

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 25.11.2019

Misc. Application No. 611 of 2019
And
Appeal No. 567 of 2019

National Spot Exchange Ltd.
6th Floor, Chintamani Plaza, B Wing,
Andheri- Kurla Road, Chakala,
Andheri (East), Mumbai - 400 053. Appellant

Versus

1. Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A,
G Block, Bandra Kurla Complex,
Bandra (East), Mumbai - 400 051.
2. Phillip Commodities India Pvt. Ltd.
No. 1, 18th Floor, Urmi Estate,
245, Ganpatrao Kadam Marg. ... Respondents

Mr. Arvind Lakhawat, Advocate with Mr. Mihir Gupte, Advocate i/b
Vaish Associates for the Appellant.

Mr. Mihir Mody, Advocate with Mr. Roshan, Advocate i/b K. Ashar
& Co. for the Respondent Nos. 1.

Mr. Prakash Shah, Advocate with Mr. Chinmay Paradkar, Mr. Meit
Shah, Advocates i/b Prakash Shah & Associates for the Respondent
Nos. 2.

**With
Misc. Application No. 612 of 2019
And
Appeal No. 568 of 2019**

National Spot Exchange Ltd.
6th Floor, Chintamani Plaza, B Wing,
Andheri- Kurla Road, Chakala,
Andheri (East), Mumbai - 400 053.

..... Appellant

Versus

1. Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A,
G Block, Bandra Kurla Complex,
Bandra (East), Mumbai - 400 051.

2. Anand Rathi Commodities Ltd.
Express Zone, A wing, 10th Floor,
Western Express Highway,
Goregaon (East), Mumbai - 400063.

... Respondents

Mr. Arvind Lakhawat, Advocate with Mr. Mihir Gupte, Advocate i/b
Vaish Associates for the Appellant.

Mr. Kevic Setalvad, Senior Advocate with Mr. Mihir Mody,
Mr. Roshan, Advocates i/b K. Ashar & Co. for the Respondent Nos.
1.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Prateek Seksaria,
Mr. Ameya Gokhale, Mr. Vaibhav Singh, Mr. Rishabh Jaiswal,
Advocates i/b Shardul Amarchand Mangaldas & Co. for the
Respondent Nos. 2.

**With
Misc. Application No. 613 of 2019
And**

Appeal No. 569 of 2019

National Spot Exchange Ltd.
6th Floor, Chintamani Plaza, B Wing,
Andheri- Kurla Road, Chakala,
Andheri (East), Mumbai - 400 053. Appellant

Versus

1. Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A,
G Block, Bandra Kurla Complex,
Bandra (East), Mumbai - 400 051.
2. Motilal Oswal Commodities Broker
Pvt. Ltd.
Motilal Oswal Towers, 6th Floor,
Rahintullah Sayani Road, Opp. Parel
ST Depot, Prabhadevi,
Mumbai - 400 025. ... Respondents

Mr. Arvind Lakhawat, Advocate with Mr. Mihir Gupte, Advocate i/b
Vaish Associates for the Appellant.

Mr. Mihir Mody, Advocate with Mr. Roshan, Advocate i/b K. Ashar
& Co. for the Respondent Nos. 1.

Mr. Aditya Mehta, Advocate with Mr. Ravichandra S. Hegde, Mr.
Paras Parekh, Mr. Ashish Venugopal, Ms. Ankita Roy, Advocates i/b
Parinam Law Associates for the Respondent Nos. 2.

With
Misc. Application No. 614 of 2019
And
Appeal No. 570 of 2019

National Spot Exchange Ltd.

6th Floor, Chintamani Plaza, B Wing,
Andheri- Kurla Road, Chakala,
Andheri (East), Mumbai - 400 053.

..... Appellant

Versus

1. Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A,
G Block, Bandra Kurla Complex,
Bandra (East), Mumbai - 400 051.

2. India Infoline Commodities Ltd.
(currently named as IIFL Commodities
Ltd.)
143, MGR Road, Perungudi,
Chennai, Tamil Nadu - 600 096.

... Respondents

Mr. Arvind Lakhawat, Advocate with Mr. Mihir Gupte, Advocate i/b
Vaish Associates for the Appellant.

Mr. Rafique Dada, Senior Advocate with Mr. Mihir Mody,
Mr. Roshan, Advocates i/b K. Ashar & Co. for the Respondent Nos.
1.

Mr. Mustafa Doctor, Senior Advocate with Mr. R. S. Loona, Ms.
Tanmayi Rajadhakshya, Ms. Aparna Wagle, Advocates i/b Alliance
Law for the Respondent Nos. 2.

With
Misc. Application No. 615 of 2019
And
Appeal No. 571 of 2019

National Spot Exchange Ltd.
6th Floor, Chintamani Plaza, B Wing,
Andheri- Kurla Road, Chakala,
Andheri (East), Mumbai - 400 053.

..... Appellant

Versus

1. Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A,
G Block, Bandra Kurla Complex,
Bandra (East), Mumbai - 400 051.

2. Geofin Comtrade Ltd.
10th Floor, 34/659-P,
Civil Line Road, Padivattom, Kochi,
Ernakulam, Kerala 682024.

... Respondents

Mr. Arvind Lakhawat, Advocate with Mr. Mihir Gupte, Advocate i/b
Vaish Associates for the Appellant.

Mr. Mihir Mody, Advocate with Mr. Roshan, Advocate i/b K. Ashar
& Co. for the Respondent Nos. 1.

None for the Respondent Nos. 2.

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

Per : Justice Tarun Agarwala, Presiding Officer (Oral)

1. The present appeals have been filed against the order dated February 27, 2019. Since there is a delay in filing the appeals an application for condonation of delay have also been filed. According to the appellant, there is a delay of 90-92 days in filing the present appeals but we think it otherwise.

2. The facts leading to the filing of the appeals is, that against the order dated February 27, 2019 the appellant had earlier filed Appeal Nos. 249, 247, 215, 216, 248 of 2019 which were dismissed as withdrawn by an order of the Tribunal dated June 17, 2019 and liberty was given to the appellant to file afresh after incorporating the necessary amendments. For facility, the order of this Tribunal dated June 17, 2019 in Appeal No. 249 of 2019 is extracted hereunder :-

“1. Let a copy of the memo of appeal be served on the learned counsel for the respondent within three days from today.

2. A request was made by the learned counsel for the appellant to withdraw the appeal with liberty to file afresh after incorporating necessary amendments. Prayer accepted. The appeal is dismissed as withdrawn with a liberty to the appellant to file the appeal afresh, if they so desire.”

Similar order was passed in other appeals.

3. After the dismissal of the appeals, the present appeals were thereafter filed on September 11, 2019 after almost three months.

4. Paragraph No. 4 of the application for condonation of delay provides the reasons for the delay in filing the appeal. For facility, paragraph 4 is extracted hereunder :-

“The Appellant states that the aforesaid delay has occurred on the fact, due to subsequent developments in other matters of the Appellant, which were pending then before the Hon’ble Supreme Court and other matters of the Appellant, which are pending at Hon’ble Bombay High Court and implications therein. The Appellant started exploring the implications of the Impugned Order and possibilities of challenging it. In the process, the Appellant was collating various details, relevant to the captioned matter, which took some time. The Appellant is sincerely pursuing the matter and in circumstances mentioned above took some time to organize all the documents for filing of the present Appeal.”

5. The ground urged in the Misc. Application for condoning the delay is, that on account of subsequent development in other matters of the appellant which were pending before the Hon’ble Supreme Court and before the Hon’ble Bombay High Court, collating the details took time and, therefore, the delay in filing the appeal. This assertion, in our opinion, is vague and is not supported by any document. Further, at the time when the appeals of the appellant were dismissed on June 17, 2019, the prayer made was that certain amendments are required to be carried out and, therefore, the appeals were withdrawn and liberty was given to the appellant to file afresh after incorporating the necessary amendments. We, thus, find that the assertion made in paragraph 4 relating to subsequent development is an afterthought and does not correlate with the

reasoning for withdrawal of the appeals i.e. for incorporating the necessary amendments which were lacking in the earlier appeals filed by the appellant.

6. The learned counsel further urged that the delay in filing the appeals was also on account of fact that the Advocate fee was not paid as there was a restraint order by the High Court. These assertions are also vague and are not supported by any document nor pleaded in the application for condonation of delay.

7. The appeal is required to be filed within 45 days from the date of the impugned order. Once the discretion is exercised by the Tribunal permitting the appellant to withdraw the appeal and liberty is given to file a fresh appeal after incorporating the necessary amendments, the same is required to be filed at the earliest opportune moment. When liberty was granted by this Tribunal to file afresh, the same should have been done within a week or two. Filing after three months is an inordinate delay and misuse of the liberty granted by the Tribunal.

8. We accordingly do not find any cogent reasons to condone the inordinate delay in filing the appeals for the second time. The Misc. Application Nos. 611, 612, 613, 614 and 615 of 2019 in Appeal Nos.

567, 568, 569, 570 and 571 of 2019 respectively are consequently rejected as a result, these appeals are also dismissed with no order as to costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M. T. Joshi
Judicial Member

25.11.2019
Prepared & Compared by
PTM