

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 03.05.2024

Appeal No. 95 of 2024

1. Mr. Bhavesh P. Bhensdadia
1201-Majestica Heights,
O/P Varachha Bank, Near Savaliya Circle,
Suraj, Gujarat
2. Mr. Rinkalkumar Mohanbhai Chopda
A/104, Shubham Elegant,
Puna-Kumbhariya Road,
Surat-Gujarat
3. Mr. Parth Kanubhai Patel
3 Parth Society, Near New Balvantpura,
Near Gokulnagar, Dist. Sabarkantha,
Gujarat

...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

PCS Abhishek Mishra, for the Appellants.

Mr. Sumit Rai, Advocate with Mr. Akash Jain and Ms. Daksha Kasekar, Advocates i/b Mansukhlal Hiralal & Co. for the Respondent.

CORAM: Justice P. S. Dinesh Kumar, Presiding Officer
Ms. Meera Swarup, Technical Member
Dr. Dheeraj Bhatnagar, Technical Member

Per: Justice P. S. Dinesh Kumar, Presiding Officer (Oral)

In this appeal, the appellants have challenged the order dated September 15, 2023 passed by the Chief General Manager (“CGM” for short) of the Securities and Exchange Board of India (“SEBI” for short) directing *inter alia* to refund the advisory fee received by noticee no. 1.

2. The principal contention urged by PCS Abhishek Mishra, appearing for the appellants is that the appellants had requested the SEBI to send all communications on their email id i.e. parthpatelkanubhai@gmail.com however the notice intimating the date of final hearing was not sent to the said email id. Hence, appellants could not appear for personal hearing. The impugned order is in violation of principles of natural justice.

3. Shri Sumit Rai, the learned counsel for the respondent does not dispute that the last notice was not sent to the email id requested by the appellants.

4. He further submitted that in the memorandum of appeal, the cause title at page no. 3 shows that this appeal is filed on behalf of three persons, namely, Bhavesh P. Bhensdadia, Vivek Laxmanbhai Patel and Parth Kanubhai Patel. At page no. 4 the name of appellant no. 2 is mentioned as Mr. Rinkalkumar

Mohanbhai Chopda. He submitted that the appellants may be directed to clarify the correct name of appellant no. 2.

5. In reply, PCS Abhishek Mishra, for the appellants clarified that the names of three appellants in this case are, Mr. Bhavesh P. Bhensdadia, Mr. Rinkalkumar Mohanbhai Chopda and Mr. Parth Kanubhai Patel.

6. In view of this specific contention that the appellants were not served with the notice for appearance and the same being an admitted position, in our considered opinion this appeal merits consideration and appellants shall be entitled for a personal hearing.

7. The learned counsel for the respondent also prayed that in the event this Tribunal considers to remit the matter paragraph 37 in the impugned order may not be disturbed and SEBI may be put on terms to dispose of the matter in a time bound manner. He further submitted that this appeal does not merit consideration so far as appellant no. 2 Mr. Rinkalkumar Mohanbhai Chopda because he has not verified the memorandum of appeal.

8. The learned PCS for the appellants seeks leave to file an affidavit rectifying the verification aspect on behalf of second appellant within two weeks. His submission accepted. The

appellant no. 2 Mr. Rinkalkumar Mohanbhai Chopda shall file affidavit within two weeks.

9. In the result, the following:-

ORDER

- (i) The appeal is allowed.
- (ii) The impugned order dated September 15, 2023 is set aside except paragraph no. 37 and the direction contained in the said paragraph shall be subject to the fresh order to be passed by the SEBI after hearing the appellants.
- (iii) Appellant No.2 shall file his affidavit as mentioned in paragraph No. 7 of this order.
- (iv) Appellants shall appear before the SEBI on June 04, 2024.
- (v) The CGM of SEBI shall hear the appellant afresh and dispose of the appeal within three months from the date of first appearance.
- (vi) The appeal is dispose of.

Justice P. S. Dinesh Kumar
Presiding Officer

Ms. Meera Swarup
Technical Member

Dr. Dheeraj Bhatnagar
Technical Member