

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 22.7.2020
Date of Decision: 08.9.2020

Appeal No.154 of 2020

1. Bharat J. Patel
3-3A, Churchgate House,
1st Floor, 32/34, Veer Nariman Road,
Fort, Mumbai – 400 001.
2. Fidelity Multitrade Pvt. Ltd.
3-3A, Churchgate House,
1st Floor, 32/34, Veer Nariman Road,
Fort, Mumbai – 400 001.
3. Pasha Finance Pvt. Ltd.
3-3A, Churchgate House,
1st Floor, 32/34, Veer Nariman Road,
Fort, Mumbai – 400 001. ... Appellants

Versus

Securities & Exchange Board of India
SEBI Bhavan, Plot No, C4-A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400051. ... Respondent

Mr. P. N. Modi, Senior Advocate with Mr. Neville Lashkari, Mr. Rihal Kazi, Advocates i/b M & M Legal Ventures and Mr. Bharat Patel, Appellant No. 1 in person for the Appellants.

Mr. Kumar Desai, Advocate with Mr. Anubhav Ghosh,
Advocate i/b The Law Point for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M.T. Joshi, Judicial Member

Per : Justice M.T. Joshi, Judicial Member

1. Aggrieved by the order of the Whole Time Member of the Respondent Securities and Exchange Board of India (hereinafter referred to as 'SEBI') barring them from accessing the securities market for a period of 2 years for violation to the provisions 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 Regulations 3(a), (b), (c) and (d) and Regulations 4(1), 4(2)(a), (b), (e) 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, 2003') the present appeal is preferred.

2. Respondent SEBI had conducted investigation into the trading in the shares of one Seshasayee Paper and

Boards Ltd. (hereinafter referred to as the 'Company') during the period from December 15, 2011 to October 9, 2014. In the investigation it was found that 16 entities termed as Bharat Patel group had traded as under.

3. It was observed that out of total 16 entities of Bharat Patel Group, 11 entities at NSE and 12 entities at BSE traded in the scrip during the investigation period. They purchased 15,55,990 shares (63.12% of total market volume) and sold 11,27,198 (45.72% of total market volume) at NSE and purchased 8,57,380 shares (40.79% of total market volume) and sold 11,22,687 (53.41% of total market volume) at BSE during the investigation period. Trading among Bharat Patel Group accounted for 39.60% and 35.33% of the total market traded volume at NSE and BSE, respectively. It was further observed that certain entities belonging to Bharat Patel Group executed trades in a circular manner.

4. More particularly so far as the present Appellants are concerned they had caused a circular trade between themselves in the following manner:

Date	Buy Client Name	Sell Client Name	Buy and Sell Member	Exchange	Qty.	% of the total Mkt. Vol.
05/03/2012	Fidelity Multitrade Pvt. Ltd.	Bharat Jayantilal Patel	Finquest Securities Pvt. Ltd.	NSE	235000	9.53
12/03/2012	Pasha Finance Pvt. Ltd.	Fidelity Multitrade Pvt. Ltd.		BSE	244998	11.65
15/03/2020	Acira Consultancy Pvt. Ltd.	Pasha Finance Pvt. Ltd.		BSE	286224	13.62
21/03/2020	Bharat Jayantilal Patel	Acira Consultancy Pvt. Ltd.		NSE	285224	11.57

Before us all the appellants submitted that they are connected to each other.

5. From the above table, the following facts were noted by the Respondent SEBI as under:-

“From the above table it was observed that Fidelity Multitrade, Pasha Finance, Bharat Patel and Acira Consultancy executed circular trades at either NSE or BSE during the investigation period. The said circular trades constituted 21.10% (9.53% + 11.57%) and 25.27% (11.65% + 13.62%) of total market traded volume at NSE and BSE, respectively and created misleading appearance of trading in the scrip without any intention of change in ownership of the security at the group level.”

6. In the circumstance, show cause notices were issued to various entities including the Appellant. While Appellant no.1, Bharat Patel as an individual had replied to the said show cause notice rest of the two Appellants

filed a joint reply. The submissions of the Appellants were common as under.

That the trades in question were said to have been carried between 5th March, 2012 to 21st March, 2012. Information about these trades were sought by The Respondent SEBI by issuing summonses in March 2019. The show cause notice was issued on 10th March 2019. In the circumstances, the records pertaining to the transactions are not available. As per the relevant rules, the records are to be maintained only for five years. It was further submitted that Appellant Nos.2 and 3 are the brokers. Their livelihood is dependent on the trading and brokerage in the shares therefore large volumes of shares were traded by them during the said period. The trades in question were bulk trades carried on the platform of the stock exchanges however no questions were raised at that. For want of record the Appellants are now unable to explain as to why those trades were carried out. In the circumstances, the Appellant wanted that the proceedings be dropped.

7. The learned Whole Time Member however reasoned that as large number of entity for a long period of time were investigated, naturally it had taken some time for investigation. As per the Rule the maintenance of record for a period of five years is a minimum period. Therefore, finding that the circular trades were carried out by the Appellants among themselves during the above stated period the Appellants were held liable for the action.

8. We have heard Mr. P. N. Modi, Senior Advocate assisted by Mr. Neville Lashkari, Mr. Rihal Kazi, Advocates and Mr. Bharat Patel, Appellant No.1 in person for the Appellants and Mr. Kumar Desai, Advocate assisted by Mr. Anubhav Ghosh, Advocate for the Respondent.

The learned counsel for the Appellant placing reliance on the judgment of this Tribunal in the case of *Ashok Shivlal Rupani & Ors. vs. SEBI (Appeal No.417 of 2018 along with other connected appeals decided on August 22, 2019)* as well as a decision in *Sanjay Jethalal Soni &*

Ors. vs SEBI in (Appeal No.102 of 2019 and other connected appeals decided on November 14 2019 and Anilkumar Nandkumar Harchandani & Ors. vs. SEBI in (Appeal no.75 of 2019 decided on 5th December, 2019) submitted that the delay in launching the proceedings by the Respondent SEBI has caused prejudice to the Appellant as they were not able to raise the proper defense for want of record. He further submitted that the Appellants are brokers as well as traders and large amount of shares are and were traded by them. In this situation it has become difficult to pinpoint this particular four trades carried out by them 7 years prior to the issuance of the show cause notice. He submitted that tax planning or liquidity may be the reasons for carrying out those trades. He therefore submitted that on this ground the appeal is required to be allowed.

9. On the other hand, Mr. Kumar Desai, learned counsel for the Respondent submitted that the impugned order would show that the investigation was for a long period

of the trading carried out by large number of entities. It has naturally caused delay in starting the proceedings. Therefore, he further submitted the reasoning of the Whole Time Member as found in the impugned order and submitted that the appeal should be dismissed.

10. Having heard the learned counsel for the parties, in our view, the appeal deserves to be allowed for the following reason:

- a. The facts on record would show that the disputed trades were carried out by the Appellant in the year 2012. The show cause notice was issued to them on July 10, 2019 i.e. after a gap of 7 years. The very first reaction of the Appellant was that the records of the trades were not available as a period of 7 years has passed from the date of these transactions. It is an admitted fact that the Appellants are brokers as well as traders. The annexures to the reply to the show cause notice would show that in the relevant year itself, the Appellants have traded in 123 shares and turnover was Rs.576 crores. Therefore for want of record it was not

possible for them to explain as to why they carried out the four trades in question.

b. Whether the delay would cause prejudice to the parties depend on the facts and circumstances of the case. There is no dispute on the principle that if the delay has caused prejudice to the parties then the proceedings are required to be quashed. This Tribunal in the case of *Ashok Shivilal Rupani & Ors. vs. SEBI*, *Sanjay Jethalal Soni & Ors. vs SEBI* and *Anilkumar Nandkumar Harchandani & Ors. vs. SEBI* cited supra has reiterated this principle and on facts of those cases set aside the orders passed against them by the Respondent.

c. In the present case, we find that except showing their inability in defending the proceedings the Appellant could not raise any other defense for want of record. The reasoning recorded by the Whole Time Member in this regard are merely speculative in nature i.e. if the records were maintained in electronic form they could have been preserved.

d. In the circumstances, the appeal is allowed without any order as to costs. The impugned order passed against the present Appellants is thereby quashed and set aside.

11. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the registry. In these circumstances, this order will be digitally signed by the Presiding Officer on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala
Presiding Officer

Dr. C. K. G. Nair
Member

Justice M.T.Joshi
Judicial Member

08.9.2020
RHN