

(2020) 03 SEBI CK 0002

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 152 Of 2019

Pooja Vinay Jain

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 17-03-2020

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(g)

Citation : (2020) 03 SEBI CK 0002

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

Bench : Division Bench

Advocate : Vikas Bengani, Vishal Kanade, Vivek Shah, Abhiraj Arora

Final Decision : Dismissed

Judgement

M. T. Joshi, J

1. Aggrieved by the imposition of a monetary penalty of Rs. 3 lacs by the Adjudicating Officer (hereinafter referred to as "AO") of respondent

Securities and Exchange Board of India (hereinafter referred to as "SEBI") for violation of provision of Regulations 3(a), (b), (c), (d), 4(1), 4(2)

(a) and (g) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market)

Regulations, 2003 (hereinafter referred to as "PFUTP Regulations"), the present appeal is preferred.

2. Respondent SEBI had investigated in the trading of the scrip of Mindvision Capital Ltd. (formerly known as Kailash Ficom Ltd.) (hereinafter

referred to as "MCL") during the period June 17, 2009 to February 8, 2010. It was found that in all 72 entities were connected with each other.

Out of those entities, 50 entities had bought shares in the off-market from 22 entities and thereafter, those shares were either sold in off-market or

through market to the connected entities in order to create a volume manipulation in the said scrips.

So far as the present appellant is concerned, during the period August 11, 2009 to February 4, 2009, the appellant has bought 30000 shares of MCL in

off-market transaction from one of the connected entity, namely, Dadima Capital (P) Ltd. (Dadima Capital) and sold the same by using the platform

of the market to other entities, namely, Nilesh Krushna Palande (Nilesh), Universal Credit & Securities Ltd. (Universal Credit) and Fast Track

Entertainment Ltd. (Fast Track Entertainment). The table given below paragraph 29 of the impugned order would show that on the given days these

trades were from 32% to 55% of the total market volume of all the trading in the scrip of MCL. It was alleged that all the above four entities were

connected with each other and with the appellant. In the circumstances, a show cause notice was issued on November 20, 2017.

3. The appellant has replied as under :-

1. From 2007 onwards, she acquired shares of various listed companies including the shares of MCL on the advice of the some personnel.

2. The shares were purchased through the stock broker.

3. She is not aware that the shares were purchased for her / stockbroker off-market / online.

4. She was simply bonafide investor and has no say in the management of the portfolio.

She therefore sought exonerated from the proceedings.

4. From the impugned order, it appears that none of the noticees either replied to the show cause notice or appeared in the proceedings except the

appellant. The appellant also did not attend respondent SEBI for personal hearing. The AO, inter-alia, held the present appeal guilty of the violation

and imposed the monetary penalty as detailed (supra). Hence, the present appeal.

5. The learned counsel for the appellant Mr. Vikas Bengani submitted before us that no circular trading is made out by the respondent SEBI in the

impugned order. There were no reversal trades. The record would show that only 30000 shares of MCL were purchased by the appellant off-market

and the same were sold in the market. While the transactions are of the year 2009-10, the show cause notice was issued on September 20, 2017.

There was an inordinate delay in initiating the proceedings and, therefore, on this sole ground the appellant is entitled for exoneration. In support, the

learned counsel for the appellant relied on the decisions of this Tribunal in the cases of Monika Jain vs. SEBI [Appeal No. 4 of 2011 decided on

February 11, 2011] and Ashok Shivilal Rupani & Anr. vs. SEBI [Appeal No. 417 of 2018 decided on August 22, 2019].

6. On the other hand, the learned counsel for the respondent SEBI Mr. Vishal Kanade submitted as under :-

1. The appellant did not take any plea of delay in launching the proceedings or the delay resulting into some prejudice to the appellant, before the AO.

2. Suddenly during the appeal, the said plea is raised.

3. The reply to the show cause notice would show that the appellant herself has annexed the copies of all the transactions with the reply. This would

show that the appellant was not anyway prejudiced due to delay, if any, in initiating the proceedings.

4. He submitted that since large numbers of entities were involved in the off-market as well as market transactions, the analysis of the same took

some time due to which no prejudice was caused to any of the noticees including the appellant.

5. It was further submitted that transaction with the connected entities is clearly borne out of the record and, therefore, merely because there was no

circle of trades the appellant cannot be exonerated.

7. Upon hearing both the sides, in our view, the appeal is liable to be dismissed for the following reasons.

8. It is an admitted fact that during the relevant period, the appellant has purchased 30000 shares off-market of MCL from one Dadima Capital and

sold the same through market to four entities during the relevant period. Paragraph Nos. 25 and 26 of the impugned order would show that the very

same Dadima Capital has sold 7500 shares of MCL on July 25, 2009 to one Mangilal Chandanmal Doshi who eventually sold the same on July 27,

2009 to Universal Credit and Nilesh, the very entities who had purchased the shares from the appellant. Besides this, this Universal Credit is

connected with Dadima Capital through one common director Narendra Shah.

Further, Nilesh is also connected with one Tribhuvan Housing Ltd. as he shares a common address with Narendra Shah. So far as Fast Track is concerned, Narendra Shah is again connected to it through one of its director Pralhad Panchal.

9. The record would show that the stock in question was illiquid stock and, the transaction between the parties was in large percentage of the total market trades as detailed (supra). The only plea of the appellant is that she acted on the advice of the stock broker and, therefore, not aware of any of the transactions is not supported by any material. In the circumstances, the plea of the appellant cannot be accepted. 10. In the case of Monika Jain (supra) cited by the appellant, this Tribunal came to the conclusion that the alleged facts of circular trade was proved as the circle got completed. It was argued that in the present case no circle was completed. It is, however, to be noted that in the present case there is no allegation of circular trade but of false trades between the connected parties which is borne out of the fact. Therefore, the ratio in the case of Monika Jain is not applicable in the present case.

11. On the issue of delay, in the case of Ashok Rupani (supra), this Tribunal, inter-alia, noted the ratio in the case of Mr. Rakesh Kathotia and Ors.

vs. SEBI [Appeal No 7 of 2016 decided on May 27, 2019]. Paragraph No. 7 of the case of Ashok Rupani Judgment is as under :-

“7. In Mr. Rakesh Kathotia & Ors. vs. SEBI (Appeal No. 07 of 2016 decided by this Tribunal on 27.05.2019) 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:

“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 6 (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.”

12. The decision would show that the power to initiate the proceedings must be exercised by the authorities within a reasonable time. This would

depend upon the facts and circumstances of the case, nature of the default/statute and prejudice caused to the noticee.

13. In the present case, the appellant neither put a plea of prejudice before the AO nor before us. It was simply stated that since the proceedings were

launched by respondent SEBI after a period seven years, the same should be quashed on the ground of delay. The record would show that all the

documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be

quashed simply on the ground of delay in launching the same. Further, as explained by the learned counsel for the respondent as recorded in paragraph

No. 6.4 above, large numbers of entities and transactions were analyzed by SEBI which took some time. In the result, the following order :-

ORDER

14. The appeal is hereby dismissed without any order as to costs.