

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 30.08.2022

Date of Decision : 02.09.2022

Appeal No. 639 of 2021

SIC Stock & Services Pvt. Ltd.
No. 501, Prestige Meridian II,
29/30, M.G. Road,
Bangalore,
Karnataka – 560 001.

..... 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. Prakash Shah, Advocate with Mr. Kushal Shah, CA i/b
Prakash Shah & Associates for the Appellant.

Mr. Akash Rebello, Advocate with Mr. Chirag Shah, Mr.
Akash Jain, Ms Daksha Kasekar, Advocates 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 Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated September 21, 2021 issued by the Whole Time Member ('WTM' for short) of the Securities and Exchange Board of India ('SEBI' for short) restraining the appellant from accepting new clients for a period of three months.

2. It transpires that SEBI conducted an investigation in the trading activities in the scrip of Vertex Spinning Ltd. ('VSL' for short) for the period March 29, 2006 to March 28, 2007 wherein SEBI noticed that the price of the scrip of the Company was fluctuating. It was alleged on the basis of the investigation that the Company had made certain false corporate announcements with respect to its project. It was alleged that the appellant was a stock broker of the promoter and director of VSL and had facilitated synchronized trades, cross dealings, self-trades and inflating the price and volume of the VSL by indulging in fraudulent trade practices.

3. Accordingly, an enquiry under the SEBI (Intermediaries) Regulations, 2008 ('Intermediaries Regulations' for short) was initiated based on a complaint

made on January 12, 2009 and the Designated Authority was appointed. It transpires that the Designated Authority made a recommendation that the appellant should be suspended for three months.

4. It further transpires that a common show cause notice dated November 14, 2019 was issued by the WTM to show cause as to why appropriate action should not be taken for the alleged violation in terms of Regulation 28 of the Intermediaries Regulations.

5. The WTM after considering the material evidence on record found that the appellant had violated the regulations and accordingly restrained the appellant from accepting new clients for a period of three months.

6. We have heard Shri Prakash Shah, the learned counsel with Mr. Kushal Shah, Chartered Accountant for the appellant and Mr. Akash Rebello, the learned counsel with Mr. Chirag Shah, Mr. Akash Jain, Ms Daksha Kasekar, the learned counsel for the respondent.

7. One of the grounds urged is, that there is been an inordinate delay for more than 13 years in the issuance of show cause notice. Consequently, on this short ground the impugned order should be quashed. It was contended that enquiry was being made for trading activities which were done during March 2006 to March 2007. The showcase notice was issued on November 14, 2019 after more than 13 years and consequently there has been an inordinate delay in the initiation of the proceedings.

8. In this regard we find from the reply filed by the respondent that the complaint was received by SEBI on January 12, 2009 and that a Designated Authority under the Intermediaries Regulations was appointed on June 18, 2014 but the report could not be submitted due to interdepartmental transfer of the Designated Authority. It was only in 2019 that upon submission of the recommendation of the Designated Authority that a show cause notice was issued on November 14, 2019.

9. Nothing has been indicated as to why proceedings under the Intermediaries Regulations could not be conducted in a

timely manner. The mere fact that there had been an interdepartmental transfer of an officer is no valid excuse to condone the laxity on the part of the respondent in initiating and concluding the proceedings.

10. In *Ashlesh Gunvantbhai Shah vs SEBI (Appeal No. 169 of 2019)* 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.”*

11. 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.”

12. In view of the aforesaid, we are of the opinion that there has been an inordinate delay in the issuance of the show cause

notice. Consequently, on the ground of inordinate delay the impugned order cannot be sustained and is quashed. The appeal is allowed with no order as to costs.

13. 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

02.09.2022
msb