

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 30.07.2021

Date of Decision : 09.08.2021

Appeal No. 187 of 2021

Garware Polyester Limited
Naigaon, Post Waluj,
Aurangabad,
Maharashtra – 431 133.

..... Appellant

Versus

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

... Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Sanjay Buch, Ms. Shruti Katakey, Advocates i/b Crawford Bayley & Co. for the Appellant.

Mr. Suraj Choudhary, Advocate with Ms. Nidhi Singh, Ms. Aditi Palnitkar, Ms. Riddhi Pawar, Advocates i/b Viddhii Partners for the Respondent.

WITH
Appeal No. 188 of 2021

Mr. Shashikant B. Garware
Garware House, 50-A,
Swami Nityananda Marg,

Vile Parle (E),
Mumbai – 400 057.

..... Appellant

Versus

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

... Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Sanjay Buch, Ms. Shruti Katakey, Advocates i/b Crawford Bayley & Co. for the Appellant.

Mr. Suraj Choudhary, Advocate with Ms. Nidhi Singh, Ms. Aditi Palnitkar, Ms. Riddhi Pawar, Advocates i/b Viddhii Partners for the Respondent.

WITH
Appeal No. 189 of 2021

Ms. Monika Garware
Garware House, 50-A,
Swami Nityananda Marg,
Vile Parle (E),
Mumbai – 400 057.

..... Appellant

Versus

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

... Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Sanjay Buch, Ms. Shruti Katakey, Advocates i/b Crawford Bayley & Co. for the Appellant.

Mr. Suraj Choudhary, Advocate with Ms. Nidhi Singh, Ms. Aditi Palnitkar, Ms. Riddhi Pawar, Advocates i/b Viddhii Partners for the Respondent.

WITH
Appeal No. 190 of 2021

Mrs. Sheela S. Garware
01-02, Eden Hall,
Dr. Annie Besant Road,
Worli,
Mumbai – 400 018.

..... Appellant

Versus

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

... Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Sanjay Buch, Ms. Shruti Katakey, Advocates i/b Crawford Bayley & Co. for the Appellant.

Mr. Suraj Choudhary, Advocate with Ms. Nidhi Singh, Ms. Aditi Palnitkar, Ms. Riddhi Pawar, Advocates i/b Viddhii Partners for the Respondent.

WITH

Appeal No. 191 of 2021

Ms. Sonia Garware
Garware House, 50-A,
Swami Nityananda Marg,
Vile Parle (E),
Mumbai – 400 057.

..... Appellant

Versus

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

... Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Sanjay Buch, Ms. Shruti Katakey, Advocates i/b Crawford Bayley & Co. for the Appellant.

Mr. Suraj Choudhary, Advocate with Ms. Nidhi Singh, Ms. Aditi Palnitkar, Ms. Riddhi Pawar, Advocates i/b Viddhii Partners for the Respondent.

AND
Appeal No. 192 of 2021

Mrs. Sarita Garware Ramsay
Garware House, 50-A,
Swami Nityananda Marg,
Vile Parle (E),
Mumbai – 400 057.

..... Appellant

Versus

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

... Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Sanjay Buch, Ms. Shruti Katakey, Advocates i/b Crawford Bayley & Co. for the Appellant.

Mr. Suraj Choudhary, Advocate with Ms. Nidhi Singh, Ms. Aditi Palnitkar, Ms. Riddhi Pawar, Advocates i/b Viddhii Partners for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Justice M.T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer

1. This group of appeals have been filed by the promoters / directors and by the Company Garware Polyester Limited against separate orders passed by the Adjudicating Officer ('AO' for short) of the Securities and Exchange of India ('SEBI' for short) dated January 15, 2021 imposing a penalty for violating the provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 ('PIT Regulations' for short). Even though separate orders of the same date have been passed by the AO, the issue involved is common and, therefore, all the appeals are being decided together.

2. Investigation was conducted in the matter of Garware Polyester Limited which is a listed company to ascertain whether there was any violation of the provisions of the PIT Regulations. The violations were that there was a delay in the disclosures made by the promoters and directors with respect to the changes in their shareholdings in the scrip of

Garware Polyester Limited to the Stock Exchanges. The charge against the Company was also that there was a delay on the part of the Company in making the disclosures to the Stock Exchange. The alleged delay ranged from 27 days to 193 days from April 10, 2012 to September 26, 2012 during this period when the shares were acquired by the appellants, promoters and directors.

3. Accordingly, a show cause notice dated July 16, 2020 was issued to show cause why appropriate penalty should not be levied for violating Regulation 13(4), 13(5) and 13(6) of the PIT Regulations. It was alleged that insofar as the promoters, directors and appellants are concerned they made acquisition of shares which warranted disclosures to the Company as well as to the Stock Exchange if the value of the shares exceeded Rs. 5 lakh and the said disclosures were required to be made within two days from the date of acquisition but there has been a delay ranging from 27 days

to 193 days. Insofar as the Company was concerned the said Company was also required to made disclosure within two days which they failed to do so within the stipulated period.

4. The AO after considering their replies passed separate orders imposing penalties on each of the appellants of different amount. Consequently, the present appeals have been filed.

5. We have heard Shri. Somasekhar Sundaresan, the learned counsel for the appellant and Shri Suraj Chaudhary, the learned counsel for the respondent.

6. It was contended by the learned counsel for the appellants that there has been an inordinate delay in the issuance of the show cause notice for violation of provisions of the PIT Regulations and therefore on the ground of inordinate delay the impugned order should be

quashed. It was alleged that the transactions are of the year 2011-12 and that the show cause notice was issued on July 16, 2020 after more than 8 years for which no explanation has been given. The AO held that there is no apparent delay in the initiation of the proceedings and in support of his findings have relied upon a decision of this Tribunal in ***Ravi Mohan & Ors. vs Securities and Exchange Board of India in Appeal No. 97 of 2014 decided on December 16, 2015.***

7. We are of the view that there has been an inordinate delay on the part of the respondent in initiating the proceedings against the appellants for the alleged violations. Much water has flown since the alleged violations and, at this belated stage, the appellants cannot be penalized.

8. Even though there has been a delay in the disclosures made by the appellants the said information was available

in the public domain and was known to the Stock Exchange. Thus, it cannot be said that the respondent were unaware of the alleged violations. The contention of the respondent that they were unaware of the alleged violations and only came to know during the course of investigation in relation to another violation cannot be accepted. The fact remains that the disclosures were made and it was in the public domain and if action was not taken within a reasonable period it does not give a right to the respondent to initiate proceedings after an inordinate delay.

9. In our view the controversy involved in the present case is squarely covered by a decision of this Tribunal in ***Ashok Shivlal Rupani & Ors. vs. SEBI (Appeal No. 417 of 2018 along with other connected appeals decided on August 22, 2019)***. In the said appeal, shares were sold by Ashok Shivlal Rupani between the period January 4, 2010 to January 10, 2011 and failed to file necessary disclosures

under Regulation 13(4) and 13(5) of the PIT Regulations.

The show cause notice was issued belatedly after an inordinate delay. This Tribunal held as follows:-

“7. In Mr. Rakesh Kathotia & Ors. vs SEBI (Appeal No. 07 of 2016 decided by this Tribunal on May 27, 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.”

This Tribunal quashed the impugned order as well as the show cause notice.

10. In our view the controversy involved in the present case is squarely covered by the aforesaid decision of this Tribunal.

11. The aforesaid decision of the Tribunal in ***Ashok Shivlal Rupani (supra)*** has also been affirmed by the Supreme Court in ***Civil Appeal No. 8444 – 8445 of 2019 Securities and Exchange Board of India vs. Ashok Shivlal Rupani & Anr***, decided on November 15, 2019.

12. Reliance by the respondent in ***Ravi Mohan's case (supra)*** is misplaced. The AO has selectively quoted part of paragraph 22. This Tribunal also held:-

“However, we make it clear that in the absence of time limit prescribed for issuing

show cause notice or for completing the adjudication proceedings, SEBI cannot arbitrarily delay the proceedings and must take all reasonable steps to initiate and complete the proceedings in accordance with law as expeditiously as possible.”

13. The decision in ***Ravi Mohan’s case (supra)*** was rendered by a bench of two members. This decision was considered by a three member bench by this Tribunal in ***Mr. Rakesh Kathotia & Others vs SEBI in Appeal No. 7 of 2016 decided on May 27, 2019*** wherein the penalty of Rs. 15 lakh was set aside on the ground of delay. Thus, reliance of Tribunal’s decision in ***Ravi Mohan’s case (supra)*** by the AO is misplaced.

14. In view of the aforesaid, the impugned orders passed against the appellants by the AO cannot be sustained and are quashed on account of the inordinate delay in the initiation of the proceedings by issuance of the show cause notice which culminated into a penalty order. The show

cause notice and the impugned orders passed by the AO are quashed. All the appeals are allowed with no order as to costs.

15. 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 Private Secretary 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

Justice M.T. Joshi
Judicial Member

09.08.2021
msb