(2022) 03 SEBI CK 0097

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 719 Of 2021

Yatin Pandya HUF — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 24-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 14
Securities Appellate Tribunal (Procedure) Rules, 2000 — Rule 21
Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulation 3, 3(a), 3(b), 3(c), 3(d), 4, 4(1), 4(2)(a), 4(2)(g)
Securities And Exchange Board Of India Act, 1992 — Section 12A, 12A(a), 12A(b), 12A(c), 15HA, 15T(4)

Citation : (2022) 03 SEBI CK 0097

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

Bench : Division Bench

Advocate : Akansha Jain, Sumit Rai, Manish Chhangani, Ravi Shekar Pandey, Samreen Fatima

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated September 8, 2021 passed by the Adjudicating Order (hereinafter referred to as 'AO') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') imposing a penalty of Rs. 2 lacs for violation of Section 12A (a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Regulation 3 (a), (b), (c), (d) and Regulation 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').

2. The facts leading to the filing of the present appeal is, that SEBI conducted an investigation in respect of irregular trading activities of certain entities in the

scrip of Sterling International Enterprises Ltd. during the period May 1, 2008 to September 30, 2009. Based on the investigation, a show cause notice dated February 12, 2020 was issued to the appellant alongwith other entities to show cause as to why an inquiry should not be initiated and penalty should not be imposed under Section 15HA of the SEBI Act for violation of Section 12A of the SEBI Act read with Regulations 3 and 4 of the PFUTP Regulations. The show cause notice alleged that 29 entities are connected to each other and that they traded among themselves in the scrip and created misleading appearance of trading which were violative of Regulations 3 and 4 of the PFUTP Regulations.

3. The appellant on receipt of the show cause notice contended that there is an inordinate delay in the issuance of the show cause notice and at this belated stage the appellant is unable to collate the exact circumstances and situation with regard to the trades executed by him. It was contended that such delay has not only caused prejudice but has placed him in a disadvantage position and is unable him to defend the allegations levelled against him. It was contended that in view of the decision of this Tribunal in Ashok Shivlal Rupani & Anr. vs. SEBI Appeal No. 417 of 2018 decided on August 22, 2019, the adjudication proceedings are liable to be quashed on account of inordinate delay. The appellant also placed reliance on the order of the Hon'ble Supreme Court in Government of India vs. Citedal Fine Pharmaceuticals, Madras & Ors. [AIR 6 (1989) SC 1771].

4. On merits, the appellant further contended that he had no connection with the other entities and cannot be connected solely on the basis of a person who has introduced the appellant in the KYC application. It was also contended that the appellant had applied for inspection of documents which was denied and such denial was violative of the principles of natural justice.

5. The AO after considering the material evidence on record held that there was no delay in the initiation of the proceedings and further held that since all the documents were supplied alongwith show cause notice, it was not necessary for the appellant to allow inspection of the documents and, thus, there was no violation of principles of natural justice. The AO further agreed that the contention of the appellant that the introducer cannot be the sole basis for connection between the noticees but further contended that the trading pattern of the appellant with the other entities leads to conclusion that there was an intention to manipulate the market and, therefore, the appellant had violated the Regulations 3 and 4 of the PFUTP Regulations.

6. We have heard Ms. Akansha Jain, Practicing Company Secretary for the appellant and Mr. Sumit Rai, the learned counsel with Mr. Manish Chhangani, Mr. Ravi Shekar Pandey, Ms. Samreen Fatima, the learned counsel for the respondent through video conference.

7. Having heard the learned counsel for the parties, we find that there is an inordinate delay in the issuance of the show cause notice. The disputed trades

are of the year 2008-2009. The investigation in the irregular trading activities was conducted during the period May 1, 2008 to September 30, 2009. After the investigation, it has taken the respondent more than 11 years to issue the show cause notice. There is no explanation in the impugned order as to why the show cause notice could not be issued earlier.

8. In this regard, the appellant placed reliance upon the decision of this Tribunal in Ashok S. Rupani vs. SEBI (supra), wherein this Tribunal has held 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 (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."

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."

9. The aforesaid judgment was affirmed by the Hon'ble Supreme Court in Civil Appeal No(s). 8444-8445 of 2019 decided on November 15 2019. In spite of this judgment which has been noted by the AO, we find that the AO has conveniently swept these decisions under the carpet and held in paragraph no. 12 of the impugned order that in view of the decision of this Tribunal in Vaman Madhav Apte & Ors. vs. SEBI Appeal No. 449 of 2014 decided on March 4, 2016, there is no delay since SEBI Act and nor the Regulations has prescribed any time limit for

initiating proceedings against the person who has violated the securities laws.

10. We are of the view that non-consideration of the judgments cited by the appellant and non-consideration of the grounds urged by the appellant amounts to judicial indiscipline. The AO is required to deal with the points raised and cannot ignore the decision that was cited and placed by the appellant and which has been upheld by the Hon’ble Supreme Court. The Hon’ble Supreme Court in Government of India vs. Citedal Fine Pharmaceuticals, Madras & Ors. (supra) held that in the absence of any period of initiation the authority is required to apply its power within the reasonable period. This view was consistently reiterated by the Hon’ble Supreme Court in Bhavnagar University vs. Palitana Sugar Mill [(2004) 12 SCC 670], State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd. [(2007) 11 SCC 363] and Joint Collector Ranga Reddy IDst. & Anr. vs. D. Narsing Rao & Ors.[(2015) 3 SCC 695]. Further, the Hon’ble Supreme Court in SEBI vs. Bhavesh Pabari [(2019) 5 SCC 90] has held that even though there is no time prescribed for initiation of the proceedings, nonetheless, it has to be initiated within a reasonable period. What should be the reasonable period would depend upon the facts and circumstances of the each case.

11. In the instant case, we find that the disputed trades are of the year 2008-09. Investigation was done 11 years ago and no steps were taken to issue a show cause notice. No reason has been given in the impugned order as to why the show cause notice could not be issued earlier. An attempt has been made by the respondent in paragraph no.

9 of the reply justifying the delay in the issuance of the show cause notice. In our opinion, such new facts which are not borne out from the impugned order cannot be taken into consideration. We are of the view that there was an inordinate delay in the issuance of the show cause notice. On account of this delay serious prejudice was caused to the appellant as he was unable to collate the circumstances in executing the trades. We are further of the opinion that old and stale disputes should not be raised. Thus, on this short ground, the impugned order is liable to be quashed.

12. We further find that merely by supplying the documents is not sufficient compliance and in the event the appellant applies for inspection of the documents, such right cannot be denied by the AO only on the ground that documents have been supplied. Denial of the inspection, in our view, is violation of principles of natural justice as embodied in the Article 14 of the Constitution of India.

13. We further find that the appellant has been connected to five noticees out of 29 noticees on the basis of a common introducer. Once the AO accepts the submission of the appellant that the sole introducer to 5 noticees cannot be made the basis for connection the matter should not have been proceeded further. Once the connection is broken the main allegation in the show cause notice that the appellant alongwith other noticees were trading among

themselves with intention to create false and misleading appearance of trading gets broken. We are, thus, of the opinion that the AO committed an error in holding that the appellant's trading pattern with the other entities was executed with the intention to manipulate the market or defect its mechanism.

14. In the light of the aforesaid, we are of the opinion that the impugned order cannot be sustained and is quashed. The appeal is allowed with costs as we find that the appellant has been unnecessarily being made to litigate and is entitled to costs which we compute at Rs. 25,000/- which the respondent shall pay to the appellant within four weeks from today. The imposition of cost is being passed by the Tribunal in exercise of its powers under Section 15T(4) of the SEBI Act read with Rule 21 of the Securities Appellate Tribunal (Procedure) Rules, 2000.

15. 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.