

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 23.04.2019

Date of Decision: 26.04.2019

Misc. Application No. 262 of 2018

And

Appeal No. 319 of 2018

Brijmohan Rathi
Plot No. R- 802 TTC,
Industrial Area,
Thane Belapur Road,
MHAPE, Navi Mumbai- 400 701 ...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. Anant Upadhyay, Advocate for the Appellant.

Mr. Anubhav Ghosh, Advocate with Ms. Vidhi Jhavar,
Advocate i/b The Law Point for the Respondent.

WITH

Misc. Application No. 271 of 2018

And

Appeal No. 332 of 2018

Sunciti Financial Services Pvt. Ltd.
Plot No. R- 802 TTC,
Industrial Area,
Thane Belapur Road,
MHAPE, Navi Mumbai- 400 701 ...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. Anant Upadhyay, Advocate for the Appellant.

Mr. Anubhav Ghosh, Advocate with Ms. Vidhi Jhavar,
Advocate i/b The Law Point for the Respondent.

WITH
Misc. Application No. 269 of 2018
And
Appeal No. 330 of 2018

New Era Advisors Pvt. Ltd.
Plot No. R- 802 TTC,
Industrial Area,
Thane Belapur Road,
MHAPE, Navi Mumbai- 400 701 ...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. Anant Upadhyay, Advocate for the Appellant.

Mr. Anubhav Ghosh, Advocate with Ms. Vidhi Jhavar,
Advocate i/b The Law Point for the Respondent.

WITH
Misc. Application No. 270 of 2018
And
Appeal No. 331 of 2018

Maharashtra Polybutenes Ltd.
Plot No. R- 802 TTC,
Industrial Area,
Thane Belapur Road,
MHAPE, Navi Mumbai- 400 701 ...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. Anant Upadhyay, Advocate for the Appellant.

Mr. Anubhav Ghosh, Advocate with Ms. Vidhi Jhawar,
Advocate i/b The Law Point for the Respondent.

WITH
Appeal No. 318 of 2018

New Era Advisors Pvt. Ltd.
Plot No. R- 802 TTC,
Industrial Area,
Thane Belapur Road,
MHAPE, Navi Mumbai- 400 701 ...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. Anant Upadhyay, Advocate for the Appellant.

Mr. Anubhav Ghosh, Advocate with Ms. Vidhi Jhawar,
Advocate i/b The Law Point for the Respondent.

AND
Appeal No. 325 of 2018

Maharashtra Polybutenes Ltd.
Plot No. R- 802 TTC,
Industrial Area,
Thane Belapur Road,
MHAPE, Navi Mumbai- 400 701 ...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. Anant Upadhyay, Advocate for the Appellant.

Mr. Anubhav Ghosh, Advocate with Ms. Vidhi Jhavar, Advocate i/b The Law Point for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M. T. Joshi, Judicial Member

Per: Justice Tarun Agarwala

1. The controversy involved in this group of appeals is the same and arises out of the same issue. Even though, separate impugned orders have been passed, these appeals are being decided together.

2. Appeal No. 319 of 2018, 332 of 2018 and 330 of 2018 have been filed against the order of the Adjudicating Officer (“AO” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) for violating 15H read with Section 27 of the SEBI Act, 1992 and Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP” Regulations, 2003” for convenience) for wrongful trading in the shares of Maharashtra Polybutenes Limited (hereinafter referred to as “MPL”) wherein a penalty was imposed. In Appeal No. 331 of 2018 the AO of

SEBI has imposed a penalty for violating Section 12 of the SEBI Act, 1992 read with Regulations 3 and 4 of the PFUTP Regulations, 2003 for wrongful disclosure in the change in the shareholding pattern in MPL and wrongful disclosure of pledging of shares by the promoters.

3. In Appeal No. 319 of 2018 there is a delay of 985 days in filing the appeal. In Appeal No. 332 of 2018 there is a delay of 880 days. In Appeal No. 330 of 2018 there is a delay of 353 days and in Appeal No. 331 of 2018 there is delay of 353 days in filing the appeal.

4. In Appeal No. 319 of 2018 and Appeal No. 332 of 2018 the ground urged is that the appellants were exploring the implications of the impugned order and possibilities of challenging it. Further, the appellants were awaiting the outcome of the adjudication proceedings of the company MPL and in the said process of filing the present appeals, the appellants consulted experts and advisors who could assist them without fee which took time. On these grounds the appellants have prayed that the delay in filing the appeals may be condoned.

5. In Appeal No. 330 of 2018 and 331 of 2018 the ground urged is virtually the same, namely, that after receiving the impugned order the appellants were exploring the implications of the impugned order and possibilities of challenging it and consulted expert and advisors who could assist without fee which took time. Further, the appellants were unable to arrange the court fee in the light of the adverse financial conditions faced by the appellants which also led to further delay in filing the appeals. The appellants in these two appeals prayed that the delay should be condoned.

6. The aforesaid applications have been vehemently opposed by the learned counsel for the respondent contending that no sufficient cause has been shown to condone the delay nor any adequate or legal reasons have been given in support of their contentions. The learned counsel for the respondent had relied upon a decision of *Balwant Singh (Dead) V/s Jagdish Singh and Others (2010) 8 Supreme Court Cases 685*.

7. Having heard the learned counsel for the parties at some length, we find that there is an inordinate delay in filing the appeals. The contention of the appellants in Appeal Nos. 319 of 2018 and 332 of 2018 that they were awaiting the outcome in

the appeals by the company MPL is patently misconceived and cannot be utilized for the purposes of condoning the delay. The appeal is required to be filed within 45 days. Such limitation was known to the appellants and, therefore, waiting for the outcome of another adjudication proceedings cannot be a cogent, valid or legal ground to condone the delay nor does such ground could come under expression “sufficient cause”.

8. Further, the contention of all the appellants that after receiving the impugned orders the appellants were exploring the implications of the impugned order and possibilities of challenging it and consulted experts and advisors who could assist them without fee is not only vague but clearly an afterthought. No details have been given as to which expert the appellants had consulted, which expert was demanding remuneration or legal fee and which consultant or expert agreed to give advice without taking a fee. In the absence of any such assertion, we are of the opinion that the ground urged is vague and untenable. In our view sufficient cause has not been shown nor any satisfactory or reasonable explanation has been given for condoning of delay.

9. There is no doubt that the expression of “sufficient cause” is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the appellant. In the instant case, waiting for the outcome of a proceeding in another adjudication matter or exploring the possibilities of challenging the impugned orders without giving satisfactory explanations tantamounts to negligence or inaction on the part of the appellants and, therefore, such ground cannot be termed as bonafide. The Supreme Court in *Balwant Singh (Supra)* has held that the expression “sufficient cause” implies the presence of adequate and legal reasons which in the instant case is lacking. We find that sufficient cause has not been shown for condoning the delay which is just one of the ingredients which has to be considered by the Court/ Tribunal. In addition to this, we find that the conduct of the appellants and the reasons given for condoning the delay was not bonafide. The delay could have been avoided if the appellant had acted with normal care and caution. In our view, the statutory provisions mandate that applications for condonation of delay filed beyond the prescribed period of limitation should be rejected unless sufficient cause is shown for condonation of delay which in the instant cases was neither bonafide nor adequate.

10. Consequently, for the reasons stated aforesaid, we do not find any reasons to condone the inordinate delay in filing the appeals. The Miscellaneous Applications are rejected, as a result of which, the appeals are dismissed.

11. Appeal No. 318 of 2018 and 325 of 2018 have been filed challenging the Recovery Certificates. These Recovery Certificates were issued for non-payment of the amount mentioned in the impugned orders passed by the AO. Since the appeals questioning the main orders have been dismissed by us on the ground of delay the appeals challenging the Recovery Certificates lack merit and are also dismissed. In the circumstances of the case, party shall bear their own costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M. T. Joshi
Judicial Member