

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 19.11.2020

**Misc. Application No. 439 of 2020
(Urgent Application)
And
Misc. Application No. 440 of 2020
(Delay Application)
And
Misc. Application No. 475 of 2020
(Exemption from filing certified copy)
And
Appeal No. 416 of 2020**

Mr. Ajay Kumar Dalmia
O-901 Arohi Crust, South Bopal,
Ahmedabad,
Gujarat- 380 058

...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. Anandodaya Mishra, Advocate i/b Amlegals for the
Appellant.

Mr. Mihir Mody, Advocate with Mr. Arnav Misra and
Mr. Shehaab Roshan, Advocates i/b K. Ashar & Co. 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 (Oral)

1. The Urgency Application No. 439 of 2020 is allowed.

2. The present appeal has been filed against the order dated November 20, 2019 passed by the Adjudicating Officer (“AO” for convenience) of the Securities and Exchange Board of India imposing a penalty of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) upon the appellant. There is a delay of 299 days in the filing of the appeal and accordingly an application for condonation of delay has been filed. It was urged that the impugned order was received only through email on October 06, 2020 pursuant to a demand notice sent by the respondent on the same email. According to the respondent the impugned order was sent at the address known to them at the Mysore and Baroda address which returned undelivered. In view of the aforesaid, we are satisfied that the appellant had not received the impugned order. Consequently the delay in filing the appeal is condoned and the application is allowed. Since certified copy was not made available to the appellant, we exempt the appellant from filing a certified copy of the impugned order. The exemption application is accordingly allowed.

3. In so far as the merits is concerned we find that the matter has proceeded ex-parte against the appellant. The show cause notice nor the notice fixing the date of hearing was ever served upon the appellant. In paragraph 11 of the impugned order the

AO has tried to justify that all possible steps were made to serve the appellant but when all steps failed the AO proceeded ex-parte against the appellant.

4. The AO in the paragraph 11 of the impugned order has stated that the date of hearing in the matter was also published in the regional newspapers but details have not been indicated. In any case, according to the appellant he was not staying either at Mysore or at Baroda but at that the relevant moment of time the appellant was staying in Ahmedabad. In view of the aforesaid, the presumption of service of notice has been satisfactorily rebutted. We are also satisfied that the appellant was not served with the show cause notice and consequently all proceedings initiated pursuant to the show cause notice fails and cannot be validated on the basis of deemed service.

5. In view of the aforesaid, the impugned order being ex-parte against the appellant cannot be sustained and is quashed in so far as it relates to the appellant. The appeal is allowed. The matter is remitted to the AO who will decide the matter afresh after serving a show cause notice along with all the annexures, if any, and after granting a reasonable opportunity to the appellant to file his reply. In this regard, we direct the appellant to appear before the AO on December 07, 2020 on which date he would be served with the show cause notice and the AO will

proceed thereafter and pass appropriate orders within six months thereafter in accordance with law after giving an opportunity of hearing to the appellant. The appellant will provide the details of his address, telephone and mobile numbers etc to the authority concerned..

6. In view of the appeal being allowed the bank attachments, etc made if any pursuant to the impugned order shall be lifted forthwith.

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

19.11.2020
PK