

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved on: 24.11.2022**

**Date of Decision : 06.02.2023**

**Appeal No. 731 of 2021**

R. Mugunthan  
23, Arisikara Street,  
Mylapore,  
Chennai – 600 004.

..... Appellant

Versus

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

...Respondent

Surasika, Advocate for the Appellant.

Mr. Vyom Shah, Advocate with Mr. Abhiraj Arora,  
Mr. Shourya Tanay and Mr. Deepanshu Agarwal, Advocates  
i/b ELP for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer  
Ms. Meera Swarup, Technical Member

Per : Ms. Meera Swarup, Technical Member

1. This appeal has been preferred by the Appellant  
(R. Mugunthan) aggrieved by the order of the Adjudicating  
Officer ('AO' for short) of the Securities and Exchange Board  
of India ('SEBI') dated July 30, 2021 imposing a penalty of

Rs. 1 lakh only for violation of the provisions of Clause 13.5.1(a) and Clause 13.5.1(b) of the Disclosure and Investor Protection (DIP) Guidelines read with Regulation 73(2) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ('ICDR Regulations' for short).

2. The facts leading to the matter are as follows. SEBI conducted an investigation in buying, selling and dealing in the shares of Pyramid Saimira Theatre Ltd. ('PSTL' / 'Company') for the financial year 2007-2008. PSTL on October 22, 2007 allotted 36,40,000 convertible warrants to Mr. P.S. Saminathan, the Promoter Director of PSTL on preferential basis. Mr. Saminathan had to pay Rs. 11.28 crore being 10% of the price towards subscription of 36,40,000 warrants at the time of application. The Appellant as Statutory Auditor of PSTL had given a certificate dated April 9, 2009 stating that PSTL had received 10% upfront subscription amounting to Rs. 11.28 crore on October 12, 2007. Further, the certificate stated that PSTL had received on various dates upto February 28, 2009 the balance of 90% of allotment money amounting to Rs. 41,43,15,000/- towards the allotment of 14,85,000 equity shares on conversion of equal number of share warrants and there was no circulation of funds or mere

passing of book entries in this regard. It was observed that the certificate given by the Appellant regarding the receipt of money for warrants was allegedly false. SEBI, thus, started adjudication proceedings against the Appellant.

3. A Show Cause Notice (SCN) was issued on June 3, 2011 alleging violation of Clause 13.5.1(a) and Clause 13.5.1(b) of DIP Guidelines read with Regulation 73(2) of ICDR Regulations. The Appellant filed his reply against the allegation made in the SCN on July 30, 2011. The Appellant was also provided an opportunity of hearing wherein he mentioned the facts as given in his written submissions.

4. After a perusal of the reply submitted by the Appellant and material available on record, the AO concluded that the Appellant's certificate dated April 9, 2009 was false with regard to the assertion that an amount of Rs. 11.28 crore had been received on October 12, 2007 towards allotment money. He reached this conclusion as the bank account statement of PSTL did not show receipt of this amount on October 12, 2007. There was a receipt of Rs. 14.55 crore on October 15, 2007 from an entity called Pyramic Saimira Productions Ltd. (PSPL) but the AO was not satisfied with the justification given by the Appellant as to why PSPL paid

Rs. 14.15 crore when the Mr. P.S. Saminathan was liable to pay only Rs. 11.28 crore. The AO, further, held that the decision to allot warrants was taken by the PSTL Board on October 22, 2007 hence the payment could not have been received before the PSTL Board's decision. Regarding the receipt of balance 90% of allotment money amounting to Rs. 41,43,15,000/-, the AO was satisfied with the explanation of the Appellant. The AO, thus, concluded that the certificate dated April 9, 2009 given by the Appellant with respect to receipt of 10% upfront money amounting to Rs. 11.28 crore by PSTL was false and accordingly imposed a penalty of Rs. 1 lakh only under Section 15HB of the SEBI Act.

5. We have heard Shri Surasika, the learned counsel for the appellant and Shri Vyom Shah, the learned counsel for the respondent.

6. Before us, the Appellant submitted two grounds for allowing his appeal - one, the AO had erred in holding the certificate issued by him as false and second, prejudice caused to him by inordinate delay in conclusion of the proceedings. The AO had held the audit certificate to be false as he found no entry in the bank account statement of PSTL for Rs. 11,28,40,000/- on October 12, 2007 and because the decision

to allot warrants was taken by the PSTL Board on October 22, 2007 so the payment could not have been received before that date. We find that the AO has dismissed the justification given by the Appellant with a bald statement that he is not satisfied with the justification. On the other hand, the Appellant has given justification that cheque of Rs. 14.55 crore deposited on October 12, 2007 was reflected in the bank statement on October 15, 2007 (October 13 and 14 being Saturday and Sunday). The books of account reflect that an amount of Rs. 11,28,40,400/- was credited by the Company towards Share Warrant Application Account of Shri P.S. Saminathan and the balance Rs. 3,26,60,000/- towards the account of payment Saimira Productions Ltd. The Appellant had also asserted that the decision to allot warrants was taken in the Annual General Meeting of PSTL in September 2007. We note that the issue regarding the date of the decision to allot warrants was not taken up in the SCN and therefore on this issue adequate opportunity was not given by the Appellant to give justification.

7. On the question of inordinate delay in concluding the proceedings, we find that though the SCN was issued on June 3, 2011 and reply filed by the Appellant on July 30, 2011, the

Respondent issued notice of hearing on January 10, 2018 after a gap of more than six years. The impugned order was passed on July 7, 2021 after a period of ten years from the issue of SCN. We find that though the AO has noted that considerable amount of time has elapsed since the impugned transactions took place in year 2007 while determining the quantum of penalty, this Tribunal has, time and again, held that adjudication proceedings must be completed in a timely manner.

8. In *Mr. Rakesh Kathotia & Ors. vs SEBI in Appeal No. 7 of 2016 decided by this Tribunal on May 27, 2019* the Tribunal held:-

*“22. In this regard, the decisions cited by the learned counsel for the respondent are not helpful. In Vaman Madhav Apte (supra), Kunal Pradeep Savla & Ors. (supra), Sudarshan Walia & Ors. (supra), Ravi Mohan & Ors. (supra), this Tribunal held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations after issuing a show cause notice, the fact that there was a delay on the part of SEBI in initiating proceedings for the violation committed cannot be a ground to quash the penalty imposed for such violation. The Tribunal, however, in the aforesaid decisions further went on to hold that in the absence of a time limit prescribed for issuing a show cause notice or for completing the adjudicating proceedings, SEBI cannot arbitrarily delay the procedure and must take all reasonable steps to initiate and complete the proceedings in accordance with law as expeditiously as possible. The Tribunal also held that the Regulator should always make an endeavor to take*

*prompt action against the defaulting Companies in order to render speedy and timely justice.*

*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.”*

9. Similar view was again reiterated in **Ashok Shivlal Rupani & Ors. vs. SEBI (Appeal No. 417 of 2018 along with other connected appeals decided on August 22, 2019)** and again in **Sanjay Jethalal Soni & Ors. vs SEBI in Appeal No.**

***102 of 2019 and other connected appeals decided on November 14 2019.*** The Tribunal held:-

*“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.”*

10. In ***ICICI Bank Limited vs Securities and Exchange Board of India (Appeal No. 583 of 2019 decided on July 8, 2020)*** the Tribunal held:-

*“30. However, we agree with the contentions of the learned Senior Counsel for the appellant on the inordinate delay in issuing the show cause notice and in passing the impugned order by respondent SEBI.”*

11. In view of the aforesaid, the impugned order cannot be sustained and is set aside. The appeal is allowed with no order as to costs.

12. 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.

Justice Tarun Agarwala  
Presiding Officer

Ms. Meera Swarup  
Technical Member

06.02.2023  
msb