

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 15.11.2022

**Misc. Application No. 1001 of 2022
And
Misc. Application No. 1163 of 2022
And
Misc. Application No. 1164 of 2022
And
Appeal No. 741 of 2022**

Shree Krishan Choudhary
D1/7, Palam Kunj, Extn, Sector 7,
Dwarka, New Delhi – 110077.

..... Appellant

Versus

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

... Respondent

Mr. Saurabh Bachhawat, Advocate with Mr. Yahya Batatawala, Mr.
Shantanu Roy, Ms. Uma Chatterjee, Advocates i/b Mr. Pratik Dash,
Advocate for the Appellant.

Mr. Pradeep Sancheti, Senior Counsel with Mr. Nishit Dhruva, Mr.
Ravishekhar Pandey, Ms. Shefali Shankar, Advocates i/b. MDP &
Partners for the Respondent.

**With
Appeal No. 786 of 2022**

Jaynarayan Tripathy
 Roxy Lane, Aatkalgali,
 Badamwadi, Cuttack,
 Odisha – 753009.

..... Appellant

Versus

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

... Respondent

Mr. Saurabh Bachhawat, Advocate with Mr. Yahya Batatawala, Ms. Uma Chatterjee, Advocates i/b Mr. Yahya Batatawala, Advocate for the Appellant.

Mr. Pradeep Sancheti, Senior Counsel with Mr. Nishit Dhruva, Mr. Ravishekhar Pandey, Ms. Shefali Shankar, Advocates i/b. MDP & Partners for the Respondent.

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

Per : Justice Tarun Agarwala, Presiding Officer (Oral)

1. Both these appeals are against a common order dated June 27, 2019 passed by the Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') directing the appellants and other noticees to refund the money collected by the company from the investors during their respective tenure as directors alongwith interest.

2. There is a delay of 1122 days in the filing of the appeal and accordingly an application for condonation of delay has been filed. The ground urged is that they were never served with the interim order dated July 22, 2015 cum show cause notice and that they came to know for the first time when the recovery certificate was served upon them in August 2022.

3. We have accordingly directed the respondent to file a reply with regard to service of the show cause notice.

4. A limited reply has been filed indicating that the show cause notice was served through speed post as per the Rule 7 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules of 1995'). Proof of service has been filed which had a track report issued by the post office showing that the item was delivered.

5. In our opinion, the evidence which has been filed is not sufficient proof of service under Rule 7 of the Rules of 1995. For facility, Rule 7 of the Rules of 1995 is extracted hereunder :-

“7. A notice or an order issued under these rules shall be served on the person in the following manner, that is to say, -

(a) by delivering or tendering it to that person or his duly authorised agent;

(b) by sending it to the person by [fax or electronic mail or courier or speed post with acknowledgement due or] registered post with acknowledgement due to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain; or

[Provided] that a notice sent by Fax shall bear a note that the same is being sent by fax and in case the document contains annexure, the number of pages being sent shall also be mentioned:

Provided further that a notice sent through electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute valid service.

(c) if it cannot be served under clause (a) or clause (b), by affixing it on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided, or carried on business or personally works or last worked for gain and that written report thereof should be witnessed by two persons.

(d) if it cannot be affixed on the outer door as per clause (c), by publishing the notice in atleast two newspapers, one in a English daily newspaper having nationwide circulation, and another in a newspaper having wide circulation published in the language of the region where that person was last known to have resided or carried on business or personally worked for gain.”

6. A perusal of the aforesaid provision indicates that service through speed post has to be done along with acknowledgment due. In the instant case, the acknowledgment due card was not given and proof of delivery has been shown through the tracking report of the postal department. In our opinion, the tracking report of the post office cannot replace the acknowledgment due card which is a mandatory requirement under Rule 7 of the Rules of 1995. The track report of the post office only indicates that the item was delivered. It does not show any proof that the item was delivered to the appellant or to his authorised agent.

7. Consequently, we are of the opinion that adequate service of the show cause notice was not made and, consequently, the entire matter proceeded ex-parte against the appellants.

8. For the reasons stated, we are satisfied that the adequate service was not made upon the appellants and the matter proceeded ex-parte. Consequently, the impugned order in so far as it relates to the appellants cannot be sustained and is quashed. The appeal is allowed. The matter is remitted to the WTM to pass afresh order after serving a show cause notice. In this regard, the appellants shall appear before the WTM on December 1, 2022 on which date the

show cause notice will be served and the matter will proceed from there onwards in accordance with law.

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

15.11.2022
PTM