BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Date of order reserved: 21/10/2016
Date of Decision : 30/11/2016

Appeal No. 126 of 2014

Mrs. Chandra Mukherji
P-195, B-Block,
Lake Town,
Kolkata – 700 089. …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. P.N. Modi, Senior Advocate a/w Mr. Neville Lashkari, Advocate i/b Mr. Santanu Mitra, Desai Diwanji for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Saurabh Bachhawat and Mr. Vivek Rana, Advocates i/b K. Ashar & Co. for the Respondent.

WITH
Appeal No. 121 of 2014

Shelter Infra Projects Pvt. Ltd.
"Eternity Building", DN-1,
Sector –V, Salt Lake,
Kolkata – 700 091. …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. U.S. Samudrala, Advocate with Ms. Vaneesa Agrawal and Mr. Ayush Jain, Advocates for Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Saurabh Bachhawat and Mr. Vivek Rana, Advocates i/b K. Ashar & Co. for the Respondent.

WITH
Appeal No. 120 of 2014

Hasmukh Parekh & Ors.
3-A, Upper Wood Street,
1st Floor,
Kolkata – 700017. …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. S.K. Jain, Advocate for Appellants.

Mr. Shyam Mehta, Senior Advocate with Mr. Saurabh Bachhawat and Mr. Vivek Rana, Advocates i/b K. Ashar & Co. for the Respondent.

WITH
Appeal No. 128 of 2014

Shanti Ranjan Paul
Vostok House,
KB-21, Salt Lake City,
Sector II,
Kolkata – 700 098. …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. Deepak Dhane, Advocate i/b Joby Mathew & Associates for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Saurabh Bachhawat and Mr. Vivek Rana, Advocates i/b K. Ashar & Co. for the Respondent.

WITH
Appeal No. 143 of 2014

1. Mr. Sisir Kumar Saha
2. Mr. Soura Sekhar Saha

Flat No. 401, Del Prado,
ST Bed Layout,
Koramangala 4th Block, …Appellants
Bengaluru – 560 034.

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. Santanu Mitra, Advocate for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Saurabh Bachhawat and Mr. Vivek Rana, Advocates i/b K. Ashar & Co. for the Respondent.

CORAM : Justice J.P. Devadhar, Presiding Officer
Dr. C.K.G. Nair, Member

Per : Dr. C.K.G. Nair

1. By this common order, we dispose of these five appeals having common/connected facts and which are heard together. These appeals raise the issue of trigger date of Unpublished Price Sensitive Information ('UPSI' for short) and whether the company in Appeal No. 121 of 2014 failed to keep the trading window of its scrip closed during the period when UPSI was in force and whether this enabled some of the Promoter-Directors and some other entities to share the UPSI with other entities

and/or trade in the shares of Shelter Infra Projects Ltd. ('Shelter Infra' for short) thereby violating relevant provisions of securities laws.

2. Through these 5 Appeals, 4 adjudication orders, all of them dated 7th March, 2014, issued by the Adjudicating Officer ("AO" for short) of Securities and Exchange Board of India ("SEBI" for short) are impugned before us. Appeal No.121 of 2014 is filed challenging the adjudication order passed against the company – Shelter Infra, whereby it was held that the appellant had violated clause 22(d) of the Listing Agreement and Regulation 12(2) read with Clause 2.1 of Schedule II of the PIT Regulations. Accordingly, penalty of Rs.50 lakh under Section 15HB of the Securities and Exchange Board of India Act, 1992 (for short "SEBI Act") and penalty of Rs.50 lakh under Section 23A(a) of SCRA for violation of the Listing Agreement has been imposed.

3. Appeal Nos. 120 & 128 of 2014 are filed against the order of the AO of SEBI passed against 8 entities for violation of Regulations 3(i), 3(ii) and 4 of the SEBI (Prohibition of Insider Trading) Regulations, 1992. However, two separate Appeals are preferred since a penalty of Rs.1 crore has been imposed on one of the appellants separately in the order (Shanti Ranjan Paul) who is in Appeal No.128 of 2014 while in Appeal No.120 of 2014, penalty of Rs.2 crore imposed under Section 15G of the SEBI Act jointly and severally on 7 appellants has been challenged.

4. Appeal No.126 of 2014 is preferred by one appellant against whom impugned order dated 7th March, 2014 imposing penalty of Rs.1 crore under Section 15G of the SEBI Act for violation of Regulation 3(i), 3(ii) and 4 of the PIT Regulations, though the impugned order was issued against

two entities including the husband of the appellant herein. However, since the husband of the appellant expired, punishment imposed on him got abated.

5. Appeal No.143 of 2014 is preferred by two appellants. A penalty of Rs.10 lakh and Rs.20 lakh, respectively was imposed on appellant No.1 under Section 15G of the SEBI Act for violation of Regulation 3(ii) and Clause 4.2 of Schedule I of Mode Code of Conduct under Regulation 12(a) of PIT Regulations. Against appellant No.2 penalty of Rs.20 lakh under Section 15G of the SEBI Act was imposed for violation of PIT Regulations.

6. Relevant facts relating to the five appeals are as follows:-

APPEAL NO.121 OF 2014:-

7. The appellant-Shelter Infra formerly known as Central Concrete and Allied Products Private Limited ("CCAP Ltd.", for short) renamed as Shelter Infra w.e.f. 11.10.2012 is engaged in the business of infrastructure since 1972. Securities and Exchange Board of India ('SEBI' for short) conducted an investigation into the substantial rise in the price of the scrip of Shelter Infra for the period from 01.04.2009 to 22.09.2009, during the period the price of the scrip increased from Rs. 9 to a high of Rs. 62.05. During the investigation it was noticed that the appellant company, along with its promoters and M/s. Ramayana Promoters Pvt. Ltd. ('RPL' for short) have entered into a Share Purchase Agreement ('SPA' for short) for the sale of 35.5% shares of the company held by the promoters of Shelter Infra at the rate of Rs. 80 per share which would also result in change in the management of the company. Therefore, the company had to make an

open offer for acquisition of at least 20% of the shares from public shareholders.

8. The investigation further found that the appellant company did not close the trading window during the period when the SPA was being negotiated. This enabled some of the promoter directors and other entities to trade in the scrip during the UPSI period taking advantage of the UPSI. It was also held that one of the Directors of Shelter Infra shared the UPSI with certain other entities who traded in the scrip while possessing the UPSI.

9. The SPA was placed before the meeting of the board of directors held on 30.07.2009 and signed on 31.07.2009. The information that the board approved the SPA had to be disclosed to the stock exchange within 15 minutes of the conclusion of the board meeting and the announcement relating to the public offer had to be made within 4 working days of signing the SPA. The investigation found that the disclosure to the stock exchange has never been made while the public announcement was made one day beyond the permissible limit of 4 days.

10. It is on record that the former promoters of Shelter Infra namely Shri Chirantan Mukherji, Shri Asamanja Mitra and Shri Mahiruha Mukherji had resigned from Shelter Infra w.e.f. 01.12.2009. It is also on record that the present management of Shelter Infra had to move the High Court of Calcutta for getting the demat shares transferred into their account from the former promoters' account.

11. Learned Counsel for the appellant argued that the UPSI came into existence only on board approval on 30.07.2009 as till the Board approved

the same, there was no certainty on the fructification of the SPA. Accordingly, the UPSI was in existence for 7 days from 30th July till 7th August, 2009, when the announcement relating to public offer was made. The one day delay noticed in making the public offer is on account of the fact that SPA was signed on Friday and two holidays came in between. He also produced evidence purportedly showing a communication to the Bombay Stock Exchange ('BSE' for short) requesting to close the trading window. It was also argued by the learned counsel for the appellant that it was the responsibility of the Compliance Officer, not the company, to ensure that the trading window was closed and to ensure that all related rules and regulations are followed correctly. Unfortunately, the Compliance Officer Shri K.L. Surana expired on 17.05.2012, which is on record. The present board of directors or management of the company was nowhere involved in any of the alleged wrong doing and even if some commissions were made by the previous board of directors and management, the company should not be penalized as that would be equivalent to penalizing the present board of directors and management. Given this situation, Counsel for the appellant has prayed for mercy for any shortcomings of the company in its past dealings before changing hands.

12. Learned Counsel for the appellant also relied on the order dated 18.06.2013 passed by the Adjudicating Officer ("AO" for short) of SEBI in respect of the Compliance Officer Shri K.L. Surana and then directors of the company. In the said order, the charges against Shri Surana were abated on account of his death and all directors were exonerated of any

responsibility as it was stated in the said order that compliance of the regulatory provisions was the responsibility of the Compliance Officer.

13. Learned counsel for the appellant also pleaded for leniency as an alternative taking totality of the facts and circumstances of the case. Under Section 15 HB of the SEBI Act, 1992, wherein maximum of Rs. 1 crore is imposable for late disclosure of the board's decision, Rs. 50 lakh has been imposed which is very high because there is only one day's delay. Similarly, under Section 23A(a) of the Securities Contracts (Regulation) Act, 1956 ('SCRA' for short), the penalty for delay of everyday is only Rs.1 lakh while the maximum is Rs.1 crore and in the instant matter the delay was only 7 days and as such penalty should have been only Rs.7 lakh instead of Rs.50 lakh imposed. The learned Counsel for the appellant relied on certain other orders such as M/s. Oregon Commercial Ltd. (SEBI order dated 30.08.2011), Order dated 20.03.2013 passed by this Tribunal in the matter of Sunday Exports Ltd. vs SEBI, SEBI order dated 26.09.2014 in respect of M/s. Surana Industries Ltd. and SEBI order dated 03.10.2016 in the case of Piramal Enterprises Ltd. and cited that in similar situations the penalty imposed has been much lower than imposed by the impugned order in the instant matter.

14. Shri Shyam Mehta, learned Senior Counsel for the Respondent argued that the period of existence of UPSI is much longer. Taking into account the replies given by various entities before the AO of SEBI and as per records available the date of 21.05.2009 as the trigger date of UPSI cannot be faulted. Similarly, the violation in respect of not disclosing the board decision on 30.07.2009 within 15 minutes is not till the date of

announcement of public offer i.e. 07.08.2009, as argued by the learned Counsel for the appellant, but that information has never been disclosed and hence it is a continuing violation. The evidence produced by the appellant relating to informing the Stock Exchange is an afterthought as the appellant had admitted to not closing the trading window. As such, it was argued that the penalty imposed in the impugned order is just and fair under the relevant provisions of law. The learned Counsel for the appellant also relied on the order passed by this Tribunal on 22.12.2011 in respect of Alka Securities Ltd. vs. SEBI dismissing the argument that the company cannot be punished for certain violations since board of directors of the company were not found to be guilty.

APPEAL NO.126 OF 2014

15. The appellant is a senior citizen and wife of late Shri Chirantan Mukherji, who was the Chairman and Promoter of "Shelter Infra" during the investigation period. Vide the impugned order dated 7th March, 2014 the AO of SEBI imposed a penalty of Rs.One crore against the appellant under Section 15G of the SEBI Act for violating Regulations 3(i), 3(ii) and 4 of the PIT Regulations. The proceedings against Shri Chirantan Mukherji were abated since he expired on March 3, 2013 during the inquiry proceedings.

16. The appellant has been charged under Section 15 G of the SEBI Act for violation of the provisions of the PIT Regulations as the appellant was "an insider" being the wife of the then Chairman and Promoter of "Shelter Infra". As detailed in the facts of Appeal No.121 of 2014, investigation into the sudden increase in the price of "Shelter Infra" revealed that some of the

promoters and other entities were trading in the scrip of this company when certain Unpublished Price Sensitive Information (for short "UPSI") was in force which was neither disclosed to the stock exchange nor the trading window was closed by the company during the UPSI period.

17. It is on record that the appellant in this appeal had bought 5000 shares of "Shelter Infra" on 3rd July, 2009, which according to the impugned order is during the UPSI period and the appellant being "an insider" attracts provisions of the PIT Regulations that during the existence of UPSI no insider can deal in the securities of the company.

18. Mr. P.N. Modi, the learned Senior Counsel for the appellant extensively argued the matter. It was argued that the appellant is a senior citizen even during the investigation period and has never traded in the securities market on her own. Whatever trading in her name was being done by her husband and in the instant case it is admitted that 5000 shares of "Shelter Infra" was bought in the appellant's name. It is, however, argued that she was not privy to insider information nor any existence of UPSI nor traded on her behalf. It is also on record that 5000 shares bought in the name of the appellant was not sold during the period of the public offer or even thereafter and as such even if there was UPSI in existence, there was no motive to take advantage of that information and profiteering during the public offer period (when shares were bought at Rs.80/-). Since the appellant never sold off her shares, she did not benefit in any manner.

19. It is not in dispute that the appellant is connected to the Chairman and Promoter of "Shelter Infra" and by law an "insider". It was further argued by the learned Senior Counsel for the appellant that there is no

unanimity on the date of the UPSI as it was argued that the initial draft alleged to have been prepared by one Mr. Baid was shared only with the acquirers (i.e. Ramayana Promoters Pvt. Ltd. – RPL) in June, 2009. The company (Shelter Infra) and its board of directors became aware of the SPA only in late July, 2009 nearer to the board meeting held on 30th July 2009. In fact, since the SPA was not specifically listed as a board agenda item and was taken up as part of "other items", effectively, the Board was aware of the SPA only on 30th July, 2009 and as such a trade entered into on 3rd July 2009 on behalf of the appellant cannot be said to be with the knowledge of UPSI even if it is argued that the appellant had information on the trade which her husband did on her behalf. Accordingly on 3rd July 2009 when 5000 shares of "Shelter Infra" were bought in the name of the appellant by her husband, neither any UPSI was in existence nor was the appellant traded on her behalf. Therefore, even by admitting that the appellant is an insider, provisions of the insider trading cannot be invoked against the appellant.

20. It was further argued by the learned Senior Counsel for the appellant that the Chairman and Promoter i.e. the late husband of the appellant – Noticee no.1 in the proceedings of adjudication in the impugned order - was an engineer by profession and was not familiar with financial market rules and regulations. All such decisions were taken with the help of the Compliance Officer of "Shelter Infra" – Shri K.L. Surana. The appellant's husband was acting on the advice of the Compliance Officer, which is on record. Unfortunately the Compliance Officer passed away on 22nd May, 2012 and the show-cause notice was issued only on 28th August, 2012 after a gap of three years from the investigation period and

as such the Compliance Officer could not present the details before the AO. It was also argued that for an investigation period covering April to September, 2009, show-cause notice was issued 3 years later in August, 2012 and the AO has been changed three times and the impugned order was issued on 7th May, 2014. Because of these undue delays, many of the key entities such as Compliance Officer and even the Chairman and Promoter i.e. the husband of the appellant could not join the investigation to prove their innocence. As the appellant's husband was a cancer patient, his replies were also not made with complete focus of mind and he had to take the help of the former Compliance Officer who left the company several years ago.

21. It was further argued that the crux of the question is the trigger date of the UPSI. In the impugned order, the AO of SEBI has erred completely and came to an arbitrary date of 21st May 2009 while no Noticee from the target company's side has given any such date during their evidence before the respondent-SEBI. It is only from the email dated 22nd March, 2012 from Mr. Baid sent to SEBI, while responding to the information sought by SEBI, it was stated that the first draft of the SPA was forwarded by him to the acquirer group on or around 28th May, 2009 but even here it was stated that the draft SPA was sent to the acquirer group only. This was also not fully corroborated by the submission made by the RPL before SEBI that they asked Mr. Baid to prepare the draft SPA only in June, 2009. Therefore, even the date indicated by Mr. Baid in his submission to SEBI is not exactly correct. In short, according to the RPL, it was in June, 2009 that the draft SPA was being prepared by them and in all other depositions before the AO, particularly from the Promoters' side, the indicated date

has been somewhere in late July, 2009. In any case since draft SPA which is available on record even in the third week of July, 2009 has left a number of critical information, including the percentage of shares to be acquired, the price at which to be acquired and many other relevant details blank, till 30th July, 2009 there was no certainty regarding the SPA and hence no UPSI came into existence till 30th July, 2009. Therefore, by no stretch of imagination it can be alleged that the appellant in the instant appeal has done insider trading nor benefitted from it.

22. Mr. Shyam Mehta, learned Senior Counsel for the Respondent argued that all the evidences on record show that UPSI was in existence from late May 2009. It is on record that the cheques drawn by the acquirers and given to the promoters of Shelter Infra after the signing of the SPA on 31st July, 2009, were dated 25th July, 2009 and 29th July, 2009, which means the cheques were kept ready even before signing the SPA. Nobody would prepare a SPA unless there is some understanding between the promoter shareholders of a company who are interested in selling their shares and the acquirers. So whether the first draft was shared with the directors of the target company or not, there was reasonable understanding about the possibility of entering into a SPA. It is also not in dispute that not only the appellant herein but many other directors and investors traded during this period and the price of the shares increased substantially during this period and many of those who bought shares during this period sold it either fully or substantially during the open offer. In the instant appeal, the appellant did not sell the shares either during the open offer or even for quite sometimes thereafter but that does not absolve an insider from

violation because it is not necessary that sale has to take place, buy itself is also an offence.

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23. The appellant in this appeal had been a director of Shelter Infra during the relevant period. By the impugned order dated 7th March, 2014 issued by the AO of SEBI against the appellant as well as 7 other noticees (Appellants in Appeal No.120 of 2014), a penalty of Rs.1 crore has been imposed against the appellant under Section 15G of the SEBI Act for violating Regulations 3(i), 3(ii) and 4 of the PIT Regulations. The impugned order held that the appellant as Director of Shelter Infra and a close associate of the Parekh Group (7 others held guilty by the said impugned order) was privy to the UPSI relating to Shelter Infra and passed on the same to the Parekh group entities. It is on record that the appellant had been a Director of Shelter Infra from February, 2008 to August, 2012 and a Director of RPL from July, 2009 to June, 2014; the target company and acquirer company, respectively.

24. It was argued by Shri Deepak Dhane, learned Counsel for the appellant that the appellant was not present in the board meetings of Shelter Infra when the SPA was discussed and since the notice of the meeting did not even indicate SPA as an agenda item, he was not aware of any SPA (it was taken up under "other items"). It was further argued that he had only business dealings with Parekh family just like his business dealings with several others and since he has not disclosed this information to anybody else there was no reason for him to disclose only to the Parekhs. Nothing on record shows that the information was passed

on. It was also argued that the ratio of Rajiv B. Gandhi vs. SEBI (Appeal No.50 of 2007 decided on 9/5/2008) relied on by the AO was not applicable to the appellant since the closeness of the appellant to the Parekh Group entities was not proved while in the case of Rajiv Gandhi it was the wife and sister of the appellant traded while the appellant herein is not related to the Parekhs. Similarly in the case of Dr. Anjali Beke vs. SEBI (Appeal No.148 of 2005 decided on 26/10/2006) the closeness of the appellant to the Managing Director of the company whose shares were traded when UPSI was in vogue was proved and the information (UPSI) was relating to the audited financial results. It was further argued that the AO did not consider several submissions made by the appellant such as he was not present in the meeting, he was not related to the Parekh Group entities, the Parekh Group entities traded in 246 scrips during the investigation period not just in Shelter Infra; the appellant did not attend the meetings of Shelter Infra Board on 11/6/2009 and 30/7/2009. He could have attended the meeting of the target company because the rules prohibit only attending the meeting of the acquirer company. It was further argued that the penalty of Rs.1 crore imposed on the appellant who has no role in the entire matter is very high while in the matter of Dr. Anjali Beke and Rajiv B. Gandhi, penalty imposed was much smaller even when the evidences against the appellants therein were conclusive.

25. The learned Senior Counsel for the Respondent-Shri Shyam Mehta-argued that the appellant was in the board of both the target company as well as acquirer company during the relevant period. He was also a business partner of Parekh Group. There has been extensive financial dealings between Parekh Group and the appellant as per record. The

Parekh Group entities had never invested in Shelter Infra before 22nd June, 2009. Whatever was invested was held on till the open offer and mostly sold during the open offer. There is no substantiation regarding the "market buzz" which Parekh Group was admittedly using/relying on while trading in the scrip of Shelter Infra; passing on insider information cannot be established with 100% proof as no such record would be maintained by anyone and as such it has to be inferred through totality of circumstantial evidences. In the present case the appellant was a close business associate of Parekh Group entities for several years, he was in the board of the target company as well as acquiring company, he cannot be claiming ignorance about the existence of the SPA and the consequent UPSI just by claiming that he did not attend the meeting of the board of directors of the target company. All these altogether prove that he was aware of the UPSI and provided that information to be used by Parekh Group entities to trade in and benefit from UPSI.

APPEAL NO.120 OF 2014

26. 7 appellants in this appeal are investors (together called the Parekh Group) who traded in the scrip of Shelter Infra during the investigation period. The impugned order dated 7th March, 2014 held that they have violated Regulation 3(ii) of the PIT Regulations since they were privy to the UPSI relating to the scrip of Shelter Infra passed on by another noticee in the same impugned order (Shanti Ranjan Paul – Appellant in Appeal No.128 of 2014)) and imposed a penalty of Rs.2 Crore jointly and severally under Section 15G of the SEBI Act.

27. Mr. S.K. Jain, learned Counsel for the appellants apart from relying on the arguments advanced by the Counsels for Appellants in Appeal Nos.121, 126, 128 and 143 of 2014 further reiterated that the Parekh Group have been regularly investing in the securities market. They would invest using "market buzz" and observation of price movements available publicly. They ran a huge portfolio of 246 scrips during the year 2009-10. Apart from normal business dealings with Shanti Ranjan Paul, they had no connection with him nor there was any evidence relating to them receiving any UPSI from Shanti Ranjan Paul. Their magnitude and pattern of trade is such that there is nothing unique about trading in Shelter Infra, an allegation made in the impugned order that the appellants traded in small cap companies very rarely. This is not correct as there were 12 companies with "M-Cap" less than 50 crore in their portfolio of 246 scrips. They noticed price movements in Shelter Infra and hence traded and as for the allegation of first time trading in June 2009, there has to be always a "first time" for trading in any scrip.

28. Learned Counsel for the appellants further argued that actual receipt of information has to be proved beyond reasonable doubt and mere business connection is not sufficient to prove the same and hence Regulation 2(e)(ii) of the PIT Regulations is not applicable to the appellants in the instant case. He relied on Order dated 8/3/2016 passed by SEBI in respect of Reliance Petroinvestments Ltd; order dated 22/9/2016 passed by SEBI in the matter of KLG Capital Services Limited, Order dated 31/1/2012 passed by this Tribunal in the case of Mrs. Chandrakala vs. SEBI, to substantiate his arguments. Counsel for the appellants argued that nothing

has been proved against the appellants as to receiving any insider information and trading based on it.

29. Mr. Shyam Mehta, learned Senior Counsel for the Respondent argued that Shanti Ranjan Paul's connection with Parekh group is more than proved by the fact that he was their business partner, there has been loan dealings without any collateral; Paul and Parekh had been the directors in Palmer Hospitality, the Parekhs had never invested in Shelter Infra before 22nd June, 2009 and small cap scrips are not their normal investments. Evidences gathered during investigation, reply to show cause notice etc. show that they never denied their association with Shanti Ranjan Paul and Parekh Group entities became insider under Regulation 2(e)(ii) because of all the evidences taken together.

APPEAL NO.143 OF 2014

30. Appellant No.1 in this appeal had been a whole time director of Shelter Infra during the investigation period and appellant no.2 is his son, as such admittedly both are insiders. Admittedly, both have traded during the period of UPSI. Accordingly vide the impugned order dated 7th March, 2014 a penalty of Rs.10 lakh under Section 15HB of the SEBI Act andRs.20 lakh under Section 15 G of SEBI Act has been imposed on appellant no.1 and a penalty of Rs.20 lakh under Section 15G of SEBI Act was imposed on appellant no.2.

31. The learned Counsel for the appellant, Mr. Santanu, argued that the appellants were never in possession of the UPSI and in their statement they expressed their ignorance stating that the UPSI could be in existence only 2-3 days prior to the signing of the SPA. Appellant no.1 though a

whole time director of Shelter Infra was not involved in any negotiation on the SPA issue, rather he had authorized the Chairman of Shelter Infra to negotiate on any matter regarding sale of shares he held in Shelter Infra. The appellant No.1 did not sell shares which he bought in July, 2009 during the open offer but sold it in July, 2009, that too with the approval of the Compliance Officer. It was further argued that the appellant no.2 i.e. the son of the appellant no.1 bought 1000 shares each of Shelter Infra on 1st and 28th July, 2009 on his own and he has not sold the shares even during the open offer period. Thus, neither the appellant no.1 nor appellant no.2 benefitted from their purchases of Shelter Infra shares though the appellant no.1 sold all the 1246 shares in July, 2009 itself. For this, appellant No.1 only used a relaxation available in the following clarification issued by SEBI on 15th March, 2009 relating to amendment to the PIT Regulations made on 19th November, 2008:-

> "All directors/officers/designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction."

32. Mr. Shyam Mehta, learned Senior Counsel for the Respondent argued that as the whole time director of Shelter Infra, appellant no.1 could not have feigned ignorance about the existence of a draft SPA. During the existence of UPSI no director could have traded in the shares of the company during six months. Since appellant no.1 had sold the shares he bought in July 2009 in the same month itself, he violated code of conduct under Rule 4(ii). It is also on record that he advised his son to buy the shares of Shelter Infra though it is a fact that his son – appellant no.2 - did not sell shares he bought during the open offer or before. The very fact

that both were "insiders" and privy to the UPSI cannot be doubted and hence their trading irrespective of whether fully sold or not is relevant. On the SEBI Clarification of six months waiver relied on by the appellant as given at para 31 above, learned Senior Counsel for SEBI stated that the six months waiver is available for shares held on the date of notification of the new regulations, but such a waiver can be used only once i.e. for instance for sale of the existing shares but not for buying again within the next six months. It is on record that though appellant no.1 did not sell the shares he bought during the UPSI during the open offer but it was sold prior to the open offer itself. Moreover, he sold 4600 shares which he held since April, 2009 during the open offer. Therefore, he sold more shares in the open offer and benefitted from the UPSI than the quantity he bought and sold in July, 2009 prior to the open offer. All these evidence point out that appellant no.1 as a whole time director of Shelter Infra has indulged in insider trading and abetted such trading of his son who is appellant no.2. Therefore, the penalty imposed to the tune of Rs.30 lakh on appellant no.1 for two violations and Rs.20 lakh on appellant no.2 for one violation cannot be faulted.

33. Having heard all the Counsel for both sides, we do not find merit in the contentions of the learned Counsel for appellants that the UPSI came into existence only on 30th July, 2009 when board meeting was held or 2-3 days prior thereto. Although the AO of SEBI has held that the UPSI came into existence on 21st May, 2009 based on email dated 22/3/2012, it is on record that a draft of the SPA was prepared and shared with the director of the target company by the consultant – Mr. Baid – on June 20, 2009. In the said letter, it is specifically recorded that in the meeting held on 19/6/2009,

Mr. Chirantan Mukherji desired that the takeover formalities set out in the SPA should be completed within a week. Thus, it is evident that the promoter-Directors of Shelter Infra had arrived at a decision about the SPA on 19th June, 2009. Fact that the draft forwarded by the consultant on June 20, 2009 contained several blanks cannot be a ground to hold that the decision to enter into the SPA was not finalized on June 19, 2009, because, unless a concrete proposal of one party was accepted by another party the draft SPA would not have been prepared. Similarly, fact that the draft SPA did not specify the price at which the shares were to be sold, cannot be a ground to hold that there was no UPSI on June 19, 2009, because, in the present case, the price fixed was a negotiated price and in the facts of present case, it is reasonable to hold that it is only after arriving at the negotiated price, the draft SPA was forwarded on June 20, 2009, however, the negotiated price was not disclosed in the draft SPA. Admittedly, the promoter-directors and their relatives and other connected entities started dealing in the shares from June 22, 2009. In these circumstances, even if it is held that the UPSI came into existence on 19th June, 2009 and not with effect from 21st May, 2009 as held by the AO, in the facts of present case, no fault can be found with the decision of AO, because, it is only from 22nd June, 2009 the directors, their relatives and connected entities sought to deal in the shares of the target company on the basis of UPSI which came into existence on 19th June, 2009.

34. Since the existence of UPSI from 19th June, 2009 cannot be doubted, it was the duty of the company (Shelter Infra) to keep the trading window closed till the date of announcement of public offer on 7th August, 2009. Since this has not been done, the Company is in violation of the relevant

provisions of Listing Agreement and the PIT Regulations. Accordingly, the penalty of Rs.50 lakh imposed on the company for not closing the trading window cannot be faulted. It was contended by the Counsel for the company that the delay in disclosing the board decision to the Stock Exchange, is attributable to the Compliance Officer and the directors of the company. It is submitted that since the promoter-directors of the company have been exonerated vide order of the AO of SEBI dated 28th June, 2013,in the present case, the company cannot be made liable. We see no merit in the above contention. It is the overall responsibility of the company and the board of directors to ensure that the Code of Conduct is followed in letter and spirit. In our opinion, the AO was not justified in holding the Compliance Officer alone was responsible for closing the trading window and disclosing the Board resolution to the Stock Exchange. Therefore, fact that the AO has erroneously held that the directors are not liable cannot be a ground to hold that the company must also escape penal liability for failing to close the trading window during the existence of UPSI and failing to make disclosures to the Stock Exchange within the stipulated time.

35. However, argument of the Counsel for the company that penalty of Rs.50 lakh imposed under Section 23A(a) of SCRA is unreasonably excessive deserves acceptance. According to the Counsel for the appellant, there was only delay of 7 days i.e. from 30th July, 2009 to 7th August, 2009 when public announcement relating to the public offer was made. Though, the learned Senior Counsel for the respondent has stated that the public announcement cannot be treated as disclosure, in the peculiar facts of present case, where the company already has suffered penalty of Rs.50

lakh on account of failure of Compliance Officer/directors to close the trading window and since the directors have been exonerated, it would be just and proper to restrict the penalty till the public announcement was made. Penalty under Section 23A(a) of SCRA for 7 days delay at the rate of Rs.1 lakh per day would be Rs.7 lakh. Accordingly, while sustaining the penalty of Rs.50 lakh imposed under Section 15HB of the SEBI Act for not closing the trading window, we reduce the penalty of Rs.50 lakh imposed under Section 23A(a) of the SCRA to Rs.7 lakh for not disclosing the Board resolution to the Stock Exchange.

36. In Appeal No126 of 2014, there is no dispute that the appellant was an insider. The contention that trades were executed by the husband and not by the appellant is without any merit because in none of the letters addressed by the appellant to the AO of SEBI this plea was raised. In any case being an insider no trades could be executed during the existence of the UPSI from 19th June, 2009. Admittedly, trades were executed by the appellant on 3rd July, 2009 i.e. during the subsistence of UPSI. The argument made by the Counsel for the appellant that she did not sell the shares bought on 3rd July, 2009 and as such did not benefit from the UPSI even assuming that if she was privy to the UPSI is also without any merit. Under the relevant regulations trading in the shares of the company (whether buy or sell) by an insider is prohibited. On the ground taken by the appellant that the penalty of Rs.1 crore imposed is too harsh, we note that in other penalty orders in Appeal Nos.120 and 143 of 2014, penalty imposed on each person comes in the range of Rs.20-30 lakh. Further, given that the appellant is an old lady who depended on her husband and the then Compliance Officer Mr. Surana and the fact that both have

expired, we deem it proper to reduce the penalty from Rs.1 crore imposed in the impugned order to Rs.30 lakh.

37. We do not agree with the arguments made by learned Counsel for appellants in Appeal No.128 of 2014 wherein it was submitted that the appellant Shanti Ranjan Paul was not privy to any insider information and as such he could not have shared it with the Parekh Group (Appellant in Appeal No.120/2014). Being a director of both the companies i.e. the target as well as the acquirer company, the appellant cannot take shelter by alleging ignorance that just because he did not attend the two meetings of the Board of the target company held prior to the signing of the SPA, he was not privy to the information. Not attending the two meetings of the board of directors of the target company when rules permitted him to attend the same, without assigning any reason itself shows that the appellant was privy to the UPSI and therefore the appellant chose not to attend the meetings. It is also on record that in the summary of responses to the show-cause notice, the appellant had stated that April/May, 2009 as the period when the deal was finalized and that no advance payments were made. The appellant's close association with the Parekh Group is established in the impugned order by recording that the appellant was a business partner and having other financial dealings with the Parekh Group and that the said group entered into trading in the scrip of Shelter Infra for the first time during the prevalence of the UPSI are all sufficient circumstantial evidence to prove that the appellant in Appeal No.128 of 2014 was privy to the UPSI and had shared the same with the appellants in Appeal No.120 of 2014. Argument of the appellants in Appeal No.120 of 2014 that they are the regular investors and that they invested in the scrip

of Shelter Infra on the basis of market buzz is without any merit, because, appellants have not disclosed the source of the alleged 'market buzz'. Very fact that the director of Shelter Infra was a business partner of the Parekh Group and that the Parekh Group traded in the shares of Shelter Infra for the first time after the UPSI came into existence, is sufficient to hold that UPSI was the reason for the appellants to trade in the shares of Shelter Infra. Accordingly, there is no reason to interfere with the AO's order in both these appeals.

38. Similarly, in Appeal No.143 of 2014 the appellant No.1 was a director of Shelter Infra which makes his son also an insider and hence prohibited from trading in the shares of Shelter Infra when UPSI was in existence. The argument that the appellants were not privy to the UPSI and had authorized the Chairman of Shelter Infra to negotiate in respect of their shares without being privy to the UPSI cannot be sustained since it is conclusively proved that UPSI was in existence from 19th June, 2009. Further, argument that the appellant no.1 did not sell shares which he bought during July, 2009 in the open offer or that the appellant no.2 did not sell the shares even during the open offer period do not absolve the appellants from being penalized for violating the PIT Regulations. Hence, the penalty of Rs.30 lakh imposed on the appellant no.1 for two violations (code of conduct and PIT regulations) and Rs.20 lakh imposed on appellant no.2 for one violation (PIT regulations) in the impugned order cannot be said to be unreasonable or excessively harsh.

39. Various decisions relied on by the learned Counsel for the appellant are distinguishable on facts. In these appeals before us, it is established beyond doubt that UPSI came into existence at least on 19th June, 2009. All the directors and their relatives are covered under the definition of "insider". The Parekh Group having business dealings and partners in business concern with an insider are covered under connected people. Passing on the information needs to be judged from the context and in the instant context it is not disputed that the Parekh Group started trading from 22nd June, 2009 after the UPSI came into existence. Thus, the company, its directors and their relatives and connected entities are guilty of violating the provisions of the securities laws, they are liable for action under the SEBI Act and/or SCRA.

40. In conclusion, we dispose of the five appeals as follows:-

(i) Appeal No.120 of 2014 – Appeal is dismissed.

(ii) Appeal No.121 of 2014 – Penalty of Rs.50 lakh under Section 15 HB of the SEBI Act is sustained. Penalty of Rs.50 lakh imposed under Section 23A(a) of the SCRA is reduced to Rs.7 lakh.

(iii) Appeal No.126 of 2014 – While sustaining the impugned order on merit, penalty of Rs.1 crore imposed is reduced to Rs.30 lakh.

(iv) Appeal No.128 of 2014 – Appeal is dismissed.

(v) Appeal No.143 of 2014 – Appeal is dismissed.

41. Appellants in all these appeals are directed to pay the penalty amount within a period of 45 days from today to SEBI. If the amount of penalty is not paid within a period of 45 days from today, SEBI is at liberty to recover the penalty with interest at 12% per annum from the date of the orders impugned in the respective appeals till payment.

42. All the appeals disposed of in the above terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

30/11/2016
msb/ddg
prepared & compared by-ddg