BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 28.06.2023

Misc. Application No. 698 of 2023
And
Appeal No. 524 of 2023

Kiran M. Joshi
Room No. D-6, Sunder Nagar,
First Floor, Opp. Blue Ocean Building,
New Link Cross Road,
Near Ekta Nagar, Mahavir Nagar,
Kandivali (West), Mumbai – 400 067. ……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. Vikas Bengani, Advocate for the Appellant.

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

Per : Justice Tarun Agarwala, Presiding Officer (Oral)

1. The appellant has challenged the order dated December 19, 2022 passed by the Adjudicating Officer (hereinafter referred to as 'AO') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') imposing a penalty of Rs. 1 lakh for violation

of Regulation 13(4A) read with Regulation 13(5) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations').

2. The facts leading to the filing of the present appeal is, that a show cause notice dated February 16, 2022 was issued to the appellant to show cause as to why an inquiry should not be initiated and penalty should not be imposed for violation of Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations. It was alleged that the appellant had acquired the shares in the scrip of Shree Krishna Biotech Ltd. but failed to make disclosures under the PIT Regulations.

3. The appellant contested the matter contending that there was an inordinate delay in initiating the proceedings. It was alleged that the appellant had acquired the shares in 2013 and that the appellant does not recollect the events and circumstances that happened in 2013 nor have the requisite documents to prove that requisite disclosures were made to the company and to the stock exchange.

4. The AO after considering the material evidence on record came to the conclusion that requisite disclosures were not made and accordingly imposed a penalty of Rs. 1 lakh.

5. On the issue of delay, the AO found that investigation in the matter was initiated in October 2014 which was concluded soon thereafter but subsequently fresh investigation was initiated in March 2017 and based on the recommendations given in the investigation report action to be taken was approved in April 2021 and thereafter a show cause notice was issued on February 16, 2022. The AO, thus, found that proceedings have been initiated within a reasonable period and there is no delay in the issuance of the show cause notice.

6. Having heard the learned counsel for the parties, we are of the opinion that there has been an inordinate delay in the issuance of the show cause notice. The transaction is of the year 2013. Show cause notice was issued in 2022, after 9 years. The justification given by the AO is wholly erroneous and cannot be accepted. The investigation was started in 2014 and concluded soon thereafter. The contention that fresh investigation was initiated again in 2017 is clearly an afterthought especially when we find that for a transaction which had taken place in 2013 and which transaction was in the public domain, by no conceivable imagination one can think that the investigation could take such period of time.

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

> *"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:***
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> > *"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. Similar view was held in ***Ashok Shivlal Rupani & Anr. vs. SEBI (Appeal No. 417 of 2018 along with other connected appeals decided on August 22, 2019)***. Against the order of this Tribunal in the matter of Ashok Shivlal Rupani, SEBI filed Civil Appeal No. 8444-8445 of 2019 before the Supreme Court of India which was

dismissed and the order of this Tribunal affirmed by the Supreme Court.

9. Similar view was again reiterated in the matter of ***Ashlesh Gunvantbhai Shah vs. SEBI (Appeal No. 169 of 2019) and other connected appeals decided on January 31, 2020 (2020 SCC OnLine SAT 30)*** where on account of inordinate delay in the initiation of the proceedings by issuance of the show cause notice, the penalty order was quashed.

10. 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. Even though there is no period of limitation prescribed in the Act and the Regulations for issuance of a show cause notice and for completion of the adjudication proceedings, nonetheless, the authorities are required to exercise its powers within a reasonable period. In ***AO, SEBI vs. Bhavesh Pabari, 2019 SCC OnLine SC 294*** the Supreme Court held that an authority is required to exercise its powers within a reasonable period.

11. In view of the aforesaid, the impugned order cannot be sustained on account of an inordinate delay in initiating proceedings. Consequently, for the reasons stated aforesaid, the impugned order is quashed in so far as it relates to the appellant. The appeal is allowed.

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

28.06.2023
PTM

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