

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 05.09.2014

Appeal No. 68 of 2014

1. Vilas Valunji
C-1/6, 5 Rajashree Villa,
Bhosle Nagar Near Range Hills,
Pune – 411020.
2. Partha Debnath
Flat No. 302, Vishista Saffire,
Mansoorabad,
Hyderabad.
3. Janardhan Shriniwas Purandare
Vivekanand Nagar
HUDCO, N 12, C-134
Aurangabad, Maharashtra – 431 003.

...Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.

...Respondent

WITH

Appeal No. 70 of 2014

V.A. Norhi
G-8, Stone Valley,
Banjara Hills Road No. 4,
Hyderabad,
Andhra Pradesh.

...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.

...Respondent

None for the Appellants.

Mr. Kumar Desai, Advocate with Mr. Pratham V. Masurekar, Advocate for
the Respondent in Appeal Nos. 68 & 70 of 2014.

CORAM : Jog Singh, Member

Per : Jog Singh (Oral)

1. These two appeals were heard by a Division Bench of this Tribunal consisting of Hon'ble Presiding Officer (PO) Shri Justice J.P. Devadhar and Hon'ble Member Shri A.S. Lamba and were disposed of on the same date i.e. on June 20, 2014 by a sccommon order. Whereas, Hon'ble PO in his order held that the two impugned orders dated January 20, 2014 were liable to be quashed and set aside on the ground that there was no effective service on the Appellants, and as such, a valuable right of Appellants of being heard before the impugned orders were passed against the Appellants had been violated. The matter was, therefore, remanded to SEBI to hold an enquiry after issuing Show Cause Notices (SCNs) to the Appellants afresh at the address given by them in accordance with the rules and pass orders on merit as per law after giving an opportunity of hearing to the Appellants. It is pertinent to note that the impugned order in both the appeals were quashed and set aside by the Hon'ble PO with the consent of the learned counsel for the Respondent. On the other hand, Hon'ble Member held that proper service was effected by SEBI on the Appellants as per SEBI (Manner of Service of Summons and Notices issued by Board) Amendment Regulations, 2007 ('Regulations 2007') and hence the impugned order of SEBI could not be interfered with on the ground of non-service of SCNs to the Appellants even though the same were passed ex parte against the Appellants and as such the appeals were dismissed.

2. The original Respondent i.e. SEBI, however, found that the Regulations referred to and relied upon by Hon'ble Member i.e. Regulations of 2007 were not applicable in the facts of the case as the enquiry was conducted by an Adjudicating Officer (AO) who is an independent and quasi-judicial authority and is governed by SEBI (Procedure for Holding

Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 ('Rules of 1995'). The Regulations of 2007 will apply only when the Board decides to take cognizance of a case. As such, the AO is obliged to conduct inquiry proceedings against persons as per Rules of 1995.

3. SEBI, therefore, has moved two Review Applications in the matter which were disposed of by order dated August 18, 2014 by referring the matter to the undersigned for fresh hearing of the appeals. Accordingly, notices were issued to the parties and the two appeals have been heard today.

4. There is no appearance on behalf of the Appellants although one fax message is received on behalf of one of the Appellants in Appeal No. 70 of 2014 for hearing the matter on merits in their absence. The appeals have been, therefore, heard on merit by the Court by invoking provisions of rule 16(2) of Securities Appellate Tribunal (Procedure) Rules, 2000.

5. Briefly stated the relevant facts for consideration by this Tribunal are that by the impugned orders dated June 20, 2014, a penalty of Rs. 5 lac (consolidated) was imposed on the three Appellants in Appeal No. 68 of 2014 for alleged violation of Regulation 14(1) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (SAST Regulations, 1997). Similarly, the Appellant in Appeal No. 70 of 2014 along with one more noticee Mr. B.Y. Somayajulu, have been imposed a penalty of Rs. 5 lac for violation of Regulation 14(1) and Rs. 10 lac for violation of Regulation 7(1)(A) read with 7(2) of SAST Regulations, 1997. It is also noted that there are three Appellants in Appeal No. 68 of 2014 and one Appellant in Appeal No. 70 of 2014.

6. The main grievance raised by the Appellants in these two appeals is that service of SCNs was not effected in accordance with procedure mandated in the rules and hence ex parte impugned order in question be set aside. After hearing the learned counsel for the Respondent and perusing the pleadings, it is evident that the Respondent (SEBI) should have effected service on the Appellants as per Rule 7 of Rules of 1995 which prescribes service through registered post with acknowledgement, apart from other modes such as affixing on the outer door etc. of the noticee. It is undoubtedly clear that speed post as one of the modes of service is not included in the Rules of 1995 which govern inquiries to be conducted by AO. Therefore, the order of Hon'ble PO is in accordance with statutory rules which govern the proceedings / inquiries before the AO. It may be noted that speed post may be an equally efficient mode of service but in the absence of any specific mention in the Rules of 1995, such a mode should be discarded by SEBI until the rules are so mandated, if so advised. Thus, if SEBI feels that speed post is also an important and efficient mode of service, it is free to amend the rules as per law. Until the Rules of 1995 are so amended, SEBI is obliged to effect the service of SCNs etc. on a person concerned by registered post and not speed post. The reliance placed by the Hon'ble Member on the Regulations of 2007 is, therefore, misplaced in the present case. Moreover, when the appeals were disposed of by consent of the parties and without hearing on merits, Hon'ble Member could not have upheld the penalty imposed against Appellants in the manner in which it has been sought to be done in the present case.

7. In this backdrop, passing of an ex parte impugned order against the Appellants violated the fundamental, and rather rudimentary, principles of natural justice in as much as no opportunity of hearing could be afforded to the Appellants in question. It is settled law that justice should not only be

done but, it must also be seen to be done. Therefore, the two impugned orders are set aside and the matter is remanded to SEBI for fresh adjudication after issuing SCNs and serving them as per law as discussed above and after affording reasonable opportunity of hearing to the Appellants preferably within a period of four months. Needless to say that the Appellants shall cooperate with the enquiry.

8. With the aforesaid directions these two appeals stand allowed with no order as to costs.

Sd/-
Jog Singh
Member

05.09.2014
Prepared and compared by:
msb