BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Date of Decision : 29.08.2022

Appeal No. 36 of 2022

1. Dhiren Dharamdas Agrawal
   12, Shardanagar Housing Society, Lane No. 1,
   Paldi, Ahmedabad – 380007.

2. Shweta Dhiren Agrawal
   12, Shardanagar Housing Society, Lane No. 1,
   Paldi, Ahmedabad – 380007.

3. Dhaval Satishkumar Agrawal
   2201, Bhandari Pole, Kalupur,
   Ahmedabad – 380001. ….. Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. … Respondent

With
Appeal No. 37 of 2022

1. Amul Gagabhai Desai
   135, Ranuja Nagar, Opp. Anand School,
   Ahmedabad – 380015.

2. Shantiben Gangaram Desai
   B/407, Ambika Smruti Park Society,
   Near Super High School, Ambika Nagar,
   Odhav, Ahmedabad – 382415.

3. Mahesh SOmabhai Desai
   B17, Chaapra, Nr. Chhaya Flat,
   Somabhai Rabari Vasahat, Ghatlodia,
   Ahmedabad – 380061. ….. Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. ….Respondent

With
Misc. Application No. 278 of 2022
And

Misc. Application No. 280 of 2022
And
Appeal No. 38 of 2022

1. Sanjay Jethalal Soni
2. Krupa Sanjay Soni
3. J M Soni Consultancy through its proprietor
   Sanjay Jethalal Soni

   36, Malay Bungalows, Science City Road,
   Sola, Ahmedabad – 380 001. ….. Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. … Respondent

With
Appeal No. 39 of 2022

1. Krunal Gopaldas Rana
   Z-1072, Khedavalano, Khando,
   Khambat – Cambay Anand, 388620.

2. Amitkumar Rameshchandra Rana
   Pan Pole, At : Khambat, Anand – 388620.

3. Ajaykumar Jayantilal Pala
   Maruti Agro Ind., Opp. Ankur Protein,
   NH8A Sarkhej, Bavla Road, Tal: Sanand,
   Changodhar, Ahmedabad – 382213. ….. Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. … Respondent

With
Appeal No. 52 of 2022

1. Janakray Vitthaldas Soni
   1018, Shriji Society, Tal : Dhansura,
   Sabarkantha, Dhansura, Modasa – 383310.

2. Nehaben Janakray Soni
   1018, Shriji Society, Tal : Dhansura,
   Sabarkantha, Dhansura, Modasa – 383310.

3. Vaishali Jimish Soni
   A301, Dharti Crystal, IOC Tragad Road,
   Opp. Chandkheda Railway Station, Chandkheda,

Ahmedabad – 382424. ….. Appellants

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. N. K. Upadhyay, Advocate with Ms. Jyoti Pandey, Advocate i/b Lexkare Legal for the Appellants.

Mr. Suraj Chaudhary, Advocate with Mr. Nishit Dhruva, Mr. Ravishekhar Pandey, Ms. Shefali Shankar, Advocates i/b. MDP & Partners for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member
Ms. Meera Swarup, Technical Member

Per : Justice Tarun Agarwala, Presiding Officer (Oral)

1. All these appeals are against a common order and are being taken up together.

2. A show cause notice dated August 24, 2017 and supplementary show cause notice dated August 24, 2018 was issued to the appellants alleging violation of Section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘SEBI Act’) read with Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market)

Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations'). After providing an opportunity of hearing, the Adjudicating Officer (hereinafter referred to as 'AO') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') passed an order dated November 16, 2018 holding that the appellants had violated Section 12A of the SEBI Act read with Regulations 3 and 4 of the PFUTP Regulations.

3. Against the said order dated November 16, 2018, the appellants filed an appeal no. 123 of 2019 and other connected appeals which were allowed by the judgment dated November 7, 2019. The impugned order was set aside and liberty was given to the AO to issue a fresh show cause notice.

4. Based on the aforesaid directions, a fresh show cause notice dated December 10, 2019 was issued. The impugned order indicates that show cause notice to most of the noticees returned undelivered and that no affixation of the summons were done. However, the show cause notice was uploaded on the SEBI website and thereafter a publication was made in the vernacular dailies indicating that the hearing was fixed for February 14, 2020.

5. The AO further relying upon an observation of the Hon'ble Supreme Court held that the principles of natural justice were

complied with and that the appellants were served show cause notice validly and further an opportunity of hearing was provided. The AO thereafter proceeded to pass an ex-parte order.

6. The appellants have filed the present appeals contending that pursuant to the remand order of this Tribunal, a show cause notice was never served.

7. We have heard Mr. N. K. Upadhyay, the learned counsel with Ms. Jyoti Pandey, the learned counsel for the appellants and Mr. Suraj Chaudhary, the learned counsel with Mr. Nishit Dhruva, Mr. Ravishekhar Pandey, Ms. Shefali Shankar, the learned counsel for the respondent.

8. We find that the procedure required for service of summon under Rule 7 of the Rules of 1995 has not been followed by the AO. In the first instance, the summons is required to be served personally. Thereafter, it has to be served by registered post acknowledgment due or through fax or electronic mail or courier. If the summons cannot be served by the aforesaid methods, then it has to be done by affixation. Lastly, if an affixation was also not done then publication of the notice in atleast two newspapers one in the English daily and another in regional newspaper which has a wide circulation. In the instant case, the procedure as per the Rule 7 (a), (b), (c) and (d) has

not been followed. The publication was also not done in two newspapers.

9. We find that as per the impugned order, admittedly, the show cause notice was not served upon most of the appellants and the same returned undelivered. Under the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'Rules of 1995'), if the summons returned undelivered, it was incumbent upon the AO to issue fresh summons which was not done. Further, under the Rules, the next step is to serve the summons through affixation which admittedly, was not done. It transpires that a publication was made intimating date for hearing of the proceedings.

10. In our view, the said procedure adopted by the AO is in gross violation of Rules of 1995 and in violation of the principles of natural justice. Until and unless the summons are served, the respondent cannot proceed nor can fix the date for hearing. In the instant case, we find that admittedly the show cause notice was not served. Consequently, proceeding ex-parte was in gross violation of principles of natural justice.

11. For the reasons stated aforesaid, the impugned order cannot be sustained and is quashed. The appeals are allowed. The matters

are remitted to the AO to decide the matter afresh after giving an opportunity to the appellants to file replies and to contest the matters. In this regard, the appellants will appear before the AO on September 15, 2022 and AO will proceed from there onwards. We also direct the AO to conclude the proceedings within six months.

12. 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

Justice M. T. Joshi
Judicial Member

Ms. Meera Swarup
Technical Member

29.08.2022
PTM

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