

Securities Appellate Tribunal  
Mr. Chetan S. Kothari vs Sebi on 25 March, 2019  
BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

Date of Decision: 25.03.2019

Appeal No. 329 of 2017

Mr. Chetan S. Kothari  
Flat No. 1502, 15th Floor, Rasraj Height,  
Rokadia Lane Borivali (W),  
Mumbai- 400 092 ...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. Nihar Mody, Advocate with Mr. Saurabh Bachhawat, Advocate  
and Mr. Ravi Ramaiya, Chartered Accountant i/b Shah & Ramaiya  
Chartered Accountants for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Anubhav Ghosh,  
Advocate i/b The Law Point for the Respondent.

WITH  
Appeal No. 328 of 2017

Mrs. Chetna Kothari  
Flat No. 1502, 15th Floor, Rasraj Height,  
Rokadia Lane Borivali (W),  
Mumbai- 400 092 ...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. Nihar Mody, Advocate with Mr. Saurabh Bachhawat, Advocate  
and Mr. Ravi Ramaiya, Chartered Accountant i/b Shah & Ramaiya  
Chartered Accountants for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Anubhav Ghosh,  
Advocate i/b The Law Point for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer

Dr. C.K.G. Nair, Member Justice M. T. Joshi, Judicial Member Per: Justice Tarun Agarwala (Oral)

1. These two appeals are against a common order and are consequently being decided together. For facility, the facts in Appeal No. 329 of 2017 is taken into consideration. The appellant Chetan Kothari is the Managing Director and promoter of a company known as Tricom India Ltd. ("TIL" for convenience). Pursuant to an investigation conducted by Securities and Exchange Board of India ("SEBI" for convenience), a show cause notice dated 08.03.2016 was issued to show cause as to why an inquiry should not be held and penalty should not be imposed under Section 15G of the SEBI Act, 1992 for alleged violation of the provisions of law namely, that the appellant being insiders in terms of Regulation 2(e), 2(h), 2(i) and 2(c) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the "PIT Regulations") read with Regulation 12 of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 were in possession of the Price Sensitive Information before it was disseminated to the public and while in possession of the said Unpublished Price Sensitive Information had traded in the scrip of TIL which was in violation of Regulation 3(i) of the PIT Regulations. The appellant submitted a reply to the show cause notice immediately thereafter. The appellant in Appeal No. 328 of 2017 is the wife of the appellant Chetan Kothari who also submitted a reply.

2. It transpires that the appellant Chetan Kothari also stood guarantee of a loan taken by TIL. The company defaulted on the repayment of the loan as a result, State Bank of India took possession of the flat in which the appellants were residing. This resulted in the appellants moving into another flat. The change of residence was intimated by the appellants to the Adjudicating Officer ("AO" for convenience) in two of the show cause notices issued to them. However, in the instant show cause notice, by an inadvertent error, the change of address could not be intimated to the AO. As a result, the notice for hearing was affixed at the last known address, i.e., the residential flat, the possession of which was taken over by the State Bank of India. The respondent also issued an advertisement for hearing and thereafter the impugned order was passed imposing a penalty of ` 50,00,000/- (Fifty Lakhs) each on the appellants. The appellants, being aggrieved by the imposition of penalty have filed the present appeals.

3. Heard Shri Nihar Mody learned counsel and Shri Gaurav Joshi, learned senior counsel for the parties. At the outset, it was submitted by the learned counsel for the appellants that the impugned order was in violation of the principles of natural justice as no opportunity of hearing was provided. It was urged that the appellants had received a number of show cause notices from the AO and that he had sent intimation of the change of address in two of the show cause notices but by an inadvertent error he could not intimate the AO about the change of address in the present show cause notice. It was also contended that the affixation of the notice at his earlier residential address

was not known, neither he read the advertisement which was published in the newspaper with regard to the intimation of the date of hearing. It was contended that in the other show cause notice in which the appellants had intimated about the change of address the appellants duly received the second notice and participated in those proceedings. It was thus, urged that an opportunity of hearing may be given so as to place the correct factual position before the AO.

4. On the other hand, learned counsel for the respondent seriously contended that there was no fault on the part of the respondent as the summons were sent at the last known address and that the appellants had failed to intimate the authority of the change of address. It was further contended that summons was not only affixed at the last known address but summons was also published in the leading newspapers and therefore the appellants were deemed to have knowledge of the date of hearing.

5. Having heard the learned counsel for the parties, we are of the opinion that in the given situation the appellants did intimate about the change of address to the AO in two other proceedings. There was no deliberate attempt on the part of the appellants in not intimating the authority about the change of address in the present proceedings. Thus, the bonafides of the appellants of not intimating the AO about the change of address cannot be doubted. The change of address also occurred on account of their forceful eviction initiated by State Bank of India who took possession of their flat for non-payment of the loan taken by the company in which the appellant Chetan Kothari had given his personal guarantee. Consequently, we are of the opinion that the appellants are entitled for an opportunity of hearing in the instant case. Since an ex-parte order was passed, we are of the opinion that an opportunity of hearing should be provided to meet the ends of justice.

6. For the reasons stated aforesaid the appeals are allowed. The impugned order is set aside. The matter is remitted to the AO to decide the matter afresh after giving an opportunity of hearing to the appellants. The appellants shall appear before the AO to be appointed by SEBI on 22nd April, 2019 on which date the matter would be heard and if for some reason the matters are not concluded on that date, the AO will decide the same within six weeks thereafter. The appellants shall further deposit a sum of `5,00,000/- each before the AO. The said amount shall be kept in an interest bearing account which shall be subject to the result of the appeal. The appeals are allowed on payment of cost of `5,00,000/- which shall be paid by the appellants to the respondent towards cost of litigation. All the aforesaid amount will be deposited before the respondent on or before the date fixed.

Sd/-

Justice Tarun Agarwala Presiding Officer Sd/-

Dr. C.K.G. Nair Member Sd/-

Justice M. T. Joshi Judicial Member 25.03.2019 Prepared & Compared By: PK