

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 17.9.2020

Date of Decision : 26.10.2020

Appeal No.204 of 2019

Ketan Shah HUF
Flat No.D-3/2, Ground Floor,
Vasupujya, Sarvodaya Nagar,
Near Jain Mandir, Mulund (West),
Mumbai – 400080. ...Appellant

Versus

Securities & Exchange Board of India
SEBI Bhavan, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400051. ...Respondent

Mr. Nirman Sharma, Advocate with Ms. Nikita Bhansali,
Advocate i/b Yasmin Bhansali & Co. for the Appellant.

Mr. Abhiraj Arora, Advocate with Ms. Rashi Dalmia,
Advocate i/b. ELP 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, Presiding Officer

1. The present appeal has been filed against the order of the Adjudicating Officer imposing a penalty of Rs.5 lakhs for violation of 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 (hereinafter referred to as the 'PFUTP Regulations').

2. We have heard Mr. Nirman Sharma, Advocate assisted by Ms. Nikita Bhansali, Advocate for the Appellant and Mr. Abhiraj Arora, Advocate assisted by Ms. Rashi Dalmia, Advocate for the Respondent. The only contention raised by the learned counsel for the appellant is, that the impugned order is an ex-parte order against the appellant and that no reasonable and/or sufficient opportunity was given to the appellant to defend himself.
3. In this regard, we find that the show cause notice dated 31st August, 2018 was duly served upon the appellant on 7th September, 2018. In response to the show cause notice the appellant vide letter dated 26th September, 2018 communicated its intention to the adjudicating officer that he would be filing a settlement application under the settlement regime. The

adjudicating officer vide notice dated 9th October, 2018 advised the appellant to file a reply by 15th October, 2018 and also advised the appellant to inform about the filing of the settlement application. The adjudicating officer further informed that the settlement proceedings will not affect the adjudication proceedings except of the passing of the final order which would be kept in abeyance till the disposal of the settlement application. The said notice was duly delivered upon the appellant on 13th October, 2018.

4. Since no reply was filed, the adjudicating officer issued a notice fixing 24th October, 2018 for final hearing. This notice was duly served upon the appellant on 17th October, 2018.
5. In spite of service of notice and in spite of time being granted to file objections, the appellant did not file any reply nor filed any settlement application. Further, the appellant failed to appear before the adjudicating officer on the date fixed and, accordingly, the adjudicating officer proceeded ex-parte and after

considering the material evidence on record passed the impugned order imposing a penalty.

6. The contention of the learned counsel for the appellant that no reasonable or sufficient opportunity was granted is patently erroneous. The record indicates that the appellant was duly served and showed his intention to file the settlement application which he did not do so. Further, inspite of time being granted, the appellant did not file any reply to the show cause notice. Thus, the contention that the impugned order is an ex-parte order is patently erroneous. Further, the contention that no reasonable or sufficient opportunity was given is again erroneous. We find that sufficient opportunity was given to the appellant which he failed to avail and, therefore, he is alone responsible. The contention that the karta was indisposed and was advised complete bed rest as he was suffering from hypertension is clearly an afterthought and, in any case, it did not prevent him from applying for adjournment which he did not do so.

We find that the show cause notice was duly served on 7th September, 2018 based on which he intimated the adjudicating officer that he would be filing a settlement application. The appellant nowhere indicated that he was suffering from hypertension and consequently we are of the opinion that the appellant is now making a lame excuse.

7. On the merits we find that the controversy is squarely covered by the decision of this Tribunal in *Global Earth Properties and Developers Pvt. Ltd. vs. SEBI and other connected appeals, Appeal No.212 of 2020 decided on 14th September, 2020.*

8. In view of the aforesaid, the appeal is dismissed with no order as to costs. The appellant is however granted two months time to deposit the amount pursuant to the impugned order.

9. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the

registry. In these circumstances, this order will be digitally signed by the Presiding Officer on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala
Presiding Officer

Dr. C. K. G. Nair
Member

Justice M.T. Joshi
Judicial Member

26 .10.2020
RHN