

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 5.12.2019

Appeal No.75 of 2019

1. Anilkumar Nandkumar Harchandani
B-1201, Imperial Heights,
Behind Goregaon Bus Depot,
Goregaon West, Mumbai – 400104.
2. Nandkumar Khattumal Harchandani
469, Poonam Vila, New Colony,
Nagpur- 440001.
3. Poonamdevi Nandkumar Harchandani
B-1201, Imperial Heights,
Behind Goregaon Bus Depot,
Goregaon West, Mumbai – 400104.
4. Riteshkumar Nandkumar Harchandani
B-1201, Imperial Heights,
Behind Goregaon Bus Depot,
Goregaon West, Mumbai – 400104.
5. Vijaykumar Nandkumar Harchandani
B-1201, Imperial Heights,
Behind Goregaon Bus Depot,
Goregaon West, Mumbai – 400104.
6. Archana Deepak Wani
455, Saroj Vila, New Colony,
Nagpur-440001.
7. Nandkumar Khattumal Harchandani HUF
469, Poonam Vila, New Colony,
Nagpur-440001.
8. Poonam Resorts Ltd.
1st Floor, B, Poonam Chambers,
Byramji Town, Chindwara Road,
Nagpur -440013.

9. Kumar Hotels Ltd.
1st Floor, B, Poonam Chambers,
Byramji Town, Chindwara Road,
Nagpur -440013.
10. Kardhar Finance Pvt. Ltd.
7th Floor, Poonam Plaza,
Palm Road, Civil Lanes,
Nagpur – 440001.
11. Lire Investment Pvt. Ltd.
1st Floor, B, Poonam Chambers,
Byramji Town, Chindwara Road,
Nagpur – 440013.
12. N Kumar Housing & Infrastructure Pvt. Ltd.
1st Floor, B, Poonam Chambers,
Byramji Town, Chindwara Road,
Nagpur – 440013. ... Appellants

Versus

The Adjudicating Officer
Securities and Exchange Board of India
SEBI Bhavan, Plot No.C-4A,
“G” Block, Bandra- Kurla Complex,
Bandra (East), Mumbai – 400 051. ...Respondent

Dr. S.K. Jain, PCS with Mr. Vikas Bengani, Advocate for the Appellant.

Mr. Vishal Kanade, Advocate with Mr. Vivek Shah and Mr. Abhiraj Arora, Advocate i/b. ELP for the Respondent.

CORAM: Dr. C.K.G. Nair, Member
Justice M.T. Joshi, Judicial Member

Per : Justice M.T. Joshi (Oral)

1. Aggrieved by the imposition of penalty of Rs.25 lakhs on the present 12 appellants for violation of Regulation 11(1) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as 'SAST Regulations') the present appeal is preferred.

2. The submissions from both the sides as well as the record would show that on the reference from the Commissioner of Income Tax (IAP)-1, Indore dated May 2, 2014 SEBI conducted investigation in the alleged artificial price rise in the scrip of Linkhouse Industries Ltd. (hereinafter called 'Company') during the period 2004-2008. It was found that between the period from 1st April, 2004 to 31st June, 2004 the present appellants who were the promoters of the Company or the persons acting in concert with each other had acquired around 2% of the share capital of the Company. This had increased their shareholding from 70.52% to 77.47% in Company. As this has crossed the limit as provided by the SAST Regulations it was found that the appellant had violated the provisions of Regulation 11(1) of the SAST Regulations which reads as under:-

11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with

the provisions of law, 15 percent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, with post acquisition shareholding or voting rights not exceeding fifty five percent, in any financial year ending on 31st March, unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations.

3. Therefore show cause notices were issued to the appellants. Some of the appellants did not answer the show cause notice while some of the noticees at the time of personal hearing came with a case that they were not aware of the acquisition of shares by other promoters. In the situation, the Adjudicating Officer found the violation of the provisions and imposed the penalty as detailed above.

4. Dr. S.K. Jain, Company Secretary for the appellant submitted before us that the order is liable to be quashed on the sole ground of the delay. He submitted that the violation if any on the acquisition of shares had occurred between March, 2004 to June, 2004. The show cause notices were issued by SEBI dated 7th November, 2017 and, thereafter, the impugned order is passed on 24th May, 2018. He further submitted that the investigating report dated 18th March, 2017 itself would show that there was lack of documentary

evidence about the mode of shares acquired by each of the appellant. Hence it was recommended that it would not be practicable to ask the appellant to make a public announcement for acquisition of shares of the Company (para 9.1.4 of the investigation report). In the situation he relied on the ratio of:-

(1) Corporation Bank and Another vs. Navin J. Shah, (2002) 2 SCC 628 dated January 25, 2000.

(2) Rajendra Singh and Other vs. Santa Singh and Others (1973) 2 SCC 705 dated August 16, 1973.

(3) Ashok Shivilal Rupani & Anr. vs. SEBI Appeal no.417 of 2018 alongwith connected Appeal no.440 of 2018 decided by this Tribunal on 22nd August, 2019. He submits that the appeal deserves to be allowed.

5. On the other hand, Mr. Vishal Kanade, the learned counsel for the respondent SEBI submits that there is no denial of the fact that the appellant violated the provisions of SAST Regulations. The respondent came to know about the violation only when the reference was received from the Income Tax authority as detailed above. Thereafter investigation was conducted and show cause notice was issued.

6. In rejoinder, Dr. S.K. Jain submitted that the disclosure of the acquisition was made regularly with BSE copy of which are filed on record. In the situation, he submitted that the appeal be allowed.

7. Upon hearing both the sides, in our view the appeal deserved to be allowed for the following reasons:-

The time line of the events would show that the alleged violation had occurred between March, 2004 to June, 2004. The appellant had disclosed the transaction to the BSE at that time. The show cause notice however was issued in the present case dated 7th November, 2017. The investigation report itself would show that for non availability of the documentary evidences the investigating authority did not recommend taking drastic action to direct making of public announcement. Thus, there was inordinate delay in initiation of the proceedings. In the circumstance, it would be relevant to quote the reasoning forwarded by us in the case of Ashok Shivilal Rupani & Anr. vs. SEBI, Appeal nos.471 of 2018 and 440 of 2018 dated 22nd August, 2019 in para nos. 6 and 7 as under:-

6. Having considering the matter, we are of the view that there has been an inordinate delay on the part of the respondent in initiating proceedings against the appellants for alleged violations. Much water has flown

since the alleged violations and at this belated stage the appellants cannot be penalized. It is alleged that disclosure under PIT Regulations was not made but similar disclosure was made by the appellant under SAST Regulations. Therefore, information was available on the Stock Exchange and therefore it cannot be said that the respondents were unaware of the alleged violations. Further, the purpose of disclosure was to make the market aware of the change of shareholding of the shareholders. When a disclosure was made by the company under SAST Regulations the investors became aware of the change in the shareholding. The non-compliance of Regulation 13 if any becomes technical in nature.

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 reasons quoted above there is no escape from the conclusion that the proceedings are required to be quashed. Therefore the appeal is hereby allowed with no order as to costs.

Sd/-
Dr. C. K. G. Nair
Member

Sd/-
Justice M.T. Joshi
Judicial Member

5.12.2019
Prepared and compared by
RHN