

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 22.09.2020

Date of Decision : 12.11.2020

Misc. Application No. 290 of 2020

(Stay Application)

And

Appeal No. 279 of 2020

Parag Sarda

Flat No. 602, Parasmani,

Plot No. 27,

J V P D Scheme, Juhu,

Mumbai- 400 049

...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. J. J. Bhatt, Advocate with Ms. Rinku Valanju and
Mr. Pratham Masurekar, Advocates i/b R V Legal for the
Appellant.

Mr. Anubhav Ghosh, Advocate i/b The Law Point the
Respondent.

CORAM: Dr. C.K.G. Nair, Member

Justice M. T. Joshi, Judicial Member

Per: Dr. C.K.G. Nair

1. This appeal has been filed challenging the order of the
Adjudicating Officer (“AO” for convenience) of the Securities

and Exchange Board of India dated March 16, 2020. By the said order a penalty of Rs. 1,00,000 (Rupees One Lakh Only) has been imposed on the appellant. The violation is non-disclosure of appellant's acquisition of shares of Sarda Papers Limited ("SPL" for convenience) in the year 2002 in terms of SEBI (Substantial Acquisition of Shares and Takeovers), 1997 ("SAST Regulations, 1997" for convenience) and SEBI (Prohibition of Insider Trading), 1992 ("PIT Regulations, 1992" for convenience).

2. Before proceeding to the merit of the appeal, we propose to deal with the contention of the appellant that there is a delay of 17 years in issuing the show cause notice dated December 20, 2019. The impugned acquisition was in August 06, 2002 when the appellant acquired 8.98% of the shares of SPL from another promoter group entity. In 2002 December quarter filing of company's shareholding pattern appellant's name and shareholding got reflected/disclosed on the Bombay Stock Exchange (BSE) website. SEBI notice alleged non-compliance on September 02, 2014 when a public announcement was made and the draft letter of offer was filed in the context of certain entities acquiring 25.89% of the equity share capital of SPL. In terms of that share purchase agreement appellant also sold his

holdings of SPL shares to the acquirers. Apparently, SEBI sought certain information relating to the appellant's acquisition of shares in the year 2002 from BSE on August 20, 2019. On receiving a reply that no filings had been done by the appellant, a show cause notice was issued by the AO on December 20, 2019. Following a personal hearing, replies etc. the impugned order was passed on March 16, 2020 and thereafter a Recovery Notice also has been issued to the appellant on August 17, 2020 directing the appellant to deposit the penalty along with the interest.

3. We have heard Mr. J.J. Bhatt, learned counsel for the appellant along with Ms. Rinku Valanju and Mr. Pratham Masurekar, advocates and Mr. Anubhav Ghosh, learned counsel for the respondent through video conference.

4. It is the stand of the learned counsel Mr. J. J. Bhatt, appearing for the appellant that an inordinate delay has happened in issuing the show cause notice and, therefore, even if the appellant, who was only 19 years old at that time of the acquisition in 2002 and was not aware of the legalities, made an unintentional disclosure violation, no penalty should have been imposed after such an inordinate delay of 17 years in issuing the

show cause notice. The learned counsel for the appellant also relied on a number of judgements of this Tribunal particularly in the matter of *Mr. Rakesh Kathotia & Ors. vs. SEBI (Appeal No. 7 of 2016 decided on May 27, 2019)* and *Sanjay Jethalal Soni and Ors. vs. SEBI (Appeal No. 102 of 2019 decided on November 14, 2019)*. The relevant paragraph in the matter of *Mr. Rakesh Kathotia & Ors. (Supra)* 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.”

5. The learned counsel Mr. Anubhav Ghosh, appearing on behalf of the respondent SEBI submits that SEBI became privy to the alleged violations only in September 2014 pursuant to the public announcement and therefore the delay prior to that period is not relevant. Moreover, violation is admitted and, consequently, the appellant is liable to pay the penalty once violation is admitted.

6. However, we note that there is no legitimate explanation given in the impugned order as to why it took 5 years to issue a

show cause notice even after SEBI admittedly came to know of the violation in the year 2014.

6. Given the above facts and circumstances, we are of the considered view that an inordinate delay has happened in this matter for initiating proceedings and serving a show cause notice. Therefore, the impugned order suffers from laches and our orders in *Sanjay Soni & Ors. (Supra)* and *Mr. Rakesh Kathotia & Ors. (Supra)* squarely applies to the matter.

7. In the result, the penalty of Rs. 1 lac imposed on the appellant cannot be justified and is set aside. Consequently the Recovery Notice is also quashed.

8. Appeal is disposed of on above terms with no orders on costs. Consequently, Misc. Application No. 290 of 2020 seeking stay has become infructuous and is disposed of as such.

9. 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.

Dr. C.K.G. Nair
Member

Justice M. T. Joshi
Judicial Member

12.11.2020
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