

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Date of Decision : 19.05.2021**

**Misc. Application No. 549 of 2020  
(Delay Application)  
And  
Appeal No. 513 of 2020**

Uma Karthikeyan  
21 Basalt Drive, Clyde North – 3978,  
VIC, Australia. ...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. Somasekhar Sundaresan, Advocate with Ms. Yugandhara Khanwilkar and Mr. Rushin Kapadia, Advocates for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b K. Ashar & Co. for the Respondent.

**AND  
Misc. Application No. 550 of 2020  
(Delay Application)  
And  
Appeal No. 514 of 2020**

Uma Karthikeyan  
21 Basalt Drive, Clyde North – 3978,  
VIC, Australia. ...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. Somasekhar Sundaresan, Advocate with Ms. Yugandhara Khanwilkar and Mr. Rushin Kapadia, Advocates for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b K. Ashar & Co. for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer  
Justice M.T. Joshi, Judicial Member

Per: Justice Tarun Agarwala, Presiding Officer (Oral)

1. Appeal No. 514 of 2020 is filed against the order dated November 29, 2019 passed by the Adjudicating Officer ('AO' for short) of the Securities and Exchange Board of India ('SEBI' for short) imposing a monetary penalty upon the appellant for a sum of Rs. 1 crore to be paid jointly and severally by the appellant and other noticees for violating Section 12A of the SEBI Act read with Regulations 3 & 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 ('PFUTP Regulations' for short). Appeal No. 513 of 2020 is

filed against the order dated January 2, 2019 passed by the Whole Time Member ('WTM' for short) of SEBI directing the appellant and other noticees to bring back USD 27.244 million and further restraining the appellant from accessing the securities market for a period of five years.

2. There is a delay of 319 days in Appeal No. 514 of 2020 and 650 days in Appeal No. 513 of 2020 and consequently there is an application in both the appeals for condonation of the delay. One of the grounds is that it was an *ex parte* order and that the appellant came to know about the impugned orders only in September 2020 when the father of the appellant found that the bank accounts of the appellant were attached. Since the issue in both the appeals is common, the same have been clubbed together and are being decided together. We had also directed the respondent to file a reply with regard to service of notice.

3. The appellant contends that she was an employee director in the company which issued GDR in April 2008 and May 2008. She had submitted her resignation which was accepted by the company in August 2012 and requisite Form 32 was submitted to the Registrar of Companies (RoC). The appellant contends that she and her husband migrated to Australia and are

residing there for the past seven years. The agreement for sale of the residential house was executed in August 2012 and they had vacated the said house when they migrated to Australia. It was stated that the appellant came to know about the impugned orders pursuant to the attachment of her bank account in September 2020 which was issued pursuant to an attachment notice dated September 11, 2020. On this ground it was submitted that the delay should be condoned and that the impugned orders should be set aside as the appellant was never served with the show cause notice at any moment of time and that the entire proceedings before the AO and the WTM were *ex parte* without serving the notices to the appellant.

4. The reply filed by the respondent in both the appeals contends that the show cause notice was initially sent at the registered office of the Company which came back undelivered and thereafter it was sent at the last known address of the appellant which also came back undelivered. Ultimately, the hearing notice along with show cause notice was served upon the appellant at the last known address by affixation. It was submitted that the service of the notice was sufficient and was in compliance with Rule 7(c) of the SEBI (Procedure for Holding

Inquiry and Imposing Penalties) Rules, 1995 ('Rules of 1995' for short).

5. We have heard Shri Somasekhar Sundaresan, the learned counsel for the appellant and Shri Shyam Mehta, the learned senior counsel for the respondent.

6. We find that the stand of the respondent is untenable. The AO had issued the show cause notice on February 12, 2018 and the WTM had issued the show cause notice on December 8, 2017. In both the appeals the service has been made by affixation at the last known address of the appellant. This address was the residential house which has been vacated by the appellant in the year 2012. Thereafter she migrated with her husband to Australia and are living there since then. The fact that the appellant vacated her residential address; the fact that she entered into agreement for sale; and the fact that she has migrated to Australia and is living there since 2012 has not been denied.

7. The contention of the respondent that service under Rule 7(c) by affixation has been made which is sufficient is patently erroneous. For facility, Rule 7 of the Rules of 1995 is extracted here under:-

***“Service of notices and orders.***

7. A notice or an order issued under these rules shall be served on the person in the following manner, that is to say,—

- (a) by delivering or tendering it to that person or his duly authorised agent;
- (b) by sending it to the person by fax or electronic mail or courier or speed post with acknowledgement due or registered post with acknowledgement due to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain:

***Provided*** that a notice sent by Fax shall bear a note that the same is being sent by fax and in case the document contains annexure, the number of pages being sent shall also be mentioned :

***Provided*** further that a notice sent through electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute valid service;

- (c) if it cannot be served under clause (a) or clause (b), by affixing it on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided, or carried on business or personally works or last worked for gain and that written report thereof should be witnessed by two persons; or
- (d) if it cannot be affixed on the outer door as per clause (c), by publishing the notice in atleast two newspapers, one in a English daily newspaper having nationwide circulation and another in a newspaper having wide circulation published in the language of the region where that person was last known to have resided or carried on business or personally worked for gain.”

8. A perusal of the aforesaid rule will indicate that the first step for serving a notice upon a person is by delivering or

tendering it to that person or to his duly authorised agent as per Rule 7(a) of the Rules of 1995. In the instant case no steps have been taken by the respondent to serve the appellant as per Rule 7(a) and straightway the respondent have taken steps under Rule 7(b) and thereafter under 7(c). In our view it was not open to the respondent to jump or skip Rule 7(a) and serve notice under Rule 7(b) and 7(c). If service had been attempted under Rule 7(a) by delivering or tendering it to that person i.e. by personal service the person tendering the service would have found out that the appellant had left the premises. Affixation at the address which has been vacated by the appellant is no service in the eyes of law. Thus, in our opinion without attempting service under Rule 7(a), affixation under Rule 7(c) becomes irregular. In any view service has been attempted by affixation on the address which had been vacated by the appellant since 2012 which fact has not been denied. Thus, we are of the opinion that service is insufficient. The appellant was not served with the show cause notice, etc.

9. We further find that no proof has been filed to show that the impugned order was served upon the appellant.

10. In the light of the aforesaid, we are of the opinion that the cause shown is sufficient. The delay in the filing the appeal has been properly explained. The delay is condoned. The application is allowed.

11. We are also satisfied that in view of the aforesaid, the show cause notice was never served upon the appellant nor was the appellant aware of the date of hearing and therefore the proceedings proceeded *ex parte* which was in violation of the principles of the natural justice. The impugned orders cannot be sustained and are quashed in so far as it relates to the appellant. Both the appeals are allowed with no order as to costs. The matter is remitted to the AO / WTM to pass a fresh order after serving the show cause notice and after giving an opportunity of hearing and thereafter proceed in accordance with law. In this regard, we direct the appellant to appear personally or through Advocate before the AO and WTM on June 15, 2021 and from there onwards the authority will proceed in accordance with law. In the circumstances of the case parties shall bear their own costs.

12. 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 Private Secretary 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

Justice M.T. Joshi  
Judicial Member

19.05.2021  
msb