

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 12.01.2023

Misc. Application No. 1013 of 2022

And

Misc. Application No. 1014 of 2022

And

Appeal No. 26 of 2023

1. Bablu Saha
Son of Late Mantu Lal Saha
Residing at Balagarh Milan Park,
Hooghly, West Bengal- 712 104
 2. Mr. Tushar Sur
Son of Manik Lal Sur
Residing at Dharampur, Rajanikanta Dutta Road,
Chinsurah, Hooghly, 712 101
 3. Mr. Joydip Mukhopadhyay,
Son of Umapada Mukhopadhyay
Residing at Pandua, Kamarpara,
Pandua- 712 149
- ...Appellants

Versus

1. Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai- 400 051
2. The Recovery Officer,
Eastern Region,
Securities and Exchange Board of India
L & T, Chamber 16, Camac Street,
Kolkata- 700 016, West Bengal
3. Registrar of Companies,
West Bengal, Ministry of Corporate Affairs,
Nizam Palace, 2nd M S O Building,
2nd Floor 234/4, A.J.C. Bose Road,
Kolkata- 700 020

4. Official Liquidator
9, Old Post Office Street,
Kolkata- 700 001

...Respondents

Mr. Diptomoy Talukder, Advocate for the Appellants.

Mr. Akash Rebello, Advocate with Ms. Karishma Motla and
Mr. Aditya Sarangarajan, Advocates i/b Mansukhlal Hiralal &
Co. for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per: Justice Tarun Agarwala, Presiding Officer (Oral)

1. We have heard the learned counsel for the appellants. The present appeal has been filed against the order dated March 02, 2016 passed by the Whole Time Member (“WTM” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) directing the Company and its directors to refund the money collected through issuance on non-convertible redeemable debentures. The appellants have also been restrained from accessing the securities market. There is a delay of 2339 days in the filing of the appeal.

2. The ground urged is, that 13 criminal cases were initiated against the appellants which they were contesting and some of

the appellants were also in custody and therefore they could not file the present appeal.

3. In our opinion, the ground urged is not a valid ground for condoning the inordinate delay. The mere fact that the appellants were contesting 13 criminal cases is not the ground to condone the delay in as much as the appellants could have filed the appeal. Nothing stopped them from not filing the appeal. Further, nothing has been brought on record to show as to when the appellants were released and enlarged on bail.

4. 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.

5. 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*.

6. 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 appellant are of no avail and, in any case, not applicable in the present circumstance of the case.

7. 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 not find any legal or adequate reasons to condone the delay.

8. In the light of the aforesaid, we do not find any reason to condone the inordinate delay in filing the appeal. Sufficient

ground has not been made out. The appeal is rejected on the ground of laches. The application for condonation of delay is rejected, as a result of which the appeal is also dismissed with no order as to costs. The misc. application for exemption is also disposed of accordingly.

9. 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

Ms. Meera Swarup
Technical Member

12.01.2023
PK