

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved On: 07.04.2022**

**Date of Decision : 09.06.2022**

**Appeal No. 426 of 2020**

1. Powerhouse Fitness Ltd.  
Concord CHS Ltd.,  
Basement, JVPD, Andheri West,  
Mumbai- 49
2. Vinay Poddar  
Sunita, 62-A Peddar Road,  
Mumbai-26
3. Ashok Gupta  
Guru Kripa, 6, Dixit Road,  
Vile Parle East,  
Mumbai- 57
4. Sushma Gupta  
Guru Kripa, 6, Dixit Road,  
Vile Parle East,  
Mumbai- 57
5. Ankush Gupta  
Swati, 101, North Avenue Road,  
Santacruz West,  
Mumbai- 54
6. Mohit Sureka  
Pace House, Swastik Soc.  
N S Road No. 1,  
Mumbai-56
7. Raj Sureka  
Pace House, Swastik Soc.  
N S Road No. 1,  
Mumbai-56

8. Rashi Sureka  
Pace House, Swastik Soc.  
N S Road No. 1,  
Mumbai-56
9. N S Sureka HUF  
Since dead no address
10. Raj Sureka HUF  
Pace House, Swastik Soc.  
N S Road No. 1,  
Mumbai-56
11. Sashi Sureka  
Pace House, Swastik Soc.  
N S Road No. 1,  
Mumbai-56
12. Akshat Gupta  
Guru Kripa, 6, Dixit Road,  
Vile Parle East,  
Mumbai-57
13. Simmi Poddar  
Sunita, 62-A Peddar Road,  
Mumbai-26
14. Ashok Gupta HUF  
18, Surti Chambers,  
2<sup>nd</sup> Dhobi Talao Lane,  
Mumbai-02
15. Sushanku Enterprises Ltd.  
Concord CHS Ltd.,  
N.S. Road No. 1 JVPD,  
Mumbai-49
16. Subhtex India Ltd.  
Sunit, Peddar Road,  
Mumbai-26

...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. Saurabh Bacchawat, Advocate with Mr. Harsh Kesharia,  
Advocate for the Appellants.

Mr. Sumit Rai, Advocate with Mr. Abhiraj Arora, Ms. Anshu  
Mehta, Mr. Shourya Tanay and Mr. Harshvardhan Nankani,  
Advocates i/b ELP for the Respondent (SEBI).

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 July 31, 2020 passed by the Adjudicating Officer (“AO” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) imposing a penalty of Rs. 51 lakhs upon the appellants for violation of Regulation 12, Regulation 7 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (“SAST Regulations, 1997” for convenience) and Regulation 3 and 29 of the SAST Regulations, 2011 and 13 of the SEBI

(Prohibition of Insider Trading) Regulations, 1992 (“PIT Regulations, 1992” for convenience) etc.

2. The facts leading to the filing of the present appeal is, that a show cause notice dated November 13, 2019 was issued alleging the following:-

*“3(a) Acquisition of more than 5% shares of the Target Company by Noticees No. 1 to 5 were not disclosed to the target company and the stock exchanges within the stipulated time period or even any time thereafter. Further, no public announcement after acquisition of these shares were by the said Noticees.*

*(b) Non-disclosure of sale of more than 5% shares of the Target Company by Noticees No. 6-11 to the target company and the stock exchanges within the stipulated time period or even any time thereafter.*

*(c) Acquisition of more than 2% shares of the Target Company by Noticees No. 1-5, 7, 12 and 13 were not disclosed to the target company and the stock exchanges within the stipulated time period or even any time thereafter. Such acquisition was also not*

*disclosed to the stock exchanges by the Target Company.*

*(d) Non-disclosure of creation and invocation of pledge of shares of the Target Company by Noticees No. 2,3,4,5,12 and 13 to the stock exchanges and the Target Company.*

*(e) Acquisition of more than 2% shares of the Target Company by Noticees No. 2, 3, 4,5,12 and 13 were not disclosed to the target company and the stock exchanges on 2 instances within the stipulated time period or even any time thereafter.*

*(f) The Target Company had failed to make requisite disclosures under Regulation 8(3) of the SAST 1997 about the change in the shareholding of the promoters in the said Financial Year.*

*g) Delayed disclosure/ Non-disclosure of the change in shareholding amounting to more than 25000 shares of the Target Company by the Noticees No. 2, 3, 5, 12, 13 to the Target Company and the stock exchanges on various dated between June 1, 2012 and September 12, 2014.*

*(h) Non-disclosure of sale of more than 5% shareholding in the Target Company by the*

*Noticee No. 16 to the stock exchanges and the Target Company.*

- (i) Non-disclosure of change in shareholding after acquisition of shares on 2 instances, to the Target Company and the stock exchanges and non-compliance with open offer obligation by Noticees No. 2,3,4,5,12,13,15,17,18 in the second instance.*
- (j) Non-disclosure of acquisition of shares of the target company made through preferential allotment, to the Target Company and the stock exchanges by Noticees No. 3,4,12,15,17,18.*
- (k) Non-compliance with various provisions of ICDR Regulations by Noticee No. 14 with respect to preferential allotments done by the target company on 2 instances.”*

3. The AO found that there was a change in the promoters group as per the shareholding details of the Company disclosed on the BSE Limited website for the quarter ending June 2006 and September 2006. The promoters group was holding 16% equity shares of the target company. The acquirers acquired 6.97% equity shares of the target company from the seller

promoters. The acquirers were under an obligation to make a public announcement to acquire the shares under Regulation 12 of the SAST Regulations, 1997. Vide letter dated June 16, 2015 the target company informed that no such announcement was made under the said regulations. Further, the AO found that from the holding statements received from the Registrar of the Company vide email dated August 11, 2017, that during the quarter ended June 2007 the erstwhile promoters of the target company acquired 4,17,000 equity shares of the target company which increased the aggregate holding of the promoter group from 16.45% to 18.83%. The acquirers were under a collective obligation to file disclosure under Regulation 7(1A) of the SAST Regulations, 1997 which they failed to do so. It was also found that the Board of Directors of the target company allotted 1,08,44,426 equity shares to erstwhile promoters, its relatives and entity controlled by promoters and, therefore, the aggregate holding of erstwhile promoters increased from 6.19% to 18.86%. Accordingly, the AO held that the promoters were under an obligation to make a disclosure to the company and the stock exchange under Regulation 29(2) of the SAST Regulations, 2011 within two days which they failed to disclose.

On the aforesaid findings, the AO accordingly imposed the penalty.

4. We have heard Shri Saurabh Bacchawat, the learned counsel for the appellants and Shri Sumit Rai, the learned counsel for the Respondent.

5. At the outset, we find that certain shares were acquired in 2006-2007 for which disclosures was not made. The acquisition of the shares was in the public domain. The holding statements have been culled out from the Registrar of Companies and, therefore, such information was in the public domain. Nothing has come on record to indicate that the respondents were unaware of the aforesaid acquisition.

6. In our opinion, there is an inordinate delay in the issuance of the notice. The acquisition is of the year 2006-2007. The impugned order indicates that certain information was given by the target company in the year 2015 inspite of which no steps were taken by the respondent to initiate proceedings and it took another four years for issuance of a show cause notice in the year 2019. Thus, there is an inordinate delay of 13 years in the initiation of the proceedings. Such long inordinate delay by



itself causes a prejudice to the appellants especially when the appellants are no longer in charge of the Company which has been taken over through a hostile acquisition and are not in possession of the documents.

7. The contention of the respondent that there is no period of limitation nor there is an unreasonable delay in the issuance of the show cause notice is patently erroneous.

8. 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.”*

9. Since adequate information was disseminated the respondents had knowledge of the fact that the appellants had acquired more than 5% of the shares and, if, the same was not disclosed the appellants could not be penalized after more than 13 years. In our view, there has been an inordinate delay in initiating the proceedings and, therefore, on the ground of laches, we are of the opinion that the proceedings initiated against the appellants for transaction done in 2006-2007 cannot be sustained.

10. In so far as the alleged transactions done in the year 2013 is concerned, there is a delay but not an inordinate delay for this

Tribunal to quash the proceedings. However, the delay in the issuance of the show cause notice would be treated as a mitigating factor for the purpose of quantification of the penalty if it is found that the security laws have been violated by the appellants.

11. In this regard, we find that the show cause notice was issued on November 13, 2019 and the last hearing was conducted on February 13, 2020. The proceedings were initiated and closed within three months.

12. It is the consistent stand of the appellants that the record and statutory registers were stolen from the registered office of the Company in respect of which a First Information Report (FIR) was lodged in the year 2012 and that the case is pending before Additional Chief Metropolitan Magistrate, 47<sup>th</sup> Court, Esplanade, Mumbai and, therefore, sought time to file a proper reply to the show cause notice. It was also stated that pursuant to a hostile takeover in the year 2014 the appellants are not in control or management of the Company. In this regard, the AO has noted the adjournment sought by the appellants but has not considered the last email that was sent on February 13, 2020, whereby, the appellants had sought further time to file a reply.

13. In the light of the aforesaid, we are of the view, that adequate and proper opportunity was not provided to the appellants to file an adequate reply. Matter relates to the transactions done in 2006-2007 and 2013. The AO was also informed that the records have been stolen and that the appellants are no longer in control of the management. In our opinion, heaven was not falling and there was no such tearing urgency for the respondent to proceed in the matter. In our opinion, dilatory tactics was not being adopted by the appellants and, consequently, in our opinion some more time should have been given to the appellants to file a reply. Before us it has been stated that the allotment of shares in the year 2013 was cancelled by the Company Law Board vide order dated June 04, 2015 and, therefore, the question of compliance of the SAST Regulations did not arise.

14. Considering the aforesaid, the impugned order cannot be sustained and is quashed. The appeal is allowed. The show cause notice in relation to the transactions which occurred in the year 2006-2007 are quashed. The matter is remitted to the AO to decide the violation, if any, with regard to the allotment of shares by the Company in the year 2013 after providing

adequate opportunity to the appellants to file their reply and opportunity of hearing. In this regard, we direct the appellants to appear before the AO on June 30, 2022 on which date adequate time would be provided by the AO to appellants to file the reply. We also direct the AO to decide the matter afresh within four months after the reply is received and after giving an opportunity of hearing. In the circumstances of the case, parties shall bear their own costs.

15. 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