(2021) 08 SEBI CK 0035

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 187, 188, 189, 190, 191, 192 Of 2021

Garware Polyester Limited And Others APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 09-08-2021

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 1992 — Regulation 13(4), 13(5), 13(6)

Citation : (2021) 08 SEBI CK 0035

Hon'ble Judges : Tarun Agarwala, Presiding Officer;M. T. Joshi, J

Bench : Division Bench

Advocate : Somasekhar Sundaresan, Sanjay Buch, Shruti Katakey, Suraj Choudhary, Nidhi Singh, Aditi Palnitkar, Riddhi Pawar, Viddhii Partners

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. This group of appeals have been filed by the promoters / directors and by the Company Garware Polyester Limited against separate orders passed

by the Adjudicating Officer (â??AOâ?? for short) of the Securities and Exchange of India (â??SEBIâ?? for short) dated January 15, 2021 imposing

a penalty for violating the provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (â??PIT Regulationsâ?? for short). Even though

separate orders of the same date have been passed by the AO, the issue involved is common and, therefore, all the appeals are being decided

together.

2. Investigation was conducted in the matter of Garware Polyester Limited which is a listed company to ascertain whether there was any violation of

the provisions of the PIT Regulations. The violations were that there was a delay in the disclosures made by the promoters and directors with respect

to the changes in their shareholdings in the scrip of Garware Polyester Limited to the Stock Exchanges. The charge against the Company was also

that there was a delay on the part of the Company in making the disclosures to the Stock Exchange. The alleged delay ranged from 27 days to 193

days from April 10, 2012 to September 26, 2012 during this period when the shares were acquired by the appellants, promoters and directors.

3. Accordingly, a show cause notice dated July 16, 2020 was issued to show cause why appropriate penalty should not be levied for violating

Regulation 13(4), 13(5) and 13(6) of the PIT Regulations. It was alleged that insofar as the promoters, directors and appellants are concerned they

made acquisition of shares which warranted disclosures to the Company as well as to the Stock Exchange if the value of the shares exceeded Rs. 5

lakh and the said disclosures were required to be made within two days from the date of acquisition but there has been a delay ranging from 27 days

to 193 days. Insofar as the Company was concerned the said Company was also required to made disclosure within two days which they failed to do

so within the stipulated period.

4. The AO after considering their replies passed separate orders imposing penalties on each of the appellants of different amount. Consequently, the

present appeals have been filed.

5. We have heard Shri. Somasekhar Sundaresan, the learned counsel for the appellant and Shri Suraj Chaudhary, the learned counsel for the

respondent.

6. It was contended by the learned counsel for the appellants that there has been an inordinate delay in the issuance of the show cause notice for

violation of provisions of the PIT Regulations and therefore on the ground of inordinate delay the impugned order should be quashed. It was alleged

that the transactions are of the year 2011-12 and that the show cause notice was issued on July 16, 2020 after more than 8 years for which no

explanation has been given. The AO held that there is no apparent delay in the initiation of the proceedings and in support of his findings have relied

upon a decision of this Tribunal in Ravi Mohan & Ors. vs Securities and Exchange Board of India in Appeal No. 97 of 2014 decided on December 16,

2015.

7. We are of the view that there has been an inordinate delay on the part of the respondent in initiating the proceedings against the appellants for the

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

8. Even though there has been a delay in the disclosures made by the appellants the said information was available in the public domain and was

known to the Stock Exchange. Thus, it cannot be said that the respondent were unaware of the alleged violations. The contention of the respondent

that they were unaware of the alleged violations and only came to know during the course of investigation in relation to another violation cannot be

accepted. The fact remains that the disclosures were made and it was in the public domain and if action was not taken within a reasonable period it

does not give a right to the respondent to initiate proceedings after an inordinate delay.

9. In our view the controversy involved in the present case is squarely covered by 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). In the said appeal, shares were sold by Ashok Shivlal

Rupani between the period January 4, 2010 to January 10, 2011 and failed to file necessary disclosures under Regulation 13(4) and 13(5) of the PIT

Regulations. The show cause notice was issued belatedly after an inordinate delay. This Tribunal held as follows:-

â??7. In Mr. Rakesh Kathotia & Ors. Vs SEBI (Appeal No. 07 of 2016 decided by this Tribunal on May 27, 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 aforesaid, we are of the opinion that there has been an inordinate delay in the issuance of the show cause notice and for

completion of the adjudication proceedings. Since the power to adjudicate has not been exercised within a reasonable period no penalty could have

been imposed for the alleged violations.â??

This Tribunal quashed the impugned order as well as the show cause notice.

10. In our view the controversy involved in the present case is squarely covered by the aforesaid decision of this Tribunal.

11. The aforesaid decision of the Tribunal in Ashok Shivlal Rupani (supra) has also been affirmed by the Supreme Court in Civil Appeal No. 8444 â?

8445 of 2019 Securities and Exchange Board of India vs. Ashok Shivlal Rupani & Anr, decided on November 15, 2019.

12. Reliance by the respondent in Ravi Mohanâ??s case (supra) is misplaced. The AO has selectively quoted part of paragraph 22. This Tribunal

also held:-

Â â??However, we make it clear that in the absence of time limit prescribed for issuing show cause notice or for completing the adjudication

proceedings, SEBI cannot arbitrarily delay the proceedings and must take all reasonable steps to initiate and complete the proceedings in accordance

with law as expeditiously as possible.â??

13. The decision in Ravi Mohanâ??s case (supra) was rendered by a bench of two members. This decision was considered by a three member

bench by this Tribunal in Mr. Rakesh Kathotia & Others vs SEBI in Appeal No. 7 of 2016 decided on May 27, 2019 wherein the penalty of Rs. 15

lakh was set aside on the ground of delay. Thus, reliance of Tribunalâ??s decision in Ravi Mohanâ??s case (supra) by the AO is misplaced.

14. In view of the aforesaid, the impugned orders passed against the appellants by the AO cannot be sustained and are quashed on account of the

inordinate delay in the initiation of the proceedings by issuance of the show cause notice which culminated into a penalty order. The show cause notice

and the impugned orders passed by the AO are quashed. All the appeals are allowed with no order as to costs.

15. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor

a certified copy of this order could be issued by the registry. In these circumstances, 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. Parties will act on production of a digitally

signed copy sent by fax and/or email.

