learned counsel for the respondent.

3. The only ground urged is, that the show cause notice was never served upon the appellant and, therefore, no opportunity of hearing was given to the appellant. It was urged, that the procedure adopted by the AO was in violation to Rule 7 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by

Adjudicating Officer) Rules, 1995. Rule 7 of the Rules provides as under:-

"Service of notices and orders.

7. A notice or an order issued under these rules shall be served on the person in the following manner, that is to say,-

(a) by delivering or tendering it to that person or his duly authorised agent;

(b) by sending it to the person by fax or electronic mail or courier or speed post with acknowledgement due or registered post with acknowledgement due to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain; or

(c) if it cannot be served under clause (a) or clause (b), by affixing it on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided, or carried on business or personally works or last worked for gain and that written report thereof should be witnessed by two persons.

d) if it cannot be affixed on the outer door as per clause (c), by publishing the notice in atleast two newspapers, one in a English

daily newspaper having nationwide circulation, and another in a newspaper having wide circulation published in the language of the region where that person was last known to have resided or carried on business or personally worked for gain."

4. A perusal of the aforesaid Rules indicates that service of the summons can be done through personal service or through registered post or through email. In paragraph 19 of the impugned order it was noticed that the show cause notice could not be served through registered post as it came back undelivered with comment that 'the addressee had left'. Paragraph 19 of the impugned order however also records that a digitally signed copy of the show cause notice along with the annexure was successfully delivered to the appellants' email address, namely, vijubjain@gmail.com on July 06, 2021.

5. There is no assertion in the memorandum of appeal alleging non-receipt of the show cause notice through email. In view of Rule 7(b) of the Rules, service of the show cause notice was duly served through email. We are consequently of the opinion that the procedure adopted by the AO for serving the show cause notice was in accordance with the Rule 7(b) of the Rules.

6. No other point was raised. The appeal consequently fails and is dismissed with no order as to costs. The misc. application is disposed of accordingly.

7. 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. Certified copy of this order is also available from the Registry on

payment of usual charges.