
(2023) 01 SEBI CK 0032

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 64 Of 2023

Man Industries Limited And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 19-01-2023

Acts Referred:

Securities And Exchange Board Of India Act, 1992 — Section 15A(b)
Securities Contracts (Regulation) Act, 1956 — Section 23E

Citation : (2023) 01 SEBI CK 0032

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

Bench : Division Bench

Advocate : Kunal Katariya, Ashmita Goradia, Harsh Kesharia, Sumit Rai, Ravishekhar Pandey, Nishit Dhruva, Shefali Shankar

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated October 25, 2022 passed by the Adjudicating Officer ('AO' for short) of the Securities and Exchange Board of India ('SEBI' for short) imposing a penalty of Rs. 5 lakh under Section 15A(b) of the SEBI Act, 1992 read with Section 23E of the Securities Contracts (Regulation) Act, 1956 ('SCRA' for short).

2. The facts leading to the filing of the present appeal is, that the appellants made a delayed disclosure to the Stock Exchange by 217 days and consequently violated certain clauses of the Listing Agreement. Based on the aforesaid delayed disclosure which was made in the year 2012 a show cause notice was issued on May 27, 2022 to show cause as why an inquiry should not be held and penalty, if any, should not be imposed under Section 15A(b) of the SEBI Act and Section 23E of the SCRA.

3. The AO after considering the submissions of the appellant held that there was

no undue delay in the issuance of the show cause notice and that no prejudice was caused to the appellant. Further, in view of the non-disclosure penalty under Section 23E of the SCRA was payable and accordingly imposed a penalty of Rs. 5 lakh.

4. We have heard Shri Kunal Katariya, the learned counsel for the appellant and Shri Sumit Rai, the learned counsel for the respondent.

5. In *Suzlon Energy Limited & Anr. vs SEBI* in Appeal no. 201 of 2018 decided on May 3, 2021 this Tribunal held that Section 23E of the SCRA is not applicable for violation of the Listing Agreement and / or LODR Regulations. Consequently, no penalty could be imposed under Section 23E of the SCRA for violation of the Listing Agreement.

6. We also find that there is undue delay in the issuance of the show cause notice. The disclosure was made in the year 2012 and the information came into the public domain. SEBI took notice of this delayed disclosure and started an investigation but issued a show cause notice only after 10 years on May 27, 2022. Nothing has been indicated as to why the show cause notice could not be issued earlier. The contention raised that investigation was being made which took time is not borne out from the impugned order. Even otherwise we are of the opinion that violation of Listing Agreement was made known to the authorities in 2012 and if action was required to be taken at the earliest opportune moment which has not been done in the instant case.

7. We are of the opinion that when there is an undue delay that itself causes prejudice and the AO has committed a manifest error in not dealing with the issue of undue delay and brushing it aside by stating that no prejudice has been caused.

8. This Tribunal in a catena of cases over the past 15 years have held that proceedings must be initiated in a timely manner and that proceedings are liable to be set aside only on the ground of undue delay in the initiation of the proceedings. One such recent decision that comes to the notice of this Tribunal is in the case of *Mr. Rakesh Kathotia & Ors. vs SEBI*, Appeal no. 7 of 2016 decided on May 27, 2019 wherein the proceedings were quashed on account of inordinate delay. 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.”

9. Similar order was passed in Ashok Shivilal Rupani vs SEBI, Appeal no. 417 of 2018 decided on August 22, 2019. This order was taken to the Supreme Court by SEBI in Civil Appeal No. 8444 – 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.

10. Recently, the Supreme Court in Adjudicating Officer, SEBI vs Bhavesh Pabari (2019) SCC Online SC 294 held as under:-

“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 orders were passed by this Tribunal in Ashlesh Gunvantbhai Shah vs SEBI (Appeal no. 169 of 2019) decided on January 31, 2020, SIC Stock & Services Pvt. Ltd. vs SEBI (Appeal no. 639 of 2021), Morepen Laboratories Limited vs SEBI (Appeal no. 62 of 2020) decided on April 15, 2021 and in ICICI Bank Limited vs SEBI (Appeal no. 583 of 2019) decided on July 8, 2020.

12. In view of the aforesaid, on both counts the impugned order cannot be sustained and is quashed. The appeal is allowed with costs.

13. 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.