

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved:16.2.2021

Date of Decision:23.2.2021

**Misc. Application No.290 of 2019
And
Appeal No.233 of 2019**

1. Jonaki Bakeri
415, Bodkadev,
Ahmedabad-380 054.

2. Hirva A. Bakeri
415, Bodkadev,
Ahmedabad-380 054.

...Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
G Block, Near Bank of India,
Bandra Kurla Complex, Bandra East,
Mumbai, Maharashtra -400051.

...Respondent

Mr. Somasekhar Sundaresan with Mr. Bijal H. Chhatrapati, Mr. Pulkit Sukhramani and Ms. Vidhi Jhavar, Advocates i/b. J. Sagar Associates for the Appellants.

Mr. Kumar Desai, Advocate with Mr. Abhiraj Arora and Ms. Rashi Dalmia, Advocates i/b ELP for the Respondent.

**With
Misc. Application No.291 of 2019**

**And
Appeal No.234 of 2019**

1. Achal Anil Bakeri
415, Bodkadev,
Ahmedabad-380 054.
2. Achal Anil Bakeri (HUF)
415, Bodkadev,
Ahmedabad-380 054.
3. Rupa Achal Bakeri
415, Bodkadev,
Ahmedabad-380 054.
4. Pavan Bakeri
13, Sadma Society,
Navrangpura, Ahmedabad -380 009.
5. Hansa Bakeri
13, Sadma Society,
Navrangpura, Ahmedabad -380 009.
6. Sanskrut Tradecom Private Limited
414, Sargam Marg Opp. Cee, Bokadev,
Ahmedabad -380 054.

...Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
G Block, Near Bank of India,
Bandra Kurla Complex, Bandra East,
Mumbai, Maharashtra -400051.

...Respondent

Mr. Somasekhar Sundaresan with Mr. Bijal H.
Chhatrapati, Mr. Pulkit Sukhramani and Ms. Vidhi

Jhawar, Advocates i/b. J. Sagar Associates for the Appellants.

Mr. Kumar Desai, Advocate with Mr. Abhiraj Arora and Ms. Rashi Dalmia, Advocates i/b ELP for the Respondent.

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

Per : Justice Tarun Agarwala, Presiding Officer

1. Two appeals have been filed against a common order dated 20th July, 2017 whereby the Adjudicating Officer ('AO' for short) has imposed a penalty of Rs.50,00,000 to be paid jointly and severally for violation of Regulation 11(2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the 'SAST Regulations')
2. There is a delay of 577 days in the filing of the appeal and, accordingly, an application for condonation of delay has been filed. The ground urged is that a similar order in the case of Tarun Jiwarajka was passed by the Securities and Exchange Board of

India (hereinafter referred to as 'SEBI') imposing a similar penalty for violation of Regulation 11(2) of the SAST Regulations which was set aside by this Tribunal in *appeal no.265 of 2015 Tarun Jiwarajka & Ors. vs. SEBI dated 28th May, 2018* and, therefore, on this ground the delay should be condoned. In addition to the aforesaid, it was also urged that the appellants were travelling and it took some time to engage an advocate, procure the documents and, thereafter, file the appeal and, therefore, the delay should be condoned. The respondent has vehemently opposed the condonation of the delay on the ground that no sufficient cause has been shown for condoning the delay.

3. In support of the contention raised by the learned counsel reliance was made on a decision of the Division Bench of the Delhi High Court in the case of *Prem Chand Bansal & Sons vs. Income Tax Officer, 1998 SCC Online Delhi 756* wherein the court found

that sufficient cause was shown for condoning the delay on account of change in view of the law by different judgments.

4. We have heard Mr. Somasekhar Sundaresan with Mr. Bijal H. Chhatrapati, Mr. Pulkit Sukhramani and Ms. Vidhi Jhavar, Advocates for the appellants and Mr. Kumar Desai, Advocate with Mr. Abhiraj Arora and Ms. Rashi Dalmia, Advocates for the Respondent.
5. Having heard the learned counsel for the parties, we are of the opinion that sufficient cause has not been shown by the appellants. The grounds that the appellants were travelling and took time to appoint an advocate and procure documents are totally vague grounds which have been asserted without any documentary evidence. There is delay of 577 days which has not been explained. Further, we find that after the passing of the impugned order the appellants paid the penalty amount though they now state that they have paid it under protest. We find that the

judgment of the Delhi High Court is totally distinguishable and is not applicable in the instant case in as much as the present appeal has been filed much after the decision of Tarun Jiwarajka which was decided on 28th May, 2018 and the present appeal was filed on 2nd April, 2019. We are further of the opinion that merely because a decision of the Tribunal has come into existence which may suit the appellants will not give a right to the appellants to file an appeal belatedly. We are of the opinion that no due diligence was shown by the appellants in fighting his case and in filing the appeal within a reasonable time. The appellants have abandoned his/her legal pursuit and submitted to the order of the authority. Considering the aforesaid, we find that no sufficient cause has been shown to condone the delay. The grounds urged are neither legal ground nor has sufficient cause been shown.

6. *In Basawaraj and Anr. vs. Special Land Acquisition Officer, (2013) 14 SCC 81* the Supreme Court held that the discretion to condone the delay has to be exercised judicially based on facts and circumstances of each case and that sufficient cause cannot be given a liberal interpretation if lack of bonafide is attributed to a party. The Supreme Court further held that delay cannot be condoned on equitable ground beyond the limits permitted expressly by statute.
7. The Supreme Court in *Ram Nath Sao and Ors. (supra)* held that the expression “sufficient cause” should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafide is imputable to a party. The same view was reiterated by the Supreme Court in *Madanlal vs. Shyamlal, (2002) 1 SCC 535*.
8. *In Balwant Singh (Dead) vs Jagdish Singh & Ors, (2010) 8 SCC 685 Supreme Court* held that the

expression “sufficient cause” means the presence of legal and adequate reasons. The decisions cited by the learned counsel for the appellants are of no avail and, in any case, not applicable in the present circumstance of the case.

9. This Tribunal is possessed with the exercise of judicial discretion in condoning the delay if sufficient or adequate reason is given. It is also a settled proposition of law that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds as held by the Supreme Court in ***Basawaraj and Anr. (supra)***. In the instant case we do find any legal or adequate reasons to condone the delay.

10. For the reasons stated aforesaid, the applications for condonation of delay is rejected as a result of which

the appeals are also dismissed with no order as to costs.

11. 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

23.2.2021
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