

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 17.6.2021

**Misc. Application No.638 of 2021
(Stay Application)**

And

**Misc. Application No.639 of 2021
(Application of Sale of Shares)**

And

Appeal No.383 of 2021

Hamraj Fashions Consultants P. Ltd.
(Now known as Gilani Infra Pvt. Ltd.)
22/1, 107 Shilly Plaza,
K Kamaraj Road,
Bangalore-560 042.

...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
G Block, Bandra-Kurla Complex,
Bandra (E), Mumbai -400051.

...Respondent

Ms. Rinku Valanju, Advocate with Mr.Pratham Masurekar
and Mr. Aditya Shah, Advocate i/b. R V Legal for the
Appellant.

Mr. Suraj Surjit Choudhary, Advocate with Mr. Abhishek
Khare and Ms. Samreen Fatima, Advocates i/b. Khare Legal
Chambers for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M.T. Joshi, Judicial Member

Per: Justice Tarun Agarwala, Presiding Officer (Oral)

1. The appellant has been filed the present appeal against the order dated 30th April, 2021 passed by the Whole Time Member ('WTM' for short) debarring the appellant from accessing the securities market for a period of two years.
2. The contention of the appellant is, that the impugned order was passed ex-parte without giving an opportunity of hearing to the appellant. It was contended that the show cause notice was never served upon the appellant at its registered office in Karnataka. It has been said that the name of the Company was changed in December, 2015 and the registered office shifted from Kolkata to Karnataka on 13th August, 2017 and the change of registered office was intimated under section 13 of the Companies Act to the Registrar of Companies.
3. In this regard, we called upon the respondent to file a short affidavit with regard to the service of the show cause notice. The affidavit which has been filed by the

respondent indicates that they tried to serve the appellants at an address given in the allotment letter which returned undelivered inspite of which the affixation was done at the same address and publication was also made in various newspapers in Kolkata. Since no one appeared the authority proceeded ex-parte against the appellant and passed the impugned order.

4. We find it strange that once a report came that the address is insufficient the respondent insistence in making service by affixation at the same address. At no stage did the respondent bother to find out the correct address by looking into the website of the Ministry of Corporate Affairs. If they had done so they would have found the change in the registered office of the Company which shifted from Kolkata to Karnataka.
5. In view of the aforesaid, we are of the opinion that the impugned order suffers from the vice of arbitrariness being violative of Article 14 of the Constitution of India since the entire proceedings were done ex-parte without serving the appellant. On this ground alone the impugned

order cannot be sustained and is quashed. The appeal is allowed and the matter is remitted to the WTM to pass a fresh order after serving the show cause notice and proceedings.

6. In this regard, we direct the appellant to give the name, address of the Company as well as details of its Directors including email within ten days from today to the respondent. Thereafter, the WTM will proceed in accordance with law.
7. With regard to the service of summons and enquiry we find that SEBI has framed Rules for adjudication of disputes by the Adjudicating Officer which is called the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995. No such Rules or procedure for holding inquiry and service has been framed for the WTM. We, accordingly, direct that a copy of this order be placed before the Chairman of Securities and Exchange Board of India to consider framing of rules/procedure/guidelines/circulars for the purpose of

service and procedure for inquiry for the WTM. Misc. application nos.638 and 639 of 2021 are disposed of accordingly.

8. 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 Private Secretary 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

Justice M.T. Joshi
Judicial Member

17.6.2021

RHN