

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 05.10.2023

Misc. Application No. 1148 of 2023
And
Misc. Application No. 1149 of 2023
And
Appeal No. 744 of 2023

Binit Joshi
B 704, Pushkar Hill,
B/S Near Gokul Gold Flat,
B/H M.B. Patel Farm Opp.
Shivanand Banglow,
Jashodanagar, Vinzol,
Ahmedabad, Gujrat, 382 445 ...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

Ms. Rinku Valanju, Advocate with Mr. Amit Kumar, Ms. Kajol Shah and Ms. Unnati Thakkar, Advocates i/b R V Legal for the Appellant.

Mr. Vyom Shah, Advocate with Mr. Nitin Jain, Mr. Ratan Singh and Mr. Anuj V.R., Advocates i/b Agama Law Associates for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per: Justice Tarun Agarwala, Presiding Officer (Oral)

1. We have heard the learned counsel for the parties. The present appeal has been filed against the order dated September

14, 2021 passed by the Whole Time Member (“WTM” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) imposing a penalty of Rs. 10 lakhs.

2. There is a delay of 676 days in the filing of the appeal. The ground urged is, that the appellant was never served with the summons nor was aware of the proceedings and was also never served with the impugned order. It was urged that the appellant came to know about the impugned order only in August 2023 when a telephonic call was received from the Recovery Officer asking for the email ID address.

3. We had directed the respondent to file a reply to the delay application. The reply indicates that attempts were made to serve the appellant through registered post acknowledgement due but the same came back undelivered. Thereafter, service was made through email on the email ID ums9999@gmail.com wherein the summons and the date of hearing as well as the impugned order was duly served on this email ID address. It was also urged, that the appellants were aware of the impugned order as their demat account was attached pursuant to the impugned order and they have underwent the period of debarment of 1 year and that the appellants have only

approached the Tribunal only when recovery proceedings were initiated pursuant to the impugned order.

4. Having heard the learned counsel for the parties and having perused the record, we find that admittedly the service of the summons etc. was not served through registered post acknowledgement due as the same came back undelivered as the appellant had left the premises in question. With regard to the email ID, we find that the same was taken by the respondents through Form 32 filed by the Company before the Registrar of Companies. The email ID is the same as given to another Director Mr. Umeshbhai Mahashankar Purohit. In this regard, the respondents have nothing to say on this issue as to why one email ID has been indicated for two persons and, therefore, there is a possibility that the Company while filing Form 32 gave a wrong email ID of the appellant.

5. Considering the aforesaid, *prima facie*, we find that the assertion that the summons were served through email is not proved and we give the benefit of doubt to the appellant. Consequently, on this short ground that the service was not made, the application for condonation of delay is allowed. The delay is condoned. For the same reason, the impugned and all

the proceedings initiated pursuant to the show cause notice are quashed in so far as it relates to the appellant being violative of the principles of natural justice. The appeal is allowed. The matter is remitted to the WTM to pass a fresh order in accordance with law after serving the show cause notice and after providing an opportunity of hearing. In this regard, the appellant shall appear before the WTM on October 30, 2023. The misc. application is disposed of accordingly.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

05.10.2023
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