

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

**Appeal No. 18 of 2008
Alongwith
Misc. Application No. 18 of 2008**

Date of decision : 11.4.2008

Shri Krishna Kumar Agarwal Appellant

Versus

Securities and Exchange Board of India Respondent

Mr. M. L. Sharma Advocate for the Appellant.
Dr. Poornima Advani with Mr. Haihangrang E. H. Newme Advocates for the Respondent.

Coram : Justice N.K. Sodhi, Presiding Officer
Arun Bhargava, Member
Utpal Bhattacharya, Member

Per : Justice N.K. Sodhi, Presiding Officer (Oral)

There is a delay of 374 days in filing this appeal and the appellant has not filed any application seeking condonation of the delay. When this appeal came up for hearing before us on 2.4.2008 the learned counsel for the appellant contended that his client had not been served in the proceedings before the adjudicating officer and that the impugned order was passed ex-parte. This is not correct. The show cause notice dated May 25, 2006 had been served on the appellant at the registered office of the company which is in Delhi. He did not file any reply and the adjudicating officer decided to conduct an enquiry in the matter. A notice of enquiry was issued on September 22, 2006 fixing October 4, 2006 as the date of hearing. This notice was, admittedly, received by the appellant and in response thereto he sent a communication dated October 3, 2006 to the adjudicating officer informing him that the company and its directors would be represented by Mr. Vineet Agarwal. Mr. Vineet Agarwal did not appear on October 4, 2006 which was the scheduled date of hearing and instead he made a phone call to the adjudicating officer seeking permission to appear on October 5, 2006. The

permission was granted and he appeared on the said date and made his submissions which have been taken note of in the impugned order. The adjudicating officer concluded that M/s. Acumen Securities Ltd. of which the appellant is one of the directors had failed to redress the grievances of its investors and accordingly by his order dated December 5, 2006 imposed a penalty of Rs. 10 lacs on the company for violating the provisions of section 15 C of the Securities and Exchange Board of India Act, 1992. It is against this order that the present appeal has been filed.

What is contended by the learned counsel for the appellant is that the impugned order was sent to the appellant at the registered office of the company in Delhi which was then lying closed. It is stated in para 5.1 of the memorandum of appeal that the new correspondence address had already been filed with the Securities and Exchange Board of India in the year 2003 and the grievance of the appellant is that despite this address having been communicated, the impugned order was sent at the registered office and hence the delay in filing the appeal. We are not satisfied with the explanation furnished by the appellant and it appears that he is taking contradictory stands at every stage of the proceedings. On the last date of hearing the appellant was required to furnish proof of the fact that the new correspondence address had been furnished to the respondent Board. He has filed an additional affidavit with which he has attached a copy of the letter dated 5.9.2006 in which he is stated to have furnished the alternative address at Agra. When enquired about the letter by which the changed address was communicated in the year 2003, the learned counsel for the appellants states that those documents are not available with his client. The respondent Board is seriously contending that the changed address had never been communicated to it. As already pointed out, in para 5.1 of the appeal, the appellant states that this changed address was communicated in the year in 2003 and in the additional affidavit he files documents pertaining to the year 2006 which have not been referred to in the memorandum of appeal. In view of this contradictory stand we are unable to accept the plea of the appellant. It is pertinent to mention that the impugned order was sent to the appellant at the registered office of the company in Delhi and on this very address the show cause notice was served in the year 2006. When the show cause notice

could be served, we fail to understand why the impugned order was not received and the same was received back by the Board undelivered. According to the appellant, the company was lying closed since October 2002. In view of the conflicting stands taken by the appellant, we are not satisfied with his explanation. There are several other conflicting stands taken by the appellant in the memorandum of appeal. In the absence of any application seeking condonation of the delay, the appeal cannot but be dismissed as time barred which we hereby do leaving the parties to bear their own costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

11.4.2008
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