

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 09.09.2020

Date of Decision : 15.09.2020

Appeal No. 268 of 2020

Pragnesh Vishnubhai Patel
H. No. B-36, Akruti Township,
Bethak Road, Khambhat – 8, Cambay,
Dist. – Anand, Gujrat – 388620.

..... 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. Vikas Bengani, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Ms. Nidhi Singh, Ms. Kinjal Bhatt,
Advocates i/b Vidhi Partners for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Dr. C. K. G. Nair, Member
Justice M. T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer

1. The appellant has challenged the order dated March 19, 2020 passed by the Adjudicating Officer (hereinafter referred to as 'AO') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') imposing a penalty of Rs. 5 lacs for violation of Regulations 3 and 4 of 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').

2. The scrips traded are in the company called Sanwaria Agro Oils Ltd. A show cause notice dated June 4, 2013 alleges that 9 entities including the appellant made various trades on Bombay Stock Exchange Ltd. (BSE) and National Stock Exchange of India Ltd. (NSE) which were reversal, synchronized and self-trades. Further, these 9 entities were related or connected with each other and trades executed created artificial volume and misleading appearance of trading which was violative of Regulations 3 and 4 of the PFUTP Regulations.

3. The AO after considering the matter passed the impugned order imposing penalties on each of the noticees including the appellant.

4. Before the Tribunal, the appellant contended that there is an inordinate delay in the initiation of the proceedings and on this short ground the impugned order should be set aside. In support of his contention, the appellant placed reliance on the decisions of this Tribunal in *Appeal No. 417 of 2018 Ashok Rupani and Anr. vs. SEBI decided on August 22, 2019* and *Appeal No. 75 of 2019 Anilkumar Nandkumar Harchandani & Ors. vs. SEBI decided on December 5, 2019* and *Appeal No. 169 of 2019 Ashlesh Gunvantbhai Shah vs. SEBI decided on January 31, 2020*. It was also urged that the response / reply made by the appellant before the AO was not considered and that the AO had committed a manifest error in holding that no specific submissions were made by the appellant. It was also urged before this Tribunal that the appellant at the relevant moment of time when the alleged trades were made was a student studying engineering and had no knowledge of the securities laws and that one of the noticees Lalit Amritlal Shah had misused his trading accounts and induced him that he would get good returns. Thus, it was urged that the said facts was not considered by the AO and, in any case, the penalty imposed is harsh and excessive as on date the appellant is an unemployed teacher and is in financial stress during this pandemic period.

5. On the other hand, the learned counsel for the respondent contended that the charges levelled against the appellant have not been denied specifically and no specific submissions were made in his reply and, therefore, since the charge remained unrebutted, the minimum penalty of Rs. 5 lacs was imposed. It was also urged that there is no delay in the initiation of the proceedings. The trades were of the period March 2, 2010 to May 3, 2010 and based on the investigation report the show cause notice was issued on June 4, 2013 and, thereafter, the impugned order was passed on March 19, 2020.

6. Having heard Mr. Vikas Bengani, the learned counsel for the appellant and Mr. Kumar Desai, the learned counsel alongwith Ms. Nidhi Singh and Ms. Kinjal Bhatt, the learned counsel for the respondent at some length, we find that the AO has not considered the replies given by the appellant pursuant to the show cause notice. The AO has proceeded on the presumption that no specific submissions had been made by the appellant and proceeded against the appellant relying upon the decisions of this Tribunal in *Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003) decided on December 8, 2006* and *Sanjay Kumar Tayal vs. SEBI (Appeal No. 68 of 2013) decided on February 11, 2014* in which it was held that if no reply is filed then the charges stands admitted. In our view, this aspect is

patently erroneous and cannot be accepted. The decisions relied upon are not applicable in the instant case in as much as the appellant had filed his reply. It was open to the AO to reject the contention raised by the appellant in his replies but it was not open to the AO to suggest that no specific submissions were made and that it amounted to no reply being filed to the show cause notice.

7. We find that a specific assertion was made by the appellant that he was a student studying engineering and though he admits that he had opened a trading account but specifically contended that he does not know any of the entities, but further contended that the noticee Lalit Amritlal Shah was handling his trading account. This aspect as to whether the noticee Lalit Amritlal Shah was trading the appellant's account should have been investigated or cross-questioned by the AO as the said noticee Lalit Amritlal Shah was contesting the matter before the AO. The AO has also not considered the fact that every trade made was of high value and, therefore, it was not possible for the appellant, being a student, to procure that kind of funds unless he was funded by someone else or his trading account was being used by someone else. These questions should have been considered while proceeding in the matter against the appellant.

8. We also find that admittedly the appellant allowed the another noticee Lalit Amritlal Shah to use his trading account and if his trading account was misused, the appellant himself is to be blamed and for this blunder, the appellant cannot escape the liability for violating the SEBI laws.

9. We also find that the contention raised by the appellant that there has been an inordinate delay in the initiation of the proceedings is incorrect. The decisions related upon are not applicable in the instant case in as much as the alleged trades are of the year 2010 and the show cause notice was issued on June 4, 2013. Thus, there is no delay in the initiation of the proceedings.

10. However, there has been an undue delay in the disposal of the adjudication proceedings for which there is no justification given by the respondent. We find that one AO was appointed on May 13, 2013 and upon her transfer another AO was appointed on August 8, 2013 who continued for six years without doing much. Further, she was transferred on or around October 23, 2019 when the present AO was appointed. There is nothing to indicate that the appellant or other noticees had delayed the proceedings. Consequently, in the given set of circumstances, we are of the opinion that by not passing

an order within a reasonable period a prejudice was caused upon the appellant.

11. For the reasons stated aforesaid, since the submissions raised by the appellant was not considered, the impugned cannot be sustained to the extent of the appellant's case. We could remand the matter back to the AO for reconsideration but given the fact that the appellant was a student at that moment of time and is an unemployed teacher during the pandemic period, we are of the opinion that remanding the matter would entail further travesty of justice. Admittedly, the trades executed are in violation of Regulations 3 and 4 of the PFUTP Regulations, but considering the fact that the appellant was 20 years old and was a student at the relevant moment of time, we give a benefit of doubt to the appellant to the extent that his trading account was misused. But we are conscious of the fact that the appellant himself is to be blamed for allowing its trading account to be misused which is violative of the SEBI laws. Consequently, in the interest of justice, we affirm the impugned order but reduce the penalty from Rs. 5 lacs to Rs. 1 lac in the peculiar facts and circumstances of the case.

12. The appeal is partly allowed. In the circumstances of the case, parties shall bear their own costs.

13. 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.

Justice Tarun Agarwala
Presiding Officer

Dr. C. K. G. Nair
Member

Justice M. T. Joshi
Judicial Member

15.09.2020
PTM