

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Date of Decision : 10.08.2020**

**Misc. Application No. 224 of 2020  
(Delay Application)  
And  
Appeal No. 162 of 2020**

Harivallabh Mundra  
45/47, Lohar Chawl,  
Crawford Market,  
Mumbai - 400002.

..... 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. Joby Mathew, Advocate with Mr. Anshuman Sugla, Advocate i/b  
Joby Mathew & Associates for the Appellant.

Mr. Vishal Kanade, Advocate with Mr. Anubhav Ghosh, Advocate i/b  
The Law Point 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 (Oral)

1. We have heard Mr. Joby Mathew, the learned counsel alongwith Mr. Anshuman Sugla, the learned counsel for the appellant and Mr. Vishal Kanade, the learned counsel alongwith Mr. Anubhav Ghosh, the learned counsel for the respondent through video conference.

2. Pursuant to the show cause notice dated October 13, 2017, the appellant appeared and submitted a reply on October 15, 2019. The impugned order was passed by the Whole Time Member (hereinafter referred to as 'WTM') on April 13, 2020 finding the appellant guilty and restraining him from accessing the securities market for a period of two years. The appellant being aggrieved by the said order has filed the present appeal.

3. There is a delay in filing the appeal. For the reasons stated in the application and considering that the appeal was filed during the pandemic period, we condone the delay. The delay condonation application is allowed.

4. Having heard the learned counsel for the parties, we find that a specific assertion was made by the appellant that he had filed a reply on October 15, 2019 which has not been considered by the WTM.

We find from the impugned order, namely, paragraph 10 that the WTM has given a specific finding that no reply was filed by the appellant. When we questioned this fact the learned counsel for the respondent fairly conceded that the reply of the appellant dated October 15, 2019 was received by the respondent on October 17, 2019.

5. In view of the aforesaid admission, we are of the opinion that the impugned order in so far as the appellant is concerned has been passed without consideration of the reply filed by the appellant and, therefore, on this short ground the impugned order cannot be sustained in so far as the appellant is concerned.

6. For the reasons stated aforesaid, the impugned order is quashed in so far as the appellant is concerned. The appeal is allowed. The matter is remitted to the WTM to reconsider the matter afresh after considering the reply of the appellant and after taking into consideration all other factors and after giving an opportunity of hearing to the appellant. In view of the aforesaid, parties shall bear their own costs.

7. 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

10.08.2020  
PTM