

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 02.01.2023

Misc. Application No. 1222 of 2022
And
Misc. Application No. 1378 of 2022
And
Appeal No. 844 of 2022

Sampark Infotainment Pvt. Ltd.
Unit No. 211 A, B Wing,
2nd Floor, Kailash Industrial Complex,
Vikhroli (W),
Mumbai- 400 079

...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

AND
Misc. Application No. 1219 of 2022
And
Appeal No. 841 of 2022

Prashanth D'Souza
3202 Belvedere, Lodha Aurum Grande,
Kanjurmarg East,
Mumbai- 400 042

...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. Vikram Nankani, Senior Advocate with Ms. Ragini Singh, Mr. Mehul Talera and Krishi Jain, Advocates i/b Ragini Singh & Associates for Appellants.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Manish Chhangani, Ms. Samreen Fatima and Mr. Sumit Yadav, Advocates i/b The Law Point for Respondent-SEBI.

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

Per: Justice Tarun Agarwala, Presiding Officer (Oral)

1. Two appeals have been filed against the order dated April 30, 2019 passed by the Whole Time Member (“WTM” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) restraining the appellant-Company from making an offer directly or indirectly regarding telecom services in any manner to a Stock Exchange, Clearing Corporation, Depository and/or any intermediary registered with SEBI or their related entities, for a period of 2 years for violation of Regulations 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP Regulations” for convenience) read with Section 12A of the SEBI Act, 1992.

2. There is a delay of 1209 days in the filing of the appeal and accordingly an application for condonation of delay has

been filed. A number of grounds have been taken in the application for condonation of delay but the learned senior counsel Mr. Nankani has only urged the ground relating to advice being given by the previous counsel.

3. The learned senior counsel contended that the appellants were advised by the previous counsel not to prefer any appeal against the impugned order which was accepted but subsequently the appellants realized that other proceedings have been initiated against the appellants, namely, by the Adjudicating Officer and by the Department of Telecommunication and accordingly the appellant consulted a new counsel who advised the appellants to file an appeal. It was urged, that in view of the aforesaid, the delay may be condoned on payment of cost and the appeal should be heard on merits.

4. The aforesaid application has been opposed by the respondent contending that no valid or legal ground has been made out for condoning the inordinate delay.

5. Having heard the learned senior counsel for the parties, we are of the opinion that the ground urged by the appellants that

they acted on the advice of their counsel is not supported by any evidence as neither name of the previous counsel who gave them the advice has been given nor any legal opinion or affidavit of such counsel affirming that such advice of not filing an appeal was given by him in good faith. In the absence of any such evidence coming on record to show that the appellants were advised by their previous counsel not to file an appeal, we are of the opinion that such ground cannot be taken as the gospel truth. *Prima facie* it appears to be an afterthought.

6. Nothing has been stated that the advice given by the previous counsel was a wrong advice. Even otherwise the Supreme Court in ***Lata Mata Din vs. A. Narayanan* [AIR 1970 SC 1953]** held that mistake of counsel by itself is not a sufficient ground for condonation of delay unless the mistake was bonafide which in the instant case is lacking as nothing has been stated in the application for condonation of delay that the advice given by the previous counsel was not bonafide.

7. The Delhi High Court in ***Babu Ram vs. Devinder Mohan Kaura & Ors.* [AIR 1981 Del 14]** observed that every mistaken advice given by the counsel does not constitute sufficient cause nor does it constitutes good faith and depends on the facts of

each case. In the instant case, nothing has been stated by the appellants that the opinion given by the previous counsel was a mistaken advice or that it was not bonafide.

8. As regards other proceedings having been initiated against the appellants, we may also observe that proceedings were initiated by the Adjudicating Officer much before the passing of the impugned order passed by the WTM and, therefore, the appellant was aware that another proceeding of the AO was underway. Thus, the contention that other proceedings have been initiated which has had led to the filing of the present appeal is clearly an afterthought.

9. 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.

10. 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.***

11. 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.

12. 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.

13. In view of the aforesaid, we do not find any sufficient legal ground to condone this inordinate delay of 1209 days. In the absence of sufficient and reasonable cause being shown the inordinate delay cannot be condoned on payment of cost. The application for condonation of delay has been rejected, as a result of which both the appeals are dismissed with no order as to costs. All the misc. applications are disposed of accordingly.

14. 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