

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 07.07.2020

**Misc. Application No. 168 of 2020
(Delay Application)**

And

**Misc. Application No. 169 of 2020
(Exemption Application)**

And

Appeal No.147 of 2020

Amit Misra
S-201, Prayag Kunj
3, Strachy Road, Civil Lines
Prayagraj - 211001

...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. Amit Agrawal, Advocate with Mr. Sumit Agrawal,
Mr. Sahil Raveen, and Ms. Darsha Shetty, Advocates i/b
Regstreet Law Advisors for the Appellant.

Mr. Pradeep Sancheti, Senior Advocate with Mr. Nishit Dhruva,
Mr. Chirag Bhavsar, Mr. Harshad Vyas, Advocates i/by MDP &
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 (Oral)

1. The present appeal has been filed against the order dated June 27, 2019 passed by the Whole Time Member (“WTM” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) directing the appellant to refund the money collected along with the interest @ 15%.

2. There is a delay of 369 days in filing the appeal and accordingly a delay condonation Application No. 168 of 2020 has been filed for condoning the delay. The ground urged is that the applicant was never served with a copy of the impugned order and that when he came to know about the order, he filed the appeal at the earliest opportune moment and therefore according to him there is no delay in filing the appeal. In this regard, the learned senior counsel Sri Pradeep Sancheti appearing for the respondent stated that the copy of the impugned order was sent which came back unclaimed and therefore according to the respondent the impugned order was deemed to be served.

3. In this regard, we are of the opinion that the fact remains that the certified copy of the impugned order was never received by the appellant. We also find that in a similar matter during the same time another order of the WTM of SEBI was passed

which the appellant had challenged and which appeal was allowed. In the light of the aforesaid, we are of the opinion that there was no reason for the appellant in not filing the appeal if he was aware of that order. We consequently condone the delay in filing the appeal and allow the application.

4. In so far as the merit is concerned, we are of the opinion that the matter is squarely covered by a decision of this Tribunal dated January 17, 2020 passed in the case of the appellant himself in Appeal No. 409 of 2019 Amit Misra vs. SEBI. Subsequent to our order, the WTM reconsidered the matter and found that the appellant was not an officer in default and consequently exonerated the appellant. In view of the said decision and for the reasons stated therein, the impugned order cannot be sustained and is liable to set aside at the admission stage itself without calling for a reply.

5. For the reasons stated in decision dated January 17, 2020 in Appeal No. 409 of 2019 Amit Mishra vs. SEBI and the subsequent order of the WTM, the present impugned order dated June 27, 2019 is set aside and the appeal is allowed and the matter is remitted to the WTM of SEBI to decide the matter afresh after considering the order dated 17.01.2020 passed by

this Tribunal and the order passed by the WTM after giving an opportunity of hearing. In the circumstances of the case, party shall bear their own costs. Misc. Application No. 169 of 2020 seeking exemption to file certified copy of the impugned order is also allowed. The entire exercise shall be carried out by the WTM within two months from today. The appellant will file physical copy of the memo of appeal, the court fees, etc with the registry within two weeks from today.

6. 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

07.07.2020
PK