

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 14.06.2021
Date of Decision: 24.06.2021

Appeal No. 06 of 2020

1. Hemant Madhusudan Sheth
Second Floor, 115/ 117,
Bhuleshwar Road,
Near Kabutarkhana,
Bhuleshwar,
Mumbai- 400 002
 2. Prem Mohanlal Parikh
Flat No. 1, 140/K,
Cavel Cross Lane No. 7,
First Floor,
Kalbadevi Road,
Mumbai- 400 002
 3. Ankit R Sanchaniya
Flat No. 9, "B" Wing,
Zainab Baug, Bharucha Road,
Dahisar (East),
Mumbai- 400 068
 4. Shree Shagun Financial Services
First Floor, Flat No. 16,
196A Tara House, Dr. Viegas Street,
X Lane No. 8, Chira Bazar,
Mumbai- 400 002
 5. H. Bhavesh Securities and Commodities Pvt. Ltd.
196/A, Dr. Viegas Street,
Cavel X Lane No. 08,
3rd Floor, Room No. 32, Chira Bazar,
Mumbai- 400 002
- ...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. Vikas Bengani, Advocate for the Appellants.

Mr. Kumar Desai, Advocate with Mr. Nishit Dhruva, Mr. Hridhay Khurana, Mr. Chirag Bhavsar and Ms. Aalisha Shah, Advocates i/b MDP & Partners for the Respondent.

**WITH
Appeal No. 23 of 2020**

1. Chirag Rajnikant Jariwala
302, Kalbadevi Road,
First Floor, Room No. 2.,
Mumbai- 400 068

2. Bipin Jayant Thakker
381-1, Kalbadevi Road,
Narottamwadi, First Floor,
Room No. 16,
Mumbai- 400 002

...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. Vikas Bengani, Advocate for the Appellants.

Mr. Kumar Desai, Advocate with Mr. Nishit Dhruva, Mr. Hridhay Khurana, Mr. Chirag Bhavsar and Ms. Aalisha Shah, Advocates i/b MDP & Partners for the Respondent.

**WITH
Appeal No. 38 of 2020**

Kiran Madhusudhan Sheth
113/115, 3rd Floor,
Above Ratanlal Barfiwala Shop,
Bhuleshwar Road,
Mumbai- 400 002

...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 Appellants.

Mr. Kumar Desai, Advocate with Mr. Nishit Dhruva, Mr.
Hridhay Khurana, Mr. Chirag Bhavsar and Ms. Aalisha Shah,
Advocates i/b MDP & Partners for the Respondent.

WITH
Appeal No. 39 of 2020

Janak Chimanlal Dave
140/L Cavel Cross Lane No. 7,
4th Floor, Kalbadevi Road,
Mumbai- 400 002 ...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 Mr. Nishit Dhruva, Mr.
Hridhay Khurana, Mr. Chirag Bhavsar and Ms. Aalisha Shah,
Advocates i/b MDP & Partners for the Respondent.

WITH
Appeal No. 40 of 2020

Jinal Apurva Rawal
Room No. 201,
2nd Floor, Rajyog Building,
1st Carpenter Street,
Nenu Bhai Desai Road,
Mumbai- 400 004 ...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 Mr. Nishit Dhruva, Mr.
Hridhay Khurana, Mr. Chirag Bhavsar and Ms. Aalisha Shah,
Advocates i/b MDP & Partners for the Respondent.

WITH
Appeal No. 41 of 2020

Kiran Bhiku Bhanaes
Flat No. 16/A,
New Bhatia Mahajan Wadi,
Ground Floor,
Dr. M.B. Velkar Street,
Kalbadevi Road,
Mumbai- 400 002

...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 Mr. Nishit Dhruva, Mr.
Hridhay Khurana, Mr. Chirag Bhavsar and Ms. Aalisha Shah,
Advocates i/b MDP & Partners for the Respondent.

WITH
Appeal No. 42 of 2020

Jigar Praful Ghogari
Room No. 6, 3rd Floor,
House No. 140K,
Madhavi Thakarsi Building,
Cavel Cross Lane No. 7,
Kalbadevi Road,

Mumbai- 400 002 ...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 Mr. Nishit Dhruva, Mr.
Hridhay Khurana, Mr. Chirag Bhavsar and Ms. Aalisha Shah,
Advocates i/b MDP & Partners for the Respondent.

WITH
Misc. Application No. 123 of 2020
And
Appeal No. 126 of 2020

Bhavesh Prakash Pabari
196/A, Dr. Viegas Street,
Cavel X Lane No. 08,
1st Floor, Flat No. 16, Chira Bazar,
Mumbai- 400 002 ...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 Mr. Nishit Dhruva, Mr.
Hridhay Khurana, Mr. Chirag Bhavsar and Ms. Aalisha Shah,
Advocates i/b MDP & Partners for the Respondent.

WITH
Misc. Application No. 124 of 2020
And
Appeal No. 127 of 2020

Bharat Shantilal Thakkar
196/A, Dr. Viegas Street,

Cavel X Lane No. 08,
1st Floor, Flat No. 16, Chira Bazar,
Mumbai- 400 002
Versus

...Appellant

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 Appellants.

Mr. Kumar Desai, Advocate with Mr. Nishit Dhruva, Mr.
Hridhay Khurana, Mr. Chirag Bhavsar and Ms. Aalisha Shah,
Advocates i/b MDP & Partners for the Respondent.

AND
Appeal No. 586 of 2019

Animesh Patel
02nd Floor, Flat No. 23,
Shri Sai Bhuvan C.H.S. Ltd.,
12th Khetwadi Back Road, V.P. Road,
Mumbai- 400 004

...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. Saurabh Bachhawat, Advocate i/b Yashvi Panchal for the
Appellant.

Mr. Kumar Desai, Advocate with Mr. Nishit Dhruva, Mr.
Hridhay Khurana, Mr. Chirag Bhavsar and Ms. Aalisha Shah,
Advocates i/b MDP & Partners for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member

Per: Justice Tarun Agarwala, Presiding Officer

1. All the appeals have been filed against the common order dated November 05, 2019 passed by the Adjudicating Officer (“AO” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) imposing penalties for violation of the SEBI Act and its Regulations. There are two sets of appeals, the first set are those appellants who were noticees no. 1 to 6 in the impugned order and who facilitated noticees no. 7 to 16 to trade through them. The second set of the appeals are appellants, namely noticees no. 7 to 16, who were restrained from accessing the securities market by an order of the Whole Time Member (“WTM” for convenience) dated February 02, 2011. Since the issues are common all the appeals are being decided together.

2. Noticing the rise in the price of the scrip in the Polytex India Pvt. Ltd. from Rs. 5.85 to s.265.10, SEBI conducted an investigation for the period October 01, 2010 to December 30, 2011. It was noticed that noticees no. 1 to 4 had entered into reversal trades. Noticees no. 1 & 2 also entered into self trades repeatedly which resulted in no change of beneficial ownership and only created artificial volume in the scrip of the Company thus giving false and misleading appearance of trading in the scrip in the securities market. Noticees no. 1 to 6 also

felicited the debarred entities, namely noticees nos. 7 to 16, from dealing in the securities market indirectly during the restraint period and therefore violated the directions of the WTMs order dated February 02, 2011.

3. Accordingly a show cause notice was issued. The AO after considering the replies found that the debarred entities had transferred the funds to noticees no. 1 to 6 and that these noticees 1 to 6 had traded on behalf of these debarred entities. The AO further found that the proceeds of the trades were also remitted back by noticees no. 1 to 6 to the debarred entities. The AO also found that noticees no. 1 & 2 had conducted self trades without any beneficial transfer of ownership and that unnecessarily increased the volume thus misleading the investors. The AO also found that noticees no. 1 to 4 had indulged in reversal of trades repeatedly on several days. Accordingly, the AO imposed penalties under Section 15HA and 15HB of the SEBI Act.

4. We have heard Mr. Vikas Bengani and Mr. Saurabh Bachhawat, the learned counsel for the appellants and Mr. Kumar Desai, the learned counsel assisted by Mr. Nishit Dhruva, Mr. Hridhay Khurana, Mr. Chirag Bhavsar and Ms. Aalisha Shah, Advocates for the Respondent.

5. A contention has been raised that there is an inordinate delay in the proceedings and therefore on this ground itself the order should be quashed. It was contended that the investigation period was from October 2010 to December 2011 and that it took four years for the respondent to issue a show cause notice. It was contended that even though there is no limitation prescribed under the SEBI Act for initiation of proceedings, nonetheless, proceedings if any has to be initiated within a reasonable period. It was contended that since there was an inordinate delay, the impugned order cannot be sustained and should be quashed. In support of his submission the learned counsel placed reliance on the decisions of this Tribunal in *Ashok Shivlal Rupani Rupani & Anr. vs. SEBI in Appeal No. 417 of 2018 decided on August 22, 2019*, *Bharat J. Patel & Ors. vs. SEBI in Appeal No. 154 of 2020 decided on September 08, 2020*), *Sanjay Jethalal Soni and Ors. vs. SEBI in Appeal No. 102 of 2019 decided on November 14, 2019* and in *Ashlesh Gunvantbhai Shah vs. SEBI in Appeal No. 169 of 2019 decided on January 31, 2020*. On this issue we are of the opinion that there is no inordinate delay in the given circumstances in the initiation of the proceedings. We find that the show cause notice was issued within a period of four years after analysing the facts given in the investigation report. Since

a large number of trades were examined we are satisfied that in the given case there was no laches on the part of the respondent in initiating the proceedings.

6. Admittedly, the noticees no. 7 to 16 had transferred about 45 crores to the six entities namely noticees no. 1 to 6. This fact is more or less admitted by the noticees no. 7 to 16. It was however contended that the amount was transferred not for trading purposes but for a simpliciter loan transaction in the ordinary course of business. We find that this contention of the appellants/ noticees no. 7 to 16 cannot be relied upon for the simple reason that there is no documentary evidence to show that the amount transferred were towards a loan. If noticees no. 1 to 6 are unknown persons then all the more reasons for the noticees no. 7 to 16 to file some documentary evidence to show that loan was given to unknown parties. We are of the opinion, that nobody in their right mind would give a loan of Rs. 45 crores to unknown entities on an oral transaction without any documentary evidence. A submission was made that noticees no. 1 to 6 were close and known entities to noticees no. 7 to 16 and that is why the funds were transferred to them on an ongoing basis. We are of the opinion, that if noticees no. 1 to 6 were known entities to noticees no. 7 to 16 then an irresistible

inference can be drawn that there was connection between noticees no. 1 to 6 with noticees no. 7 to 16.

7. We further find from the impugned order that on numerous occasions, the trading entities, namely, noticees no. 1 to 6 have transferred back the funds to noticees no. 7 to 16 immediately after receipt of the payout from brokers in respect of their trades in the scrip of the company as well as in other scrips. The summary of such funds and transfers from noticees no. 1 to 6 to noticees no. 7 to 16 have been clearly tabulated in paragraph 41 of the impugned order, which fact has not been disputed. Thus, from a perusal of table produced in paragraph 40 and 41 of the impugned order clearly establishes that noticees no. 7 to 16 were making funds available to noticees no. 1 to 6 on a continuous basis for trading in the securities market. Further, upon receipt of the payouts, noticees no. 1 to 6 were transmitting the proceeds to noticees no. 7 to 16. These facts have remained undisputed especially the fund transfers between noticees no. 7 to 16 and noticees no. 1 to 6.

8. Admittedly, the noticees no. 7 to 16 were debarred from accessing the securities market either directly or indirectly by order of the WTM dated February 02, 2011. This order was completely violated and these entities have traded through

noticees no. 1 to 6. They have thus violated regulations 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003 (“PFUTP Regulations” for short) read with Section 12A of the SEBI Act.

9. A submission was made that the charge of violating regulation 4(2)(b) of the PFUTP Regulations have been dropped. This contention is patently erroneous. The appellants are taking undue advantage of the operative portion of the impugned order in which penalties have been imposed under Section 15HA and 15HB of the SEBI Act without recording the violation of regulation 4(2)(d). We have perused the order and we find that in paragraph 38 of the impugned order the AO has specifically considered and have found that the appellants have violated regulation 4(2)(d) of the PFUTP Regulations. In view of this, the contention of the appellants on this aspect is patently incorrect.

10. It was also contended that between the period October 01, 2010 and December 30, 2011 noticees no. 7 to 16 were not restrained by any order of the WTM. It was contended that the order of debarment became operative only when the order of the WTM dated February 02, 2011 was passed. It was thus

contended that the appellants cannot be penalized for the trades done prior to February 02, 2011. In this regard, the submission appears to be correct but the trades executed prior to February 02, 2011 makes no difference to the fact that after the order of the WTM dated February 02, 2011, noticees no. 7 to 16 continued to trade indirectly through noticees no. 1 to 6 which was clearly violative of Regulations 3 and 4 of the PFUTP Regulations read with Section 12A of the SEBI Act.

11. It was further urged, that if noticees no. 7 to 16 have violated the order of the WTM, the penalty if any could only be levied under Section 15HB and that no penalty under Section 15HA could be levied. The submission appears to be attractive in the first blush but upon a closer scrutiny we find that noticees no. 7 to 16 have indulged in unfair trade practices in relation to the securities market by indirectly dealing through noticees no. 1 to 6 and therefore the provisions under Section 15HA and 15HB has rightly been invoked which we do not find any error.

12. Further the submission of the appellants that a composite penalty has been imposed for violation under 15HA and 15HB and that a bifurcation should have been indicated in our opinion is irrelevant. In the given circumstances it is not required to bifurcate the quantum of penalty under each head. The charges

were that the noticees no. 7 to 16 have indulged in unfair practice by trading indirectly through noticees no. 1 to 6 and therefore violated Sections 15HA and 15HB on account of which a composite penalty has been imposed.

13. An additional submission was made in the case of noticee no. 15 contending that a charge of Rs. 2.02 crores were transferred to noticee no. 1 whereas the fact was that only a sum of Rs. 27 lakhs were transferred. It was contended that this question was specifically raised and no details were provided by the respondent to show that a sum of Rs. 2.02 crores were transferred by him to noticee no. 1. In our view, it is not necessary to go into this question as to what amount was actually transferred by noticee no. 15 to noticee no. 1. The fact remain that noticee no. 15 was a debarred entity and was restrained from accessing the securities market either directly or indirectly. Admittedly, according to noticee no. 15, Rs. 27 lakhs was transferred which was used for trading purposes by noticee no. 1. This was clearly violative of Section 15HA and 15HB and therefore penalty was rightly imposed.

14. In so far as noticees no. 1 to 6 are concerned admittedly they have received a substantial sum from noticees no. 7 to 16 for trading in the securities market on their behalf. The proof of

the pudding is in the eating which in the instant case is proved by the transfer of funds from noticees no. 7 to 16 to noticees no. 1 to 6 which is not disputed. Further, the record indicates that upon receipt of the payouts the money was transferred by noticees no. 1 to 6 to noticees no. 7 to 16. Thus, a clear case of indirect trading by noticees no. 7 to 16 has been made out which was carried by noticees no. 1 to 6. By aiding and facilitating noticees no. 7 to 16, the appellants namely noticees no. 1 to 6 have also violated the provisions of the SEBI Act and its Regulations. On this score itself the noticees no. 1 to 6 were liable to be penalized under Section 15HA and 15HB of the SEBI Act.

15. We further find that noticees no. 1 and 2 had contributed the self-trades during the entire investigation period and these self-trades were repeated instances on several days. Such self trades where noticees no. 1 and 2 were buying and selling does not lead to any change in the beneficial ownership and leads to creation of artificial volume in the scrip which is violative of the Regulations 3 and 4 of the PFUTP Regulations. The contention that the self trades were miniscule which had no impact on the total volume of trades made is patently incorrect and against the material evidence on the point. The contention of noticees no. 1

and 2 that the self-trades were insignificant is erroneous and cannot be accepted.

16. In the same way, we find that noticees no. 1 to 4 who were connected to each other had indulged in the reversal of trades in the scrip of the Company. We find that noticees no. 1 to 4 had executed reversal trades repeatedly of more than 10,000 shares which have been reversed on 10 counts in a period of 1 or 2 days which in turn created artificial volume in the scrip. This was done repeatedly in Patch-2 of the investigation period. In Patch-2 noticees no. 1 and 4 have bought 43,64,899 shares and sold 31,35,660 shares which accounted for 75.82% and 54.48% of the total market buy and sell volume respectively. We further find that noticees no. 1 to 4 traded on a continuous basis contributing to significant trading in the volume in the scrip. Thus the finding that noticees no. 1 to 4 had indulged in reversal trades for the purpose of creation of artificial volume and misleading appearance of trading in the scrip of the Company without any intention of change of actual beneficial ownership is proved. We do not find any error in the order of the AO. The contention of the appellants that the reversal trades were insignificant is erroneous in the light of the volume of trades made by them which has been indicated aforesaid. Such reversal trades cannot be done coincidentally but appears to be

done deliberately for the purpose of increasing the volume of the trades. The contention so raised by noticee no. 4 is thus erroneous.

17. It was contended on behalf of the noticee no. 6 that the said appellant had received a sum of Rs. 50 lakhs from M/s Shree Shagun Financial Services who is noticee no. 8. It was contended that the said noticee no. 8 was not prohibited from given loans as they were not debarred entity. We have perused the order and we find that the partners of this firm were Hemant Sheth and Bhavesh Pabari who were the debarred entities. The partners of the firm were clearly debarred and admittedly Rs. 50 lakhs was transferred by them to the said noticee for trading purposes on their behalf. The contention of this appellant/noticee no. 6 thus cannot be accepted.

18. It was last contended that the penalty imposed is very excessive and disproportionate to the alleged violation. It was contended that in a parallel adjudication proceedings for the investigation period April 13, 2012 to December 17, 2012 in relation to various scrips including the scrip of the Company in question, the AO passed an order dated March 03, 2021 imposing a penalty of Rs. 2 lakhs against some of the noticees who are also appellants before this Tribunal. It was thus

contended that on parity the penalty should be reduced to Rs. 2 lakhs each on the noticees. Having heard the learned counsel on this aspect we are of the opinion that comparisons are odious. No comparison can be made on the quantum of penalty by comparing the order of the AO dated March 03, 2021. The circumstances that prevailed in the said order were totally different and distinguishable from the circumstances prevailing in this order. Thus, based on the assessment, the AO, in the instant case, has imposed a penalty which we do not find it arbitrary or excessive.

19. A contention was raised by noticee no. 6 Animesh Patel contending that the penalty of Rs. 5 lakhs was highly excessive. It was contended that the demat account was given at the rate of 2500/- per month to Bhupesh Rathod who was not a debarred entity. In this light it was urged, that even though the appellant has violated the provisions of SEBI Act and its Regulations by allowing someone to use the demat account the penalty should be reduced as he has no financial capacity. Having perused the order of the AO we find that Bhupesh Rathod had received funds from Bhavesh Pabari to the extent of Rs. 1.13 crores. Thus, indirectly the trading account of noticee no. 6 was been used by a debarred entity. Consequently, the penalty imposed is neither excessive nor arbitrary.

20. In view of the aforesaid, all the appeals are dismissed with no order as to costs. Misc. Application Nos. 123 and 124 of 2020 are also disposed of accordingly.

21. The present matters were 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

Justice M. T. Joshi
Judicial Member

24.06.2021
PK