(2023) 05 SEBI CK 0037

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 350, 357, 643, 1208 Of 2022, Appeal No. 119, 152, 216, 217, 218 Of 2022

D. Sundararajan And Others APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 18-05-2023

Acts Referred:

Citation : (2023) 05 SEBI CK 0037

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Meera Swarup, Technical Member

Bench : Division Bench

Advocate : Vinay Chauhan, Almira Lasrado, Afreen Thanevala, Sumit Rai, Mihir Mody, Arnav Misra, Harshvardhan Melanta, V.M Singh, Akshaya Bhansali,, Nirali Mehta, Nimay Dave, Faiza Dhanani

Final Decision : Disposed Of

Judgement

Tarun Agarwala, Presiding Officer

1. All these appeals are against a common order dated December 24, 2021 passed by the Adjudicating Officer ('AO for short) of the Securities and Exchange Board of India ('SEBI' for short) imposing penalties on eight noticees and are being taken up together.

2. Cals Refineries Ltd. issued Global Depository Receipts ('GDR' for short) in December 2007. During the course of investigation it was observed that a false impression was given to the investors regarding the subscription of the GDR by one entity known as Honor Finance Limited. Since the issuance of GDR was found to be fraudulent an ex parte ad interim order was issued by SEBI on September 21, 2011 which was subsequently confirmed. Some of the appellants filed an appeal before this Tribunal which was disposed of with the direction to SEBI to complete the investigation and initiate proceedings, if any. Based on the aforesaid, after conclusion of the investigation, a show cause notice dated

September 25, 2013 was issued by the Whole Time Member ('WTM' for short). The matter was contested by the noticees and thereafter the WTM passed an order of debarment by its order dated December 31, 2014. This order was challenged in an appeal before this Tribunal which appeals were dismissed by an order dated October 12, 2017.

3. On the same facts and on the same cause of action and for the same violation the AO initiated proceedings by issuance of a show cause notice on June 9, 2021 which after contest has resulted in the passing of the impugned order on December 24, 2021 wherein different quantum of penalties have been imposed upon the noticees.

4. The appeal was admitted on the question of undue delay in the issuance of the show cause notice as well as on the quantum of penalty.

5. We have heard Shri Vinay Chauhan, Shri V.M. Singh and Shri Nimay Dave, the learned counsel for the appellant in respective appeals and Shri Sumit Rai, the learned counsel for the respondent.

6. We find that the GDR was issued by the Company on December 12, 2007 and the present show cause notice was issued on June 9, 2019 after an undue delay of 12 years.

It was urged that there is an undue delay in the initiation of the proceedings and, on this short ground the proceedings should be quashed including the impugned order.

7. In this regard we find that a specific plea was raised by the appellants which has been dealt with by the AO in paragraph 25 and 26 of the impugned order. In paragraph 25 the AO noted:-

"However, I note that the present matter is complex involving investigation of various entities registered under foreign jurisdiction. The same, inter alia, required collaboration with foreign regulators by SEBI and collection of information."

In paragraph 26 the AO held:-

"Adjudication proceedings were initiated against the above entities and pursuant to the appointment of the undersigned as AO vide Order dated July 05, 2018, SCNs were issued in the matter. Further, the Noticees were granted opportunity for inspection of documents, submitting replies and hearing in the matter. Thus, I note that there is no delay in the present adjudication proceedings."

8. With regard to the findings given by the AO that the investigation took time as it involved various entities registered under foreign jurisdiction and required collaboration with various regulators and collection of information we find that the investigation was completed as far back prior to issuance of the show cause notice dated September 25, 2013 issued by the WTM. Once the investigation stood completed prior to September 25, 2013 nothing stopped the respondents

from not issuing another show cause notice for initiation of penalty proceedings. No explanation whatsoever has been given as to why penalty proceedings could not be initiated prior to June 9, 2019.

9. The contention that since the AO was appointed on July 5, 2018 there is no delay in the initiation of the proceedings is patently erroneous. We are of the opinion that when the investigation was completed prior to September 2013 steps should have been taken immediately for initiation of proceedings by the AO. We further are of the opinion that when the WTM had issued a show cause notice on September 25, 2013 nothing stopped SEBI / AO from initiating penalty proceedings against the appellant. By sitting over the matter from 2013 to 2019 we are of the opinion that there has been an undue delay in the initiation of the proceedings for which no cogent or valid reasons has been given.

10. In Mr. Rakesh Kathotia vs. SEBI in Appeal No. 7 of 2016 decided by this Tribunal on May 27, 2019. This Tribunal held:-

“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.”

11. Similar view was held in Ashok Ashok Shivlal Rupani & Anr. vs. SEBI (Appeal No. 417 of 2018 along with other connected appeals decided on August 22, 2019). Against the order of this Tribunal in the matter of Ashok Shivlal Rupani, SEBI filed Civil Appeal No. 8444-8445 of 2019 before the Supreme Court of India which was dismissed and the order of this Tribunal affirmed by the Supreme Court.

12. Similar view was again reiterated in the matter of Ashlesh Gunvantbhai Shah vs SEBI (Appeal No. 169 of 2019) and other connected appeals decided on January 31, 2020 (2020 SCC OnLine SAT 30) where on account of inordinate

delay in the initiation of the proceedings by issuance of the show cause notice, the penalty order was quashed.

13. 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 the Regulations for issuance of a show cause notice and for completion of the adjudication proceedings, nonetheless, the authorities are required to exercise its powers within a reasonable period. In AO, SEBI vs Bhavesh Pabari, 2019 SCC OnLine SC 294 the Supreme Court held that an authority is required to exercise its powers within a reasonable period.

14. In the instant case we are of the opinion that power to adjudicate has not been exercised within a reasonable period and that there has been undue delay of 12 years in initiating the proceedings. Consequently, no penalty could be imposed.

15. For the reasons stated aforesaid, the impugned order is quashed. The appeals are allowed with no order as to costs. The miscellaneous applications are disposed of.

16. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Certified copy of this order is also available from the Registry on payment of usual charges.