SUPREME COURT OF INDIA

Adjudicating Officer, Securities and Exchange Board of India

Vs.

Bhavesh Pabari

C.A.No.11311 of 2013

(Ranjan Gogoi,CJI., Deepak Gupta and Sanjiv Khanna,JJ.,)

28.02.2019

JUDGMENT

Sanjiv Khanna,J.,

1. Delay condoned.
2. Two primary questions, in a way interconnected, Sign ature-Not Verified have been referred by the Referral judgment and order dated 14th March, 2016 passed in *Siddharth Chaturvedi Vs. Securities and Exchange Board of India*[1]. The correctness of the view expressed on the said two questions by a numerical smaller bench of this Court in Securities and Exchange Board of India through its *Chairman vs. Roofit Industries Limited*[2] would coincidentally arise. The questions referred can be enumerated and summarized as follows:

> (i) Whether the conditions stipulated in clauses (a), (b) and (c) of Section 15-J of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") are exhaustive to govern the discretion in the Adjudicating Officer to decide on the quantum of penalty or the said conditions are merely illustrative?
>
> (ii) Whether the power and discretion vested by Section 15-J of the SEBI Act to decide on the quantum of penalty, regardless of the manner in which the first question is answered, stands eclipsed by the penalty provisions contained in Section 15-A to Section 15-HA of the SEBI Act?
>
> 3. The SEBI Act, as the object of its enactment would indicate, was enacted "to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto."

4. For the purposes of the present reference, we may proceed to consider the provisions contained in Chapter VI-A of the SEBI Act. Sections 15-A to 15-HA are the penalty provisions whereas Section 15-I deals with the power of adjudication and Section 15-J enumerates the "factors to be taken into account by the Adjudicating Officer" while adjudging the quantum of penalty.

5. Section 15-A, illustratively, as existing prior to its amendment by Act No.59 of 2002, as amended by Act No.59 of 2002 and thereafter as amended by Act No.27 of 2014 and Section 15-J are required to be specifically noticed at this stage.
Section 15A as existing prior to Amendment Act No.59 of 2002

> "15A. Penalty for failure to furnish information, return, etc. - If any person, who is required under this Act or any rules or regulations made there-under, -
>
> (a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty not exceeding one lakh and fifty thousand rupees for each such failure;
>
> (b) to file any return or furnish any information, books or other documents within the time specified there for in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day, during which such failure continues;
>
> (c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty not exceeding ten thousand rupees for every day during which the failure continues."
>
> Section 15A as amended by Act No.59 of2002
>
> "15A. Penalty for failure to furnish information, return, etc. - If any person, who is required under this Act or any rules or regulations made thereunder, -
>
> (a)to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;
>
> (b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;
>
> (c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less."
>
> Section 15A as amended by Amendment Act No.27 of 2014
> "
> 15-A. Penalty for failure to furnish information, return, etc. - If any person, who is required under this Act or any rules or regulations made thereunder,-
>
> (a) to furnish any document, return or report to the Board fails to furnish the same,

he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

(c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Section 15 J

"15-J. Factors to be taken into account by the adjudicating officer.- While adjudging the quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation - for the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15-A to 15-E, clauses (b) and (c) of section 15-F, 15-G, 15-H and 15-HA shall be and shall always be deemed to have been exercised under the provisions of this section."

[Explanation added by Act No. 7 of 2017]

6. Insofar as the second question is concerned, if the penalty provisions are to be understood as not admitting of any exception or discretion and the penalty as prescribed in Section 15-A to Section 15-HA of the SEBI Act is to be mandatorily imposed in case of default/failure, Section 15-J of the SEBI Act would stand obliterated and eclipsed. Hence, the question referred. Sections 15-A(a) to 15-HA have to be read along with Section 15-J in a manner to avoid any inconsistency or repugnancy. We must avoid conflict and head-on-clash and construe the said provisions harmoniously. Provision of one section cannot be used to nullify and obtrude another unless it is impossible to reconcile the two provisions. The explanation to Section 15- J of the SEBI Act added by Act No.7 of 2017, quoted above, has clarified and vested in the Adjudicating Officer a discretion under Section 15-J

on the quantum of penalty to be imposed while adjudicating defaults under Sections 15-A to 15-HA. Explanation to Section 15-J was introduced/added in 2017 for the removal of doubts created as a result of pronouncement in M/s. Roofit Industries Ltd. case (supra). We are in agreement with the reasoning given in reference order dated 14th March, 2016 that M/s Roofit Industries Ltd. had erroneously and wrongly held that Section 15-J would not be applicable after Section 15- A(a) was amended with effect from 29th October, 2002 till 7th September, 2014 when Section 15-A(a) of the SEBI Act was again amended. It is beyond any doubt that the second referred question stands fully answered by clarification through the medium of enacting the Explanation to Section 15-J vide Act No.7 to 2017, which also states that the Adjudicating Officer shall always have deemed to have exercised and applied the provision. We, therefore, deem it appropriate to hold that the provisions of Section 15-J were never eclipsed and had continued to apply in terms thereof to the defaults under Section 15-A(a) of the SEBI Act.

7. Reference Order in Siddharth Chaturvedi & Ors. (supra) on the said aspect has observed that Section 15-A(a) could apply even to technical defaults of small amounts and, therefore, prescription of minimum mandatory penalty of Rs.1 lakh per day subject to maximum of Rs.1 crore, would make the Section completely disproportionate and arbitrary so as to invade and violate fundamental rights. Insertion of the Explanation would reflect that the legislative intent, in spite of the use of the expression "whichever is less" in Section 15-A(a) as it existed during the period 29th October 2002 till 7th September 2014, was not to curtail the discretion of the Adjudicating Officer by prescribing a minimum mandatory penalty of not less than Rs. 1 lakh per day till compliance was made, notwithstanding the fact that the default was technical, no loss was caused to the investor(s) and no disproportionate gain or unfair advantage was made. The legislative intent is also clear as Section 15A(a) was amended by the Amendment Act No.27 of 2014 to state that the penalty could extend to Rs. 1 lakh for each day during which the failure continues subject to a maximum penalty of Rs. 1 crore. This amendment in 2014 was not retrospective and therefore, clarificatory and removal of doubt Explanation to Section 15-J was added by the Act No. 7 of 2017. Normally the expression "whichever is less" would connote absence of discretion by prescribing the minimum mandatory penalty, but in the context of Section 15A(a) as it was between 29 th October,2002 till 7th September, 2014, read along with Explanation to Section 15-J added by Act No.7 of 2017, we would hold the legislative intent was not to prescribe minimum mandatory penalty of Rs.1 lakh per day during which the default and failure had continued. We would prefer read and interpret Section 15-A(a) as it was between 25th October, 2002 and 7th September, 2014 in line with the Amendment Act 27 of 2014 as giving discretion to the Adjudicating Officer to impose minimum penalty of Rs.1 lakh subject to maximum penalty of Rs.1 crore, keeping in view the period of default as well as aggravating and mitigating circumstances including those specified in Section 15-J of the SEBI Act.

8. This will require us to consider the first question referred. Having dealt with the submissions advanced by the rival parties, (both parties have actually canvassed for a wider and more expansive interpretation of Section 15-J), we are inclined to take the view that the provisions of clauses (a), (b) and (c) of Section 15-J are illustrative in nature and have to be taken into account whenever such circumstances exist. But this is not to say that there can be no other circumstance(s) beyond those enumerated in clauses (a), (b) and (c)

of Section 15-J that the Adjudicating Officer is precluded in law from considering while deciding on the quantum of penalty to be imposed.

9. A narrow view would be in direct conflict with the provisions of Section 15-I(2) of the SEBI Act which vests jurisdiction in the Adjudicating Officer, who is empowered on completion of the inquiry to impose "such penalty as he thinks fit in accordance with the provisions of any of those sections."

10. The above apart, the circumstances enumerated in clauses (a), (b) and (c) of Section 15-J of the SEBI Act may have no relevance and may never arise in case of contraventions contemplated by certain provisions of the SEBI Act, for instance Section 15-A, 15-B or 15-C of the SEBI Act. Failure to furnish information, return, etc.; failure to enter into agreement with clients; and failure to redress investors' grievances cannot give rise to the circumstances set out in clauses (a), (b) and (c) of Section 15-J.

11. Therefore, to understand the conditions stipulated in clauses (a), (b) and (c) of Section 15-J to be exhaustive and admitting of no exception or vesting any discretion in the Adjudicating Officer would be virtually to admit/concede that in adjudications involving penalties under Sections 15- A, 15-B and 15-C, Section 15-J will have no application. Such a result could not have been intended by the legislature. We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15- J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15-J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty.

12. At this stage, we must also deal with and reject the argument raised by some of the private appellants that the conditions stipulated in clauses (a) to (c) of Section 15-J are mandatory conditions which must be read into Sections 15- A to 15-HA in the sense that unless the conditions specified in clauses (a) to (c) are satisfied, penalty cannot be imposed by the Adjudicating Officer under the substantive provisions of Sections 15-A to 15-HA of the SEBI Act. The argument is too far-fetched to be accepted. Section 15-J of the SEBI Act enumerates by way of illustration(s) the factors which the Adjudicating Officer should take into consideration for determining the quantum of penalty imposable. The imposition of penalty depends upon satisfaction of the substantive provisions as contained in Sections 15-A to Section 15-HA of the SEBI Act.

13. There is a distinction between a continuing offence and a repeat offence. The continuing offence is a one which is of a continuous nature as distinguished from one which is committed once and for all. The term "continuing offence" was explained and elucidated by giving several illustrations in *State of Bihar vs. Deokaran Nenshi & Ors*[3]. . In case of continuing offence, the liability continues until the rule or its requirement is obeyed or complied with. On every occasion when disobedience or non-compliance occurs and reoccurs, there is an offence committed. Continuing offenceconstitutes a fresh offence every time or occasion it occurs. In *Union of India & Anr. Vs. Tarsem Singh*[4], continuing offence or default in service law was explained as a single wrongful act which causes a continuing injury. A recurring or successive wrong, on the other hand, are those which occur periodically with each wrong giving rise to a distinct and separate cause of action.

We have made reference to this legal position in view of clause (c) of Section 15-J of the SEBI Act which refers to repetitive nature of default and not a continuing default. The word "repetitive" as used therein would refer to a recurring or successive default. This factum has to be taken into consideration while deciding upon the quantum of penalty. This dictum, however, does not mean that factum of continuing default is not a relevant factor, as we have held that clauses (a) to (c) in Section 15-J of the SEBI Act are merely illustrative and are not the only grounds/factors which can be taken into consideration while determining the quantum of penalty.

14. We now proceed to consider each of the case as, in our considered view, such exercise would be appropriate to finally terminate/decide the appeals under consideration. C.A. No. 9797 of 2014 (*Bhavesh Pabari Vs. The Adjudicating Officer, SEBI) C.A. No. 9798 of 2014 (M/s. Shree Radhe Vs. The Adjudicating Officer, SEBI) C.A. No. 9799 of 2014 (Hemant Sheth Vs. The Adjudicating Officer, SEBI*)

15. These appeals arise from a common order dated 10th September, 2013 passed by the Securities Appellate Tribunal, Mumbai, ("Appellate Tribunal" for short), on appeals preferred by Mr. Bhavesh Pabari, M/s Shree Radhe, and Mr. Hemant Sheth impugning three separate orders all dated 30th December, 2011 passed by the Adjudicating Officer under Section 15-I of the SEBI Act.

16. Impugned order passed by the Appellate Tribunal confirms penalty of Rs.20,00,000 (Rupees twenty lakhs only) each as imposed on the appellants by the Adjudicating Officer under Section 15-HA of the Act for violation of Regulation Nos.4(2)(a), (b) and (g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations" for short).

17. Factual findings, as observed by the Adjudicating Officer and accepted by the Appellate Tribunal as un-controvertible, are mentioned below:

(i) Bhavesh Pabari in his name and as sole proprietor of M/s. Shree Radhe, Hemant Sheth and one Neeraj Sanghvi had indulged in synchronized/structured and reversed trade in the scrips of M/s. Gulshan Polyols Ltd. (erstwhile Gulshan Sugar and Chemicals Ltd.) ("GPL" for short) from 10th April, 2006 to 8th September, 2006.

(ii) Connection/complicity between Bhavesh Pabari/M/s. Shree Radhe, Hemant Sheth and one Neeraj Sanghvi was established and was not disputed. Hemant Sheth and Bhavesh Pabari/M/s. Shree Radhe had a common introducer in the "Know Your Customer" documentation.

(iii) Scrips of GPL opened at Rs.44.75 on 12th January, 2006, touched a peak high of Rs.103.40 on 30th August, 2006 and closed at Rs. 31.70 on 29 th December, 2006. The share price of the scrips during the period 1st December, 2005 to 11 January, 2006 was in the range of Rs.31.50 to Rs. 49.90 with an average daily volume of 8,255 shares.

(iv) The three appellants along with Neeraj Sanghvi, during the period 10th April, 2006 to 8th September, 2006 had traded with each other in 18,48,081 shares of the GPL which had accounted for around 16.29% of the total traded volume in this period.

(v) About 45% of the total shares, i.e., 8,34,453 shares were executed via structured orders, i.e., buy and sell orders which were placed within a gap of one minute. Out of this, trade in 5,97,835 shares (32% of the total shares traded) were through synchronized orders as the rate and quantity of the buy and sell order were identical.

(vi) On 64 trading dates between 10th April, 2006 to 8th September, 2006, a reverse trading pattern was espied in 15,18,204 shares, which had accounted for 13.38% of the total market value and was more than 20% of the market volume in the aforesaid period.

(vii) On 24 days between the period from 10 April, 2006 to 8th September, 2006, the quantity traded in the GPL scrips between the connected persons was more than 50% of the market volume.

(viii) On 1st August, 2006, the connected transactions were 83.79% of the market volume.

(ix) Bhavesh Pabari had indulged in self trade in 60,203 GPL shares (5.1% of the total traded quantity from 18th April, 2006 to 25th August, 2006).

(x) Bhavesh Pabari had executed reversal trades with M/s. Shree Radhe and Hemant Sheth for 7,73,810 shares during the period 18th April, 2006 to 25th August, 2006 which was 66% of the total traded quantity.

(xi) Bhavesh Pabari had entered into 96 buy trades in 1,22,324 shares which were found to be synchronized by price and time and 69 buy trades in 1,43,170 shares synchronized by price, time and quantity with his sole proprietorship M/s. Shree Radhe in the period 18th April, 2006 to 25th August, 2006.

(xii) Bhavesh Pabari had entered into 282 sell trades in 2,16,578 shares which were synchronized by price and time, and 32 sell trades for 43,626 shares which was found to be synchronized by price, time and quantity with M/s Shree Radhe during the period 18th April, 2006 to 25th August, 2006.

(xiii) Bhavesh Pabari had entered into 28 buy trades for 55,915 shares synchronized by price and time and 21 buy trades for 39,350 shares synchronized by price, time and quantity with Hemant Sheth in the period 18th April, 2006 to 25th August, 2006.

(xiv) Bhavesh Pabari had entered into 22 sell trades for 41,500 shares which were

found to be synchronized by price and time and 16 sell trades for 40,422 shares which were synchronized by price, time and quantity with Hemant Sheth in the period 18th April, 2006 to 25th August, 2006.

(xv) Similarly, there were 13 buy and sell trades with Neeraj Sanghvi.

18. The sole contention of the learned counsels appearing on behalf of Bhavesh Pabari and M/s Shree Radhe is that penalties of Rs.20,00,000 (Rupees twenty lakhs only) each should not have been separately imposed on Bhavesh Pabari and M/s Shree Radhe, of which he was the sole proprietor.

19. This contention superficially seems attractive, but on an in-depth reflection should be rejected as Bhavesh Pabari had indulged in trading in its personal name and as also the sole proprietor of M/s. Shree Radhe. This is clear from inter se transactions and transactions with connected persons. Thus, Bhavesh Pabari had transacted in two different capacities, i.e., in his personal name and as sole proprietor of M/s. Shree Radhe. It is in this background that total penalty of Rs.40 lakhs (Rupees forty lakhs only) under Section 15-HA of the SEBI Act had been imposed for violation of Regulations 4(2)(a), (b) and (g) of the PFUTP Regulations as the transactions were in two different names, though belonging to the same individual.

20. Accordingly, C.A. No.9798/2014 preferred by M/s Shree Radhe and C.A. No.9797/2014 preferred by Bhavesh Pabari hold no merit and are dismissed affirming the order passed by the Appellate Tribunal and confirming the penalty of Rs.20,00,000/- (Rupees twenty lakhs only) each imposed under Section 15-HA of the Act. C.A. No. 9799/2014 by Hemant Sheth must also fail. In the given facts, we are not inclined to show indulgence and leniency to the three appellants, as the facts found are highly ignominious and scandalous. C.A. No. 11311 of 2013 (A.O., Securities and Exchange Board of India vs. Bhavesh Pabari) C.A. No. 1824 of 2014 (Securities & Exchange Board of India Vs. M/s. Shree Radhe)

21. SEBI has filed cross appeals aggrieved by the order of Appellate Tribunal dated 10th September, 2013 deleting the penalty of Rs.10,00,000 (Rupees ten lakhs only) each imposed on Bhavesh Pabari and M/s Shree Radhe under Section 15-A(a) of the SEBI Act for violating Section 11-C(3) and 11-C(5) of SEBI Act.

22. The relevant portion of the impugned order passed by the Appellate Tribunal reads:

> "Additional challenge in Appeal No. 71 of 2012 and 72 of 2012, relates to imposition of Rs.10 lac penalty upon each appellant for violating Section 11C (3) and 11C (5) of SEBI Act. Grievance of appellants is that failure to furnish requisite information was due to circumstances beyond control viz. grandmother of Bhavesh Pabari (Appellant in Appeal No. 71 of 2012) who is proprietor of M/s. Shree Radhe (Appellant in Appeal No. 72 of 2012) had expired during the relevant period and, therefore, he was in disturbed mind at the material time. Though, explanation given does not inspire confidence in the facts of present case, where penalty of Rs. 20 lac has already been upheld, in our opinion, it would be just and proper to delete

penalty of Rs. 10 lac imposed upon both appellants".

23. Submission of the SEBI that the impugned order did not record any reason for deleting the said penalty, in spite of observing that the explanation given by Bhavesh Pabari did not inspire confidence, would be a just and fair criticism and a good challenge. We clearly have reservations on the ground stated or rather lack of reasoning given by the Appellate Tribunal, especially in the light of the language of Sections 15-A(a) and Section 15-J of the Act. However, during the hearing, the learned counsel appearing for Bhavesh Pabari had drawn our attention to his reply dated 28th September, 2009 stating that Bhavesh Pabari's grandmother had expired and, therefore, he had requested for time to make an appearance. It was stated at the Bar that grandmother of Bhavesh Pabari had expired on 19th September, 2009, and this aspect was highlighted and made known to the authorities. Furthermore, Bhavesh Pabari/ M/s. Shree Radhe had submitted part information vide letter dated 2nd November, 2009. These aspects and explanations have not been considered by the Appellate Tribunal.

24. Adjudicating Officer, while imposing penalty had referred to the letter dated 6th May, 2009 by which Bhavesh Pabari and M/s. Shree Radhe were required to furnish information of details regarding trading in the GPL scrips, connection/relation with the GPL, its promoters/directors, connection/relation between Hemant Sheth, etc. but the said notice was not complied with. Thereafter, reminders dated 21st July, 2009 and 14th August, 2009 were issued, but again of no avail. This was followed by summons dated 4th September, 2009, 23rd September 2009, 20th October, 2009 and 5th November, 2009.

25. Given the aforesaid facts, we should have remitted the matter to the Appellate Tribunal for a fresh adjudication and examination but would refrain from doing so in view of the time gap, the quantum of fine imposed, and, as we have upheld the total penalty of Rs.40,00,000/- (Rupees forty lakhs only) imposed on the appellant under Section 15-HA of the SEBI Act. We would rather close the proceedings. Accordingly, appeals preferred by SEBI, i.e., C.A. No.11311 of 2013 and C.A. No.1824 of 2014 are also disposed of. C.A. No.14728/2015 (Ankur Chaturvedi vs. Securities and Exchange Board of India); C.A. No.14729/2019 (Jay Kishore Chaturvedi vs. Securities and Exchange Board of India); and C.A. No.14730/2015 (Siddharth Chaturvedi vs. Securities and Exchange Board of India); and

26. The above-captioned appellants are Promotors-cum- Directors of M/s. Brij Laxmi Leasing and Finance Co. Ltd., a company whose shares were listed on the Bombay Stock Exchange.

27. It is accepted and admitted that the appellants Ankur Chaturvedi, Sidharth Chaturvedi and Jay Kishore Chaturvedi having purchased shares of M/s. Brij Laxmi Leasing and Finance Co. Ltd. on 2, 3 and 6 occasions respectively, were required but had failed to make necessary disclosures to the stock exchange as stipulated and statutorily mandated by Regulations 13(4) and 13(4A) read with Regulation 13(5) of the Securities and Exchange Board of India (Probation of Insider Trading) Regulations, 1992 ("PIT Regulations" for short).

28. For the said violations, penalty of Rs.5,00,000/- (Rupees five lakhs only) in the case of Ankur Chaturvedi and Sidharth Chaturvedi and Rs.11,00,000/- (Rupees eleven lakhs only) in the case of Jay Kishore Chaturvedi were imposed under Section 15-A(b) of the SEBI Act. Ankur Chaturvedi had also suffered penalty of Rs.2,00,000/- (Rupees two lakhs only) under Section 15-HB of the SEBI Act as he had sold 45,032 shares after acquiring 45,000 shares on 29th January, 2013, which was in violation of Clause 4.2 of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies as set out in Schedule I, Part A of the PIT Regulations.

29. The aforesaid penalties were affirmed in the impugned order passed by the Appellate Tribunal, rejecting the contention that the penalty so imposed was harsh and deserved substantial reduction as there was no intention on the part of the appellants to suppress purchase or sale or that non-disclosure had not caused profits to appellants or otherwise a loss to the investors and that the failure to make disclosure was an inadvertent error without mala fide intention.

30. The Appellate Tribunal, considering the factual matrix, has held that the maximum penalty stipulated in the PIT Regulations was Rs.1,00,000/- (Rupees one lakh only) for each day during which the failure continued or Rs.1,00,00,000/- (Rupees one crore only), whichever was less. The penalty imposed by the Adjudicating Authority took into consideration the mitigating factors and cannot be said to be excessively harsh or unreasonable.

31. In view of the factual background and the reasoning given by the Appellate Tribunal, we do not find any good ground and reason to interfere with the quantum of penalty confirmed by the impugned order passed by the Appellate Tribunal. *(Akshat Tandon and Others vs. Securities and Exchange Board of India*[5]); and (*Badri Vishal Tandon vs. Securities and Exchange Board of India6*).

32. We have jointly dealt with these two appeals as they both relate to shares of M/s Bhawani Paper Mills Ltd. ("the Target Company" in short).

33. In the first appeal, Akshat Tandon and 14 others are aggrieved by the order dated 5th October, 2016 passed by the Appellate Tribunal wherein their appeal against order dated 31st July, 2014 passed by the Adjudicating Officer imposing penalty between Rs.3,00,000/- (Rupees three lakhs only) to Rs.6,00,000/- (Rupees six lakhs only) for each of the 15 violations of Regulation Nos. 3(3) and 3(4) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 ("SAST Regulations" for short) was upheld.

34. The appellants were promotors of the target company and together were holding 54% of the paid-up shares of the target company, which were acquired on various dates. The acquisition was in excess of the limits prescribed under Regulations 3(3) and 3(4) of SAST Regulations. Failure to notify/submit report to the concerned authorities within the stipulated time in terms of Regulations 3(3) and 3(4) is accepted. The case of the appellants is predicated on the principle of proportionality, for it is asserted that the quantum of penalty imposed is excessive and unreasonably harsh. Similar contentions were raised

before the Appellate Tribunal with the submission that the target company had incurred huge losses and that it was a sick company. Furthermore, there was an absence of disproportionate gain or unfair advantage to the appellants or otherwise a loss to the investors. Contentions were rejected on the ground that the penalty imposed was reasonable and not harsh. To justify the quantum, reference was made to Sections 15-A(a) and (b) of the SEBI Act, which stipulate that the penalty could be Rs.1,00,000 (Rupees one lakh only) for each day during which the violation continued and could be as high as Rs.1,00,00,000/- (Rupees one crore only) for each violation.

35. This court, in the exercise of its jurisdiction under Section 15-Z of the SEBI Act, cannot go into the proportionality and quantum of the penalty imposed, unless the same is distinctly disproportionate to the nature of the violation which makes it offensive, tyrannous or intolerable. Penalty by the very nature of the provision is penal. We can interfere only where the quantum is wholly arbitrary and harsh which no reasonable man would award. In the instant case, the factual findings are not denied and, thus, we are not inclined to intermeddle with the quantum of penalty. The penalty imposed is just, fair and reasonable and, thus, upheld.

36. The appellants have also contended that in the absence of any prescribed limitation period, SEBI should have issued show cause notice within a reasonable time and there being a delay of about 8 years in issuance of show cause notice in 2014, the proceedings should have been dropped. This contention was not raised before the Adjudicating Officer in the written submissions or the reply furnished. It is not clear whether this contention was argued before the Appellate Tribunal. 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. The show cause notice in the present case had specifically referred to the respective dates of default and the date of compliance, which was made between 30th August, 2011 to 29th November, 2011 (delay was between 927 days to 1897 days). Only upon compliance being made that the defaults had come to notice. In the aforesaid background, and so noticing the quantum of fine/penalty imposed, we do not find good ground and reason to interfere.

37. Now coming to the second appeal, Badri Vishal Tandon has impugned the order dated 20th June, 2018 passed by the Appellate Tribunal affirming the order dated 29th December, 2017 passed by the Adjudicating Officer, whereby he has been saddled with penalty of Rs. 1,50,000/- (Rupees one lakh fifty thousand only) for violation of Regulation 7(1A) read with Regulation 7(2) of the SAST Regulations. The appellant as Karta of Ram Mohandas Tandon (HUF) was allotted 22,50,000 shares of the target company by way of preferential allotment, which constituted 6.46% of its total share capital. The shares were allotted pursuant to the approval given by the Board of Directors vide letter dated 25th June, 2011. The letter of allotment was received by him on 27th June, 2011, and 22,50,000 shares of the Target Company were transferred to his demat account on 12th August, 2011.

38. The Appellate Tribunal has affirmed the factual findings that there was a delay in disclosure, which was required to be made within two days of the receipt of intimation of

allotment of shares, as per Regulations 7(1A) and 7(2) of the SAST Regulations. The intimation/letter from the Target Company about the said acquisition was received by the Bombay Stock Exchange only on 11th July, 2011.

39. Maximum penalty imposable on Badri Vishal Tandon was upto Rs.1,00,00,000/- (Rupees one crore only). In this backdrop, we do not find any reason to interfere with the quantum of penalty of Rs.1,50,000/- (Rupees one lakh and fifty thousand only) as imposed in exercise of jurisdiction under Section 15-Z of the SEBI Act. C.A. No.1009/2017 (Magnum Equity Broking Ltd. Vs. Securities and Exchange Board of India).

40. The appellant has assailed the order of the Adjudicating Officer dated 18th July, 2014, which was affirmed by the Appellate Tribunal vide order dated 28th November, 2016, whereby penalty of Rs.3,00,000/- (Rupees three lakhs only) was imposed on the appellant for violation of Clause A(2) of the Code of Conduct for Stock Brokers. The said penalty was imposed pursuant to investigation into trading in scrips of M/s Aarey Drugs and Pharmaceuticals Ltd. ("ADPL" in short) and M/s Winsome Textile Industries Ltd. ("WTIL" in short) during the period 1st January, 2009 to 31st August, 2009.

41. The brief facts are that the appellant was a stock broker and member of the Bombay Stock Exchange Limited. The appellant had executed synchronized trades in the aforesaid scrips on behalf of its clients - Mr. Ronak Choski, Mr. Shailesh Patel, Ms. Nitaben Patel and Ms. Kapilaben Patel, acting both as a stock broker as well as party stock broker. Total volume of symphonized trade in the scrip of WTIL was 68,02,131 shares, which were executed on one day. Total volume of 88,89,052 shares in the case of scrip of ADPL were transacted over a period of five days. The appellate order succinctly refers to the figures and details of such transactions, for example, on 19 th February, 2009, the appellant's clients had executed 18 trades in the scrip of WTIL, which constituted 68% of the total number of shares traded on that date and 38% of the trades executed on that date. For 7 out of 18 synchronized trades, the buy and sell orders were perfectly matching in price and quantity. Similarly, on 20 th March, 2009, there were 73 synchronized trades in the scrip of ADPL amounting to 43.8% of the shares traded and 63.4% of the trades executed. The appellate order observes that such synchronized trades create an artificial volume, leading to ratcheting up in the trading of the scrip and cause price fluctuations, thereby misleading the potential investors. Such transactions create a deceptive appearance as to the quantum of trading in the scrip which could be understood as a viable investment opportunity when it is not. This hurts and damages sanctity of the securities market. Reference was specifically made to the factum that the synchronized trade on different dates was amounting to 3.4%, 7.17%, 20.4% and 15.12% of the total market volume on 25th March, 2009, 23rd March, 2009, 26th March, 2009 and 27th March, 2009 respectively.

42. The appellant does not controvert the transactions/trades. The case of the appellant is that the trades were executed within a normal price range and did not lead to an artificial price movement. Reliance was placed on SEBI's circular dated 14th September, 1999 that cross deals executed between two clients of the same broker can be conducted through the screen mechanism of the stock exchange. Submission was that the synchronized trade was not a result of any illicit scheme. However, Appellate Tribunal had rejected the contentions as the transactions/trades made by the appellants were between family members restricted

to two scrips of WTIL and ADPL spread over a period of 6 days and had referred to the factual matrix of the case.

43. Reference to the *Securities and Exchange Board of India vs. Rakhi Trading (P) Ltd*. which refers to an earlier decision in the Securities and Exchange Board of India vs. Kishore R. Ajmera is misconceived, for the said decisions do not hold that a broker cannot be proceeded against for violation of Regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 ("Stock Broker Regulations" for short) for violation of Clause A(2) of the Code of Conduct for Stock Brokers. The decisions hold that a broker would not be liable merely because he had facilitated the transactions, in the absence of any material to suggest negligence and connivance on the part of the broker. Thus, the matter would be different as observed in the concurring judgment of Banumathi, J. in Rakhi Trading Pvt. Ltd. (Supra), where there was evidence to show involvement and meeting of minds of the share broker with the client to indulge in egregious and foul transactions, in which circumstances the stock broker would be held liable. While proximity of time in an isolated case may not be conclusive, but huge volume of trading between same set/group of brokers can in a given case reasonably point to some kind of a fraudulent and manipulative exercise with prior meeting of minds. Further, there is a difference between synchronized trading involving bulk quantities and negotiated trades as a result of consensual bargaining involving synchronization of buy and sell orders resulting in matching thereof as per permissible parameters which are programmed accordingly. Test of preponderance of probability applies for the adjudication and determination of civil liability for violation of the SEBI Act or the provisions of the Regulations framed thereunder (see para 65 to 69 in Rakhi Trading Pvt. Ltd.). Keeping the aforesaid parameters in mind, the adjudicating authority had imposed penalty of Rs.3,00,000/- (Rupees three lakhs only) under Section 15- HB of the SEBI Act, which has been upheld by the Appellate Tribunal being commensurate with the violation.

44. For the aforesaid reasons, we do not find any infirmity with the concurrent findings or with the quantum of penalty imposed and the same is upheld. *C.A. No.2641/2017 (M/s Quantum Global Securities & Leasing Company Ltd. vs. Securities and Exchange Board of India).*

45. In the present appeal, the appellant is the registered stock broker and had indulged, as per the findings recorded in the adjudication order dated 22nd July, 2014 and upheld by the Appellate Tribunal vide order dated 18th January, 2017, in synchronized trades, circular trades and reversal trades in the scrips of M/s Gangotri Textiles Ltd. during the period 7th April, 2006 to 31st May, 2006. Accordingly, the appellant had violated Sections 12A (a), (b), (c) of the SEBI Act and Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a), (e) and (g) of the PFUTP Regulations and Regulation 7 read with Clauses A(1), (2), (3), (4) and (5) of the Code of Conduct for Stock Brokers specified under Schedule II of the Stock Broker Regulations. Consequently, penalty of Rs.60,00,000/- (Rupees sixty Lakhs only) was imposed under Section 15-HA for violation of the provisions of the SEBI Act and the PFUTP Regulations and the penalty of Rs.15,00,000/- (Rupees fifteen lakhs only) was imposed under Section 15-HB of the SEBI Act for the violation of the provisions of the Code of Conduct for Stock Brokers.

46. The appellant did not dispute the factual findings of having indulged in synchronized trade, circular trade and reversal trade in the scrips of M/s. Gangotri Textiles Ltd. They pleaded leniency claiming that they had no mala fide intention and their annual turnover for several years was around Rs.5,00,000/- (Rupees five lakhs only). Lastly, their contribution towards Last Traded Price (LTP) variation was nominal. The contentions have to be rejected as the appellant was a part of the larger game plan along with other entities who had indulged in synchronized, circular and reversal trading leading to a total cumulative positive and negative LTP contribution of Rs.999.25 and Rs.1007.25 respectively. It is to be further noted that the penalty imposable under 15-HA of the SEBI Act could be upto Rs.25,00,00,000/- (Rupees twenty-five crores only) or three times the amount of profit made out of such practices whichever was higher. Thus, the penalty of Rs.60,00,000/- (Rupees sixty lakhs only) was not unreasonable and excessive. Similarly, penalty of Rs.15,00,000/- (Rupees fifteen lakhs only) for failing to adhere to the standards required to be maintained by the stock brokers which could be as high as Rs.1,00,00,000/- (Rupees one crore only) was not excessive, unreasonable or harsh. Penalty was also imposed on others who had participated in the nefarious plan. Findings are correct and unchallengeable. We do not find any good ground and reason to interfere with the quantum of penalty. *C.A. No.6160/2018 (Durga Prasad Yadav & Anr. vs. Securities and Exchange Board of India*).

47. Durga Prasad Yadav and Jai Hind Kumar have filed the present appeal having suffered penalty of Rs.1,00,00,000/- (Rupees one crore only) under Section 15- A(a) of the SEBI Act for violation of Section 11-C(3) of the SEBI Act vide adjudication order dated 20th January, 2016 which stands affirmed by the Appellate Tribunal in its order dated 15th January, 2018.

48. The appellants were required to furnish particulars about the plans/schemes offered to the public, funds mobilized, Memorandum of Association, details of Directors, etc. in order to examine the matter under Section 11-AA of the SEBI Act and the SEBI (Collective Investment Schemes), Regulations, 1999 ("CIS Regulations" for short). For this purpose, various letters dated 22nd November, 2012, 11th January, 2013, 7th November, 2013 and 20th February, 2014 were written by SEBI to the two appellant Directors, two other Directors and M/s Skylark Land Developers & Infrastructure India Pvt. Ltd. for furnishing of information /documents/reports. Since there was an inordinate delay, default and failure in furnishing information and responding to these letters, fresh summons were issued on 30th July, 2014 under Section 11-C(3) of the SEBI Act requiring them to furnish the details to which again there was no response. Consequently, second summons dated 12th September, 2014 were issued for furnishing information by 22nd September, 2014, to which yet again there was no response. Thereafter, show cause notice on 30th June, 2015 was issued to which a part reply was given by the appellants on 23rd September, 2015. An email dated 30th November, 2015 was also sent by SEBI asking them to reply before 10th December, 2015, with an opportunity to appear on 15th December, 2015. This was also communicated by forwarding the notice through Speed Post AD, which was returned undelivered in case of Durga Prasad. Thus, several opportunities were given to ensure compliance by the appellants. Afterwards, on 15th December, 2015 Subodh Kumar Gupta, authorized representative of the appellants and others had appeared and sought adjournment for 22nd December, 2015, on which date a

reply was filed. Subsequently, an additional reply dated 30th December, 2015 was furnished. Appellants in the aforesaid replies had stated that their offices were sealed and, therefore, the required details and information could not be furnished. Further, SEBI had not provided them necessary documents including the copy of complaint, affidavit, evidence against them and the investigation report.

49. We would now refer to the background of the case and why notices/summons were issued. The aforesaid notices and summons were issued pursuant to orders passed by the High Court of Madhya Pradesh in the year 2010 in Public Interest Litigation against various companies including M/s Skylark Land Developer and Infrastructure India Pvt. Ltd. for cheating thousands of investors in fraudulent schemes by promising high returns. Pursuant to orders passed by the High Court, different authorities including SEBI were given liberty to take appropriate action in accordance with law. Central Bureau of Investigation was also directed to conduct investigation. Therefore, SEBI had issued notice to the aforesaid company, the two appellants and two other Directors to provide information of documents for alleged violation of Section 11-C of the SEBI Act.

50. During the course of hearing by SEBI, most details as provided by the appellants were general in nature. We would observe that in case there was no violation pertaining to mobilization of funds from the public under various schemes/arrangements, this could have been so stated in clear and categoric terms. Moreover, the contention that the offices were sealed which rendered them incapable to furnish information has been rejected for two good reasons. First, this stand is belated and held to be an afterthought when it could have been raised at the first instance when the reply dated 5th December, 2012 was furnished, given that the records were seized by the police on 5th May, 2011. Second, assertion was contradicted by their own conduct when during the proceedings they had submitted a few documents, which were incomplete and not as desired. They did not make any distinction as to the documents within their possession and as to those with the police. Appellate Tribunal had in these circumstances affirmed the finding that there was a lack of good faith and failure in complying with the aforesaid notices/letters/summons/emails. Adjudicating Officer had, therefore, rightly recorded that non-compliance of summons had hampered the further course of investigation. The failure was without any justification. Agreeing with the said findings, the Appellate Tribunal has observed that details were withheld with a view to delay the investigation being conducted by SEBI to the detriment of investors from whom funds were collected by the appellants in contravention of CIS Regulations.

51. We do not find any fault with the reasoning given. We are of the opinion that the fault squarely lied with the appellants and, thus, penalty of Rs.1,00,00,000/- (Rupees one crore only) for violation of Section 11-C(3) under Section 15-A(a) of the SEBI Act does not call for any interference.

52. The reference made vide order dated 14th March, 2016 and the above captioned Civil Appeals are, accordingly, disposed of. In the facts and circumstances of the cases, there shall be no order as to costs.

Judgment Referred.

[1]*(2016) 12 SCC 0119*
[2]*(2016) 12 SCC 0125*
[3]*(1972) 2 SCC 0890*
[4]*(2008) 8 SCC 0648*
5(2018) 13 SCC 0753
[6]*(2016) 6 SCC 0368*