

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 08.03.2018
Date of Decision : 10.04.2018

Misc. Application No. 75 of 2015
And
Appeal No. 114 of 2015

Rajkumar C. Basantani
301, Pacific Enclave,
15th Road, Khar (West),
Mumbai- 400 052 ...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

Mr. Nirman Sharma, Advocate i/b A. S. Khan & Associates for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Mihir Mody and Mr. Nishant Upadhyay, Advocates i/b K. Ashar & Co. for the Respondent.

WITH
Misc. Application No. 76 of 2015
And
Appeal No. 115 of 2015

Rajkumar C. Basantani
301, Pacific Enclave,
15th Road, Khar (West),
Mumbai- 400 052 ...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
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Mr. Pradeep Sancheti, Senior Advocate i/b A. S. Khan & Associates for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Mihir Mody and Mr. Nishant Upadhyay, Advocates i/b K. Ashar & Co. for the Respondent.

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

Per: Justice J.P. Devadhar

1. Appeal No. 114 of 2015 (with Miscellaneous Application No. 75 of 2015) is filed to challenge the order passed by the Adjudicating Officer (“AO” for short) of Securities and Exchange Board of India (“SEBI” for short) on 28.11.2008 whereby penalty of ₹ 15 crore is imposed on the appellant under Section 15HA of the SEBI Act, 1992 for violating the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003 (“PFUTP Regulations” for short) in relation to the trading in the scrip of Kolar Biotech Limited.

2. Appeal No. 115 of 2015 (with Miscellaneous Application No. 76 of 2015) is filed to challenge the order passed by the AO of SEBI on 29.04.2010 whereby penalty of ₹ 1.25 crore is imposed on the appellant under Section 15HA of the SEBI Act for violating the PFUTP Regulations and penalty of ₹ 10 lac under Section 15HB of SEBI Act for creating artificial volumes and causing price rise in the scrip of Adam Comsof Ltd., by making false and misleading corporate announcements.

3. Miscellaneous Application No. 75 of 2015 is filed seeking condonation of 2271 days delay in filing Appeal No. 114 of 2015 and Miscellaneous Application 76 of 2015 is filed seeking condonation of 1754 days delay in filing Appeal No. 115 of 2015.

4. SEBI commenced investigation in the scrip of Kolar Biotech Limited (“KBL” for short), Adam Comsof Limited (“ACL” for short) and Soundcraft Industries Limited (“SIL” for short) on receiving complaint from the investors that the cheques issued by these companies were bouncing and the promoters and directors of these companies had fled the country after committing fraud in the securities market.

5. Investigation carried out by SEBI revealed that Rajkumar Basantani, appellant in these two appeals was the promoter/ director of KBL and ACL respectively and was also promoter/director of Kolar Sharex Pvt. Ltd., (“KSPL” for convenience) registered as stock broker and having the same registered office address as that of ACL.

6. Investigation revealed that even in the past appellant as the Chief Promoter of SIL had indulged in manipulative trading in the scrip of ACL by creating artificial volumes and price rise in the scrip of SIL and therefore by an order dated 16.09.2002 SEBI had restrained the appellant from dealing in securities for 3 years. On appeal filed by the appellant the said order was upheld by this Tribunal, but the restraint period was reduced to six months.

7. Investigation carried out by SEBI further revealed that the appellant after resigning as director of KBL and ACL on 27.06.2003 fled to USA on 05.04.2004.

8. While in USA, the appellant sold his flat situated at 701, Pinky Panorama, Khar, Mumbai on 17.08.2004. Further, the appellant caused

KBL and ACL to make false corporate announcements as a result whereof not only the volume of trading in the scrip of KBL increased, but also the price of KBL scrip rose from ₹ 0.46 to ₹ 2.29 during the period from 01.07.2004 to 11.08.2004 and during that period appellant sold 6.65 crore shares of KBL through KSPL at a value of ₹ 6.29 crore. Similarly, during the period from 29.10.2003 to 06.02.2004, due to misleading corporate announcement made by ACL at the instance of the appellant, apart from increase in the volume of trading, price of the ACL scrip rose from ₹ 5.90 to ₹ 20.90 and during the said period appellant bought and sold bulk of the shares of ACL through KSPL which led to drastic fall in the price of ACL scrip.

9. In view of aforesaid facts on record, SEBI initiated penalty proceedings against the appellant. All attempts made by SEBI to serve the notices on the appellant failed. Therefore, by the impugned order dated 28.11.2008 penalty of ₹ 15 crore was imposed on the appellant for violating PFUTP Regulations in relation to the KBL scrip, which is challenged in Appeal No. 114 of 2015. Similarly, by order dated 29.04.2010 penalty of ₹ 1.35 crore was imposed on the appellant under Section 15HA/15HB of the SEBI Act for violating the PFUTP Regulations and the SEBI Act in relation to the ACL scrip which is challenged in Appeal No. 115 of 2015.

10. As the two appeals are filed with Miscellaneous Applications seeking condonation of delay, first question to be considered is, whether the appellant has made out a case for condoning 2271 days delay in filing

Appeal No. 114 of 2015 and 1754 days delay in filing Appeal No. 115 of 2015.

11. Basic argument advanced on behalf of the appellant in these two appeals is that neither the notices relating to the proceedings initiated against the appellant nor the impugned orders were served on the appellant at any time in the past and immediately after the impugned orders were furnished to the appellant on 12.02.2015 the appellant has filed these two Appeals with Miscellaneous Applications seeking technical delay of 2271 days and 1754 days in filing the appeals from the date of the respective orders. It is submitted that having failed to comply with the regulations framed by SEBI relating to service of notices/ orders, SEBI is not justified in seeking to enforce the ex-parte orders passed against the appellant. Accordingly, it is submitted that in the facts of present case, the delay in filing appeals deserve to be condoned and thereafter the impugned ex-parte orders ought to be set aside and the appellant must be given an opportunity to demonstrate that he has not committed any violations.

12. Fact that SEBI made several attempts to serve the notices/orders on the appellant is evident from the following:-

- a) Pending investigation, the WTM of SEBI had passed an ex-parte ad interim order on 30.09.2004 thereby restraining several entities including the appellant from buying, selling or dealing in any manner in the

scrip of ACL, SIL and KBL till the investigations are completed.

- b) SEBI attempted to serve the said ex-parte order dated 30.09.2004 at the last known address of the appellant at 701, Pinky Panorama, 6th Khar Road, Mumbai-400 052 but failed. Therefore, SEBI addressed a letter to BSE on 01.10.2004 requesting them to serve the ex-parte order dated 30.09.2004 on the appellant. As that attempt also failed SEBI published the ex-parte order dated 30.09.2004 by way of a public notice in a newspaper.
- c) Thereafter, first show cause notice dated 30.04.2008 (relating to KBL scrip) addressed to the appellant was attempted to be served at the last known address of at Pinky Panorama by RPAD, but the same returned undelivered with remark 'left' the premises.
- d) Similarly, the second show cause notice dated 04.07.2008 (relating to ACL scrip) issued at the last known address at Pinky Panorama was sought to be delivered by RPAD but the same returned with the remark 'left'.
- e) On 28.07.2008 the first show cause notice dated 30.04.2008 was sought to be served by way of

affixture at the last known address at Pinky Panorama, but the security staff at Pinky Panorama did not permit affixture of the show cause notice.

- f) As the appellant evaded service inspite of repeated attempts made by SEBI, the AO passed the ex-parte order on 28.11.2008 imposing penalty of ₹ 15 crore on the appellant.
- g) Above order of AO dated 28.11.2008 was sought to be communicated to the appellant by a letter dated 01.12.2008 through RPAD, but the same was returned with the remark 'left'. Even the attempt to affix the letter dated 01.12.2008 at the last known address of the appellant at Pinky Panorama failed because, the security staff did not permit the SEBI officials to affix the said letter on ground that the appellant is not staying there.
- h) Similarly, the second show cause notice dated 04.07.2008 was sought to be affixed at the last known address of the appellant at Pinky Panorama on 29.04.2009 but the security staff at Pinky Panorama did not permit affixation of the said show cause notice.
- i) Thereafter, the second show cause notice dated 04.07.2008 was forwarded to BSE on 24.06.2009 for

serving it on the appellant through KSPL who is the stock broker of the appellant and a registered stock broker of BSE. On 30.06.2009 BSE intimated to SEBI that the second show cause notice forwarded to KSPL through speed post returned undelivered with the remark 'left'.

- j) SEBI then issued a public notice in Hindustan Times and Lokmat inter alia to the appellant, wherein it was stated that the second show cause notice is also available at www.sebi.gov.in under the heading undelivered notices/ summons and in case the appellant wished to avail personal hearing or make any submissions, he may write to SEBI failing which the matter will proceed ex-parte. However, there was no reply from the appellant.
- k) By a letter dated 03.02.2010 SEBI fixed the hearing of the second show cause notice on 19.02.2010 and sent that letter through Hand Delivery Acknowledgement at the last known address of the appellant which was returned with the remark 'person not staying there'.
- l) On 08.02.1010 the hearing notice in respect of the second show cause notice was sought to be affixed at the last known address of the appellant at Pinky Panorama but the same was not allowed by the

security staff on ground that the appellant was not staying there.

- m) As the appellant evaded service inspite of repeated attempts made by SEBI, the AO disposed of the second show cause notice by passing an order on 29.04.2010 whereby penalty of ₹ 1.35 crore was imposed on the appellant under Section 15HA and 15HB of SEBI Act for violating the PFUTP Regulations and the SEBI Act.
- n) Above order dated 29.04.2010 was attempted to be served on the appellant through RPAD at the last known address of the appellant at Pinky Panorama, but the same was returned back. Similarly, attempt to serve the said order by affixing at Pinky Panorama failed as the security staff did not permit affixation on ground that the appellant was not staying there.
- o) Thereafter, on initiating recovery proceedings, SEBI sought to serve the recovery notices (arising out of orders dated 29.04.2010 and 28.11.2008) dated 13.01.2014, 11.07.2014, 16.07.2014 and 24.02.2015 at the last known address of the appellant at Pinky Panorama which were returned undelivered.
- p) It is relevant to note that by attaching the bank account of the appellant and his minor daughter,

₹ 4.23 lac was recovered from the IndusInd Bank account of the appellant on 29.04.2014. Similarly, ₹ 2.82 lac was recovered from the bank accounts of the daughter of the appellant in September- October 2014.

- q) From the criminal proceedings initiated against the appellant by CBI, SEBI came to know that the appellant had the new address at B-303, Eden Rose, Mira Road. However, attempt made by SEBI to serve the appellant at the said address failed as it was found that neither the appellant nor any of his family members were staying at the said address.
- r) Subsequently, SEBI got the present address of the appellant at Pacific Enclave, Khar from Kotak Mahindra Bank in response to attachment notice issued to the bank account of the daughter of the appellant. When SEBI officials visited the said premises on 21.01.2015 to serve the hearing notice fixed before the Recovery Officer, appellant claimed himself to be Rajesh Punjabi and accepted the hearing notice by signing as Rajesh Punjabi. Thereafter, appellant sought copies of the orders passed against him and SEBI furnished the same to the appellant on 12.02.2015. Thereupon, the appellant has filed these

two appeals with two Miscellaneous Applications seeking condonation of delay in filing the appeals.

- s) It is relevant to note that the criminal proceedings initiated by SEBI against the appellant on 29.06.2011 and 31.07.2015 in relation to the ACL and KBL Scrip are pending.

13. From the aforesaid facts it is evident that the appellant has successfully evaded service of notices/orders for decades initially by running away from the country and thereafter changing his residence every now and then. Very fact that the appellant did not bother to challenge the impugned orders even after his bank accounts were attached and the amount lying therein were taken away on 29.04.2014 in implementation of the impugned orders and chose to file these appeals only when threatened with the second criminal proceedings, clearly shows that the delay in filing appeals is not a bonafide delay and that the appellant does not deserve any sympathy.

14. Argument of the appellant that SEBI is guilty of not serving the notices/ orders for several years is without any merit, because, SEBI has demonstrated that the notices/ orders sent to the last known address of the appellant were returned with the remark 'left' or the 'person is not staying' at the said address and even the attempt to serve by other means failed. Merely because, SEBI could not produce the endorsements made by the postal authorities due to efflux of time, it cannot be said that SEBI

has failed to comply with the provisions relating to service of notice/ orders.

15. It is not the case of the appellant that he had made arrangements to receive letters/ notices/ orders at the last known address of the appellant. Admittedly, the appellant had sold the flat at Pinky Panorama (last known address) in the year 2004 and in the absence of any arrangement made by the appellant to receive the notices/ orders sent at the said address, any attempt to serve the appellant at the said address by RPAD/ affixing was an empty formality. In any event, SEBI has completed that formality, by sending notices/orders at the last known address of the appellant through RPAD and also attempted to serve by way of affixation at the last known address of the appellant. Even thereafter, SEBI tried its best to locate the appellant, but the appellant by repeatedly changing his address has evaded service of the notice/ orders.

16. Reliance was placed by counsel for appellant on various decisions which, in our opinion, have no bearing on the facts of present case, because, in the present case, SEBI has discharged its duty to serve the appellant by sending the notices through RPAD and also by way of affixation. Merely because, SEBI at this belated stage is unable to produce the A/D card, it cannot be said that SEBI has failed to serve notices/ orders and failed to comply with the procedure for holding inquiry.

17. Argument of the appellant that SEBI failed to affix the notices at the last known address of the appellant in the presence of two witnesses is without any merit, because, firstly, case of SEBI is that affixation at the said address was not permitted by the security staff on ground that the appellant had sold his flat in the year 2004. In such a case, affixing the notices/ orders in the presence of two witnesses at the said address does not arise at all. Secondly, it is not the case of the appellant that he had made arrangements to accept the notice if served/ affixed at the last known address which was admittedly sold by the appellant on 17.08.2004.

18. Argument of the appellant that the impugned order is passed in breach of the principles of natural justice is also without any merit, because, it is the appellant who had evaded service initially by running away from the country in the year 2004 and, thereafter, on his return in the year 2008 when arrested and subsequently released, the appellant evaded service by changing his address every now and then. Very fact that the appellant did not choose to approach SEBI even after his bank accounts were attached and the amount lying therein were taken away in implementation of the impugned orders on 29.04.2014, clearly shows that the appellant at all times had evaded service. In these circumstances, the appellant is not justified in contending that the impugned orders are passed in breach of the principles of natural justice.

19. Fact that the ex-parte orders passed against two other directors of the company have been set aside by this Tribunal cannot be a ground to

set aside the ex-parte orders passed against the appellant, because in the present case it is established that the appellant who is the chief architect of the fraud committed in the scrip of KBL and ACL has evaded service for more than a decade.

20. In the result, we see no reason to condone the delay of 2271 days and 1754 days in filing the two appeals and accordingly both the Miscellaneous Applications seeking condonation of delay in filing the respective appeals are dismissed. In view of dismissal of the Miscellaneous Applications, both the Appeals become infructuous and are disposed of accordingly with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

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