

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 01.08.2017

Misc. Application No. 368 of 2016
And
Misc. Application No. 183 of 2017
And
Appeal No. 438 of 2016

K. C. Rajan
S/o Chummar,
Ex- Managing Director of
M/s. Kunnamkulam Paper Mills Ltd.
Aged 60 years, residing at Kuthur House,
Kunnamkulam- 680 503 ...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. Philip Mathew, Advocate i/b Mr. M.S. Roy, Advocate for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Vaibhav Wali, Advocate i/b Juris Corp for the Respondent.

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

Per: Justice J.P. Devadhar (Oral)

1. This appeal is filed to challenge the order passed by the Chairman of Securities and Exchange Board of India ("SEBI" for short) on 10.04.2003. Misc. Application No. 368 of 2016 is filed by the appellant seeking condonation of 110 days delay in filing the appeal. Misc. Application No. 183 of 2017 is filed by SEBI for dismissal of the appeal

on the erroneous ground that the appellant has not filed any application seeking condonation of delay in filing the appeal.

2. Facts relevant for considering the question of condoning the delay in filing the appeal are as follows:-

- a) By an order dated 10.04.2003 the Chairman of SEBI had directed Kunnamkulam Paper Mills Ltd. (“the company” for short) and its Directors including the appellant to refund the money collected under the issue made by offer document dated 15.02.2001 to the investors with interests within 30 days from the receipt of the said order.
- b) Challenging the aforesaid order appellant had filed a Writ Petition before Kerala High Court and by Judgement and Order dated 30.07.2009 Learned Single Judge of Kerala High Court allowed the Writ Petition and quashed the order of SEBI dated 10.04.2003 on ground that the said order passed by SEBI was without jurisdiction.
- c) Challenging the aforesaid order, SEBI filed an appeal before a Divisional Bench of Kerala High Court which was allowed on 20.12.2012 whereby the order passed by the Learned Single Judge was set aside and the order passed by SEBI on 10.04.2003 was restored with liberty to the appellant to challenge the said decision inter alia on the jurisdictional issue, before

this Tribunal which is the appellate forum provided under the SEBI Act itself.

- d) Instead of filing an appeal before this Tribunal against the order passed by the Chairman of SEBI on 10.04.2003 in compliance of the order passed by the Division Bench of Kerala High Court, the appellant filed Special Leave Petition (“SLP” for short) before the Apex Court which was dismissed on 12.02.2016.
- e) Thereafter, the appellant filed Appeal No. 390 of 2016 before this Tribunal on 02.08.2016 which was allowed to be withdrawn on 23.11.2016 with liberty to file fresh appeal within 4 weeks from 23.11.2016. Accordingly, the present appeal is filed by the appellant on 08.12.2016.

3. Although, in the Miscellaneous Application it is claimed that the delay in filing the appeal is only 110 days, in fact the delay enormous. After the Division Bench decision of Kerala High Court dated 20.12.2012 the appellant ought to have filed appeal before this Tribunal within a reasonable time, which the appellant failed to do. Instead, the appellant filed an SLP before the Apex Court. There is nothing on record to suggest that the appellant had obtained stay of the order passed by the Division Bench of Kerala High Court on 20.12.2012. Even, when the SLP was dismissed by the Apex Court on 12.02.2016, appellant did not seek extension of time to file Appeal before this Tribunal. Thus, there is gross negligence on part of the appellant in not filing appeal against the

impugned order dated 10.04.2003 inspite of specific direction given to that effect by a Division Bench of Kerala High Court.

4. Argument advanced by counsel for the appellant that the proceedings before Kerala High Court and the Apex Court were initiated under the prima facie belief that SEBI had no jurisdiction to pass the impugned order and therefore, time taken in those proceedings ought to have been condoned is without any merit, because, it was open to the appellant to challenge the decision of SEBI by filing an appeal before this Tribunal and contend that SEBI had no jurisdiction to pass the impugned order, especially when it was not the case of the appellant that this tribunal has no jurisdiction to entertain the appeal against the impugned order passed by SEBI.

5. Moreover, even after dismissal of SLP by the Apex Court on 12.02.2016 the appellant chose to file Appeal No. 390 of 2016 before this Tribunal belatedly on 02.08.2016. In that appeal, the appellant had taken out Miscellaneous Application No. 316 of 2016 seeking condonation of 1309 days delay in filing the appeal. As the Appeal Memorandum did not contain requisite particulars, Advocate for the appellant sought to withdraw the appeal with liberty to file fresh appeal. Accordingly, the present appeal is filed, with Miscellaneous Application No. 368 of 2016 seeking condonation of 110 days delay in filing the appeal. Apart from the fact that the Miscellaneous Applications filed by the appellant contain mutually contradictory statements, there is no reason to condone the inordinate delay of nearly 170 days in filing the appeal from the Apex Court order dated 12.02.2016 till the date of filing the initial appeal on 02.08.2016. Argument that the appellant got the case papers from the

Apex Court on 20.06.2016, has no merit, because for filing appeal against the impugned order of SEBI, proceedings before the Apex Court were not at all relevant. Therefore, the explanation for delay given by the appellant who was the Managing Director of the company is devoid of any merit.

6. It is relevant to note that SEBI had initiated Criminal Proceedings against the appellant in the year 2003 before the 23rd Metropolitan Magistrate Court, Chennai (CC No: 8859 of 2003) and the same is presently pending for arguments before the 19th Additional City Civil Court, Parry's, Chennai. It is apparent that since the Criminal Proceedings initiated against the appellant is nearing completion, the appellant as an afterthought, has chosen to file the present appeal belatedly, only with a view to delay implementation of the impugned order.

7. In these circumstances, we see no merit in the Misc. Application No. 368 of 2016 and the same is dismissed with no order as to costs. In view of the dismissal of Misc. Application No. 368 of 2016, Misc. Application No. 183 of 2017 filed by SEBI and also Appeal No. 438 of 2016 filed by the appellant becomes infructuous and the same are also disposed of accordingly with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

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