

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 08.09.2017

**Misc. Application No. 174 of 2015
And
Appeal No. 252 of 2015**

Ashish Pannalal Shah
B/12 Yashpal Apartments,
Near Vijay Char Rasta,
Navrangpura,
Ahmedabad.

.....Appellant

Versus

1. Securities and Exchange Board of India
Ground Floor, Sakar-I,
Opp: Gandhigram Railway Station,
Ahmedabad.

2. Oasis Media Matrix Ltd.
709, Loha Bhavan,
Opp. Old High Court,
Ashram Rd,
Ahmedabad.

3. Parshwa Finance
Through its Proprietor
Piyush S Jhaveri
113, Kamdhenu Complex,
Ambawadi, Ahmedabad.

.....Respondents

Mr. Chitrajeet B. Upadhyaya, Advocate with Mr. Shyamal Bhimani,
Advocate for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Nishant Upadhyay, Advocate
i/b K. Ashar & Co. for the Respondent.

None for Respondent Nos. 2 & 3.

CORAM : Justice J.P. Devadhar, Presiding Officer
Dr. C.K.G. Nair, Member

Per : Dr. C.K.G. Nair, Member (Oral)

1. This appeal is filed by the appellant aggrieved by the order of the Adjudicating Officer ('AO' for short) of Securities and Exchange Board of India ('SEBI' for short) dated March 18, 2009 whereby a penalty of ` 25 lakh has been imposed on the appellant for failure to appear before the AO despite a summons to that effect issued by SEBI. However, since the appeal is filed after a delay of 2158 days from the date of the impugned order Shri Shyam Mehta, Learned Senior Counsel for the respondent SEBI objected to admitting the appeal. Accordingly, merit of the Misc. Application seeking to condone the delay in filing the appeal has been heard first.

2. As per the records in the appeal produced before us we note that summons dated September 7, 2006 was issued by SEBI to the appellant in the address 2, Ghar Angan Apartments, B H Child Care Hospital, Navrangpura, Ahmedabad – 380009 directing the appellant to appear in person before the Investigating Authority enquiring into certain violation of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995 ('PFUTP Regulations' for short) on September 18, 2006. Subsequently, vide letter dated September 21, 2006 the appellant was summoned again to appear before the Investigating Authority as well as to produce certain documents on October 9, 2006. However, the appellant failed to appear in person or furnish the requisite documents to SEBI on both these occasions making it violative of Section 11C(2) and 11C(5) of the SEBI Act, 1992 on account of non-compliance of summons and failure to furnish requisite information / documents.

3. Further, a Show Cause Notice ('SCN' for short) dated November 21, 2007 and hearing notice dated December 24, 2008 was issued by the

respondent SEBI. Since no response was received to these notices on January 14, 2009, the SCN was issued in seal cover to the appellant through the broker of the appellant. Broker confirmed to SEBI vide his letter dated February 10, 2009 that the said SCN had been duly served upon the appellant and an acknowledgement to this effect was also given to SEBI. However, the appellant did not respond to any of these notices and therefore the respondent SEBI proceeded ex-parte and issued the impugned order on March 18, 2009.

4. Learned Counsel Shri. Chitrajeet Upadhyaya appearing on behalf of the appellant stated that as per details given in the appeal paper book as well as in the Misc. Application seeking condonation of delay the appellant was never in receipt of either the summons or the SCN. The signatures shown in the acknowledgement are not that of the appellant or his relatives staying in his address. In fact, the appellant came to know about the entire matter, including the impugned order, only in July 2014 when he received the Recovery Certificate from SEBI dated July 17, 2014. Accordingly he also pleaded that the delay in filing of the appeal should be taken into account from this date i.e. July 17, 2014 and he filed the appeal on April 11, 2015 with a delay of about 10 months. Further, though immediately on receipt of the Recovery Notice the appellant approached an advocate, that advocate did not pursue the matter for about 6 months and therefore the delay of few months in filing the appeal may be condoned. In any case, it was argued by the Counsel for the appellant, even assuming that the appellant did receive the SCN on February 7, 2009 as confirmed by his past broker the appellant could not have appeared before the Investigating Authority because the scheduled date of hearing / appearance was January 13, 2009 which was already over by the time he would have got the notice. In short, the counsel for the appellant pleaded that the appellant never received the summons or

the SCN or the impugned order and he came to know about the matter only in July 2014 when he received the Recovery / Attachment Notice. As such, the appellant was not in any default and the short delay in filing the appeal thereafter is on account of the lethargy of the advocate initially engaged by the appellant. However, the counsel for the appellant admits that the address of the appellant shown in the summons, SCN and/or other communications issued by the SEBI is factually correct.

5. Learned Senior Counsel for SEBI while taking us through the various documents also submitted a copy of the ex-parte order dated September 16, 2009 whereby, inter alia, the appellant has been debarred from the securities market for a period of 6 months on the charges levelled in the SCN issued for violation of PFUTP Regulations.

6. We have gone through the records including the notices, acknowledgement etc. Prima-facie it is untenable that the appellant has not got any of the documents issued by the SEBI till the Recovery Certificate despite the fact that the address is that of the appellant and the past broker of the appellant got the SCN delivered at the same address and confirmed it to SEBI. As such, the delay in filing the appeal has to be reckoned with from the date of the impugned order. Therefore, the delay is 2158 days in filing the appeal. Even assuming that the appellant got to know about the matter only on July 17, 2014, as a benefit of doubt, the delay of 10 months thereafter is inexplicable. We do not find any logical reason provided by the appellant in condoning the delay even subsequent to July 17, 2014. Therefore we find no merit in the arguments put forth by the appellant either relating to non-receipt of summons / SCN / impugned order or relating to delay in filing the appeal.

7. Accordingly, the Misc. Application is rejected with no order as to costs. In the result, appeal becomes infructuous and is disposed of accordingly. Appellant is directed to pay the penalty within 30 days from the date of this order.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

08.09.2017
Prepared and compared by:
msb