
(2020) 01 SEBI CK 0001

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 169, 171, 172, 231, 264, 266, 277, 278, 279, 280, 281 Of 2019

Ashlesh Gunvantbhai Shah And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 31-01-2020

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(g)
Securities And Exchange Board Of India Act, 1992 — Section 11(1), 12(A)(a), 12(A)(b), 12(A)(c), 15HA

Citation : (2020) 01 SEBI CK 0001

Hon'ble Judges : Tarun Agarwala, Presiding Officer; Dr. C. K. G. Nair, Member

Bench : Division Bench

Advocate : Rinku Valanju, Hiral Shah, Karan Bhosale, Kaushal Parsekar, Tanvi Rana, Nishant K. Upadhyay, Vijay Pandey, Akhil Sarathy

Final Decision : ?Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. In this group of appeals the appellants have challenged a common order dated November 16, 2018 passed by the Adjudicating Officer (â??AOâ??

for short) of Securities and Exchange Board of India (â??SEBIâ?? for short) imposing penalties against each of the appellants for violation of Section

12(A)(a), (b) and (c) read with Regulations 3(a),(b),(c) & (d) and 4(1), 4(2)(a) and (g) of the SEBI (Prohibition of Fraudulent and Unfair Trade

Practices relating to Securities Market) Regulations, 2003 (â??PFUTP Regulationsâ?? for short). Since the issue is common all the appeals are being

decided by a common order.

2. Certain irregularities in the scrip of M/s. Oregon Commercial Ltd. now known as M/s. Saianand Commercial Ltd. was noticed by SEBI and

accordingly an investigation was started in August 2011 for the period January 4, 2010 to January 10, 2011. Based on this investigation and the

investigation report, a show cause notice was issued to the appellants alleging that they had created artificial volumes and misleading appearance in

the securities market by trading among others through matched trades, reversal trades and self trades. The AO after considering the replies of the

appellants found them guilty of the aforesaid violations and accordingly imposed different monetary penalties under Section 15HA of the SEBI Act,

1992. The appellants being aggrieved filed separate appeals which are being decided together.

3. The ground urged is, that there is an inordinate delay in the issuance of the show cause notice for violation of Section 12(A)(a), (b) and (c) read

with Regulations 3(a),(b),(c) & (d) and 4(1), (4(2)(a) and (g) of PFUTP Regulations. It was urged that on the ground of inordinate delay the

proceedings should have been dropped and no penalty could have been imposed. It was contended that the alleged violations occurred in the year 2010

whereas the show cause notice was issued in the year 2017 after 7 years for which no explanation has been given.

4. In support of his submission the learned counsel for the appellants have relied upon a decision of this Tribunal in Ashok Shivlal Rupani & Ors. vs.

SEBI (Appeal No. 417 of 2018 along with other connected appeals decided on August 22, 2019) as well as a decision in Sanjay Jethalal Soni & Ors.

vs SEBI in Appeal No. 102 of 2019 and other connected appeals decided on November 14 2019.

5. On the other hand, the contention of the respondent that the issue of delay was not raised by the appellants and consequently it is no longer open to

the appellants to raise a plea of laches at this stage. It was also contended that the SEBI Act does not provide any period of limitation and therefore

proceedings cannot be quashed only on the ground of laches. It was further contended that the respondent in any case have explained the delay in the

issuance of the show cause notice which has been explicitly stated in their additional affidavit dated December 20, 2019 which should be considered

and the delay, if any, in the issuance of show cause notice in the peculiar circumstances of the case should be condoned.

6. We have heard the leaned counsel for the parties in the respective appeals. From the material available on record we find that the alleged

irregularities was noticed by SEBI in August 2011 and immediately thereafter investigation was launched for the period January 4, 2010 to January 10,

2011. Based on the investigation a show cause notice was issued on November 20, 2017. Thus, there is a delay of 7 years in the issuance of the show

cause notice.

7. The respondent have tried to explain the delay in the issuance of show cause notice in the additional affidavit contending that on the basis of the

investigation which started in September / October 2011 a preliminary report was prepared on April 2, 2012 but no action could be taken in 2013-14 as

there were certain changes in the officers of the Investigation department. The investigation report was subsequently approved in February 2016

based on which a show cause notice was issued on July 24, 2017.

8. In our opinion, the grounds shown by the respondent in its additional affidavit only indicates the lackadaisical attitude in proceeding against the

entities. It is quite clear that no urgency was shown by the respondent to culminate the proceedings and has moved at a leisurely pace. We find that

after the submission of the preliminary report on April 2, 2012 no further steps were taken in 2012 and the period of 2013-14 has been covered with a

vague allegation that there were certain changes in the officers of the Investigation department. We also find that after the report was submitted on

February 1, 2016 it took the respondent another 17 months to issue the show cause notice. The explanation given in the additional affidavit is patently

farcical and appears to be an afterthought.

9. An objection was raised by the respondent that the appellants did not raise the issue of delay before the AO. This fact is apparently incorrect as

some of the appellants have raised a specific issue with regard to the inordinate delay in issuing the show cause notice. In this regard, we find from a

perusal of Appeal No. 171 of 2019 that the appellants had made a specific assertion with regard to the inordinate delay in the issuance of the show

cause notice. Similar objection has been raised in Appeal No. 171, 172 etc. For facility, paragraph 3 of the reply given by the appellant in Appeal No.

171 of 2019 is extracted herein below:-

â??3. At the outset, the Noticee may bring to your kind notice that the

investigation period in the OCL scrip is between 04.01.2010 to 10.01.2011 and the above referred SCN is dated 24.07.2017. There is, therefore, a great delay of 7 years in issuance of the SCN which is not even explained. This delay has caused prejudice to the Noticee. On the basis of Honâ??ble SAT judgment in the matter of Subhkam Securities Private Limited versus Securities and Exchange Board of India (Appeal No. 73 of 2012) observed as follows, â??There is yet another aspect of the case which we would like to highlight here. The trades for which investigation was carried out pertain to the year 2000 and the impugned order has been passed only in March, 2012. Investigation started in or around June, 2001. It has taken the Board twelve years to complete the proceedings in a matter relating to market manipulation. This is not the way to conduct proceedings against entities who are charged with serious allegations like market manipulation or insider trading. Expeditious disposal of such proceedings by the Board alone will ensure that the Board is carrying out its duty effectively to protect the interest of investors in securities and to promote the development of and regulating the securities market as mandated by section 11(1) of the Act. Inordinate delay in conducting inquiries and in punishing the delinquent not only permits market manipulator to operate in the market, it also has demoralizing effect on the market players who are ultimately â??not found guiltyâ?? but damoclesâ?? sword of inquiry keeps hanging on them for years together from the date of starting investigation by the Board to the date of completion of inquiry proceedingsâ?;, notice hereby requests SEBI to provide explanation for the inordinate delay and request SEBI to dispose off the matter as expeditiously as possible.â??

Similar objections have been raised by the other appellants.

10. It was contended that all the appellants have not raised the issue of delay and therefore they cannot be permitted to raise the issue of delay for the first time before this Tribunal.

11. On this aspect we are of the opinion that the issue of delay is a mixed question of fact and law and if it goes to the root of the matter such an issue can be raised even at the appellate stage even though such objection was not raised before the AO. In the instant case, we find that some of the

appellants had raised a specific issue with regard to the inordinate delay in the issuance of the show cause notice. This aspect should have been considered by the AO which in the instant case has not been done and in fact it has totally ignored such objection. We are further of the opinion that when the matter is being decided against the appellants as a group by a common order, an objection raised by one appellants will cover for all the appellants and it will not be confined to that appellant alone especially when the objection raised is one of mixed question of law which goes to the root of the matter.

12. Having considered 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 the alleged violations. The controversy in this regard is squarely covered by a decision of this Tribunal in Mr. Rakesh

Kathotia & Ors. vs SEBI in Appeal No. 7 of 2016 decided by this Tribunal on May 27, 2019. The relevant paragraph is extracted herein below:-

“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:

“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??

13. Similar view was again relied in Ashok Shivilal Rupani & Ors. vs. SEBI (Appeal No. 417 of 2018 along with other connected appeals decided on

August 22, 2019) and again in Sanjay Jethalal Soni & Ors. vs SEBI in Appeal No. 102 of 2019 and other connected appeals decided on November 14 2019.

14. We also find that in the case of Ashok Shivilal Rupani (supra) the period of investigation was January 4, 2010 to January 10, 2011 in the scrip of

M/s. Oregon Commercial Ltd. and the show cause notice issued on November 20, 2017 which this Tribunal held that there was an inordinate delay. In

the instant case, the same scrip was investigated for the same period and there is a delay of 7 years in issuing the show cause notice. To this extent,

the facts are common. Further, Civil Appeal No. 8444 â?" 8445 of 2019 Securities and Exchange Board of India vs. Ashok Shivilal Rupani & Anr, etc

was dismissed by the Supreme Court on November 15, 2019 thus affirming the decision of this Tribunal.

15. In the light of the aforesaid, we are of the opinion that there has been an inordinate delay in the issuance of the show cause notice. Even though

there is no period of limitation prescribed in the Act and Regulations in the issuance of a show cause notice or for completion of the adjudication

proceedings the authority is required to exercise its powers within a reasonable period as held recently in Adjudicating Officer, Securities and

Exchange Board of India vs. Bhavesh Pabari (2019) SCC OnLine SC 294. In the instant case, we are of the opinion that the power to adjudicate has

not been exercised within a reasonable period and therefore no penalty could be imposed.

16. As a result, without going into the merits of the case, we find that on account of the inordinate delay in the initiation of the proceedings by issuance

of a show cause notice, the penalty order cannot be sustained. The impugned order passed by the AO is quashed. All the appeals are allowed. In the

circumstances of the case, there shall be no order on costs.