(2019) 12 SEBI CK 0012

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No.75 Of 2019

Anilkumar Nandkumar Harchandani And Others APPELLANT

Vs

Adjudicating Officer RESPONDENT

Date of Decision : 09-12-2019

Acts Referred:

Securities And Exchange Board Of India (Substantial Acquisition Of Shares And Takeovers) Regulations, 1997 — Regulation 11(1)

Citation : (2019) 12 SEBI CK 0012

Hon'ble Judges : Dr. C. K. G. Nair, Member;M. T. Joshi, J

Bench : Division Bench

Advocate : Dr. S.K. Jain, Vikas Bengani, Vishal Kanade, Vivek Shah, Abhiraj Arora

Final Decision : ?Allowed

Judgement

M.T. Joshi, J

1. Aggrieved by the imposition of penalty of Rs.25 lakhs on the present 12 appellants for violation of Regulation 11(1) of Securities and Exchange

Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as â??SAST Regulationsâ??) the present

appeal is preferred.

2. The submissions from both the sides as well as the record would show that on the reference from the Commissioner of Income Tax (IAP)-1,

Indore dated May 2, 2014 SEBI conducted investigation in the alleged artificial price rise in the scrip of Linkhouse Industries Ltd. (hereinafter called

â??Companyâ??) during the period 2004-2008. It was found that between the period from 1st April, 2004 to 31st June, 2004 the present appellants

who were the promoters of the Company or the persons acting in concert with each other had acquired around 2% of the share capital of the

Company. This had increased their shareholding from 70.52% to 77.47% in Company. As this has crossed the limit as provided by the SAST

Regulations it was found that the appellant had violated the provisions of Regulation 11(1) of the SAST Regulations which reads as under:-

11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 percent or more

but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in

concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, with post acquisition shareholding or

voting rights not exceeding fifty five percent, in any financial year ending on 31st March, unless such acquirer makes a public announcement to

acquire shares in accordance with the Regulations.

3. Therefore show cause notices were issued to the appellants. Some of the appellants did not answer the show cause notice while some of the

noticees at the time of personal hearing came with a case that they were not aware of the acquisition of shares by other promoters. In the situation,

the Adjudicating Officer found the violation of the provisions and imposed the penalty as detailed above.

4. Dr. S.K. Jain, Company Secretary for the appellant submitted before us that the order is liable to be quashed on the sole ground of the delay. He

submitted that the violation if any on the acquisition of shares had occurred between March, 2004 to June, 2004. The show cause notices were issued

by SEBI dated 7th November, 2017 and, thereafter, the impugned order is passed on 24th May, 2018. He further submitted that the investigating

report dated 18th March, 2017 itself would show that there was lack of documentary evidence about the mode of shares acquired by each of the

appellant. Hence it was recommended that it would not be practicable to ask the appellant to make a public announcement for acquisition of shares of

the Company (para 9.1.4 of the investigation report). In the situation he relied on the ratio of:-

(1) Corporation Bank and Another vs. Navin J. Shah, (2002) 2 SCC 628 dated January 25, 2000.

(2) Rajendra Singh and Other vs. Santa Singh and Others (1973) 2 SCC 705

dated August 16, 1973.

(3) Ashok Shivlal Rupani & Anr. vs. SEBI Appeal no.417 of 2018 alongwith connected Appeal no.440 of 2018 decided by this Tribunal on 22nd

August, 2019. He submits that the appeal deserves to be allowed.

5. On the other hand, Mr. Vishal Kanade, the learned counsel for the respondent SEBI submits that there is no denial of the fact that the appellant

violated the provisions of SAST Regulations. The respondent came to know about the violation only when the reference was received from the

Income Tax authority as detailed above. Thereafter investigation was conducted and show cause notice was issued.

6. In rejoinder, Dr. S.K. Jain submitted that the disclosure of the acquisition was made regularly with BSE copy of which are filed on record. In the

situation, he submitted that the appeal be allowed.

7. Upon hearing both the sides, in our view the appeal deserved to be allowed for the following reasons:-

The time line of the events would show that the alleged violation had occurred between March, 2004 to June, 2004. The appellant had disclosed the

transaction to the BSE at that time. The show cause notice however was issued in the present case dated 7th November, 2017. The investigation

report itself would show that for non availability of the documentary evidences the investigating authority did not recommend taking drastic action to

direct making of public announcement. Thus, there was inordinate delay in initiation of the proceedings. In the circumstance, it would be relevant to

quote the reasoning forwarded by us in the case of Ashok Shivlal Rupani & Anr. vs. SEBI, Appeal nos.471 of 2018 and 440 of 2018 dated 22nd

August, 2019 in para nos. 6 and 7 as under:-

6. Having considering the matter, we are of the view that there has been an inordinate delay on the part of the respondent in initiating proceedings

against the appellants for alleged violations. Much water has flown since the alleged violations and at this belated stage the appellants cannot be

penalized. It is alleged that disclosure under PIT Regulations was not made but similar disclosure was made by the appellant under SAST Regulations.

Therefore, information was available on the Stock Exchange and therefore it cannot be said that the respondents were unaware of the alleged

violations. Further, the purpose of disclosure was to make the market aware of the change of shareholding of the shareholders. When a disclosure

was made by the company under SAST Regulations the investors became aware of the change in the shareholding. The non-compliance of

Regulation 13 if any becomes technical in nature.

7. In Mr. Rakesh Kathotia & Ors. vs. SEBI (Appeal No. 07 of 2016 decided by this Tribunal on 27.05.2019) proceedings were quashed on account of

inordinate delay. The said decision is squarely applicable to the instant case. For facility, the relevant paragraph of the order is extracted hereunder:

â??23. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion

of the adjudication proceedings. The Supreme Court in Government of India vs. Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC

1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be

the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of

this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court in Bhavnagar

University v. Palitana Sugar Mill (2004) Vol.12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd (2007) Vol.11 SCC 363 and

Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3 SCC 695. The Supreme Court recently in the case of

Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294 held:

â??There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What

would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the

third-party rights had been created etc.â??

8. In the light of the reasons quoted above there is no escape from the conclusion that the proceedings are required to be quashed. Therefore the

appeal is hereby allowed with no order as to costs.

