

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

**Misc. Application No. 1 of 2012
With
Misc. Application No. 2 of 2012
And
Appeal No. 7 of 2012**

Date of decision: 25.04.2012

Norben Tea & Exports Ltd.

Octavius Centre,

15B, Hemant Basu Sarani,

Calcutta – 700 001.

... Appellant

Versus

1. Bombay Stock Exchange Limited

a Stock Exchange recognized under

Section 4 of the Securities Contracts (Regulation)

Act, 1956 and having its registered office

at Floor 25, P.J. Towers, Dalal Street,

Mumbai – 400 001.

2. Securities and Exchange Board of India

SEBI Bhavan, Plot No.C-4A, ‘G’ Block,

Bandra Kurla Complex, Bandra (East),

Mumbai – 400 051.

3. Stock Brokers Pvt. Ltd.

a company incorporated under the

provisions of the Companies Act, 1956,

having its address at R-410,

Rotunda Building, Mumbai Samachar

Marg, Mumbai – 400 001.

... Respondents

Mr. Avinash B. Avhad, Advocate with Ms. Meena Kshirsagar, Advocate
for the Appellant.

Mr. Somasekhar Sundaresan, Advocate with Mr. Ravichandra Hegde, Advocate
for Respondent No.1

None for Respondent No.2.

None for Respondent No.3.

Coram : P. K. Malhotra, Member & Officiating Presiding Officer
S.S.N. Moorthy, Member

ORDER:

The appellant before us is a company incorporated under the Companies Act, 1956 and is listed with the Bombay Stock Exchange (BSE) and National Stock Exchange Limited (NSE). BSE issued a notice dated January 3, 2002 to all members of the exchange informing that trading in the securities of 281 companies listed in the annexure to the said notice, will be suspended w.e.f. January 7, 2002 until further notice on account of non-payment of annual listing fee by the companies for the financial year 2001-02. Name of the appellant appears at sr. no. 163 of the said list. The present appeal has been filed on January 2, 2012 praying for setting aside the said notice and also for quashing the demands on account of reinstatement fees made by BSE.

2. It is the case of the appellant that notice dated January 3, 2002 was never communicated to the appellant and the demand for reinstatement fee is arbitrary and bad in law. Although in para IV of the memo of appeal, the appellant had declared that the appeal is filed within the limitation period as prescribed in the Securities Contract (Regulations) Act, 1956, the appellant has also filed an application for condonation of delay on the ground that there has been a series of correspondence between the appellant and the respondents where the issue remained unresolved and that it is in the interest of justice that delay in filing the appeal may be condoned.

3. The application for condonation of delay is contested by BSE stating that no sufficient cause or even a reasonable cause has been shown for condoning the delay of

more than 118 months. It is, therefore, prayed by the learned counsel of BSE that the application for condonation of delay should be dismissed and consequently the appeal would not survive for consideration.

4. Having heard the learned counsel for the parties and having perused the record, we are of the view that the delay in filing the appeal is considerable. The onus to show that sufficient cause exists for condonation of delay lies on the appellant. It is obligatory upon the appellant to show sufficient cause due to which it was prevented from continuing to prosecute the proceedings before the appropriate appellate forum. In the application for condonation of delay, it is stated that the impugned notice dated January 3, 2002 suspending the trading in the securities of the company w.e.f. January 7, 2002 on account of non-payment of listing fee was not communicated to the appellant and, therefore, there was no occasion for the appellant to challenge the same. However, we find that as early as on January 28, 2002, the appellant asked BSE to quantify the reinstatement fee payable by the appellant so that it could issue a demand draft for the said amount. On February 1, 2002, BSE quantified the reinstatement fee payable by the appellant and also intimated the appellant about the compliance requirements under the listing agreement. Assuming that the appellant had not received notice dated January 3, 2002, it became aware about the same prior to January 28, 2002 when it asked BSE to quantify the reinstatement fee payable by it. The BSE vide its letter dated February 1, 2002, informed the appellant that the revocation of the suspension in the securities of the company will be subject to the appellant complying with certain formalities mentioned in the letter including payment of reinstatement fee. The appellant was again informed about the non-payment of reinstatement fee by BSE vide its letter dated February 19, 2002. However, the appellant neither paid the reinstatement fee nor challenged the decision of BSE demanding the same for revocation of suspension of trading in the securities of the appellant. It is stated by the appellant that there was a series of correspondence between the parties where the issue remained unresolved and it did not make the decision of BSE absolute. We do not find any merit in this contention of the appellant. The decision of BSE was abundantly clear

that revocation of suspension will be subject to, inter alia, payment of reinstatement fee. In spite of this clear decision, the appellant kept on corresponding with BSE. It is settled legal proposition that repeated representations will not save the limitation and cannot be considered sufficient cause for condonation of delay.

5. The liberal construction of the expression “sufficient cause” for condonation of delay is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the appellant to whom want of bona fide is imputable. The Hon’ble Supreme Court in the case of **Balwant Singh v. Jagdish Singh** [(2010) 8 SCC 685] has observed that even if the term “sufficient cause” has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of reasonableness as it is understood in its general connotation. The Hon’ble Court further observed as under:

“The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.”

It has also been observed in the same judgment that delay is just one of the ingredients which has to be considered by the Court and in addition to this, the Court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether the said delay could easily be avoided by the applicant acting with normal care and caution.

6. Examined in the above perspective, we are of the view that the appellant has failed to show any cause, much less a sufficient cause, for condoning the delay of more

than 118 months in filing the appeal. Even the application filed by the appellant does not contain the correct and true facts. There are no reasons shown as to what steps were taken during the period and why immediate steps were not taken by the appellant to file an appeal before the appropriate forum. Therefore, we have no hesitation in dismissing the miscellaneous application for condonation of delay. Consequently the miscellaneous application praying for restraint order and the main appeal do not survive.

The two miscellaneous applications and the appeal stand dismissed with costs which are assessed at ₹ 10,000.

Sd/-
P. K. Malhotra
Member &
Officiating Presiding Officer

Sd/-
S.S.N. Moorthy
Member

25/4/2012
Prepared & compared by-ddg