

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 13.1.2020

**Misc. Application No.1 of 2020
And
Appeal No.1 of 2020**

Rakhi Trading Pvt. Ltd.
61/162, 4th Floor,
109 Gaya Building,
Y M Road, Masjid Bunder West,
Mumbai – 400009.

..... Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, C-4A, G- Block,
Bandra-Kurla Complex,
Bandra (East), Mumbai – 51.

..... Respondent

Mr. Vikram Nankani, Senior Advocate with Mr. P.R. Ramesh, Mr. KRCV Seshachalam, Ms. Sabeena Mahadik, Mr. Pankaj Uttaradhi and Mr. Aayush Kothari, Advocates i/b. Vishesha Law Services for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody and Mr. Shehaab Roshan, Advocates i/b. K. Ashar & Co. for the Respondent.

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

Per : Justice Tarun Agarwala (Oral)

1. The facts leading to the filing of the present appeal is that the Adjudicating Officer passed an order dated

26th March, 2009 under Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') imposing a penalty of Rs.1,08,00,000/- for violating Regulations 3(a), (b), (c) and 4(1), 4(2)(a) and (b) of the Securities and Exchange of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations'). The order further directed the appellant to pay the amount within 45 days from the date of receipt of the order. The said order was challenged by the appellant before this Tribunal which was allowed by an order dated 11th October, 2010 and the order of the Adjudicating Officer was set aside. Consequently, the demand of Rs.1,08,00,000/- came to an end.

2. Securities and Exchange of India (hereinafter referred to as 'SEBI') being aggrieved by the order of this Tribunal filed an appeal before the Supreme Court of India. The Civil Appeal of SEBI was allowed by judgment dated 8th February, 2018 and the order of SAT was set aside in so far as the appellant was concerned.

3. As a result of the setting aside of the order of the Tribunal the order of the Adjudicating Officer revived and the demand of Rs.1,08,00,000/- became payable by the appellant. Since the same was not paid, the Recovery Officer issued a Recovery Certificate No.1773 of 2018 dated 14th December, 2018 directing the appellant to pay a sum of Rs.2,34,05,932/- which included the component of interest and recovery cost in addition to the penalty imposed by the Adjudicating Officer. The appellant being aggrieved by the Recovery Certificate dated 14th December, 2018 issued by the Recovery Officer has filed the present appeal. Since there is a delay of 335 days in filing the present appeal, a Misc. Application No.1 of 2020 has also been filed for condoning the delay.

4. We have heard Shri Mr. Vikram Nankani, Senior Advocate assisted by Mr. P.R. Ramesh, Mr. KRCV Seshachalam, Ms. Sabeena Mahadik, Mr. Pankaj Uttaradhi and Mr. Aayush Kothari, Advocates for the Appellant and Mr. Kumar Desai, Advocate assisted by Mr. Mihir Mody and Mr. Shehaab Roshan, Advocate for the Respondent. Since there is no factual dispute the appeal is being decided at the admission stage without calling for a reply.

5. Under Section 15T of the SEBI Act, an appeal is required to be filed within 45 days from the date of receipt of the order. In the instant case, the impugned order is dated 14th December, 2018. The present appeal was filed on 31st December, 2019. There is a delay of 335 days in filing the appeal. The ground urged is, that the impugned order is void and, therefore, no cognizance was taken on the said order and only when the appellant's bank account was attached and money was withdrawn that an application was filed before the Recovery Officer in October, 2019. Since the Recovery Officer took no action on the representation of the appellant the present appeal was filed. It was thus urged that there is no undue delay on the part of the appellant and, in the circumstances of the case, the delay, if any, was liable to be condoned.

6. It was further contended by the learned Senior counsel that no amount is payable as on the date in as much as the order of the Adjudicating Officer merged with the order of SAT and consequently the quantum of penalty was set aside. It was further contended that once the appeal of SEBI was allowed by the Supreme Court the order of the Adjudicating

Officer with regard to the quantum of penalty does not revive and that the Adjudicating Officer was required to quantify the penalty, if any, afresh.

7. On the other hand, learned counsel for SEBI submitted that the principle of merger is not applicable in the present case and since there is undue delay in filing the appeal the same should be dismissed on the ground of laches.

8. Having heard the learned counsel for the parties, we find that the appellant was aware of the order of the Recovery Officer dated 14th December, 2018. Even after the receipt of the said order the appellant took no action and sat over the matter. The request for reconsideration of the quantum of penalty was only made by the appellant in October, 2019 after a considerable delay. Such representation so made will not allow the appellant to extend the period of limitation for the purpose of filing an appeal under Section 15T of the SEBI Act.

9. We are of the opinion, that there is an inordinate delay in filing the appeal. No sufficient cause has been shown for condoning the inordinate delay. The Supreme Court in ***Ram Nath Sao Alias Ram Nath Sahu and Ors. (2002) 3 SCC 195***

held that the expression “sufficient cause” should be given a liberal construction so as to advance substantial justice especially when no negligence or inaction or want of bonafides is imputable to a party. However, in ***Balwant Singh (Dead) vs. Jagdish Singh & Ors. (2010) 8 SCC 685*** the Hon’ble Supreme Court held that the expression “sufficient cause” means the presence of legal and adequate reasons.

10. In the instant case, we are of the opinion that sufficient cause has not been shown nor any adequate or legal reasons have been given for condoning the delay. Further, the reason for filing representation is not bonafide. Thus, for the inordinate delay in filing the appeal, the application for condonation of delay cannot be allowed and is rejected as a result, the appeal is also dismissed with no order as to costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Justice M.T. Joshi
Judicial Member

13.1.2020

Prepared and compared by
RHN