

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 06.02.2020

**Misc. Application No. 50 of 2020
And
Appeal No. 58 of 2020**

Vipin Sharma
101, Dariya Mahal (A),
80, Nepean Sea Road,
Mumbai- 400 006

...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

Dr. Mr. S. K. Jain, Practicing Company Secretary for the
Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody and
Mr. Shehaab Roshan, Advocate 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)

ORDER:

1. The present appeal has been filed against the order dated
September 30, 2019 passed by the Whole Time Member

(“WTM for convenience) of Securities and Exchange Board of India (“SEBI” for convenience) under Sections 11, 11B and 19 of the SEBI Act, 1992. Through this order the company M/s Chromatic India Limited was restrained from accessing the securities market including issuance of prospectus, offer document etc. for a period of 5 years and the directors were restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market for specified period as contained in the order. The appellant was restrained from accessing the securities market for a period of 1 year.

2. There is a delay of 7 days in the filing of the appeal and accordingly an application has been filed for condoning the delay. The ground urged is, that the impugned order is an ex-parte order in as much as the appellant was never served with any show cause notice nor was given any opportunity to file a reply to the show cause notice. Since the issue involved in the disposal of the Misc. Application and on the merits was the same, we had directed the respondent by our order dated January 29, 2020 to file a reply. The reply filed indicates that the appellant was never served with the show cause notice

accordingly the delay is condoned. The Misc. Application is allowed.

3. We find that the appellant was a director in the company and had resigned on September 29, 2010 and the same was communicated to the Registrar of Companies on October 22, 2010. The residential address of the appellant which is reflected in Form 32 before the Registrar of Companies indicates as under:-

*“101, Dariya Mahal (A)
80, Nepean Sea Road,
Mumbai
Maharashtra
India- 400 006”*

4. On the other hand, the show cause notice was sent to the appellant was sent to the corporate address of the company at 501, Maker Chamber V, 221, Nariman Point, Mumbai- 400 021.

5. The fact that the appellant had resigned on September 29, 2010 has not been denied by the respondent in their reply. Consequently, it is a clear case where the appellant was not served with the show cause notice. In the absence of the service of the show cause notice the entire proceedings are vitiated.

6. For the reasons stated aforesaid, the impugned order cannot be sustained in so far as the appellant is concerned on account of non-service of the show cause notice. We accordingly allow the appeal and direct the appellant to appear before the Whole Time Member of Securities and Exchange Board of India on February 20, 2020 on which date the appellant would be served with the show cause notice and, from there onwards, the WTM would proceed in accordance with law.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M. T. Joshi
Judicial Member