

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 22.08.2019

Appeal No. 417 of 2018

1. Ashok Shivilal Rupani
3/4/5, Nanabhai Mansion, 61,
Sir P.M. Road, Fort,
Mumbai- 400 001

2. Naresh Shivilal Rupani
B-142/3, Chinar, 14th Floor,
Rafi Ahmed Kidwai Road, Wadala,
Mumbai- 400 031

...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

WITH
Appeal No. 440 of 2018

1. Ashok Shivilal Rupani
3/4/5, Nanabhai Mansion, 61,
Sir P.M. Road, Fort,
Mumbai- 400 001

2. Naresh Shivilal Rupani
B-142/3, Chinar, 14th Floor,
Rafi Ahmed Kidwai Road, Wadala,
Mumbai- 400 031

3. Uttam Ravji Gada
401, Nalin Apartment,
J.P. Road, Andheri (W),
Mumbai- 400 058

...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. Yuvraj Choksy, Advocate i/b Ganesh & Co. for the Appellants.

Mr. Karan Bhosale, Advocate with Mr. Kaushal Parsekar, Advocate i/b Legasis Partners for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member

Per: Justice Tarun Agarwala (Oral)

1. Certain irregularities in the scrip of Oregon Commercial Limited now known as Saianand Commercial Limited was observed between January 04, 2010 to January 10, 2011 based on which a show cause notice was issued to the appellants who are directors in the company to show cause as to why an inquiry should not be held and penalty should not be imposed under the Securities and Exchange Board of India Act, 1992 (“SEBI Act” for convenience) for the alleged violations.

2. The violations were that the appellants Ashok Shivilal Rupani and Naresh Rupani as directors had sold shares during the investigation period that is on January 04, 2010 to January 10, 2011 and they failed to file necessary disclosures under Regulation 13(4) and 13(5) of the Securities and Exchange Board of India (Prohibition of Insider Trading Regulations, 1992 (“PIT Regulations, 1992” for convenience). The second

violation alleged was that the Board of Directors of the company in its meeting held on July 22, 2010 recommended for a change in the management of the company in accordance with the provisions of Regulation 12 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (“SAST Regulations” for convenience) which proposal for change in management of the company was moved through postal ballot for approval of members on July 22, 2010 but no corporate announcement was made to the Exchange regarding the Board Meeting and thus, the directors violated Regulation 30(4) of SEBI (Listing and Disclosures Requirements) Regulations, 2015 (“LODR Regulations, 2015”) read with clause 36 of the Listing Agreement.

3. The appellants filed the replies and the Adjudicating Officer (“AO” for convenience) passed two separate orders on the aforesaid two violations. By an order dated August 29, 2018 the AO imposed a penalty of ₹ 2 lakh each on two directors for violation of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations, 1992 for failure to make the necessary disclosures. It was found that the two directors had sold their shares which were more than 1% of the total paid up capital of the company and thus necessary disclosures were required to be made under Regulation 13(4) read with Regulation 13(5) of the

PIT Regulations, 1992 which the directors failed to do so. By the second order dated September 06, 2018 the same AO passed an order imposing a penalty of ₹ 2 lakh each on the three directors for violation for violation of the LODR Regulations and the Listing Agreement.

4. The directors of the company being aggrieved by the two orders have filed Appeal Nos. 417 of 2018 and 440 of 2018. Since the issue involves a common ground, both the appeals are being decided together.

5. We have heard the learned counsel for the parties. It was contended that there was an inordinate delay in the issuance of the show cause notice for violation of provisions of PIT Regulations or of the LODR Regulations and therefore on the ground of inordinate delay the proceeding should have been dropped and no penalty could have been imposed. It was contended that the alleged violation occurred in the year 2010 whereas the show cause notice was issued in the year 2018 after eight years for which no explanation has been given.

6. Having considering 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 alleged

violations. Much water has flown since the alleged violations and at this belated stage the appellants cannot be penalized. It is alleged that disclosure under PIT Regulations was not made but similar disclosure was made by the appellant under SAST Regulations. Therefore, information was available on the Stock Exchange and therefore it cannot be said that the respondents were unaware of the alleged violations. Further, the purpose of disclosure was to make the market aware of the change of shareholding of the shareholders. When a disclosure was made by the company under SAST Regulations the investors became aware of the change in the shareholding. The non-compliance of Regulation 13 if any becomes technical in nature.

7. In *Mr. Rakesh Kathotia & Ors. vs. SEBI (Appeal No. 07 of 2016 decided by this Tribunal on 27.05.2019)* proceedings were quashed on account of inordinate delay. The said decision is squarely applicable to the instant case. For facility, the relevant paragraph of the order 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.”

8. 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 and for completion of the adjudication proceedings. Since the power to adjudicate has not been exercised within a reasonable period no penalty could have been imposed for the alleged violations.

9. As a result, without going into the merits of the case, we are of the opinion that on account of inordinate delay the initiation of proceedings by issuance of the show cause notice which culminated into a penalty order cannot be sustained. The show cause notice and the impugned orders passed by the AO are quashed. Both the appeals are allowed.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member