

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 1.9.2022

Appeal No.586 of 2021

1. Grishma Securities Ltd.
620, PJ Tower,
Dalal Street, Fort,
Mumbai – 400001.
 2. Chandrika H. Gandhi
92/04, Nirbhay Niwas,
Bhaudaji Cross Road # 10,
Matunga, Mumbai – 400019.
 3. Ketan C Shah
92/04, Nirbhay Niwas,
Bhaudaji Cross Road # 10,
Matunga, Mumbai – 400019.
 4. Chhabil C. Shah
92/04, Nirbhay Niwas,
Bhaudaji Cross Road # 10,
Matunga, Mumbai – 400019.
 5. Mihir Ghelani
92/04, Nirbhay Niwas,
Bhaudaji Cross Road # 10,
Matunga, Mumbai – 400019.
- ...Appellants

Versus

Securities and Exchange Board of India
SEBI Bhawan, C4-A,
'G' Block, Bandra-Kurla Complex,
Bandra (E), Mumbai – 51.

...Respondent

Mr. Ranjeev Carvalho, Advocate with Mr. KRCV Seshachalam and Ms. Sabeena Mahadik, Advocates i/b. Vishesha Law Services for the Appellant.

Mr. Vyom Shah, Advocate with Mr. Chirag Shah, Mr. Akash Jain and Ms. Daksha Kasekar, Advocate i/b. Mansukhlal Hiralal & Co. for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M.T. Joshi, Judicial Member
Ms. Meera Swarup, Technical Member

Per: Justice M.T. Joshi, Judicial Member (Oral)

1. Aggrieved by the decision of the learned Adjudicating Officer ('AO' for short) dated 30th June, 2021 imposing separate penalties against each of the present appellants for Section 12A(a), 12A(b), 12A(c) and 12A(d) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with

Regulations 3(a), 3(b), 3(c), 4(1), 4(2)(a), 4(2)(d) and 4(2)(p) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations, 2003') and additionally so far as appellant no.1 is concerned for violation of Section 23D of Securities and Exchange Board of India (Securities Contracts Regulation Act, 1956 (hereinafter referred to as 'SCRA') and Regulations 26(xii), 26(xvi) of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1997 (hereinafter referred to as 'Stock Brokers Regulations'), Regulation 7 of the Stock Brokers Regulations read with Clauses A(1), A(2), A(3) and A(4) of the Code of Conduct for Stock Brokers, the present appeal has been filed.

2. Appellant no.1, Grishma Securities Pvt. Ltd. is a stock broker. Appellant no.2 is its Chief Executive Officer.

Appellant nos.3 is the Managing Director of appellant no.1 while appellant nos.4 and 5 are the Directors of appellant no.1.

Respondent, Securities and Exchange Board of India (hereinafter referred to as 'SEBI') found that in the scrip of Tijaria Polypipes Ltd. (hereinafter referred to as 'Tijaria' or 'the Company') had come up with Initial Public Offering ('IPO' for short) of 1,00,00,000 equity shares of face value of Rs.10 each issued at a premium of Rs.50/- per equity share. It has raised an amount of Rs.60 crores. 71.64% of the total IPO shares were allotted to retail individual investors while 28.36% shares were allotted to Qualified Institutional Buyers (hereinafter referred to as 'QIBs'). The shares of the Company were listed on the stock exchanges on 14th October, 2011. However, on the very first date the price fell from the highest of Rs.67.75 per share to Rs.16.50 per share on the platform of NSE. In the

similar fashion, it fell from Rs.67.80 to Rs.16.05 per share on the platform of BSE. In the circumstances, SEBI conducted an investigation in the case. It was found by SEBI that one individual Mr. Jivraj Zala (hereinafter referred to as 'Mr. Zala') had on his first day traded through the present appellant no.1 in the scrip of the Company. It was found that Mr. Zala was a walk-in client whose annual income was less than Rs.5 lakhs but on the very first day of his trading Mr. Zala had incurred a huge loss of Rs.9,95,07,582 in his trading. This trading principally gave exit to QIBs on a premium of issue price. Though Mr. Zala was a walk-in client of the appellant no.1 he had only paid Rs.8,55,000 for buying the shares on 15th October, 2011 and the rest of the amount was received by appellant no.1 only on 17th October, 2011 i.e. around 3 days later on. However, appellant no.1 had manipulated its ledger to show that large amounts as detailed in internal

page no.4 of the impugned order was received by appellant no.1. Further, for a margin requirement of Rs.5,97,24,951.64 the appellant no.1 got the amount transferred from another client's account. Further, for the margin purpose shares of various clients as detailed in the order were used. Additionally, appellant no.1 had used funds from its own F&O account, funds of appellant no.5 Mr. Mihir Ghelani to meet the margin purposes. Additionally, synchronized trades on behalf of Mr. Zala for a trade volume of 91,603 on BSE platform and 2,73,794 on the NSE platform in the same scrip was noted. In the circumstances, the show cause notice for alleged violation of the above provisions was issued to the appellants.

3. Two separate proceedings one for passing protective order under section 11(4) and 11B of the SEBI Act and another for imposition of penalties were launched against the present appellants. The WTM vide his order dated 31st

July, 2013 passed a protective order restraining the appellants from buying, selling or otherwise dealing in securities was passed. The said order was challenged by the present appellant vide appeal no.151 of 2013 which was dismissed on merit by this Tribunal vide order dated 28th October, 2013.

4. The present proceedings continued with the AO in which the impugned order is passed.
5. Aggrieved by the said decision of this Tribunal the appellants have preferred a civil appeal no.8121 of 2014. The Supreme Court vide order dated 10th August, 2018 has ordered as under:

“I.A. No.97165 of 2018 (Application for stay) is dismissed. However, the SEBI proceedings may culminate in an order which shall not be enforced without prior leave to this Court.”

6. In view of the above directions, the learned AO though imposed the penalty as detailed supra, has directed that the order passed by him shall not be enforced with respect to

any of the appellants without prior leave of the Supreme Court.

7. We have heard Mr. Ranjeev Carvalho, Advocate assisted by Mr. KRCV Seshachalam and Ms. Sabeena Mahadik, Advocates for the appellant and Mr. Vyom Shah, Advocate assisted by Mr. Chirag Shah, Mr. Akash Jain and Ms. Daksha Kasekar, Advocates for the respondent.
8. The order passed by the learned WTM as well as order passed by this Tribunal in the appeal filed against the said order would clearly show that the present appellants had indulged in violation of the provisions of the SEBI Act as well as PFUTP Regulations supra. The detailed reasons given in paragraph nos.20 to 25 in the Tribunal's order dated 28th October, 2013 depicts the modus operandi adopted by the present appellants in giving exit to the QIBs through Mr. Zala. In the circumstances, the present appeal is devoid of any merit so far as the facts are concerned.

9. The learned counsel for the appellant emphatically submitted before us that there is a gross delay in adjudication of the present proceedings. It was submitted that though the show cause notice was issued by the AO on 30th August, 2013 after filing of the reply to the show cause notice however no progress was made in the proceedings and only on 8th September, 2015 the appellant was intimated that learned AO was transferred and, thereafter the proceedings remained pending. After four years suddenly i.e. on 26th October, 2020 appellant received a letter granting an opportunity of hearing though earlier the hearing was granted and, ultimately, the impugned order came to be passed on 30th June, 2021. In the circumstances, it is submitted that the gross delay that has occurred in conducting proceedings had itself caused injustice to the appellant. It was submitted that on the same facts there were multiple proceedings filed against

the present appellants besides the proceedings before the WTM and AO as detailed in paragraph no.13 of the appeal memo. It was therefore submitted that on this sole ground the impugned order is liable to be quashed and set aside.

10. On the other hand, the learned counsel for the respondent submitted that due to the transfer of the AO from time to time and due to the fact that the appellant had sought inspections of the documents from time to time the delay has occurred.

11. Upon hearing both the sides, in our view, though the proceedings were initiated within a reasonable period from the date of violations, the very fact that respondent SEBI delayed the adjudication in the present matter can be a mitigating factor to be considered under section 15J while considering the quantum of penalty.

12. The appellants relied on this Tribunal's judgment in Rakesh Kathotia & Ors. vs. SEBI, appeal no.7 of 2016

decided on 27th May, 2019; Ashok Shivilal Rupani & Anr. vs. SEBI, appeal no.417 of 2018 decided on 22nd August, 2019; Parag Sarda vs. SEBI, appeal no.290 of 2020 decided on 12th November, 2020 and Sanjay Jethalal Soni vs. SEBI, appeal no.102 of 2019 decided on 14th November, 2019.

13. This Tribunal in number of cases has held that delay in the conduct of the proceedings itself causes prejudice to the noticee therein in facts and circumstances of the case. In the present case, multiple proceedings were launched against the appellants. So far as the present proceedings is concerned the same came to be kept in cold storage by the respondent SEBI for no reason. In these circumstances, in our view, while affirming the violations found by the learned AO, the penalty amount is required to be reduced to 50%. In the result the following order:

ORDER

14. For the reasons stated aforesaid the appeal is partly allowed. While affirming the violations, we reduce the penalty to 50% against each of the appellants.
15. 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

Justice M.T. Joshi
Judicial Member

Ms. Meera Swarup
Technical Member

1.9.2022

RHN