

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 25.04.2023
Date of Decision : 31.10.2023

Appeal No. 650 of 2022

1. Geetaben Joshi
2. Shivshankar Joshi

71-A, Benhur Apartments,
Chandavarkar Lane,
Borivali (West),
Mumbai- 400 092

...Appellants

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. Saurabh Bacchawat, Advocate i/b Corporate Pleaders for
the Appellants.

Mr. Sumit Rai, Advocate with Mr. Mihir Mody, Mr. Arnav
Misra and Mr. Mayur Jaisingh, Advocates i/b K Ashar & Co.
for the Respondent.

WITH
Misc. Application No. 1693 of 2022
And
Appeal No. 658 of 2022

1. Girraj Kishor Agrawal
3A, 1601/1602, Green Acre,
Lokhandwala Complex, Andheri (West),
Mumbai- 400 053
2. Tanu Girraj Kishor Agrawal
3A, 1601/1602, Green Acre,
Lokhandwala Complex, Andheri (West),
Mumbai- 400 053

3. Saloni Agrawal
3A, 1601/1602, Green Acre,
Lokhandwala Complex, Andheri (West),
Mumbai- 400 053
4. Tilak Ventures Limited
(formerly known as “Tilak Finance Ltd.”)
E/109, Crystal Plaza, Opp. Infinity Mall,
New Link Road, Andheri (West),
Mumbai- 400 053
- ...Appellants

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. Kunal Kataria, Advocate with Mr. Shantibhushan Nirmal
and Ms. Sneha Ramnathan, Advocates i/b Profess Law
Associates Advocates for the Appellants.

Mr. Sumit Rai, Advocate with Mr. Mihir Mody, Mr. Arnav
Misra and Mr. Mayur Jaisingh, Advocates i/b K Ashar and Co.
for the Respondent.

WITH
Misc. Application No. 1430 of 2022
And
Appeal No. 952 of 2022

Jaidev Gupta HUF
Plot No. 9, Spectra Compound,
4th Floor, Ramchandra Lane,
Extn., Kanchpada II, Malad (West),
Mumbai- 400 064

...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. Saurabh Bachhawat, Advocate with Mr. Shantibhushan Nirmal and Ms. Sneha Ramnathan, Advocates i/b Profess Law Associates Advocates for the Appellant.

Mr. Sumit Rai, Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b K Ashar and Co. for the Respondent.

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

Per: Justice Tarun Agarwala, Presiding Officer

1. Three appeals have been filed against three different orders of the Adjudicating Officer (“AO” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience). The issue is the same, based on the same investigation and, therefore, all the appeals are being decided together.

2. Appeal No. 650 of 2022 Geetaben Joshi & Anr. has been filed against the order of the AO dated June 30, 2022 imposing a penalty of Rs. 10 lakhs each for violation of Section 12A of the SEBI Act, 1992 read with Regulations 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (“PFUTP Regulations” for convenience) for subscribing to preferential

allotment of Essar (India) Limited to the tune of Rs. 30 lakhs which was financed by the Company itself. Appeal No. 658 of 2022 has been filed by Girraj Kishor Agrawal, Tanu Girraj Kishor Agrawal, Saloni Agrawal and Tilak Ventures Limited against the order of the AO dated July 27, 2022 wherein a penalty of Rs. 5 lakhs each has been imposed upon the said appellants for the same violation. Appeal No. 952 of 2022 has been filed by Jaidev Gupta HUF against the order of the AO dated August 30, 2022 wherein a penalty of Rs. 5 lakhs has been imposed for the same violation.

3. The basic charge against the appellants in the show cause notice was that the Company Essar (India) Limited had funded the preferential allotment of its shares to the appellants which was an unfair trade practice and violative of Regulations 3 and 4 of the PFUTP Regulations. The AO after considering the material evidence on record found that the subscription of shares through preferential allotment subscribed by the appellants was in fact funded by the Company itself and portrayed a false impression that there was infusion of funds in the Company. The AO found that the funding by the Company was violative of Regulations 3 and 4 of the PFUTP Regulations and accordingly penalties were imposed.

4. We have heard Shri Saurabh Bacchawat, the learned counsel, Shri Kunal Kataria, the learned counsel for the appellants and Shri Sumit Rai, the learned counsel for the respondent.

5. The appellants urged that the finding that the Company had funded the allotment was patently erroneous and based on wrong appreciation of the facts. It was contended that the appellants are not connected to the Company and that certain loans were provided by the appellants which was refunded and the said refunded money could not be treated as money given by the Company for subscription of the preferential allotment of shares. In addition to the above, it was contended that there was an inordinate delay in the initiation of the proceedings and, therefore, on account of inordinate delay of more than 11 years from the date of the preferential issue the proceedings should be quashed on this ground itself.

6. Having heard the learned counsel for the parties, we are of the opinion that the appeal is liable to be allowed on the short ground of inordinate delay in the initiation of the proceedings.

7. In this regard, we find that the AO considered this issue and held that the investigation period was from April 01, 2011 to February 28, 2015 which was concluded in July 2021. In August 2021 the Competent Authority approved adjudication proceedings and the show cause notice was issued in October 2021 and the impugned order was passed. On this basis the AO came to the conclusion that in view of the time taken to complete the investigation there was no inordinate delay in the initiation of the proceedings. Further, there is no provision under the SEBI Act or its Regulations which prescribes a time limit for initiation of a show cause notice and, consequently held that there was no inordinate delay in the initiation of the proceedings.

8. From the impugned order, we do not find as to when the investigation was initiated and why it took so long to complete the investigation. However, the respondents in their reply before this Tribunal has provided certain details, namely, that SEBI advised the Bombay Stock Exchange (BSE) to examine the matter based on which BSE submitted a report in July 2015 which was then referred to the investigation department of SEBI in January 2016. In February 2018 a plan of action was approved by the investigation department based on which summons were thereafter issued and the investigation thereafter

was concluded in July 2021 and show cause notice was issued on October 20, 2021.

9. Considering the aforesaid, we find that it is not known as to when the complaints were received by SEBI. It is also not known as to when SEBI directed BSE to examine the matter but what is alarming is, that when BSE submitted its report in July 2015 it took another seven months for SEBI to refer it to the investigation department. Further the investigation department sat on it for two years and in February 2018 a plan of action was approved pursuant to which summons were issued. At the outset, we may observe that a lackadaisical approach was adopted by SEBI in investigating the matter.

10. We are of the opinion that there is an inordinate delay in the issuance of the adjudication proceedings. Preferential allotment of the shares was made in May 2011. Necessary disclosure regarding the preferential allotment of shares was made by the Company to the Stock Exchange. This fact was known to the Stock Exchange and to SEBI. No action whatsoever was taken. BSE itself took cognizance and submitted a report in July 2015 inspite of which it took SEBI another six years to issue a show cause notice on October 20, 2021.

11. In our view, there is an inordinate delay in the issuance of the show cause notice. The preferential issue was made in May 2011 and the show cause notice was issued on October 20, 2021. The issuance of the preferential issue was known to the Stock Exchange as well as to SEBI and, therefore, there was no justification for issuance of the show cause notice at this belated stage.

12. In *Ashlesh Gunvantbhai Shah vs. SEBI Appeal No. 169 of 2019* alongwith connected appeals decided on January 31, 2020, this Tribunal held :-

*“12. Having considered 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 the alleged violations. The controversy in this regard is squarely covered by a decision of this Tribunal in **Mr. Rakesh Kathotia & Ors. vs SEBI in Appeal No. 7 of 2016** decided by this Tribunal on May 27, 2019. The relevant paragraph is extracted herein below :-*

“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.

*13. Similar view was again relied 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.***

*14. We also find that in the case of Ashok Shivlal Rupani (supra) the period of investigation was January 4, 2010 to January 10, 2011 in the scrip of M/s. Oregon Commercial Ltd. and the show cause notice issued on November 20, 2017 which this Tribunal held that there was an inordinate delay. In the instant case, the same scrip was investigated for the same period and there is a delay of 7 years in issuing the show cause notice. To this extent, the facts are common. Further, **Civil Appeal No. 8444 – 8445 of 2019 Securities and Exchange Board of India vs. Ashok Shivlal Rupani & Anr., etc.** was dismissed by the Supreme Court on November 15, 2019 thus affirming the decision of this Tribunal.*

15. 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 Regulations in the issuance of a show

*cause notice or for completion of the adjudication proceedings the authority is required to exercise its powers within a reasonable period as held recently in **Adjudicating Officer, Securities and Exchange Board of India vs. Bhavesh Pabari (2019) SCC OnLine SC 294**. In the instant case, we are of the opinion that the power to adjudicate has not been exercised within a reasonable period and therefore no penalty could be imposed.”*

13. In **Sanjay Jethalal Soni and Ors. vs. SEBI Appeal No.102 of 2019 decided on November 14, 2019**, this Tribunal held :-

“11. Having heard the learned counsel for the parties at some length we find that the respondent had investigated the scrips of Shree Global Tradefin Ltd. for the period March 1, 2009 to January 10, 2011 in September 2011. Pursuant thereto, a show cause notice dated April 20, 2012 was issued for the violation found during the investigated period March 1, 2009 to November 30, 2009. The respondents thereafter waited for another five years to issue a second show cause notice dated July 20, 2017 for the investigated period April 1, 2010 to January 10, 2011 which had been investigated in September 2011. We find that the respondents were aware of the alleged violation and thus there is no justification for waiting for more than five years to issue the second show cause notice dated July 20

2017. In our view there is an inordinate delay in initiating the proceedings.”

14. In *Alps Motor Finance Ltd. vs. SEBI Appeal No. 620 of 2023 and connected appeals decided on July 20, 2023* in similar circumstances the preferential allotment of shares was made between June 2013 to August 2013. The show cause notice was issued on January 05, 2023. This Tribunal by its order dated July 20, 2023 held that there was an inordinate delay in the issuance of the show cause notice and, therefore, the order was set aside. The said decision is squarely applicable in the instant case.

15. In view of the aforesaid, without going into the merits, we are of the view that the impugned orders passed against the appellants cannot be sustained and are quashed. All the appeals are allowed with no order as to costs. The misc. applications are disposed of accordingly.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member