

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved: 11.1.2021
Date of Decision: 22.3.2021

Appeal No.225 of 2020

Vishal Vijay Shah
First Floor, Room No.112A,
Stock Exchange Plaza, Dalal Street,
Mumbai – 400 023. ...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
G Block, Bandra Kurla Complex,
Bandra (E), Mumbai-400051. ...Respondent

Mr. Nirman Sharma, Advocate i/b. Mr. Vikas Bengani,
Advocate for the Appellant.

Mr. Anubhav Ghosh, Advocate with Mr. Ravishekhar
Pandey, Advocate i/b The Law Point for the Respondent.

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

Per: Justice M.T. Joshi, Judicial Member

1. Aggrieved by the order dated 8th July, 2020 cancelling the certificate of registration granted to the appellant as a stock broker, the present appeal is preferred.
2. Respondent Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had initiated enquiry proceedings against the appellant a registered stock broker in terms of the Securities and Exchange Board of India (Intermediaries) Regulation, 2008 (hereinafter referred to as 'the Regulations'). Thereafter, a Designated Authority under regulation was appointed who made enquiry into the alleged violation committed by the appellant and submitted the report to the Designated Member cum Whole Time Member. Designated Authority ('DA' for short) had observed that the appellant have violated the following provisions of securities laws.

A. Sections 12A(a), (b) and (c) of the SEBI
Act and Regulations 3(a), (b), (c) and (d)

and Regulations 4(1), 4(2)(a), (b),(c), (d), (e), (g) and (p) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003 (“PFUTP Regulations 2003”)

B. SEBI Circular no.SEBI/MRD/SE/Cir-33/2003/27 dated August 27, 2002 and SEBI Circular no.MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 through misutilization of clients’ funds and securities.

C. Clauses A(1), (2), (3), (4) and (5) of the Code of Conduct for Stock Brokers as specified in Schedule II of Regulation 9 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (“Stock Brokers Regulations”), for failure to adhere to the prescribed Code of Conduct in respect of

high standard of integrity, due skill, care and compliance with statutory requirements, etc.

3. Thereafter, post enquiry the Designated Member issued notice to the appellant calling upon him as to why action recommended by the DA or any action of higher nature should not be imposed on the appellant. The appellant replied that he was already penalized by respondent SEBI of Rs.18,23,028 and, therefore, he should be pardoned. It was submitted that in the circular and synchronized trades of Maharashtra Polybutenes shares this penalty was imposed. As regards two other violations, namely, (i) the appellant in large number of buy transactions had given wrong instruction to the clearing house for direct pay out to 92 front entities even when such entities had not traded and (ii) the appellant had falsified record and issued fictitious contract note to the 20 other front entities, the appellant submitted that such mistakes would not be

repeated again and no more punishment shall be imposed.

4. Thereafter, during personal hearing dated 9th April, 2019 and written submission dated 18th April, 2019 the appellant submitted that as regards the illegalities allegedly committed in the scrip of Maharashtra Polybutenes, respondent SEBI had artificially divided the investigation in two periods. In fact there could have been a joint enquiry and both recommendations should be in one single proceeding. As regards executing circular/synchronized trades, the appellant now contended that he had executed those trades on behalf of the clients who had given proper power of attorney to execute such trades and the appellant was unaware as to the counter parties of such trades. The clients were transacting through the appellant for more than five years and, therefore, the appellant had not doubted their bonafides. The appellant therefore

cannot be penalized for the trades carried by the clients.

5. As regards the two other violations as detailed supra it was contended in the written submissions that the relevant information was not available with the appellant and, if any, violations were committed by him it would have been on account of certain inadvertence. It was again submitted that vide order dated 14th September, 2015 a penalty of Rs.15 lakhs was imposed and paid by the appellant he should not be again further penalized.
6. The learned Designated Member however did not agree with the submissions and the impugned order came to be passed. Hence the present appeal.
7. We have heard Mr. Nirman Sharma, Advocate for the Appellant and Mr. Anubhav Ghosh, Advocate assisted by Mr. Ravishekhar Pandey, Advocate for the Respondent.

8. Mr. Nirman Sharma, the learned counsel for the appellant submitted that there was considerable delay in launching the proceedings and, therefore, as can be seen from the written submissions the appellant was unable to defend the same. He submits that the order is therefore liable to be quashed on this sole ground. To buttress his argument the learned counsel relied on number of decisions of this Tribunal *Ashok Shivlal Rupani & Anr. vs. SEBI, appeal no.417 of 2018 decided on 22nd August, 2019, Sanjay Jethalala Soni & Ors. vs. SEBI, appeal no.102 of 2019 decided on 14th November, 2019* and the order of the Hon'ble Supreme Court affirming the order in the case of *Ashok Shivlal Rupani dated 15th November, 2019*.
9. The learned counsel for the respondent, Mr. Anubhav Ghosh on the other hand submitted that while in the reply to the show cause notice the appellant had admitted all the guilt, only during the personal hearing he came with a case of delay in launching the

proceedings. He further pointed to the earlier proceedings in which admittedly the appellant was penalized of Rs.15 lakh. He submits that the said penalty was imposed upon the appellant for non-honouring of the five summonses to produce the record earlier in the year 2011 itself and nothing further. This act of the appellant delayed the proceedings and he was aware long back that investigation in the subject matter had started long back. The learned counsel therefore submitted that the appellant is trying to take advantage of his own wrong by taking shelter of plea of delay in the present case.

10. Upon hearing both the sides in our view the delay, if any, has not at all prejudiced the appellant. He himself did not produce the material to the respondent SEBI though five summonses one after another were issued to him since January, 2011. He was therefore ultimately penalized for non-compliance with the summonses.

11. The learned counsel for the appellant further submitted that while the personal hearing was conducted by the learned Designated Member on 9th April, 2019 the impugned order was passed on 8th July, 2020. This itself is sufficient to set aside the order.

12. Having heard the parties in our view, on the face of of initial non traverse of the fact in reply to the show cause notice , in fact there remains nothing to decide for the learned Designated Member as regards the facts involved in the proceedings and, therefore delay in passing the order has not prejudiced the appellant as none of his submissions could have been forgotten by the Designated Member causing the prejudice.

13. Even otherwise, the order of the learned Designated Member would show that large number of synchronised and circular trades were caused by the present appellant during the relevant period. The group branded by the Designated Member as Vipul Group who were the clients of the appellant were in

factct his uncle and two other relatives as close relatives. This fact was already admitted by the appellant vide his letter dated 19th April, 2010. The details given in the order would show that the appellant had transferred 26,23,376 shares of Maharashtra Polybutenes which was a highly illiquid stock of this group to total of 115 front entities which was again retransferred to the three close relatives of the appellant through the present appellant except 2 lakh and odd figures. The details of the front entities, the nature of the circular and synchronised trades had all been detailed in the impugned order though the appellant in reply to the show cause notice has not denied the allegations. For this reason also delay in passing the order by the learned WTM also would not vitiate it.

14. Considering all the facts on record and finding out the enormity of the violations committed by the appellant that of engaging in circular and synchronized

trades in large amount, of giving wrong instruction to the clearing house, for direct pay out to 92 front entities without any transactions, of falsifying record and issuing fictitious contract notes to 20 front entities, we do not find it fit to interfere in the impugned order. The alternative plea of the appellant to interfere in the order of cancellation of order and award a lesser penalty is therefore rejected. Hence the following order.

The appeal is hereby dismissed without any order as to costs.

15. 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 Private Secretary 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

22.3.2021
RHN