(2023) 06 SEBI CK 0032

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 459 Of 2023, Appeal No. 470 Of 2022

M/s. G R Capital & Finance Private Limited And Others — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 14-06-2023

Acts Referred:

Securities And Exchange Board Of India (Substantial Acquistion Of Shares And Takeovers) Regulations, 1997 — Regulation 8A(2), 8A(3)
Securities And Exchange Board Of India Act, 1992 — Section 15A(b)

Citation : (2023) 06 SEBI CK 0032

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

Bench : Division Bench

Advocate : Harsh Keshari, Vikas Bengani, Vishal Kanade, Pritish Chatterjee, Aditya Sarangarajan, Mansukhlal Hiralal

Final Decision : Disposed Of

Judgement

Tarun Agarwala, Presiding Officer

1. The appellants being noticees no. 1,2,3 & 6 have challenged the order of the Adjudicating Officer ("AO" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) dated December 29, 2022 imposing a penalty under Section 15A(b) of the SEBI Act, 1992 for violation of Regulation 8A(2) & (3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("SAST Regulations" for convenience).

2. The facts leading to the filing of the present appeal is, that the SEBI received a reference from the Income Tax Department regarding bogus purchase made by the Company- noticee no. 1 from its sister concerns and inflation of the books and accounts. SEBI conducted a forensic audit through a Chartered Accountant who submitted a report on February 27, 2012 finding that various violations of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations" for convenience) and

irregularities with regard to the financials of the Company and non-compliance of the disclosure requirement as per Regulation 8A(2) & (3) of the SAST Regulations.

3. Based on the aforesaid findings given by the forensic auditor, proceedings were initiated by the Whole Time Member ("WTM" for convenience) by issuance of a show cause notice dated June 23, 2016 with regard to financial irregularities and violations of the PFUTP Regulations. The WTM after considering the material evidence on record passed an order dated February 28, 2019 exonerating the appellants of the charges levelled against them.

4. After the passing of the order of the WTM, the AO issued a show cause notice dated February 18, 2020 with regard to the non-disclosure made by the appellants under Regulation 8(A)(2)&(3) of the SAST Regulations relating to transactions which were executed between the period 16.12.2009 to 15.12.2010. The AO after considering the material evidence on record has passed an impugned order imposing penalty.

5. We have heard Shri Harsh Kesharia, the learned counsel for the appellants and Shri Vishal Kanade, the learned counsel for the Respondent.

6. In our view, the entire proceedings initiated by the AO is a misuse of the process of law. The forensic audit report was submitted on February 27, 2012 finding financial irregularities, violations of PFUTP and SAST Regulations. Based on these findings the WTM issued a show cause notice and consciously did not include the charge of the SAST violations. By not including the charge in the show cause notice it would be deemed that SEBI chose not to pursue this violation and, consequently, we are of the opinion, that the respondents were estopped from initiating a show cause notice relating to violations of the SAST Regulations especially when that allegation was not included in the earlier show cause notice. The principle of estoppel will squarely apply in the instant case.

7. Apart from the aforesaid, we find that there is an undue delay in the initiation of the proceedings for which no plausible explanation has been given. The transactions is of the period 2009-2010. SEBI came to know about the allegation and accordingly conducted a forensic audit which report was submitted on February 27, 2012 and the violation under the SAST Regulations was indicated in this forensic report. The show cause notice was issued by the AO on February 18, 2020 after eight years of the submission of the forensic report.

Inspite of having knowledge of the alleged violations, no steps were taken by the respondent to initiate proceedings at the appropriate time. Consequently, in our view, there has been an inordinate delay in the initiation of the proceedings and on this short ground the impugned order cannot be sustained.

8. 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."

9. Similar view was held in 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.

10. 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.

11. 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.

12. For the reasons stated aforesaid, the impugned order in so far as it relates to the appellants are quashed. The appeal is allowed. The misc. application is disposed off accordingly.

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.