

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Date of Decision : 27.02.2020**

**Misc. Application No. 100 of 2020  
And  
Misc. Application No. 101 of 2020  
And  
Appeal No. 91 of 2020**

Mr. Sandeep Chatterjee  
D 34/65 Ganesh Mahal,  
Post Office : Bengalitola,  
Varanasi - 221001.

..... 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. Sabyasachi Chatterjee, Advocate for the Appellant.

Mr. Abhiraj Arora, Advocate with Mr. Vivek Shah, Advocate i/b  
ELP 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 (Oral)

1. The present appeal has been filed against the order dated November 1, 2016 passed by the Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as, 'SEBI') wherein the appellant along with other noticees and the company were directed jointly and severally to refund the money collected through the issue of non-convertible redeemable secured debentures to the allottees alongwith interest at the rate of 15% per annum and were further restrained from associating themselves with any listed public company for a period of four years or till the date of refund of money to the allottees.

2. There is a delay of 1181 days in filing the appeal in as much as the appeal was filed on February 6, 2020. Accordingly, an application for condonation of delay has been filed.

3. The ground urged is, that after passing of the impugned order, the appellant made a representation on March 21, 2017 before the WTM seeking a relief that he should be discharged from the impugned order on the ground of his limited association with the company as an independent non-executive director. It was further contended that the appellant was arrested on July 5, 2017 and was

enlarged on bail on September 7, 2018 and thereafter he became unwell and consequently, the present appeal has been filed. In support of his submission, the learned counsel has placed reliance upon the decision of the Hon'ble Supreme Court in ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors. [(2013) 12 SCC 649]*** wherein the Hon'ble Supreme Court after considering the various case laws culled out the following principles which should be considered while considering an application for condonation of delay, namely :-

*“21. From the aforesaid authorities the principles that can broadly be culled out are:*

*21.1. (i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*

*21.2. (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.*

*21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

*21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

21.5. (v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

21.6. (vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

21.7. (vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

21.8. (viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

21.9. (ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

21.10. (x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

21.11. (xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

21.12. (xii) *The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

21.13. (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

22. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -*

22.1. (a) *An application for condonation of delay should be drafted with careful concern and not in a half haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

22.2. (b) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

22.3. (c) *Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*

22.4. (d) *The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”*

4. There is no dispute with the aforesaid principles of law culled out by the Hon’ble Supreme Court. A liberal justice oriented approach should be made while dealing with the application for condonation of delay. However, no precise formula could be laid down while exercising judicial discretion. Yet a concise effort

should be made so that there is consistency in the adjudicatory system. Further, the application for condonation of delay should not be dealt with in a routine manner.

5. The law of limitation is a substantive law and has a definite consequence on the rights and obligations of a party. This principle has to be adhered to and applied appropriately in the facts and circumstances of the given case. Once a valuable right has accrued in favour of a party as a result of the failure of the other party to explain the delay and its own conduct, it would be unreasonable to take away that right on the mere asking of the other party to explain the delay by showing sufficient cause particularly when the delay is directly as a result of negligence, default or inaction of that party. The law requires that justice must be done to both the parties equally only then the ends of justice could be achieved. If a party is negligent in implementing its rights and remedies in which case the said party is not entitled for any relief on account of the inordinate delay.

6. What is an inordinate delay and a delay of few days came up for consideration in the case of *Maniben Devraj Shah vs. Municipal*

***Corpn. Of Brihan Mumbai [(2012) 5 SCC 157]*** wherein the Hon'ble Supreme Court explained what sufficient cause would be, namely :-

*“What colour the expression ‘sufficient cause’ would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”*

7. In ***Balwant Singh (Dead) vs. Jagdish Singh and Ors. [(2010) 8 Supreme Court Cases 685]***, the Hon'ble Supreme Court explained that the expression ‘sufficient cause’ means the presence of adequate and legal reasons.

8. In the light of the aforesaid decisions, we find that there is an inordinate delay on the part of the appellant in questioning the veracity and legality of the order dated November 1, 2016. No legal or adequate reasons have been given. Cause has not been sufficiently explained. The appellant did not question the impugned order before the appellate forum with the prescribed period. The arrest of the appellant was made after 8 months of the passing of the order. Even after he was enlarged on bail, the appellant did nothing for almost a

year and a half. The medical bills which have been annexed are of the year 2018. Thus, no sufficient cause has been shown. The application seeking condonation of delay is not bonafide.

9. For the reasons stated aforesaid, the Misc. Application No. 100 of 2020 for condonation of the delay is rejected on account of inordinate delay in approaching the Tribunal, as a result of which the appeal is also dismissed with no order as to costs.

Sd/-  
Justice Tarun Agarwala  
Presiding Officer

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

Sd/-  
Justice M. T. Joshi  
Judicial Member

27.02.2020  
Prepared & Compared by  
PTM