

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 08.09.2020

Date of Decision : 11.09.2020

**Misc. Application No. 269 of 2020
(Urgency Application)**

And

**Misc. Application No. 270 of 2020
(Delay Application)**

And

Appeal No. 265 of 2020

Mr. Debapratim Majumder
65/1, Maharshi Debendra Road,
Kolkata -700 006.

..... 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

Mr. Pulkit Sharma, Advocate with Mr. Saurabh Bachhawat,
Advocate i/b Mr. Vikas Bengani, Advocate for the Appellant.

Ms. Nidhi Singh, Advocate with Ms. Kinjal Bhatt, Advocate i/b
Vidhi Partners 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

1. For the reasons stated in the application the urgency application is allowed and the matter is taken up for admission and for hearing. The present appeal has been filed against the order dated March 19, 2018 passed by the Whole Time Member (hereinafter referred to as 'WTM') directing the appellant and seven other entities to wind up the Collective Investment Scheme (CIS) and refund the money so collected.

2. There is a delay of 669 days in filing the appeal and accordingly an application for condoning the delay has also been filed. The controversy in the delay application as well as on the merits is the same and accordingly, the application and the appeal are being decided together at the admission stage without calling for a reply. In this case, the respondent has filed a compilation of documents relating to service upon the appellant.

3. The facts leading to the filing of the appeal is, that the controversy relates with regard to the company known as Remac Realty India Ltd. in which the appellant was appointed as a director in April 2010. According to him, he resigned in August 2013.

4. It transpires that an ex-parte interim order dated July 15, 2014 was passed by the WTM directing the appellant and other entities to stop taking money under the CIS. This ex-parte interim order was duly served upon the appellant. As per the contention of the respondent, in spite of service, the appellant did not file a reply nor appeared before the WTM. The record of the respondent from the compilation of the documents indicates that the WTM after passing an interim order issued a notice dated July 27, 2017 for hearing which was delivered by hand at the residence of the appellant. Since the appellant did not appear, an ex-parte order was passed against him vide the impugned order dated March 19, 2018 which is alleged to have been sent by Speed Post at his residential address and which was duly received by some member of the family. In addition to the above, according to the respondent the publication was made in the newspaper on September 13, 2018 intimating about the passing of the impugned order dated March 19, 2018.

5. We have heard Mr. Pulkit Sharma, the learned counsel with Mr. Saurabh Bachhawat, the learned counsel for the appellant and Ms. Nidhi Singh, the learned counsel with Ms. Kinjal Bhatt, the

learned counsel for the respondent at some length through video conference.

6. According to the appellant, he was unaware of the entire proceedings before the WTM as he was taken in the judicial custody on December 9, 2015 and remained in jail till October 4, 2018 when he was granted bail by Orissa High Court on October 16, 2018. It was contended that the appellant only came to know about the impugned order dated March 19, 2018, when he received the notice of demand dated November 26, 2019 issued by the Recovery Officer on or around December 7, 2019, based on which his accounts were frozen. Thereafter, the present appeal was filed.

7. The learned counsel for the respondent strenuously urged that the appellant was aware of the proceedings and deliberately chose not to contest or appear before the WTM and, therefore, the impugned order does not suffer from any error of law.

8. Having heard the learned counsel for the parties, we are of the opinion that the fact that the appellant was in judicial custody from December 9, 2015 to October 4, 2018 cannot be denied by the respondent. While the appellant was in jail during the aforesaid

period the respondent issued the notice of hearing dated July 27, 2018 and thereafter passed the impugned order on March 19, 2018 and published a news item in the newspaper on September 13, 2018. The aforesaid dates are those dates when the appellant was in judicial custody and, therefore, it was not possible for the appellant to be aware either of the service of the notice for hearing or publication of the news item. In the light of the aforesaid, we are of the opinion that the appellant had no knowledge of the proceedings before the WTM.

9. Accordingly, for the reasons stated aforesaid, sufficient cause has been shown to condone the delay of 669 days in filing the appeal. We are satisfied that the appellant had no knowledge of the proceedings. The delay condonation application is allowed.

10. In view of the fact that the appellant had no knowledge of the proceedings before the WTM, the ex-parte proceedings and the ex-parte order dated March 19, 2018 in so far as it relates to the appellant cannot be sustained and is quashed. The appeal is allowed to that extent. The matter is remitted to the WTM to decide the matter afresh. In this regard, we direct the appellant to appear before the WTM either personally or through his Advocate on September

25, 2020 and thereafter, the WTM will grant an opportunity to the appellant to file an appropriate reply to the show cause notice and would proceed thereafter in accordance with law.

11. In the circumstances of the case, there shall be no order as to costs.

12. 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

11.09.2020
PTM