

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 31.5.2022

**Misc. Application No.319 of 2022
And
Misc. Application No.225 of 2022
And
Misc. Application No.1374 of 2021
And
Appeal No.168 of 2022**

Sri Balvir Singh
Flat No.401, Tower No.12,
Royal Estate, Ambala Road, Zirakpur,
District-Mohali, State Punjab-140603. Appellant

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No.C-4A,
G Block, Bandra Kurla Complex,
Bandra (East), Mumbai- 400 051.
2. Securities and Exchange Board of India
Recovery Cell, Northern Regional Office,
5th Floor, Bank of Baroda Building,
16, Sansad Marg, New Delhi-110001. ... Respondents

Mr. Siddharth Bhatnagar, Senior Advocate with Mr. Uday Gupta, Ms. Shanta Pandey, Mr. Rahul Arya, Mr. Hiren Dasan, Ms. Reena Lange and Mr. Prashant Phophale, Advocate i/b. PMH Law for the Appellant.

Mr. Akash Rebello, Advocate with Mr. Nishit Dhruva, Mr. Yash Garach, Ms. Shefali Shankar and Ms. Meghna Ashwin, Advocates i/b. MDP & Partners for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per: Justice Tarun Agarwala, Presiding Officer (Oral)

1. For the reasons stated in the application, the delay in the filing of the appeal is condoned. The application is allowed.
2. We have heard the learned counsel for the parties. The present appeal has been filed challenging the ex-parte order dated 18th June, 2021 passed by the Whole Time Member ('WTM' for short) directing the appellant alongwith other Directors of the Company to jointly and severally refund the money collected from the investors alongwith interest.
3. The facts leading to the filing of the present appeal is, that an ex-parte ad-interim order dated 20th September, 2013 was passed against the Company and its Directors which order was confirmed by an order of 14th August, 2015. The WTM while confirming the ex-parte order directed Securities and

Exchange Board of India (referred to hereinafter as ‘SEBI’) in paragraph 31 of its order to take appropriate steps to complete service of the interim order on the appellant and thereafter proceed further against him.

4. It transpires that instead of taking steps to serve the appellant as per the procedure provided under Regulation 7 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (referred to hereinafter as ‘Rules 1995’) the respondent made a publication in various newspapers in Calcutta and Chandigarh based on which service was held to be sufficient and, thereafter, the ex-parte impugned order was passed on 18th June, 2021.
5. Having heard the learned counsel for the parties, we find that no steps were taken by the respondent pursuant to the WTM’s order dated 14th August, 2015 to serve the appellant as per the procedure provided under Rule 7 of the Rules of 1995. For facility, Rule 7 of the Rules, 1995 is extracted hereunder:

“Service of notices and orders.

7. A notice or an order issued under these rules shall be served on the person in the following manner, that is to say,—

(a) by delivering or tendering it to that person or his duly authorised agent;

(b) by sending it to the person by fax or electronic mail or courier or speed post with acknowledgement due or registered post with acknowledgement due to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain:

Provided that a notice sent by Fax shall bear a note that the same is being sent by fax and in case the document contains annexure, the number of pages being sent shall also be mentioned:

Provided further that a notice sent through electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute valid service;

(c) if it cannot be served under clause (a) or clause (b), by affixing it on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided, or carried on business or personally works or last worked for gain and that written report thereof should be witnessed by two persons; or

(d) if it cannot be affixed on the outer door as per clause (c), by publishing the notice in at least two newspapers, one in a English daily newspaper having

nationwide circulation and another in a newspaper having wide circulation published in the language of the region where that person was last known to have resided or carried on business or personally worked for gain.”

6. The aforesaid Rule 7 requires a notice to be served personally to that person or his duly authorised agent or by sending it through registered post, courier, fax, electronic mail etc. If service by the aforesaid two methods cannot be done then service has to be done by affixation and as a last resort service may be done by publication in at least two newspapers, one in English newspaper, and the other in the regional language.

7. We find that in the instant case no steps have been taken to serve the appellant under clause (a), (b) and (c) of Rule 7 of the Rules of 1995. Without taking steps under clause (a), (b) and (c), the respondent cannot directly take steps under clause (d) of Rule 7 of the Rules of 1995. Such procedure taken by the respondent is incorrect and cannot be sustained. We also find that the appellant had in their possession the correct address as is clear from the application filed by the respondent

before the Patiala House Court, New Delhi. A copy of the application has been filed as Exhibit N which fact is not disputed by the respondent. Nothing has been brought on record to indicate that the respondent took steps to serve the appellant at the address indicated under Rule 7(a), (b) and (c).

8. In view of the aforesaid, we are satisfied that the appellant was not served with show cause notice nor any sufficient opportunity was given to him to contest the matter. Consequently, the impugned order, being violative of the principles of natural justice as envisaged under Article 14 of the Constitution of India, cannot be sustained and is quashed insofar as it relates to the appellant. The appeal is allowed. The matter is remitted to the respondent to decide the matter afresh after serving a show cause notice to the appellant. In this regard, the appellant shall appear before the WTM on 30th June, 2022 on which date the respondent shall serve a copy of the show cause notice and, thereafter proceed in accordance with law. Any bank account, demat account attached shall be

defreezed and lifted forthwith. All the misc. applications are accordingly disposed of.

9. 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. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

31.5.2022
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