BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Order Reserved On: 02.08.2017
Date of Decision : 11.08.2017

Appeal No. 463 of 2015

SRSR Holdings Private Limited
Fortune Monarch Mall,
3rd Floor, #306,
Plot No. 707-709,
Jubilee Hills, Road No. 36,
Hyderabad- 500 033 …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. Ravi Kadam, Senior Advocate with Mr. KRCV Seshachalam, Mr. A. Rama Rao, Ms. Sabeena Mahadik, Mr. Pankaj Uttaradhi and Mr. Sagar Hate, Advocates i/b Visesha Law Services for the Appellant.

Mr. Fredun DeVitre, Senior Advocate with Dr. Mrs. Poornima Advani, Mr. Pulkit Sukhramani, Mr. Siddha Pamecha and Ms. Vidhi Jhawar, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 451 of 2015

Chintalapati Srinivasa Raju
Plot No. 1317, Road No. 66,
Jubilee Hills,
Hyderabad- 500 033 …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. Darius Khambata, Senior Advocate with Mr. Pesi Modi, Senior Advocate, Mr. Somasekhar Sundaresan, Mr. Ravichandra Hegde, Mr. Abishek Venkatraman, Mr. Dhaval Kothari, Mr. Paras Parekh and Mr. Akash Joshi, Advocates i/b J. Sagar Associates for the Appellant.

Mr. Fredun DeVitre, Senior Advocate with Dr. Mrs. Poornima Advani, Mr. Pulkit Sukhramani, Mr. Siddha Pamecha and Ms. Vidhi Jhawar, Advocates i/b The Law Point for the Respondent.

WITH
Misc. Application No. 87 of 2017
And
Appeal No. 452 of 2015

Chintalapati Holdings Pvt. Ltd.
Bldg. No. 3, iLabs Center
#18, Software Units Layout
Madhapur,
Hyderabad- 500 081 …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. Pesi Modi, Senior Advocate with Mr. Somasekhar Sundaresan, Mr. Ravichandra Hegde, Mr. Abishek Venkatraman, Mr. Dhaval Kothari, Mr. Paras Parekh and Mr. Akash Joshi, Advocates i/b J. Sagar Associates for the Appellant.

Mr. Fredun DeVitre, Senior Advocate with Dr. Mrs. Poornima Advani, Mr. Pulkit Sukhramani, Mr. Siddha Pamecha and Ms. Vidhi Jhawar, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 453 of 2015

Late Shri Anjiraju Chintalapati
represented by Mr. Chintalapati Srinivasa Raju
Plot No. 1317, Road No. 66, Jubilee Hills,
Hyderabad- 500 033 …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. Pesi Modi, Senior Advocate with Mr. Somasekhar Sundaresan, Mr. Ravichandra Hegde, Mr. Abishek Venkatraman, Mr. Dhaval Kothari, Mr. Paras Parekh and Mr. Akash Joshi, Advocates i/b J. Sagar Associates for the Appellant.

Mr. Fredun DeVitre, Senior Advocate with Dr. Mrs. Poornima Advani, Mr. Pulkit Sukhramani, Mr. Siddha Pamecha and Ms. Vidhi Jhawar, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 458 of 2015

B. Appalanarasamma
Satyam Enclave, NH-7,
Petbashirabad,
Secunderabad- 500 855 …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. Zal Andhyarujina, Advocate with Mr. L. S. Shetty, Mr. U. R. Naik, Ms. N. L. Shetty and Mr. M. M. Nair, Advocates i/b L. S. Shetty & Associates for the Appellant.

Mr. Fredun DeVitre, Senior Advocate with Dr. Mrs. Poornima Advani, Mr. Pulkit Sukhramani, Mr. Siddha Pamecha and Ms. Vidhi Jhawar, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 459 of 2015

B. Teja Raju
C2, Trendset Vintage,
Road No. 14, Banjara Hills,
Hyderabad- 500 034 …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. Mohan Parasaran, Senior Advocate with Mr. L. S. Shetty, Mr. U.R. Naik. Ms. N. L. Shetty and Mr. M. M. Nair, Advocates i/b L. S. Shetty & Associates for the Appellant.

Mr. Fredun DeVitre, Senior Advocate with Dr. Mrs. Poornima Advani, Mr. Pulkit Sukhramani, Mr. Siddha Pamecha and Ms. Vidhi Jhawar, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 460 of 2015

B. Rama Raju (Jr.)
B1, 8-2-317/1, Crosswinds Apartment,
Road No. 14,
Banjara Hills,
Hyderabad- 500 034 …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. J. J. Bhatt, Senior Advocate with Mr. KRCV Seshachalam, Mr. A. Rama Rao, Ms. Sabeena Mahadik, Mr. Pankaj Uttaradhi and Mr. Sagar Hate, Advocates i/b Visesha Law Services for the Appellant.

Mr. Fredun DeVitre, Senior Advocate with Dr. Mrs. Poornima Advani, Mr. Pulkit Sukhramani, Mr. Siddha Pamecha and Ms. Vidhi Jhawar, Advocates i/b The Law Point for the Respondent.

WITH
Appeal No. 461 of 2015

B. Suryanarayana Raju
R/o. H. No. 1-123/A,
Satyam Enclave, Pet Bashirabad (V),
N.H. No. 17,
Secunderabad-500 855 …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. Prasad Dakephalkar, Senior Advocate with Mr. L. S. Shetty, Mr. U. R. Naik, Ms. N. L. Shetty and Mr. M. M. Nair, Advocates i/b L. S. Shetty & Associates for the Appellant.

Mr. Fredun DeVitre, Senior Advocate with Dr. Mrs. Poornima Advani, Mr. Pulkit Sukhramani, Mr. Siddha Pamecha and Ms. Vidhi Jhawar, Advocates i/b The Law Point for the Respondent.

AND
Appeal No. 462 of 2015

B. Jhansi Rani
H. No. 1-123/A,
Satyam Enclave, Pet Bashirabad (V),
N.H. No. 7,
Secunderabad-500 855 …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. Kevic Setalvad, Senior Advocate with Mr. Sumeet Patni, Mr. KRCV Seshachalam, Mr. A. Rama Rao, Ms. Sabeena Mahadik, Mr. Pankaj Uttaradhi and Mr. Sagar Hate, Advocates i/b Visesha Law Services for the Appellant.

Mr. Fredun DeVitre, Senior Advocate with Dr. Mrs. Poornima Advani, Mr. Pulkit Sukhramani, Mr. Siddha Pamecha and Ms. Vidhi Jhawar, Advocates i/b The Law Point for the Respondent.

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

Majority View
Per: Justice J.P. Devadhar (Dr. C.K.G. Nair, Member-II Concurring)

1. Appellants in all these appeals are aggrieved by the common order passed by the Whole Time Member ("WTM" for short) of Securities and Exchange Board of India ("SEBI" for short) on September 10, 2015. By the said order, the WTM of SEBI has restrained the appellants from accessing the securities market and prohibited them from buying, selling or otherwise dealing in securities, directly or indirectly being associated with the securities market in any manner whatsoever for a period of 7 years. Further, the WTM of SEBI has directed the appellants to disgorge

the unlawful gains made by each appellant as more particularly set out in para 65 of the impugned order jointly and severally with Mr. B. Ramalinga Raju and Mr. B. Rama Raju, who during the period from 2001 to 2008 were the Chairman and Managing Director of Satyam Computer Services Ltd. ("Satyam" for short). Since all these appeals arise from a common order passed by the WTM of SEBI on September 10, 2015, all these appeals are heard together and disposed of by this common decision.

2. In the impugned order it is held that the appellants as promoters of Satyam and as 'connected person'/ deemed to be connected person' were reasonably expected to have access to Unpublished Price Sensitive Information ("UPSI" for short) relating to Satyam and therefore, each appellant was an 'insider' within the meaning of SEBI (Prohibition of Insider Trading Regulations) 1992 ("PIT Regulations" for short). Since each appellant had sold /pledged shares of Satyam when in possession of UPSI relating to Satyam and made unlawful gains, it is held that the appellants are guilty of violating the SEBI Act and the PIT Regulations.

3. At the outset, it may be noted that in para 55 of the impugned order the WTM of SEBI has recorded a finding that there is no material on record to support the charge contained in the show cause notice that the appellants had violated the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations" for short). However, in para 61 of the impugned order, the WTM of SEBI, inter alia, in exercise of the powers conferred

under regulation 11 of the PFUTP Regulation has purported to restrain the appellants from accessing the securities market for 7 years. Having recorded a finding that there is no material to show that the appellants had violated the PFUTP Regulations, the WTM of SEBI could not have issued any direction under regulation 11 of the PFUTP Regulations. Therefore, the restraint order contained in para 61 of the impugned order, to the extent it is based on exercise of power under regulation 11 of the PFUTP Regulations cannot be sustained.

4. The question, therefore, to be considered in all these appeals is,

a) Whether the WTM of SEBI is justified in holding that each appellant was an 'insider' under the PIT Regulations and that the appellants pledged/ sold shares of Satyam when in possession of UPSI, and therefore the appellants are guilty of violating SEBI Act and the PIT Regulations.

b) Assuming that the appellants had violated SEBI Act and the PIT Regulations, whether the WTM of SEBI is justified in uniformly restraining the appellants from accessing the securities market for 7 years and whether, the quantum of unlawful gain directed to be disgorged by each appellant jointly and severally with Mr. B. Ramalinga Raju and Mr. Rama Raju with interest at the rate of 12% per annum from 07.01.2009 till payment, is in accordance with law.

5. Uncontroverted facts set out in the impugned order based on which the impugned directions have been issued against each appellant may be summarized as follows:-

a) The relation/ connection of the appellants with the Chairman and Managing Director of Satyam is set out in para 7 of the impugned order as follows:-

Sl. no.	**Name**	**Relation/connection**
1.	Mr. B. Ramalinga Raju	Chairman, Satyam Computers
2.	Mr. B. Rama Raju	Managing Director, Satyam Computers and brother of Mr. B Ramalinga Raju and Mr. B Suryanarayana Raju
3.	Mr. B. Suryanarayana Raju	Brother of Mr. B. Ramalinga Raju and Mr. B Rama Raju
4.	Ms. B. Appalanarasamma	Mother of Mr. B. Ramalinga Raju, Mr. B Rama Raju and Mr. B Suryanarayana Raju.
5.	Ms. B. Jhansi Rani	Wife of Mr. B Suryanarayana Raju
6.	Mr. B Teja Raju alias, Mr. B Pritam Teja	Son of Mr. B Ramalinga Raju
7.	Mr. B. Rama Raju (Jr.)	Son of Mr. B Ramalinga Raju
8.	Mr. Chintalapati Srinivasa Raju	Director of Satyam Computers
9.	Chintalapati Holdings Pvt. Ltd.	Mr. Chintalapati Srinivasa Raju was one of its directors and shareholder
10.	Mr. Anjiraju Chintalapati	Father of Mr. Chintalapati Srinivasa Raju
11.	Maytas Infra Ltd. (MIL)	Company promoted *inter-alia* by Mr. Ramalinga Raju, Mr. B. Rama Raju (Jr.) and Mr. Teja Raju, who was also Vice Chairman
12.	SRSR Holdings Pvt. Ltd.	Company controlled by Mr. B. Ramalinga Raju and Mr. B. Rama Raju and Mr. Suryanarayana Raju - these three related persons were only directors in this company.

b) On January 07, 2009 Mr. B. Ramalinga Raju addressed an email to the Board of Directors of

Satyam and copy to SEBI, wherein he had inter alia stated that the books of Satyam were inflated for several years to show artificial cash and bank balances. In the said email it was also stated that neither the immediate nor extended family members of Ramalinga Raju and Rama Raju had any idea about the books of Satyam being inflated.

c) Thereupon, SEBI carried out investigation which revealed that the books of Satyam were inflated during the years from 2001 to 2008.

d) On completion of investigation, SEBI issued show cause notices during the period from March 2009 to March 2010 to Mr. B Ramalinga Raju (Chairman), Mr. B Rama Raju (Managing Director), Mr. V. Srinivas (Chief Financial Officer), Mr. G Ramakrishna (Vice President, Finance) and Mr. V. S. Prabhakara Gupta (Head 'Internal Audit') of Satyam.

e) Show cause notices were also issued to the appellants on June 19, 2009/ September 15, 2009 alleging that each appellant was an ‘insider’ under the PIT Regulations and each appellant had sold/ pledged the shares of Satyam when in possession of UPSI along with Ramalinga Raju and Rama Raju and made

unlawful gains in contravention of SEBI Act, PFUTP Regulations & PIT Regulations, 1992.

f) By an order dated July 15, 2014 the WTM of SEBI disposed of the show cause notices issued to Mr. B. Ramalinga Raju, Mr. B. Rama Raju, Mr. V. Srinivas, Mr. G Ramakrishna and Mr. V. S. Prabhakara Gupta, by holding that they are guilty of violating SEBI Act, PFUTP Regulations & PIT Regulations, 1992. By the said order Mr. Ramalinga Raju & Mr. B. Rama Raju were, inter alia, directed to disgorge unlawful gain of ₹ 543.93 crore made on sale of Satyam shares (which included the sale of Satyam shares by the appellants) and disgorge unlawful gain of ₹ 1258.88 crore made by pledging the Satyam shares through SRSR Holdings Private Limited.

g) Challenging the order passed by the WTM of SEBI dated July 15, 2014 Mr. B. Ramalinga Raju & Mr. B. Rama Raju filed appeals before this Tribunal. By order dated May 12, 2017, this Tribunal inter alia upheld the decision of SEBI that Mr. B. Ramalinga Raju & Mr. B. Rama Raju had violated the SEBI Act, PFUTP Regulations & PIT Regulations, 1992 and that they were instrumental in manipulating the books of Satyam during the period from 2001 to 2008.

However, the direction given by the WTM of SEBI to Mr. B. Ramalinga Raju & Mr. B. Rama Raju to disgorge the unlawful gain of ₹ 543.93 crore on sale of Satyam shares and unlawful gain of ₹ 1258.88 crore on pledge of Satyam shares have been set aside and restored to the file of WTM of SEBI for passing fresh order on merits and in accordance with law.

h) By the impugned order dated September 10, 2015, very same WTM of SEBI disposed of the show cause notices issued against the appellants by holding that the appellants are guilty of violating SEBI Act and the PIT Regulations. Even though the very same WTM in his earlier order dated 15.07.2014 had held that ₹ 1258.88 crore (being the amount sanctioned on pledge of Satyam shares by one of the appellant herein i.e. SRSR Holdings Private Limited) was the unlawful gain made by Ramalinga Raju and Rama Raju and directed them to disgorge ₹ 1258.88 crore, by the impugned order dated 10.09.2015 the WTM has held that the said amount of ₹ 1258.88 crore was the unlawful gain made by SRSR Holdings Pvt. Ltd. and directed them to disgorge ₹ 1258.88 crore jointly and severally with Ramalinga Raju and Rama Raju.

i) Similarly, even though the very same WTM in his order dated 15.07.2014 had held that Ramalinga Raju

& Rama Raju were liable to disgorge the unlawful gain of ₹ 543.93 crore arising on sale of Satyam shares by various parties including the appellants herein, in para 65 of the impugned order the WTM has given break-up of the unlawful gain of ₹ 543.93 crore made by various entities set out therein and directed that the unlawful gain made by each entity shall be disgorged by that entity, jointly and severally with Ramalinga Raju & Rama Raju. As per para 65 of the impugned order, unlawful gain of ₹ 543.93 crore on sale of Satyam shares was made by the following entities:-

Sr. No.	**Name of the Entity**	**Unlawful Gain**
1.	Mr. B. Ramalinga Raju	₹26,62,50,000
2.	Mr. B. Rama Raju	₹29,54,35,195
Sr. No.	**Names of the noticees in the present matter**	**Unlawful Gain**
1.	Ms. B. Appalanarasamma	₹8,00,43,125
2.	Ms. B. Jhansi Rani	₹8,50,63,350
3.	Mr. B. Rama Raju Jr.	₹46,00,17,218
4.	Mr. B. Suryanarayana Raju	₹89,71,70,765
5.	Mr. B. Teja Raju	₹49,31,43,762
6.	Mr. Anjiraju Chintalapati (*since deceased*)	₹7,92,13,750
7.	Mr. Chintalapati Srinivasa Raju	₹136,64,01,742
8.	Chintalapati Holdings Pvt. Ltd	₹82,49,37,875
9.	Maytas India Limited (now known as IL & FS Engineering and Construction Company Limited)	₹59,16,49,091
	Grand Total	**₹543,93,25,874**

Thus, by order dated 15.07.2014 the WTM of SEBI has held that the aforesaid unlawful gain of ₹ 543.93 crore arising on sale of Satyam shares by various entities set out above shall be disgorged by Ramalinga Raju and Rama Raju. However, by the impugned

order, very same WTM of SEBI has held that the unlawful gain of ₹ 543.93 crore made by the entities set out therein shall be disgorged by the respective entity jointly and severely with B. Ramalinga Raju & B. Rama Raju.

j) Challenging the order passed by the WTM of SEBI on 10.09.2015 appellants have filed above appeals before this Tribunal.

6. Before dealing with the rival contentions, we deem it proper to quote relevant provisions (as they stood at the material time) contained in the PIT Regulations, 1992 and the Companies Act, 1956 which read thus:-

"Definitions.

2. In these regulations, unless the context otherwise requires :—

(a) ...
(b) ...
(c) "connected person" means any person who—

(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act or

(ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company [whether temporary or permanent] and who may reasonably be expected to have an access to unpublished price sensitive

information in relation to that company:

[Explanation:- For the purpose of clause (c), the words "connected person" shall mean any person who is a connected person six months prior to an act of insider trading;

(d) "dealing in securities" means an act of subscribing, buying, selling or agreeing to subscribe, buy, sell or deal in any securities by any person either as principal or agent;

(e) "insider" means any person who,

(i) is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or

(ii) has received or has had access to such unpublished price sensitive information;

(f) ...

(g) ...

(h) "person is deemed to be a connected person", if such person—

(i) to (vii)...

(viii) relatives of the connected person; or

(ix) is a concern, firm, trust, Hindu undivided family, company or association of persons wherein any of the connected persons mentioned in sub-clause (i) of clause (c), of this regulation or any of the persons mentioned in sub-clause (vi), (vii) or (viii) of this clause have more than 10 per cent of the holding or interest;

(ha)...

(i) 'relative' means a person, as defined in Section 6 of the Companies Act, 1956 (1 of 1956)

Prohibition on dealing, communicating or counselling on matters relating to insider trading."

"3. *No insider shall—*

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or

(ii) communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities:

Provided *that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law."*

<u>Companies Act, 1956</u>

"Section 6*. A person shall be deemed to be a relative of another if, and only if,-*

(a) they are member of a Hindu undivided family; or
(b) they are husband or wife; or
(c) the one is related to the other in the manner indicated in Schedule IA."

"Section 307 (10)

For the purposes of this section-

(a) any person in accordance with whose directions or instructions the Board of directors of a company is accustomed to act, shall be deemed to be a director of the company; and

(b) a director of a company shall be deemed to hold, or to have an interest or a right in or over, any shares or debentures, if a body corporate other

> *than the company holds them or has that interest or right in or over them, and either-*
>
> *(i) that body corporate or its Board of directors is accustomed to act in accordance with his directions or instructions; or*
>
> *(ii) he is entitled to exercise or control the exercise of one-third or more of the total voting power exercisable at any general meeting of that body corporate."*

7. In the light of aforesaid provisions contained in the PIT Regulations and the Companies Act, 1956, we may now consider the first question, namely, whether the WTM of SEBI is justified in holding that each appellant was an 'insider' under the PIT Regulations and that the appellants sold/ pledged the shares of Satyam when in possession of UPSI and thus violated SEBI Act and the PIT Regulations.

Whether each appellant was an insider and sold/ pledged shares of Satyam when in possession of UPSI.

8. Since the appellants contend that they were not 'insider' under the PIT Regulations, and were not in possession of UPSI while selling/ pledging the shares of Satyam, it would be appropriate to deal with the arguments of each appellant independently.

SRSR Holdings Pvt. Ltd. (Appeal No. 463 of 2015)

9. Facts relating to SRSR Holdings Pvt. Ltd. ("SRSR" for convenience) as well as their arguments and consideration thereof may be summarized as follows:-

a) SRSR was incorporated on 22.06.2006 as a private limited company in which the initial shareholders were

i)	B. Suryanarayan Raju	34%	Brother of Ramalinga Raju
ii)	B. Teja Raju	33%	Son of Ramalinga Raju
iii)	B. Rama Raju (Jr.)	33%	Son of Ramalinga Raju

b) On incorporation of SRSR all the above three shareholders became the directors of SRSR. On 14.09.2006, B. Ramalinga Raju and B. Rama Raju were inducted as directors of SRSR.

c) On 18.09.2006, the shareholding pattern of SRSR was changed as follows:-

i)	R. Ramalinga Raju	33.11%	
ii)	B. Rama Raju	38.47%	
iii)	Nandini Raju	40.52%	(Wife of Ramalinga Raju)
iv)	B. Radha	13.90%	(Wife of B. Rama Raju)

d) On 18.09.2006 B. Ramalinga Raju, B. Rama Raju and their respective spouses who were the promoters of Satyam, transferred their shareholding in Satyam to SRSR. On the very same day, B. Teja Raju & B. Rama Raju (Jr) demitted their office as directors of SRSR.

e) Investigation carried out by SEBI revealed that between October 11, 2007 and September 26, 2008, SRSR pledged 6,28,83,317 shares of Satyam as

security for obtaining loan amounting to ₹ 1258.88 crore. The said amount was borrowed to provide funds to 10 private limited companies which were owned by Raju family.

f) In the impugned order (para 33) the WTM of SEBI has recorded a finding that SRSR was under the same management or group and therefore SRSR was a 'deemed to be a connected person' defined under regulation 2(h)(i) of the PIT Regulations. It is not in dispute that Ramalinga Raju and Rama Raju (Chairman & Managing Director respectively of Satyam) were also the directors of SRSR and in fact entire shareholding in SRSR were held by Ramalinga Raju, Rama Raju and his family members. In these circumstances, decision of the WTM that SRSR was a company under the same management or group covered under the expression 'deemed to be connected person' defined under regulation 2(h)(i) of the PIT Regulations cannot be faulted.

g) It is not in dispute that Ramalinga Raju and Rama Raju as Chairman and Managing Director of Satyam were 'connected person' under regulation 2(c) (i) of the PIT Regulations. Admittedly, Ramalinga Raju and Rama Raju individually held more than 10% interest in SRSR and therefore, as per regulation

2(h)(ix) of the PIT Regulations, SRSR was a deemed connected person. Although, the impugned order does not consider SRSR as a 'deemed to be connected person under regulation 2(h)(ix) of the PIT Regulations, aforesaid uncontroverted facts on record clearly reveal that SRSR was a 'deemed to be connected person' under regulation 2(h)(ix) of the PIT Regulations.

h) It is now established that Ramalinga Raju and Rama Raju manipulated the books of Satyam during the period from 2001 to 2008. During that period Ramalinga Raju, Rama Raju and their wives transferred their shareholding in Satyam to SRSR and SRSR in turn pledged those shares for obtaining loan of ₹ 1258.88 crore to the group concerns and as the loan was not repaid the pledged shares have been sold by invoking the pledge. Thus, on one hand Ramalinaga Raju and Rama Raju manipulated the books of Satyam and ensured that the market price of Satyam were higher and on the other hand through SRSR got the Satyam shares pledged and obtained higher loan on the basis of higher market price of Satyam shares. In these circumstances, inference drawn by the WTM of SEBI that SRSR was reasonably expected to have access to the UPSI and

hence an 'insider' under regulation 2(e) of the PIT Regulations cannot be faulted. Consequently, the decision of the WTM of SEBI that SRSR indulged in pledging the shares of Satyam belonging to Ramalinga Raju Rama Raju and their spouses in contravention of regulation 3 of the PIT Regulations cannot be faulted.

i) Apart from the above, mode and the manner in which SRSR was incorporated, mode and the manner in which shares of Satyam were transferred by Ramalinga Raju, Rama Raju and their wives to SRSR and the mode and the manner in which the shares of Satyam were pledged and the pledged amounts were utilized, leave no manner of doubt that SRSR was a front entity established by Ramalinga Raju and Rama Raju for off loading their shareholding in Satyam when the market value of Satyam shares were higher on account of fictitious bank balances shown in the books of Satyam. Therefore, argument that SRSR was not an 'insider' and had not pledged the shares of Satyam when in possession of UPSI cannot be accepted.

j) Argument advanced by Mr. Kadam, learned Senior Advocate appearing on behalf of SRSR that pledging

shares of Satyam by SRSR would not amount to dealing in securities is without any merit. Expression 'dealing in securities' as defined under regulation 2(d) of the PIT Regulations is not restricted to any particular type of dealing but is wide enough to cover all types of dealing in securities including the activity of pledging the securities. Although pledging of securities is not per se illegal under the PIT Regulations, regulation 3 of the PIT Regulations prohibits an 'insider' from pledging the securities when in possession of UPSI. Thus, the prohibition contained in the PIT Regulations do not apply to bonafide pledge of securities, but apply only to pledge of securities by an insider when in possession of UPSI. In the present case, shares of Satyam were transferred by Ramalinga Raju, Rama Raju and their wives to SRSR a company owned by Ramalinga Raju, Rama Raju and their family members while in possession of UPSI. Moreover, before transferring the shares of Satyam, Ramalinga Raju and Rama Raju became Directors of SRSR and thereafter on transfer of shares, SRSR pledged those shares for obtaining loan to the entities owned by Ramalinga Raju and his family members. In these circumstances, decision of the WTM of SEBI that acquisition and pledge of Satyam shares by SRSR was a device adopted for off-

loading the shares of Satyam when in possession of UPSI and hence violative of regulation 3 of the PIT Regulations cannot be faulted.

k) Argument advanced on behalf of SRSR that the 'Model Code of Conduct for Prevention of Insider Trading for listed Companies' does not refer to 'pledge' and therefore pledging the shares does not amount to dealing in securities is without any merit. Model Code is only a Model and is not illustrative of all the dealings covered under the expression 'dealing in securities'. Therefore, fact that the Model Code of Conduct does not specifically refer to 'pledge', cannot be a ground to hold that the expression 'dealing in securities' defined under regulation 2(d) of the PIT Regulations would not include pledge of shares.

l) In the result, decision of the WTM of SEBI that SRSR was an 'insider' under the PIT Regulations and that SRSR pledged and got the shares of Satyam belonging to Ramalinga Raju, Rama Raju and their spouses sold when in possession of UPSI and thus SRSR violated SEBI Act and the PIT Regulations cannot be faulted.

Chitalapati S. Raju (Appeal No. 451 of 2015)
Chintalapati Holdings Pvt. Ltd. (Appeal No. 452 of 2015)
Late Shri Anjiraju Chintalapati represented by
Mr. Chintalapati Srinivasa Raju (Appeal No. 453 of 2015)

10. Facts relating to Chintalapati S. Raju ('CSR' for convenience) Chintalapati Holdings Pvt. Ltd. ("CHPL" for convenience) and Late Shri Anjiraju Chintalapati ("Anjiraju" for convenience) may be summarized as follows:-

a) CSR is the son of Anjiraju. CHPL is a company floated by CSR in which CSR and his wife were the only directors. CSR, CHPL and Anjiraju are hereinafter referred to as "the Chintalapati group" for convenience.

b) In the year 1993 CSR became executive director of Satyam. In the year 1996, Satyam Enterprise Solutions Pvt. Ltd. ("SESPL" for short) was formed as a joint venture between Satyam and CSR in which Satyam held 80% shares and CSR held 20% shares. Pursuant to a scheme of arrangement approved by Andhra Pradesh High Court, SESPL merged with Satyam with effect from 01.04.1999 and in lieu of holding 20% shares of SESPL, CSR was issued 8,00,000 shares of Satyam. Due to bonus and stock split (reducing face value of shares from ₹ 10 to ₹ 2) announced by Satyam, the shareholding of CSR in

Satyam rose within a period of one year from 8,00,000 shares to 76,50,000 shares.

c) On 20.01.2000 CHPL was incorporated by CSR and during the course of arguments counsel for CSR fairly stated that CSR and his wife held 50% shares each in CHPL and that they were the only two Directors of CHPL. CSR transferred some shares of Satyam to CHPL and some shares of Satyam to Anjiraju. Thereafter, CHPL retained some shares of Satyam and returned balance shares of Satyam to CSR.

d) From 1993 till August 2000, CSR continued as Executive Director of Satyam. In August 2000 CSR disclosed to the public that he was relinquishing his position as Executive Director of Satyam in order to focus on his independent venture capital business. However, the Board of Satyam requested CSR to continue as a non-executive director until a suitable replacement was found. Accordingly, from August 2000, CSR continued as the non-executive director till 23.01.2003 when the Board of Satyam accepted his resignation.

e) It is not in dispute that CSR sold 65,55,152 shares of Satyam between 22.02.2001 to 15.12.2008, CHPL sold 8,00,000 shares of Satyam between 04.01.2001

to 12.04.2001 and Anjiraju sold 2,50,000 shares of Satyam between 18.12.2002 to 15.12.2008 (after the death of Anjiraju on 03.12.2007 shares of Satyam held by Anjiraju were sold by CSR).

f) In the impugned order it is held that as a Promoter and Director of Satyam CSR was reasonably expected to have access to the UPSI and therefore CSR was an 'insider' under the PIT Regulations. Apart from the above, CSR being a Co-brother of Ramalinga Raju, it is observed that CSR was reasonably expected to have access to the UPSI. Similarly, it is held that CHPL and Anjiraju being 'deemed to be connected person' with CSR, they were reasonably expected to have access to the UPSI. Since CSR and his related entities viz; CHPL and Anjiraju had sold shares of Satyam while in possession of UPSI, it is held that they made unlawful gains in violation of the PIT Regulations. Accordingly, for violating PIT Regulations the Chintalapati group is restrained from accessing the securities market for 7 years, and CSR, CHPL and Anjiraju are individually directed to disgorge the unlawful gain made by them on sale of Satyam shares jointly and severally with Ramalinga Raju & Rama Raju.

11. Mr. Khambata & Mr. Modi, learned Senior Advocates appearing on behalf of Chintalapati group have strenuously argued that their clients have neither violated the SEBI Act nor violated the PIT Regulations and therefore, the impugned order passed against their clients deserve to be quashed and set aside. We see no merit in their arguments for the following reasons:-

a) First and the foremost argument advanced by counsel on behalf of Chintalapati group is that in the impugned order the WTM of SEBI has erroneously held that CSR/ Chintalapati group were the promoters of Satyam on the basis of unsubstantiated internet news report. It is submitted that neither CSR nor Chintalapati group were the promoters of Satyam at any point of time and even the internet news report referred to by SEBI does not suggest that the Chintalapati group entities were the promoters of Satyam and therefore, the impugned order passed solely on the basis of unsubstantiated internet news report is liable to be quashed and set aside. We see no merit in the above argument, because, in the impugned order, CSR is held to be a promoter of Satyam not on the basis of internet news report but basically on the basis of periodic disclosures filed by Satyam from time to time with the stock exchanges, (para 44 of the impugned order) wherein, CSR has

been shown as promoter of Satyam till 2008. The internet news report was in fact relied only to establish the relationship between CSR and Ramalinga Raju.

b) Extensive arguments were advanced by counsel on both sides on the question as to whether CSR/Chintalapati group could be considered as promoters of Satyam on the basis of the declarations made by Satyam in their periodic filings before the stock exchanges. In our opinion, correctness of the impugned order can be decided without going into the controversy as to whether CSR/ Chintalapati group were promoters or not. Accordingly, without going into the controversy as to whether Chintalapati group were promoters of Satyam or not, we proceed to consider the question, as to whether the WTM of SEBI on the basis of other material on record is justified in holding that CSR/ Chintalapati group were insiders and that they had sold shares of Satyam when in possession of UPSI.

c) Expression 'insider' is defined under regulation 2(e) of the PIT Regulations to mean any person who is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to UPSI or a person who has

actually received or has had access to such UPSI. Expression 'connected person' is defined under regulation 2(c) to mean (one) any person who is a Director or deemed Director under Section 2(13) and Section 307 (10) of the Companies Act, 1956 or (two) an officer/ an employee or any person who holds a position involving a professional or business relationship between himself and the company and who may be reasonably expected to have access to UPSI. It is relevant to note that the concept of 'reasonably expected to have access to UPSI' is not applied to Director/deemed Director, because, unlike other connected persons, Director/ deemed Director constitute part of the company's board and hence responsible for all the deeds/ acts of the company during the period when they were Director/ deemed Director. Thus, reading regulation 2(e) with regulation 2(c) & 2(h) of the PIT Regulations, it is evident that the expression 'insider' under regulation 2(e) covers the following persons.

i) Director/ deemed Director who is or was connected with the company.

ii) Officer/employee of the company or any person who on account of professional or business relationship with the company is

reasonably expected to have access to UPSI.

iii) Deemed to be connected persons who are reasonably expected to have access to UPSI.

iv) Any person who has actually received or has had access to UPSI.

In the present case, admittedly, CSR was a Director of Satyam till 23.01.2003 and therefore, being responsible for all the acts/ deeds of Satyam, the WTM of SEBI was justified in holding that CSR was an insider under the PIT Regulations.

d) CHPL was a company floated by CSR and during the course of arguments, counsel for CSR fairly stated that CSR and his wife held 50% shares each in CHPL and that they were the only two Directors in CHPL. Regulation 2(h)(i) of the PIT Regulations provide that a company which is under the same management or group would be deemed to be a connected person. Since CSR was a person connected with Satyam and since CSR and his wife each holding 50% shares of CHPL were also managing CHPL as the only two Directors, CHPL was a deemed connected person under regulation 2(h)(i) of the PIT Regulations. Apart

from the above, CSR who is a connected person with Satyam under regulation 2(c) (i) of the PIT Regulations admittedly held more than 10% of the shareholding or interest in CHPL and therefore, even under regulation 2(h)(ix) of the PIT Regulations, CHPL was liable to be considered as a 'deemed to be connected person'. Although, the impugned order does not consider CHPL to be a deemed connected person under regulation 2(h)(ix) of the PIT Regulations, uncontroverted facts on record conclusively establish that CHPL was a deemed to be connected person under regulation 2(h)(ix) of the PIT Regulations. Thus, CSR as a connected person and CHPL as a deemed to be a connected person managed by CSR and his wife were reasonably expected to have access to UPSI.

e) Similarly, Anjiraju being father of CSR was a deemed connected person under regulation 2(h)(viii) read with regulation 2(h)(i) of the PIT Regulations and Section 6 of the Companies Act, 1956. Thus, CSR. CHPL and Anjiraju as connected person/ deemed connected person were reasonably expected to have access to UPSI and hence CSR CHPL and Anjiraju were insiders under regulation 2(e) of the PIT Regulations.

f) Under regulation 3 of the PIT Regulations an 'insider' is prohibited from dealing in securities of the company when in possession of UPSI. Question, therefore, to be considered herein is, whether there is any merit in the inference drawn by the WTM of SEBI that CSR/ Chintalapati group were reasonably expected to have access to UPSI.

g) Admittedly, CSR had joined Satyam in the year 1993 as an Executive Director and his duties as an Executive Director of Satyam was 'Business Development, Diversification Plans and advise on new ventures'. It is not in dispute that during the years 1994-1996, CSR became the founding Chief Executive Officer of Dun & Bradstreet Satyam Software (currently known as Cognizant), a joint venture of Dun & Bradstreet & Satyam. On 11.04.1996 another joint venture company known as Satyam Enterprise Solutions Pvt. Ltd. ("SESPL" for convenience) was floated in which Satyam held 80% stake and the remaining 20% stake was with CSR. On 27.08.1999 SESPL merged with Satyam, pursuant to a scheme of arrangement approved by the Andhra Pradesh High Court. As a result of that merger, CSR was issued 8,00,000 equity shares of Satyam. On account of Bonus declared by Satyam and in view of

stock split announced by Satyam whereby the face value of Satyam shares were reduced from ₹ 10/- to ₹ 2/-, the shareholding of CSR in Satyam increased from 8,00,000 equity shares to 76,50,000 equity shares of Satyam within a period of one year. These facts clearly show that apart from being an Executive Director of Satyam CSR was closely connected with several companies floated by Ramalinga Raju and his family members.

h) It is relevant to note that on 20.08.2000 CSR made it public that he was relinquishing his position as Executive Director of Satyam in order to focus on his independent venture capital business, however, it is an admitted fact that on being asked to continue till a suitable replacement was found, CSR agreed and continued as Non-Executive Director of Satyam till 23.01.2003. There is nothing on record to suggest that the duties of CSR as a Non-Executive Director were different from the duties discharged by him as an Executive Director of Satyam. Admittedly, CSR was attending the Board Meeting of Satyam till his retirement on 23.01.2003.

i) Investigation carried out by SEBI revealed that the books of Satyam were manipulated during the years

2001-2008 and it is seen that in the year 2001 & 2002 the inflated bank balances in the deposit account and current account of Satyam with the Bank of Baroda, New York Branch was to the tune of ₹ 120.29 crore and ₹ 995.01 crore respectively. Since CSR was involved in business development, diversification plans and advise on new ventures of Satyam during the year 2001 and 2002, inference drawn by the WTM of SEBI that CSR was reasonably expected to have access to the fictitious bank balances shown in the books of Satyam during the period 2001-2002 cannot be faulted. In other words, it is impossible to believe that business development, diversification plans and advise on new ventures could be given by CSR to Satyam without being aware that the bank balances shown in the books of Satyam during the years 2001-2002 were fictitious.

j) It is relevant to note that during the year 2001 & 2002, while Satyam recorded fictitious bank balances to the tune of ₹ 120.29 crore and ₹ 995.01 crore respectively, Chintalapati group resorted to selling shares of Satyam from time to time. As per the records, 71.05% shares of Satyam held by Chintalapati group were sold by October 2003 and the total profits made on sale of Satyam shares by CSR,

CHPL and Anjiraju up to 2008 was ₹ 136.64 crore, ₹ 82.49 crore and ₹ 7.92 crore respectively. It is equally important to note that during the period from 2001 to 2008, like Ramalinga Raju & his family members even Chintalapati group indulged only in selling the shares of Satyam and not deemed it fit to acquire the shares of Satyam inspite of the fact that Satyam was depicted as a highly prosperous company during that period. It is also an undisputed fact that CSR and Ramalinga Raju were Co-brothers as their wives were two real sisters. Aforesaid facts on record give credence to the reasonable belief that Chintalapati group sold the shares of Satyam when in possession of UPSI that the books of Satyam have been manipulated by showing fictitious bank balances in the books of Satyam.

k) Strong reliance was placed by counsel for Chintalapati group on the charge sheet filed by CBI, SFIO report and the decision of the special CBI Court wherein it is held that Chintalapati group were only shareholders of Satyam and not promoter of Satyam and that the Chintalapati group like other investors were the victim of fraud committed by Ramalinga Raju & Rama Raju. It is relevant to note that, the investigation carried out by the above authorities was to find out the persons

who were responsible for the accounting fraud committed by Satyam and not to find out the persons who were guilty of violating the PIT Regulations. In none of those documents it is held that the Chintalapati group were not reasonably expected to have access to UPSI. Therefore, even if we accept the SFIO report and hold that Chintalapati group were not promoters of Satyam, the question still to be considered is, whether Chintalapati group, who were insiders under the PIT Regulations had sold shares of Satyam when in possession of UPSI and made profits in violation of the PIT Regulations. Since that question was not considered by any of the authorities, the WTM of SEBI was justified in not relying on the reports of those agencies.

l) Relying on the decisions of the Apex Court in case of Canara Bank v/s Debasis Das reported in (2003) 4 SCC 557 and in the case of Nasir Ahmad v/s Assistant Custodian General reported in (1980) 3 SCC 1 it was strongly contended by counsel for Chintalapati group that while the show cause notice alleges that Chintalapati group as promoters of Satyam were reasonably expected to be privy to UPSI, in the impugned order it is held for the first time that CSR was related to Ramalinga Raju and was closely

connected with Satyam and therefore it is reasonable to believe that Chintalapati group was privy to UPSI. Thus, it is submitted that the impugned decision which travels beyond the show cause notice is liable to be quashed and set aside as having been passed without jurisdiction.

m) We see no merit in the above argument. In the annexures to the show cause notice issued to CSR/ Chintalapati group it was specifically stated that CSR was the Executive Director of Satyam up to 31.08.2000 and Non- Executive Director of Satyam from 01.09.2000 to 23.01.2003. It was also specifically stated in the annexure to the show cause notice that CSR and Ramalinga Raju were co-brothers. Thus, the show cause notice not only alleged that Chintalapati group violated PIT Regulations on account of their being promoters but also on account of CSR being a Director of Satyam and Co-brother of Ramalinga Raju. Therefore, even if Chintalapati group were not promoters of Satyam, it was open to the WTM of SEBI to hold that CSR as Director of Satyam and Co-brother of Ramalinga Raju was reasonably expected to have access to the UPSI and thus violate the PIT Regulations by selling the shares when in possession of UPSI. In such a case, it

cannot be said that the impugned order travels beyond the show cause notice. As the impugned order does not travel beyond the show cause notice, the above two decisions of the Apex Court relied upon by the counsel for Chintalapati group would have no relevance to the facts of present case.

n) Fact that a criminal complaint was filed against Chintalapati group on 05.08.2014 even before passing of the impugned order on 10.09.2015 cannot be a ground to hold that the WTM of SEBI had predetermined the issue against the appellants, because, Section 24 of the SEBI Act provides that without prejudice to any order that may be passed in the adjudication proceedings it would be open to SEBI to initiate criminal proceedings against any person who contravenes SEBI Act and the regulations made thereunder. Therefore, fact that criminal complaint was filed against the Chintalapati group even before the impugned order was passed, would not invalidate the impugned order. Similarly, fact that the WTM of SEBI, without hearing the Chintalapati group had held in his earlier order dated 15.07.2014, that Chintalapati group were 'connected/ related' entities would not render the impugned order invalid, because, the facts on record ex-facie support the

conclusion drawn in the earlier order which was passed without giving an opportunity of hearing to the Chintalapati group. In any event, since the impugned order is passed after giving an opportunity of hearing, the grievance made by the Chintalapati group is wholly unjustified.

o) Argument advanced by counsel for Chintalapati group that CSR was a director of Satyam till 23.01.2003 and therefore, CSR could be said to be a connected person till 23.07.2003 i.e. six months post his resignation deserves acceptance. Explanation inserted to regulation 2(c) of the PIT Regulations with effect from 20.02.2002 clearly stipulates that where a connected person ceases to be a connected person then, in respect of the insider trading of that person, action can be taken up to a period of six months from the date of a person ceasing to be a connected person. In view of the specific provision to the above effect inserted in the PIT Regulations with effect from 20.02.2002 in our opinion, the WTM of SEBI was not justified in initiating action beyond the period of six months stipulated in the Explanation to regulation 2(c) of the PIT Regulations.

p) Counsel for SEBI, however, submitted that subscribing to the above view would defeat the purpose with which the law was enacted, because in all such cases no action could be taken against any person/ entity who had indulged in insider trading, after six months of his ceasing to be a connected person. It is submitted by counsel for SEBI that the term "was connected with the company" under regulation 2(e) would mean that a person would continue to be a connected person until the unpublished information which is price sensitive, becomes known to the investors/ gets published. It is further submitted that the period of six months included in the Explanation is meant to cover routine cases where it is not expected that the information would be held as unpublished for a period more than six months. However, it is submitted that in the rarest of rare cases as the present one, where the unpublished price sensitive information continued for a period of about 8 years, a person who was once an insider and had access to the unpublished information cannot be permitted to trade and gain advantage of such information to the detriment of the common investor. In such a case, it is submitted that even if the person is not connected with the company for a period beyond six months but who was in the past

connected with the company and who even after his disconnection dealt in securities of the company while in possession of UPSI may be held liable as an insider till the publication of the Price Sensitive Information. In support of the aforesaid submission reliance is placed on a decision of the Apex Court in the case of Ajay Kumar Agarwal v/s Union of India reported in (2010) 3 SCC 765.

q) We see no merit in the above contentions. Although regulation 2(c) refers to a person who is presently a connected person, regulation 2(e) defines the expression 'insider' to mean a person who is or who was a connected person. As a result, the prohibition contained in regulations 3 of the PIT Regulations on the insider would apply to both persons i.e. a person who is a connected person and a person who was a connected person. In the absence of any time limit prescribed under the PIT Regulations for initiating action against a person indulging in insider trading it was open to SEBI to initiate action till the UPSI continued to be UPSI. However, by inserting Explanation to regulation 2(c) with effect from 20.02.2002 it is made clear that action in relation to insider trading of a connected person covered under regulation 2(c) of the PIT Regulations could be taken

up to a period of six months from the date on which the person ceased to be a connected person. It is apparent that explanation to regulation 2(c) has been inserted on the prima facie belief that UPSI would not continue beyond a period of six months from the date of the connected person ceasing to be a connected person. Although the above prima facie belief is belied in the present case, till the law is amended it would have to be held that explanation to regulation 2(c) restricts action for insider trading up to a period of six months from the date on which the connected person ceases to be a connected person.

r) To hold that the Explanation inserted to regulation 2(c) with effect from 20.02.2002 is not restricted to the act of insider trading up to six months and to extend the same beyond the period of six months would amount to violating the clear mandate contained in the newly inserted Explanation. Since the language used in the Explanation to regulation 2(c) is clear and unambiguous, it would be improper to give an extended meaning to the words used in the Explanation to regulation 2(c) of the PIT Regulations. Reliance placed by the counsel for SEBI on the Apex Court decision in case of Ajay Kumar Agarwal (supra) is misplaced. In that case while considering

the question as to whether Section 11B of SEBI Act can be applied retrospectively or not, the Apex Court held that while interpreting the provisions of a social welfare legislation the purpose of enacting the law must be taken into consideration. In the present case, Explanation to regulation 2(c) specifically introduces with effect from 20.02.2002 bar of 'six months' and to ignore that bar would mean violating the mandate of law. Therefore, the decision of the Apex Court in case of Ajay Kumar Agarwal (supra) would not be applicable to the facts of present case.

s) Argument that SEBI could not proceed against Anjiraju on account of his death on 03.12.2007 is without any merit. As noted in the impugned order, unlawful gains made on account of insider trading by Anjiraju and inherited by CSR as legal heir cannot be allowed to be retained by CSR as it would amount to unlawful enrichment.

t) Strong reliance was placed by counsel for Chintalapati group on the order passed by the Adjudicating Officer ("AO" for short) on 08.03.2016 in case of Reliance Petro Investments Limited ("RPIL" for convenience). In our opinion, that decision is distinguishable on facts. Although that decision is not binding on this

Tribunal, in that case, inter alia on appreciation of facts it is held that one month prior to the UPSI came into existence, the Board of RPIL had authorized investments in the shares of Indian Petrochemical Corporation Ltd. ("IPCL) and therefore, it cannot be said that the shares of IPCL were purchased when in possession of UPSI. In the present case, Chintalapati group sold the shares of Satyam during the period when UPSI was existing. Therefore, the decision of SEBI in case of RPIL has no relevance to the facts of present case.

u) In the result, decision of the WTM that Chintalapati group were insiders under the PIT Regulations and that they had sold the shares of Satyam when in possession of UPSI in violation of PIT Regulations cannot be faulted.

B. Jhansi Rani (Appeal No. 462 of 2015)

12. In the impugned order it is held that B. Jhansi Rani wife of B. Suryanarayana Raju is deemed to be a connected person under regulation 2(h)(viii) of the PIT Regulations and hence an insider under regulation 2(e) of the PIT Regulations. It is further held that under regulation 3 of the PIT Regulations, B. Jhansi Rani could not have sold shares of Satyam when in possession of UPSI and accordingly she is directed to disgorge

the unlawful gain of ₹ 8.50 crore made on sale of Satyam shares when in possession of UPSI.

13. As rightly contended by Mr. Setalvad learned Senior Advocate, B. Jhansi Rani had sold shares of Satyam in off-market on 22.01.2001 and on 05.02.2001. Regulation 2(h)(viii) which applies to relatives of the connected person was inserted to the PIT Regulations with effect from 20.02.2002. Therefore, the WTM of SEBI could not have applied regulation 2(h)(viii) of the PIT Regulations to the case of B. Jhansi Rani, because that provision was not in existence when B. Jhansi Rani sold the shares of Satyam on 22.01.2001 and on 05.02.2001.

14. Similarly, in para 65 of the impugned order it is held that Jhansi Rani sold shares of Satyam 'when in possession' of UPSI and therefore she has violated regulation 3 of the PIT Regulation. It is relevant to note that Jhansi Rani sold the shares of Satyam prior to the amendment of regulation 3 on 20.02.2002. On the date on which Jhansi Rani sold the shares of Satyam, the prohibition under regulation 3 was that no 'insider' shall trade in the shares of the company 'on the basis' of UPSI. The words 'on the basis' was substituted by the words 'when in possession' with effect from 20.02.2002. Thus, sales effected by Jhansi Rani could be said to be violative of regulation 3, only by establishing that she had sold the shares of Satyam not only when in possession of UPSI but also on the basis of UPSI. As there is no finding recorded in the impugned order that Jhansi Rani sold shares of Satyam on the basis of UPSI, impugned order passed against Jhansi Rani cannot be sustained.

15. Apart from the above, it is held in the impugned order that the UPSI existed between January 2001 to December 2008, however, the exact date on which manipulation of the books of Satyam commenced is not set out in the impugned order. From the order passed by the WTM of SEBI in case of Ramalinga Raju and other key managerial persons which is confirmed by this Tribunal on 12.05.2017, it is evident that SEBI investigated the books of Satyam for the period commencing from the last quarter of the financial year 2000-2001 i.e. the period from 01.01.2001 to 31.03.2001 and on investigation SEBI found that the books of Satyam were manipulated on the basis of monthly bank statements received from the office of Chairman Ramalinga Raju. Since the books of Satyam were manipulated on the basis of monthly bank statements, it is apparent that the manipulation could have commenced on the basis of monthly statement either in January 2001 or in February 2001 or in March 2001. In the absence of any specific date on which manipulation of the books of Satyam commenced, in our opinion, it would be just and proper to give benefit of doubt to Jhansi Rani and hold that it is possible that the books of Satyam might have been manipulated after Jhansi Rani sold shares of Satyam. Fact that SEBI conducted investigation for the last quarter of the financial year 2000-2001 lie from 01.01.2001 and found that the books of Satyam were manipulated in that quarter, it could not inferred that the manipulation of accounts commenced from Januray 2001. Accordingly, we hold that the WTM of SEBI is not justified in holding that Jhansi Rani violated the PIT Regulations.

16. Reliance placed by counsel for SEBI on the decisions of this Tribunal in case of Rajiv Gandhi v/s SEBI (Appeal No. 50 of 2007) and Chandrakala v/s SEBI (Appeal No. 209 of 2011 decided on 31.01.2012) are misplaced. As noted earlier, facts set out in the impugned order do not even remotely suggest that the books of Satyam were manipulated prior to the date on which Jhansi Rani sold the shares of Satyam. Therefore, the decisions of this Tribunal relied upon by the counsel for SEBI wherein it is held that once an insider trades in the securities of company, it is presumed that such trades were done on the basis of UPSI would have no relevance to the case of B. Jhansi Rani.

17. In the result, the directions issued against Jhansi Rani are quashed and set aside and the Appeal filed by Jhansi Rani is allowed with no order as to costs.

B. Appalanarasamma (Appeal No. 458 of 2015)

B. Teja Raju (Appeal No. 459 of 2015)

B. Rama Raju (Jr.) (Appeal No. 460 of 2015)

B. Suryanarayana Raju (Appeal No. 461 of 2015)

18. It is not in dispute that the appellants in all these appeals are family members of Ramalinga Raju and Rama Raju and are covered under the Expression ‘deemed to be connected person’ as defined under regulations 2(h) of the PIT Regulations. However, Mr. Mohan Parasaran, Mr. J. J. Bhatt, Mr. Dhakephalkar, learned Senior Advocates and Mr. Andhyarujina learned Advocate appearing on behalf of their respective clients have argued that the WTM of SEBI is not justified in

holding that the appellants had sold the shares of Satyam when in possession of UPSI.

19. We see no merit in the above contentions for the following reasons:-

a) B. Appalanarasamma (Mother of Ramalinga Raju & Rama Raju) was a shareholder and/ or Director of more than 10 companies which were all floated by Ramalinga Raju, Rama Raju and their family members. B. Teja Raju (Son of Ramalinga Raju) was a shareholder and/ or Director of 50 companies which were floated by Ramalinga Raju, Rama Raju and their family members. B. Rama Raju (Jr.) (Son of Ramalinga Raju) was the shareholder and/ or Director of 22 companies which were floated by Ramalinga Raju, Rama Raju and their family members. Similarly, B. Suryanarayana Raju (Brother of Ramalinga Raju) was a shareholder and/ or Director of 103 companies floated by Ramalinga Raju and his family members. Thus, all these appellants apart from being 'deemed to be connected person' had close business relationship with Ramalinga Raju and Rama Raju.

b) During the period from 12.12.2003 to 15.12.2003 B. Appalanarasamma transferred her entire shareholding

of 2,25,500 shares of Satyam in off-market to Elem Investments, Fincity Investments and Higrace Investments which were all owned by Ramalinga Raju, Rama Raju and their family members. According to SEBI the unlawful gain made by Appalanarasamma on sale of Satyam shares was to the tune of ₹ 8,00,43,125/-

c) B. Teja Raju was the Vice Chairman, Director and Promoter of Maytas Infra Limited. During his tenure Maytas Infra Limited made off-market transfers of Satyam shares to Fincity Investments, Elem Investments and Higrace Investments. B. Teja Raju held 49.66% shares of SNR Investments and was its Director, held 48.07% shares of Veeyes Investments which were all group concerns of Raju family. B. Teja Raju had sold 4,92,250 shares of Satyam during the period from 11.08.2005 and 12.09.2005 and made profit to the extent of ₹ 49.31 crore.

d) B. Rama Raju (Jr.) was the Director of Maytas Properties Limited. He had given a presentation to the Board of Satyam in the Board meeting on 26.12.2008 in support of the proposed merger of Maytas Properties Ltd. with Satyam. B. Rama Raju (Jr.) sold his entire shareholding of 9,34,250 shares of

Satyam between 23.08.2005 and 02.09.2005 and made gain to the tune of ₹ 46,00,17,218/-.

e) B. Suryanarayana Raju was the founding shareholder and Director of SRSR Holdings Pvt. Ltd. He was holding 95.80% shares of Elem Investments, 3.68% shares of Higrace Investments which were all group concerns of Raju family. B. Suryanarayana Raju made off-market transfers of his entire shareholding of 27,89,000 shares of Satyam to Elem Investments, Fincity Investments and Higrace Investments between 05.02.2001 to 19.11.2004 and made profit of ₹ 89,71,70,765/-.

f) Till the accounting fraud of Satyam was revealed by Ramalinga Raju on 07.01.2009 Satyam was a promising and rising company. In such a case, ordinarily the appellants who were closely associated with Ramalinga Raju and Rama Raju would have resorted to consolidating their shareholding in Satyam. However, strangely, not only Ramalinga Raju & Rama Raju, but also all their family members including all the appellants herein who were deemed to be connected persons have resorted to selling the shares of Satyam during the years 2001-2008. It is relevant to note that the appellants not merely sold the

shares of Satyam but virtually liquidated their shareholding in Satyam during the period from 2001 to 2008 and during the said period the investors were made to believe that Satyam is achieving greater heights year after year. None of the appellants have placed any material on record to suggest there were compelling reasons or circumstances which compelled them to liquidate their shareholding in Satyam during the period from 2001 to 2008. It is equally strange that during the entire period of eight years (2001 to 2008) none of the appellants at any point of time deemed it fit to acquire the shares of Satyam which was the flag ship company of Raju family and was supposed to be financially a sound company. In these circumstances, inference drawn by the WTM of SEBI that the appellants being insiders have liquidated their shareholding in Satyam when in possession of UPSI cannot be faulted.

g) In support of their argument that the WTM of SEBI has failed to establish that the appellants were in possession of UPSI, counsel for the appellants have relied upon various decisions of this Tribunal as also decisions of the Apex Court. In our opinion, all those decisions are distinguishable on facts. As held by the Apex Court in the case of SEBI v/s Kishore R.

Ajmera reported in (2016) 6 SCC 368, in the absence of direct evidence, it is the duty of the courts to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges are founded and to reach what would appear to the court to be a reasonable conclusion there from. In the present case, the overwhelming circumstantial evidence clearly demonstrate that Ramalinga Raju and Rama Raju orchestrated the accounting fraud in Satyam and they along with their family members reaped the benefits of accounting fraud by selling the shares of Satyam to unsuspecting investors who were made to believe that Satyam was financially sound.

h) Since PIT Regulations, 1992 were repealed and replaced by PIT Regulations, 2015, even before the impugned order was passed, it is submitted by the counsel for appellants that the WTM of SEBI ought to have taken into consideration the expression 'Immediate relative' introduced in the PIT Regulations, 2015. There is no merit in the above contention, because, regulation 12(2) of the PIT Regulations, 2015 specifically saves the proceedings initiated under the PIT Regulations, 1992. Therefore, the expression 'Immediate relative' introduced in the PIT Regulations, 2015 would not apply to the case of

the appellants, who are covered under the PIT Regulations, 1992.

i) For all the aforesaid reasons, decision of the WTM of SEBI that the appellants herein were insiders and that they had sold shares of Satyam when in possession of UPSI and hence violated PIT Regulations cannot be faulted.

Whether the WTM is justified in passing uniform restraint order against all the appellants and directing each appellant to disgorge the unlawful gain jointly and severally with B. Ramalinga Raju and Rama Raju.

20. There can be no dispute that the role played by SRSR, Chintalapati group and other appellants in facilitating and liquidating the shares of Satyam when in possession of UPSI differ substantially. In such a case, without considering the merits of each case the WTM of SEBI could not have imposed uniform restraint order against all the appellants.

21. Apart from the above, having held in his order dated 15.07.2014 that the gains arising on sale/ pledge of Satyam shares by the appellants were the unlawful gains made by Ramalinga Raju and Rama Raju, and having directed them to disgorge the said unlawful gain, the WTM could not have held in the impugned order that the very same gains were the unlawful gains made by the appellants and direct each appellant to disgorge that unlawful gain jointly and severally with Ramalinga Raju

and Rama Raju. Thus, the order passed by the WTM of SEBI in case of Ramalinga Raju and Rama Ramu on 15.07.2014 and the impugned order passed against the appellants on 10.09.2015 are mutually contradictory because in one order it is held that the unlawful gains specified therein are made by Ramalinga Raju and Rama Raju and in another order it is held that the said gains are the unlawful gains made by the appellants herein. In these circumstances, we deem it proper to set aside the impugned order, to the extent it imposes uniform restraint order and determines the quantum of unlawful gain (except in the case of B. Jhansi Rani) and restore the matters for fresh decision on merits and in accordance with law.

22. Before passing fresh order on remand, the WTM of SEBI shall give an opportunity of hearing to the appellants and consider their plea on merits, including the plea of SRSR that it had acquired the shares of Satyam for valuable consideration and that the loan obtained by pledging shares of Satyam have been substantially repaid. Similarly, while computing the unlawful gain the WTM of SEBI shall consider the cost of acquisition, if any, incurred by each appellant. Till the WTM of SEBI passes fresh order on merits on the above issues, the appellants shall not deal in securities or access the securities market in any manner whatsoever.

23. In the result we pass the following order:-

a) In view of the explanation inserted to regulation 2(c) of the PIT Regulations, 1992 with effect from

20.02.2002, action for insider trading of a connected person can be taken up to a period of six months from the date of that person ceasing to be a connected person. Obviously, SEBI cannot take action in respect of the insider trading of a connected person beyond the period of six months from the date of that person ceasing to be a connected person.

b) The expression 'dealing in securities' defined under regulation 2(d) of the PIT Regulations, 1992 is wide enough to include pledging of securities. Prohibition contained in regulation 3 is inter alia restricted to pledging of securities by an insider when in possession of UPSI. In other words, pledging of securities by any person other than an insider is not prohibited under regulation 3 of the PIT Regulations.

c) Impugned order passed by the WTM of SEBI on 10.09.2015 against all the appellants herein (except in case of B. Jhansi Rani, Appellant in Appeal No. 462 of 2015) is upheld to the extent that the appellants were insiders under the PIT Regulations and that the appellants had pledged/sold the shares of Satyam when in possession of UPSI and thus, they have violated the SEBI Act and the PIT Regulations. However, the uniform restraint order passed against

the appellants and the quantum of unlawful gain determined against each appellant and the direction to disgorge the same jointly and severally with Ramalinga Raju & Rama Raju are quashed and set aside and restored to the file of the WTM of SEBI for fresh decision on merits and in accordance with law as expeditiously as possible and preferably within a period of four months from today. Till fresh order is passed by the WTM of SEBI on the aforesaid issues, the appellants shall not deal in securities or access the securities market in any manner whatsoever.

d) Appeal No. 462 of 2015 filed by B. Jhansi Rani is allowed and directions issued against her in the impugned order are quashed and set aside.

24. All the Appeals are disposed of in the aforesaid terms with no order as to costs. In view of the disposal of the Appeals, Misc. Application No. 87 of 2017 in Appeal No. 452 of 2015 does not survive and the same is disposed of accordingly.

Sd/-
Justice J.P. Devadhar
Presiding Officer

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

11.08.2017
Prepared & Compared By: PK

Per : Shri Jog Singh, Member (Minority View)

*25. I have gone through the majority view written by the Learned Presiding Officer and concurred by my brother Dr. C.K.G. Nair. By the majority judgment, the impugned order dated September 10, 2015 has been quashed in respect of all the nine entities before us and the matter has been remanded in respect of eight for fresh consideration by the Ld. WTM of SEBI, except Appeal No. 462/2015 (Ms. B. Jhansi Rani). With respect, I am not in a position to persuade myself to remand these matters at this belated stage and would like to give finality to a decade old matter.

26. There are nine appeals in this order, out of which the appellants in five appeals are relatives of Mr. B. Ramalinga Raju and B. Rama Raju, the main architects of the Satyam Scam, namely, Ms. B. Appalanarasamma, Mr. B. Teja Raju, Mr. B. Rama Raju (Jr.), Mr. B. Suryanarayana Raju and Ms. B. Jhansi Rani. Sixth one is SRSR Holdings Pvt. Ltd., which was a company owned by Mr. B. Ramalinga Raju and his wife, B. Nandini Raju; B. Rama Raju and his wife, B. Radha. Mr. B. Suryanarayana Raju, Mr. B. Ramalinga Raju and Mr. B. Rama Raju were the directors of the company. The third group consists of Mr. Chintalapati Srinivasa Raju, his late father Mr. Anjiraju Chintalapati and Chintalapati Holdings Pvt. Ltd., a company promoted by Mr. Chintalapati Srinivasa Raju.

27. Except the case of Ms. B. Jhansi Rani, which has been allowed by majority order, all other cases have been remanded on one ground or the other. I have my own reservations in following the majority view.

I. Appeal Nos. 458/015 (B. Appalanarasamma**), 459/2015 (**B. Teja Raju**), 460/2015 (**B. Rama Raju Jr.**), 461/2015 (**B. Suryanarayana Raju**) and 463/2015 (**SRSR Holdings Pvt. Ltd.**)**

28. First of all I will deal with the case of the five relatives and SRSR Holdings Pvt. Ltd. in as much as, admittedly, the four appellants are the relatives of Mr. B. Ramalinga Raju whereas the company SRSR Holdings Pvt. Ltd. was floated as a front by Mr. B. Ramalinga Raju and his relatives only with a view to pledge the shares of Satyam and take loans from banks in the name of other B. Ramalinga Raju family owned companies for the eventual benefit of the family members at the cost of the public shareholders. Ms. B. Jhansi Rani is also a relative of Mr. B. Ramalinga Raju. She is the wife of his real brother, Mr. Suryanarayana Raju, but her case has been allowed, therefore, I restrict myself to the four relatives and SRSR Holdings Pvt. Ltd. The ostensible reason for remand given in the majority order is to recalculate the amount of disgorgement directed to be paid by these five entities ultimately to be refunded to public shareholders who lost their hard earned money due to the colossal fraud.

29. Restoration to the file of WTM of SEBI has been done after quashing and setting aside the impugned order by which these entities have been directed to disgorge various amounts, detailed below**,** on the ground that the cost of acquisition/intrinsic value of shares was not taken into account by SEBI while making the disgorgement and imposing a ban of seven years on entering the market on each entity.

Sl.No.	Appeal No.	Name of Appellant	No. of shares sold	Shares sold for(Unlawful gain)/amount to be disgorged.	Cost of acquisition of shares
1.	458/2015	Ms.B.Appalanarasamma	2,25,500	8,00,43,125/-	Not known
2.	459/2015	Mr. B. Teja Raju	9,42,250	49,31,43,762/-	Gift from Grandfather
3.	460/2015	Mr. B. Rama Raju (Jr.)	9,34,250	46,00,17,218	Gift from Grandfather
4.	461/2015	Mr. B. Suryanarayana Raju	27.89 lacs approx.	89,71,70,765	Not known
5	463/2015	SRSR Holdings Pvt. Ltd.		1258.88 Crore	Company floated as a front by Mr. B. Ramalinga Raju & his relatives.

It is a matter of record that two appellants, namely Mr. B. Rama Raju (Jr.) and Mr. B. Teja Raju have categorically admitted that they did not incur any cost on acquisition of the shares which they sold while they were in possession of UPSI in question. In view of this clear and unambiguous admission, the Ld. WTM was right in directing the whole amount as illegal gain and, hence, remand of all these matters at a belated stage of almost a decade would not serve the ends of justice. Similarly, in the other three cases of Mr. B. Suryanarayana Raju, Ms. B. Appalanarasamma and SRSR Holdings Pvt. Ltd., these entities repeatedly failed to produce the cost of acquisition either before the WTM of SEBI or before this Tribunal for years together. Therefore, the WTM cannot be faulted with in directing the whole amount to be disgorged and banning the entities for seven years from accessing the capital markets in any manner.

30. While deciding these appeals, we cannot be unmindful of the fact that the whole dispute arose in the wake of Satyam Scam, which erupted on 07.01.2009 when Mr. B. Ramalinga Raju, the then Chairman of Satyam admitted of having indulged into grave acts of fabricating and fudging of accounts of Satyam, which led to an artificial hike in the scrips of the company. Thousands of investors were duped of their money whereas the family members of Mr. B. Ramalinga Raju went on a spree of selling the shares and thereby illegally enriching themselves. In fact, it is pertinent to note that in the said email dated 07.01.2009 addressed to SEBI and others, it is specifically mentioned that Mr. B. Ramalinga Raju, the Chairman and his real brother, Mr. B. Rama Raju, the Managing Director of the Company, were only responsible for the manipulation of accounts which seems to have been done by them for their own personal greed. It was further categorically stated by

Shri B. Ramalinga Raju that no other Director/Executive Director, past or present, was responsible for the falsification and fabrication of the records.

31. Various Government of India agencies sprung into action for prosecuting the perpetrators of the Scam for violating the law. Ministry of Corporate Affairs, Government of India, immediately constituted Multi-Disciplinary Investigation Team ("**MDIT**") comprising of officers of the SEBI, the Serious Fraud Investigation Office ("**SFIO**"), the Central Bureau of Intelligence ("**CBI**"), the Enforcement Directorate ("**ED**"), the Reserve Bank of India ("**RBI**") and the Income Tax Department ("**IT**"). The underlining objective in forming **MDIT,** as reflected at page 35 of the **SFIO Report**, seems to be to avoid inconsistencies among the aforementioned agencies while investigating the same set of facts which led to the Satyam scam in the first place.

32. SEBI also undertook its investigation and initiated action against the five main architects of the scam and initially three Show Cause Notices (**"SCNs")** were issued to five architects of the scam, namely, Mr. B. Ramalinga Raju, Mr. B. Rama Raju, Mr. Vadlamani Srinivasa, Mr. G. Ramakrishna and Mr. V. S. Prabhakar Gupta, between March 09, 2009 to March 22, 2010. Later on, as an after-thought, a common SCN dated June 19, 2009 as well as another SCN dated September 15, 2009, were also issued by SEBI to ten entities, including nine in hand, mainly on the ground that they were relatives of Mr. B. Ramalinga Raju and/or promoters of Satyam and its connected companies. The case of Mr. B. Ramalinga Raju and four others has been separately considered and by order dated 12.05.2017, the cases of five said appellants had to be remanded mainly because they were not given reasonable opportunity of cross-examination of certain witnesses by SEBI and also the calculation of disgorgement was to be redone.

33. Other agencies, including CBI, have also prosecuted Mr. B. Ramalinga Raju, Mr. B. Rama Raju, Mr. B. Suryanarayana Raju, five officials and two auditors and held guilty and have sentenced them**.** It is, thus, apparent that present is a very serious matter which led to thousands of shareholders losing their hard earned money in the shares of Satyam on the very day the said email dated 07.01.2009 was shot by Mr. B. Ramalinga Raju, the then Chairman of Satyam. Showing any sympathy to such manipulators of the market would send a wrong signal to the investors, upright and scrupulous promoters of Satyam, and to the market as a whole.

34. It has been rightly held by the Hon'ble Supreme Court in the case of **Zarif Ahmad Vs. Mohd. Farooq [2015 (13) SCC 673]** that "it is not a healthy practice to remand a case to the trial court unless it is necessary to do so as it makes the parties to wait for the final decision of a case for the period which is avoidable. One in rare situations, should a case be remanded e.g. when the trial court has disposed of a suit on a preliminary issue without recording evidence and giving its decision on the rest of the issues, but it is not so in the present case." For arriving at the above said conclusion, the Hon'ble Supreme Court relied upon its earlier ruling in the case of **P. Purushottam Reddy Vs. Pratap Steels Limited [2002 (2) SCC 686]** in which the Hon'ble High Court had remanded the matter for retrial to the lower court. The Hon'ble Supreme Court testing the validity of remand in that case aptly remarked that "the High Court was to examine whether such finding of the trial court was sustainable or not in law and on facts. Even otherwise, the question could have been gone into by the High Court and a finding could have been recorded on the available material inasmuch as the High Court being the court of first appeal, all the questions of fact and law arising in the case were open before it for consideration and decision."

35. From the abovesaid judgment of the Hon'ble Supreme Court it is borne out that a court or tribunal should remand a matter in extremely rare cases where the discrepancy before that court or tribunal is such that cannot be remedied by way of deciding an Appeal. It cannot be denied that remanding a matter, sets it back many months or even years in some cases and prevents the matter from reaching judicial finality, which is extremely disheartening in a country like India with a very serious issue of a vast backlog of cases. Of course, it goes without saying that in cases where remand is the only appropriate remedy, the matter must be remanded to the lower authority. However, in my opinion, remand should be treated as the last resort, left to cure inconsistencies over which the Appellate authority has no discernible purview. In all situations where the deficiency or inconsistency can be done away with by the intervention of the Appellate authority, the authority should go ahead and do so, unless there exists a very strong and cogent reason for it to abstain. It is of paramount importance that matters be allowed to reach judicial finality at the earliest to help the wheels of justice move at a faster pace.

36. The old maxim 'interest Republicae ut sit finis litium' clearly says that it is for the public good that there be an end of litigation after a long lapse of time. It is therefore necessary to put a quietus at some stage to give finality and certainty in the matter of judicial adjudication of appeals.

37. In this connection it is pertinent to note that Hon'ble Supreme Court in the case of M. Nagabhushana v. State of Karnataka and others (2011) 3 SCC 408 has observed that "principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. ……"

38. This Tribunal is also the first court of appeal against the SEBI order and appeal lies only to the Hon'ble Supreme Court on law point from the orders of this Tribunal on facts the finding of the Tribunal is final. Therefore, indiscriminate remand to the tune of about 25% appeals disposed of by this Tribunal in the last more than four years would set a bad precedent and litigants would lose faith in the institution itself inasmuch as they are compelled to undergo the vicious circle of retrial before the SEBI once again, that too without any fruitful result. SEBI is also flooded with hundreds of cases every year to be tried in the name of remand at the hands of this Tribunal. This tendency of remand has, therefore, to be revisited by us and appropriate remedial measures should be taken.

39. As per WTM Impugned Order, total amount to be disgorged from the four family members and SRSR Holdings is Rs.1451.91 Crores. This huge amount has to be disgorged at once to be distributed by SEBI to the victim investors of Satyam who had bought shares at an artificial price, which was the result of falsification and fabrication of accounts of Satyam and sold at a meagre amount of ₹ 40/- to ₹ 50/-, not even at $1/10^{th}$ of the price they would have paid for acquisition of shares out of their hard earned money. Thus, keeping in view the facts and circumstances and the legal position in mind, I dismiss all the five appeals, namely – Appeals 458/2015, 459/2015, 460/2015, 461/2015 and 463/2015, and uphold the action of the SEBI in passing the impugned order and directing the five appellants to disgorge the amount with interest.

40. The remaining four appeals pertaining to **Ms. B. Jhansi Rani (Appeal 462/2015) and C.S.R., CHPL and Late Shri Anjiraju Chintalapati (Appeal 451/2015, 452/2015 and 453/2015),** require a careful examination of the

relevant PIT Regulations and jurisprudence in respect thereof. At the outset, I would like to first reproduce the relevant PIT regulations herein below:

PIT Regulations of 1992

2 (c) "connected person" means any person who —

(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act or

(ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company [whether temporary or permanent] and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company:

[Explanation :—For the purpose of clause (c), the words "connected person" shall [mean] any person who is a connected person six months prior to an act of insider trading;]"

*"2(e) "**insider**" means any person who,*

*(i) is or was connected with the company or is deemed to have been connected with the company **and** is reasonably expected to have access to unpublished price sensitive information in respect of securities of [a] company, or*

(ii) has received or has had access to such unpublished price sensitive information ;

2(h) "person is deemed to be a connected person", if such person—

(i) is a company under the same management or group, or any subsidiary company thereof within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956) or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be; or

[(ii) is an intermediary as specified in section 12 of the Act, Investment company, Trustee Company, Asset Management Company or an employee or director thereof or an official of a stock exchange or of clearing house or corporation;]

(iii) is a merchant banker, share transfer agent, registrar to an issue, debenture trustee, broker, portfolio manager, Investment Advisor, sub-broker, Investment Company or an employee thereof, or is member of the Board of Trustees of a mutual fund or a member of the Board of Directors of the Asset Management Company of a mutual fund or is an employee thereof who have a fiduciary relationship with the company;

(iv) is a Member of the Board of Directors or an employee of a public financial institution as defined in section 4A of the Companies Act, 1956; or

(v) is an official or an employee of a Self-regulatory Organisation recognised or authorised by the Board of a regulatory body; or

(vi) is a relative of any of the aforementioned persons;

(vii) is a banker of the company.

(viii) relatives of the connected person; or

[(ix) is a concern, firm, trust, Hindu undivided family, company or association of persons wherein any of the connected persons mentioned in sub-clause (i) of clause (c), of this regulation or any of the persons mentioned in sub-clause (vi), (vii) or (viii) of this clause have more than 10 per cent of the holding or interest;]

(ha) "price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

Explanation.—The following shall be deemed to be price sensitive information :—

(i) periodical financial results of the company;

(ii) intended declaration of dividends (both interim and final);

(iii) issue of securities or buy-back of securities;

(iv) any major expansion plans or execution of new projects.

(v) amalgamation, mergers or takeovers;

(vi) disposal of the whole or substantial part of the undertaking;

(vii) and significant changes in policies, plans or operations of the company;

2(i) "relative" means a person, as defined in section 6 of the Companies Act, 1956 (1 of 1956);

"2(k) "unpublished" means information which is not published by the company or its agents and is not specific in nature.

Explanation.—Speculative reports in print or electronic media shall not be considered as published information."

Prohibition on dealing, communicating or counselling on matters relating to insider trading.

***3.** No insider shall—*

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of anyunpublished price sensitive information; or

(ii) communicate [or] counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities :

***Provided** that nothing contained above shall be applicable to any communication required in the ordinary course of business [or profession or employment] or under any law.]"*

Section 12A of the SEBI Act, inserted on October 29, 2002 as Chapter VA

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

***"12A**. No person shall directly or indirectly—*

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised

stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.]"

Penalty for insider trading.

15G. If any insider who –

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or

(ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels or procures for any other person to deal in any securities of anybody corporate on the basis of unpublished price-sensitive information,

shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

41. In applying these PIT Regulations, the following questions arise for the disposal of the case.

a. What is the scope of Regulation 3 under PIT Regulation, 1992? What is the impact of the 2002 Amendment to Regulation 3?
b. What is the meaning of an "Insider" under the PIT Regulations, 1992? What is the impact of the 2002 Amendment to Regulation 3?
c. What is the UPSI in this case and when did UPSI come into existence?

d. Are findings of SFIO Report admissible in adjudicating a violation under the PIT Regulations?
e. Are CBI charge sheet and findings of the CBI Court (XXI Additional Chief Metropolitan Magistrate cum Special Sessions Court, Hyderabad) dated 09.04.2015 relevant and admissible while adjudicating a violation under the PIT Regulations?

42. The history of the PIT Regulations can be traced back to the Thomas Committee which stated way back in 1948 that there was lack of a legislation/statute to punish the "unfair use of inside information". An attempt was made for the first time when provisions with respect to insider trading were first introduced into the Indian regulatory system in the Companies Act, 1956 as Sections 307 and 308, which mandated disclosures of shares held by the management and directors of a company. Subsequently, the Sachar Committee in 1979, the Patel Committee in 1986 and the Abid Hussain Committee in 1989 suggested the enactment of a legislation to control instances of insider trading.

43. The most relevant of these reports was one formulated by a High-Powered Committee, established by the Government of India in May 1984 headed by former Chairman of Unit Trust of India, Mr. G S Patel, to review the functioning of the Indian capital market as a whole. In its report published in 1986, the Committee made certain recommendations and observations regarding the suggested legislation on insider trading. The Committee correctly identified that the chief reason for the excessive and unbounded speculation in the market was insider trading. Insider trading, in turn, was a direct result of the lack of timely and prompt disclosure of information by companies. It was stated that in order to establish healthy economic and trade practices in the securities market so as to maintain the investors' confidence in the regulatory system, any instance of insider trading should be dealt with

strongly. The Committee then went on to provide a draft of the legislation on insider trading, which culminated into the PIT Regulations of 1992.

44. Before the drafting of the PIT Regulations of 1992, SEBI prepared an approach paper on the orderly development and regulation of the securities market to ensure sufficient investor protection. A Consultative Paper was issued in December 1991 by SEBI suggesting strict measure to control insider trading in the market. On August 1992, SEBI issued a Press Release declaring that an internal code of conduct for corporates be put into place to check insider trading.

45. On a perusal of the PIT Regulations of 1992, it appears that the objective with which they were framed was primarily to ensure that the damaging consequences of insider trading could be kept at bay in the Indian securities market as the phenomenon of insider-trading leads to baseless speculation in the market and due to artificial price-hike of the shares of the company in question, gullible investors are tempted to invest or deal in those shares with a view to making profits.

46. Further, Regulation 3 serves a purpose which is two-fold inasmuch as on one hand it forbids the dealing in securities of a listed company by an insider in possession of UPSI; and on the other, the regulation prohibits the communication or procurement or counselling of such UPSI to any other person who is then legally bound to NOT trade in the scrip of the company in question. **Chapter III** of the PIT Regulations of 1992 deals with powers of the investigation of cases of insider trading by SEBI. **Chapter IV** lays down the policy on disclosures and internal procedure to be put in place by a company to ensure that insider trading does not occur. **Schedule I** deals with model code of conduct for prevention of insider trading in listed companies, **Schedule**

II deals with the code of corporate disclosure practices to prevent insider trading and **Schedule III** gives the format of various forms.

A. What is the scope of Regulation 3 under PIT Regulation, 1992? What is the impact of the 2002 Amendment to Regulation 3?

47. Regulation 3 of PIT Regulation 1992 prohibits Insider trading. This Regulation has undergone several amendments. Regulation 3(i) of the PIT Regulations, 1992 originally stated as follows:

> ***Prohibition on dealing, communicating or counselling on matters relating to insider trading.***
>
> *"3. No **insider** shall—*
>
> *(i) either on his own behalf or on behalf of any other person, **deal in securities of a company** listed on any stock exchange on the basis of any unpublished price sensitive information; or"*

48. This Regulation was amended by the SEBI (Insider Trading) (Amendment) Regulations, 2002 ("2002 Amendment") which came into effect from 20.02.2002. After this amendment, the phrase "on the basis of" was substituted by "when in possession". After the amendment, the Regulation reads as follows:

> ***Prohibition on dealing, communicating or counselling on matters relating to insider trading.***
>
> *3. No **insider** shall—*
>
> *(i) either on his own behalf or on behalf of any other person, **deal in securities of a company** listed on any stock exchange when in possession of any unpublished price sensitive information; or*

49. In the light of the above, for the period prior to 20.02.2002, the prohibition under Regulation 3(i) would be attracted only if SEBI establishes that

a. person was an insider; AND

b. such insider dealt in securities of a company listed on the stock exchange on the basis of UPSI.

50. After the 2002 Amendment (i.e. after 20.02.2002), the prohibition under Reg. 3(i) would be attracted only if SEBI demonstrates that

a. person was an insider; AND
b. such Insider Dealt in securities of a company listed on the stock exchange when in possession of UPSI.

51. The definition of "Insider" has also undergone several amendments. The relevant amendment for the present appeal is the 2002 Amendment. Prior to the 2002 Amendment, the definition of "Insider" reads as follows:

"(e) "insider" means any person who,

*(i) is or was connected with the company or is deemed to have been connected with the company **and** who is reasonably expected to have access to unpublished price sensitive information **by virtue of such connection** in respect of securities of a company, or*

(ii) has received or has had access to such unpublished price sensitive information."

52. The 2002 Amendment amended the definition of "Insider" and deleted the phrase "by virtue of such connection". Regulation 2(e) defines "Insider" to mean:

(e) "insider" means any person who,

*(i) is or was connected with the company or is deemed to have been connected with the company **and** who is reasonably expected to have access to unpublished*

> *price sensitive information in respect of securities of the company, or*
>
> *(ii) has received or has had access to such unpublished price sensitive information."*

53. Therefore, for a person to be an Insider under Reg. 2(e) (i), the following requirements need to be satisfied.

Prior to 20-02-2002

A person can be an insider if SEBI is able to demonstrate that

a. such a person was connected with the company OR deemed to have been connected with the company; AND
b. reasonably expected to have access to UPSI in respect of securities of a company by virtue of such connection

After 20-02-2002

A person can be an insider if SEBI is able to demonstrate that

a. such a person was connected with the company OR deemed to have connection with the company; AND
b. reasonably expected to have access to UPSI in respect of securities of a company.

54. In cases before the coming into force of the 2002 Amendment, the source of reasonable expectation of access to UPSI must emanate by virtue of such connection which makes a person connected or deemed to be connected. This requirement has been dispensed with since the 2002 Amendment.

55. Another significant issue regarding implication of the conjunctive "AND" in the definition of "Insider". In the Impugned Order, the WTM underlines the conjunctive "and" while discussing the definition of an "Insider" (para 30). This suggests that the dual requirement in Regulation 2(e) must be satisfied viz., first, that of being a connected person and second, existence of a reasonable expectation of access to UPSI. However, the WTM takes a

contrary view in Para 32 of the Impugned Order by holding that a person becomes an insider merely by being a connected person.

56. Since this has a significant impact on how PIT Regulations are understood and interpreted in this case and other cases, this Tribunal deemed fit to hold a further hearing on 31.07.2017 and 02.08.2017 after the matter was reserved for judgment to hear counsel submissions on this issue. In the said hearing, Senior Counsel appearing for SEBI Mr. DeVitre fairly stated that a person can only be an insider if he a connected person or deemed connected person AND reasonably expected to have access to UPSI. This is also the SEBI's position in its written submissions. Mr. Khambatta, learned senior counsel also took us through the definition of "Insider" and emphasized that a person cannot be an Insider merely by being a connected person or a deemed connected person. SEBI must establish that he was reasonably expected to have access to UPSI.

57. After careful consideration of the PIT Regulations and the clarifications from the two learned senior counsels, it is evident from the definition of "Insider" that two categories of insiders have been created by the aforementioned definition. A person will fall into the first category as an insider if he fulfills both the ingredients of the first category cumulatively.

58. For the first category, if a person is a connected person, that itself satisfies half the component of the first category of insiders. However, it is pertinent to note that in order to fall under the first category, the term "connected person" must be read with the second ingredient viz., *"reasonably expected to have access to unpublished price sensitive information"*. Therefore, not only does a person need to be a connected person to be an insider, but there must also be some reliable and convincing material

to show such a connected person is reasonably expected to have "access" to the UPSI. The Scheme of PIT Regulations of 1992 makes it evident that these dual requirements need to be satisfied before a person can be called an "insider" under the PIT Regulations of 1992. The conjunctive "And" is, therefore, significant and cannot be ignored.

59. As far as the second category of "insider" is concerned (Regulation 2(e)(ii)), it clearly refers to a person who "*has received or has had access to such unpublished price sensitive information"*. Thus, to fall under the second category of insiders, one must either have actually received the UPSI or actually had access to such UPSI in any manner without being a connected person. In these appeals, we are not concerned with this category of persons as SEBI has not invoked the second category. There is also no finding to that effect in the Impugned Order.

C. When did UPSI come into existence?

60. The PIT Regulations of 1992 specifically speak of UPSI. For the adjudication of all these appeals, it is important to identify the UPSI herein and when UPSI came into existence.

61. In para 38 of the Impugned Order, the WTM notes the definition of UPSI prior to the 2002 Amendment and the impact of the 2002 Amendment. After analyzing the definition of UPSI, the WTM concludes that financial results constitute price sensitive information. The WTM at para 41 finds that the "periodical financial results" of Satyam and the difference between the actual financial results and the manipulated financial results constitutes "price sensitive information". This finding of the WTM is correct and in accordance with the PIT Regulations of 1992. The manipulation of financial statements which was suppressed from the entire world till 07-01-2009 certainly

constitutes UPSI. Since the manipulated financial statements constitutes UPSI, the question is – when did UPSI come into existence?

62. The WTM asserts that the fabrication and the manipulation of financial statements came into existence from January, 2001. However SEBI has not produced any material to show that the discrepancies in the financial statements came into existence earlier than March 2001. When we questioned the Senior Counsel for SEBI, Shri DeVitre as to whether there was any material on record to show that the fabrication of financial statements happened prior to 31-03-2001, he fairly stated that there was no material on record to show any fabrication of financial statements prior to 31-03-2001. The statement of the learned Senior Counsel of SEBI is also consistent with the record. The SCN issues by SEBI states that there were "*a difference between the conformation received directly from the bank and the balance in the books for each year leading back to the year ending March 2001*" (para 3.1.3.3)

63. The UPSI as identified by the WTM relates to the fabrication of the financial statements. The financial statements of a listed company are necessarily prepared at the end of the quarter and at the end of year. March 31, 2001 is the end of the quarter and the end of the financial year. Therefore any fabrication of the financial statements (which is the UPSI herein) would happen only when the financial statements have been prepared, approved by the Board and published. Since the financial statements are prepared only after 31.03.2001 and in light of the statement of senior counsel of SEBI, it would be appropriate to take 31.03.2001 as the date on which the UPSI was generated.

D. Whether the SFIO Report is admissible in an adjudication under the PIT Regulations

64. The SFIO was set up by the Government of India by way of a resolution dated July 02, 2003, and it carried out investigations within the then existing legal framework under sections 235 to 247 of the erstwhile Companies Act, 1956, which falls under the Chapter on "Investigations" under Part VI of the Companies Act, 1956 which deals with Management and Administration of companies. With the advent of the Companies Act, 2013, Section 211 of the Act accorded statutory status to the SFIO and by virtue of various other provisions of the Companies Act, 2013, SFIO is vested with the requisite legal authority to conduct investigations. The SFIO comprises of experts from various relevant disciplines including law, banking, corporate affairs, taxation, capital market, information technology, forensic audit etc. An investigation into the affairs of a company can be initiated by the Central Government and entrusted to the Serious Fraud Investigation Office under the following circumstances:-

(a) on receipt of a report of the Registrar or inspector under section 208

(b) on intimation of a special resolution passed by a company that its affairs are required to be investigated

(c) in public interest

(d) on request from any Department of the Central Government or a State Government.

65. After the 07.01.2009 letter of Ramalinga Raju, the Ministry of Corporate Affairs, Government of India ordered investigation into the affairs of Satyam under S.235 of the Companies Act, 1956 by its order dated 13.01.2009.

66. In the present matter, the SFIO analyzed the over-statement of accounts of Satyam, which is also investigated by SEBI. These agencies inferred that the

Board of Satyam had been deceived by the manipulators involved. In addition to the SFIO Report, CBI Chargesheet and CBI Court finding, we also perused SEBI's Investigation Report which we summoned during the course of proceedings before this Tribunal. It is noted that SEBI itself acknowledges in its Investigation Report that it worked closely with SFIO.

67. After completing the investigation, the SFIO gave a detailed report on the various aspects of how the fraud occurred in Satyam. Specifically, they gave a finding on the incorrect filings on promoter holding to the stock exchanges, the inflation of the promoter list to camouflage the sale of shares by the actual promoters and the suppression of information about the actual financial position by the management from the Board of Directors. SFIO also made a specific assertion that its findings "may therefore be brought to the notice of SEBI" (Para 4.7.21 of SFIO Report at page 16)

68. When confronted with the SFIO Report, the WTM in the Impugned Order refused to take in account the SFIO Report by observing that SEBI's investigation is independent and separate from that of other investigating agencies.

69. This finding is unfortunate and rather absurd. As a matter of law, the Companies Act, 2013 (and prior Companies Act, 1956) stipulates that the SFIO Report is admissible as evidence in any legal proceeding. S.246 of the Companies Act, 1956 states :

> *"246.* ***Inspectors' report to be evidence.*** *A copy of any report of any inspector or inspectors appointed under section 235 or 237 authenticated in such manner, if any, as may be prescribed,* ***shall be admissible in any legal proceeding as evidence*** *of the opinion of the inspector or inspectors in relation to any matter contained in the report."*

(A similar provision is there in S.223(4) of the Companies Act, 2013)

70. When a statute expressly mandates that the SFIO Report (which is Report of the Inspector) is admissible in any legal proceeding as evidence, the WTM ought to have carefully considered the findings of the SFIO Report as well.

71. Even though SEBI is a separate agency tasked with enforcement of SEBI Act, 1992, it has to take into account the findings of the other Government of India investigating agencies so as to ensure that there are no incongruities and that it is on the same page with other investigating agencies regarding material facts and does not overlook the same. This is more so when the SEBI worked closely with SFIO, CBI, ED, IT Dept and RBI for the purpose of conducting investigation into the affairs of Satyam and righting the horrendous wrong done to shareholders of Satyam. In such a grave matter as this, it is of paramount importance that there be no loopholes in the findings of SEBI or any other investigating agency, which is precisely the reason that MDIT was formed in the first place, instead of leaving every investigating agency to conduct its own enquiry in isolation. (SFIO Supplementary Report dated 23.10.2009 at para 1.1 and 1.2).

72. It may not be understood to mean that the reports of other investigating agencies are binding on SEBI, but SEBI has to take into account the findings of the said agencies, particularly when they have investigated the same subject matter and specifically recommended that its findings be brought to the attention of SEBI atleast for the sake of clarity and better understanding and to avoid contradictions.

73. Even though WTM refused to take cognizance of the SFIO Report, SEBI in its oral submissions placed extensive reliance on facts from the SFIO

Report and the CBI Charge Sheet. It, therefore, appears that as and when it was convenient for SEBI, they relied upon the SFIO Report to support their arguments and when confronted with factual findings in the SFIO report which undermined the allegations made by SEBI, they took the position that SEBI investigation is independent of the other investigating agencies. This approach of SEBI cannot be countenanced and points to a double standard which must be prevented from becoming a regular practice. In light of the above, reliance can be placed on the SFIO Report.

Relevance of the Judgment of Special Sessions Court

74. After 07.01.2009 letter of B. Ramalinga Raju, the former Chairman of Satyam Computer Services Limited ("Satyam"), the Central Bureau of Investigation ("CBI") filed three charge sheets before the XXI Additional Chief Metropolitan Magistrate cum Special Sessions Court, Hyderabad. As stated above, SEBI in its submissions has placed extensive reliance on the CBI Charge Sheet.

75. The CBI derives its powers from the Delhi Special Police Establishment Act, 1946 ("**DSPE**"). The DSPE acquired its popular current name, Central Bureau of Investigation, through a Home Ministry resolution dated April 01, 1963. Initially the offences that were notified by the Central Government related only to corruption by Central Government servants. In due course, with the setting up of a large number of public sector undertakings, the employees of these undertakings were also brought under the purview of the CBI. Similarly, with the nationalization of the banks in 1969, the Public Sector Banks and their employees also came within the ambit of the CBI. CBI has grown into a multi-disciplinary investigation agency over a period of more than 5 decades, during which it has dealt with numerous cases of national and

international importance. Today it has the following three divisions for investigation of crimes:-

(i) Anti-Corruption Division - for investigation of cases under the Prevention of Corruption Act, 1988 against Public officials and the employees of Central Government, Public Sector Undertakings, Corporations or Bodies owned or controlled by the Government of India - it is the largest division having presence almost in all the states of India.

(ii) Economic Offences Division - for investigation of major financial scams and serious economic frauds, including crimes relating to Fake Indian Currency Notes, Bank Frauds and Cyber Crime.

(iii) Special Crimes Division - for investigation of serious, sensational and organized crime under the Indian Penal Code and other laws on the requests of State Governments or on the orders of the Supreme Court and High Courts. The laws under which CBI can investigate Crime are notified by the Central Government under section 3 of the DSPE Act.

76. After the Satyam Scam broke out, the matter was referred to CBI. After extensive investigation, CBI named the former Chairman of Satyam (B. Ramalinga Raju), former Managing Director (B. Rama Raju), former CFO (V. Srinivas), former Auditors (S. Gopalakrishnan and T. Srinivas), former Employees of the Finance Department (G. Ramakrishna, D. Venkatapathi Raju, Ch. Srisailam and V.S.P. Gupta) and Director of SRSR Advisory Services (B. Suryanarayana Raju) were arrayed as Accused in the Charge Sheets. After an extensive trial, the Court of the XXI Additional Chief Metropolitan Magistrate cum Special Sessions Court, Hyderabad (Special CBI Court) rendered an elaborate Judgment on 9.4.2015.

77. The CBI report and the subsequent Judgment of the Special CBI Court are relevant. The following findings in particular are relevant for the purposes of the present appeals :

a. CBI prepares a list of actual promoters which has been furnished by the new management to CBI.

b. Former Chairman and Managing Director suppressed information about the fabrication of financial statements from the Board of Directors.

c. The former Statutory Auditors connived with the former management and suppressed information about the fabrication of the financial statements from the Audit Committee and the Board of Directors.

d. Mr. Suryanarayana Raju (one of the Appellants) and others were convicted by the CBI Court, for trading in shares based on inside information.

78. From the record, it is evident that the Judgment of the Special CBI Court was placed before the WTM, instead of considering the Judgment of the CBI Court, WTM chose to ignore it and not refer to in the Impugned Order. The judgment of CBI Court has been delivered by a Ld. Court of Law, presided over by an experienced Ld. Judge, duly taking into consideration the pleadings, including the documents filed before it and evidence adduced by the parties which would undoubtedly include examination and cross-examination of the witnesses. Therefore, this judgment of the Ld. CBI Court would at least have some persuasive value, if not binding. Therefore, the exclusion of such a relevant judgment, involving same facts will not lay down a good precedent.

Appeal No. 462/2015 (Ms. B. Jhansi Rani Vs. SEBI)

79. In allowing Appeal No. 462/2015 the majority order has taken into consideration the fact that Ms. B. Jhansi Rani sold shares of Satyam between January 22 – February 05, 2001. The provisions of the then PIT Regulations particularly provided that a person could be held guilty of 'insider trading' only if it was proved that he or she sold the shares "on the basis of UPSI". This was the prevailing law at that time. As discussed above, the law was changed by the 2002 Amendment by amending the regulation 2 (h)(viii) of the PIT Regulations so as to delete the concept of "on the basis of UPSI" and by replacing the same with the principle of "while in possession of the UPSI". It is a fact that the SCN nowhere mentions that Ms. B. Jhansi Rani sold the shares on the basis of the UPSI. Therefore, the majority order has given her the benefit of doubt and her appeal has been allowed.

80. Apart from the above, yet another important aspect relevant to the matter is that during the course of argument the Sr. Counsel for SEBI, Mr. DeVitre has categorically revealed that there was no material/evidence on record to show the existence of UPSI prior to March 31, 2001 when Jhansi Rani admittedly sold her shares . In this view of the matter, Ms. B. Jhansi Rani's appeal has to be allowed. Ordered accordingly.

Appeal No. 451/2015(Mr. Chintalapati Srinivasa Raju Vs. SEBI)

81. At the outset it is pertinent to note that this Appellant as well as CHPL and Late Shri Anjiraju have been exonerated of the charge of fraud by the WTM himself. I take the case of Mr. Chintalapati Srinivasa Raju ("**CSR**") (Appeal No. 451/2015) as lead case for deciding these three appeals, namely - Appeal Nos. 451/2015, 452/2015 and 453/2015. The dispute in this Appeal is in a narrow compass as to whether the Appellants are guilty of Insider

Trading. For this purpose, as a prerequisite, one must consider whether this Appellant satisfies the criteria laid down under PIT Regulations of 1992 as to the Insider by twist.

82. Factually, unlike the other Appellants, CSR has adduced evidence before this Tribunal to show that he neither had access to UPSI nor was in possession of UPSI. This evidence was primarily reports of Government of India agencies (like CBI, SFIO and ED) and CBI court ruling. Ironically while WTM peremptorily refused to consider these reports, SEBI extensively relied on these same reports adduced by CSR against other Appellants before this Tribunal. CSR also presented evidence of the business requirements for the sale of shares. I therefore have to carefully consider all the evidences presented by CSR.

83. Legally also, this appeal requires us to carefully consider the provisions of PIT Regulations. Unlike, other appellants, this appellant CSR has sold his shareholding in Satyam over a period of nine years (from 28-12-1999 to 22-12-2008). During this period, the PIT Regulations of 1992 underwent several amendments and we have to closely examine the legal regime when CSR sold shares over this extended period.

84. Since CSR sold shares over a long period of time, it is appropriate to divide the periods into various categories taking into account the amendments to the PIT Regulations of 1992.

A. Sale of shares from 28.12.1999 to 31.03.2001 (prior to UPSI coming into existence);

B. Sale of shares from 01.04.2001 to 19.02.2002 (prior to the 2002 Amendment to the PIT Regulations;

C. Sale of shares from 20.02.2002 to 23.07.2003 (from date of 2002 Amendment to Appellant ceasing to be a Non-Executive Director plus 6 months); and

D. Sale of shares from 24.07.2003 to 22.12.2008 (after Appellant ceased to be a Non-Executive Director plus 6 months)

85. For the sake of convenience, I deal with the first and last category at the outset.

86. The shares sold from 28.12.1999 to 31.03.2001 would not be covered by the PIT Regulations. As discussed above, the UPSI in the form of manipulation of financial statements came into existence after 31.03.2001. Consequently the sale of shares during this period cannot be considered. Since the order against Ms. B. Jhansi Rani has been quashed on this ground, the same will apply to CSR.

87. The sale of shares from 24.07.2003 to 22.12.2008 will also fall outside the ambit of PIT Regulations because CSR ceased to a Non-Executive Director on 23.01.2003. Once he ceased to be a director, he ceases to be a connected person. Consequently, he will cease to be an "Insider" and will be outside the ambit of prohibition of Regulation 3.

88. The 2002 Amendment to the PIT Regulations of 1992 came into effect on 20-02-2002. Consequently for the shares sold by CSR prior to this period, the unamended PIT Regulations have to be applied. As discussed above, under the PIT Regulations prior to 20-02-2002, for the Appellant to be an Insider, SEBI must have considered and demonstrated in unequivocal terms that the

a. Appellant was "connected" with the company or deemed to have been connected with the company; AND
b. reasonably expected to have access to UPSI in respect of securities of a company by virtue of such connection.

89. During this period, CSR was a "connected person" since he was a Non-executive Director of Satyam. However as discussed above, the conjunctive "**and**" requires SEBI to demonstrate that the Appellant was reasonably expected to have access to UPSI (the manipulation of financial statements) by virtue of his connection as a non-executive director.

90. Although the Impugned Order refers to the 2002 Amendment to the PIT Regulations and it does notice the distinction between the definition of Insider prior and after the 2002 Amendment. But there is neither any consideration nor any finding in the Impugned Order that CSR was, in any manner, reasonably expected to have access to the UPSI by virtue of his connection as a Non-Executive Director. The WTM has rather chosen an easier path of referring to the principle of possibility/probability without paying any heed to the material/evidence brought by the Appellant in this regard.

91. Furthermore, the WTM at para 32 of Impugned Order holds that being a "directly connected person", CSR is an Insider. This bald finding/statement without any cogent reason supporting the same is contrary to the PIT Regulations. Further, it may be mentioned here that there is no concept of a "directly connected person" under the PIT Regulation of 1992. A person is either connected, or not connected, there is no category of a "directly" or "indirectly" connected person, as is sought to be created by SEBI.

92. At this stage, we may briefly analyse an order of SEBI dated **March 2016** in the case of **Reliance Petroinvestment Limited ['RPL']** which is brought to our notice after the conclusion of the argument by way of written submission. In this case, the concept of "Insider" as well as the expression

"access" to UPSI were also examined in detail and appellants therein were exonerated. In the case of RPL, SEBI, by an Adjudication Order dated 2nd May, 2013, imposed a penalty of ₹ 11 Crore on RPL under Section 15 G of the SEBI Act, 1992, for violation of Regulation 3 of the PIT Regulations. The said order was challenged by the RPL before this Tribunal by way of Appeal No. 122 of 2013, which was quashed by this Tribunal by order dated 7th December, 2015, mainly on the ground that the said impugned order was merely based on presumption of the appellant being in possession of UPSI at the time of purchase of shares. After quashing the said order, SEBI was called upon to pass fresh order on merit and in accordance with law. After remand, the AO of SEBI by an Order dated 08.03.2016 has exonerated the Noticees therein specifically holding that definition of insider under Reg 2(e) required SEBI to provide evidence showing access to UPSI. Therefore, in that matter, even SEBI has recognised the need to prove access to UPSI before an entity/individual can be condemned as an insider.

93. The majority opinion holds that a director as a connected person is automatically an insider. For this purpose, the majority view places reliance on Regulation 2(c)(ii) without taking into account requirement of reasonable expectation to have access to UPSI in definition of insider in Regulation 2(e). This will only lead to absurdity in interpreting the two concepts, namely, "connected person" and "insiders" which are separately and vividly enshrined under the PIT Regulations inasmuch as the majority view fails to take into account requirement of reasonable expectation to have access to UPSI in definition of insider in Regulation 2(e).

94. Assuming that CSR was an Insider, the prohibition under Regulation 3(i) prior to the 2002 Amendment would be attracted only if SEBI establishes that the Appellant dealt in securities of a company listed on the stock exchange on the basis of UPSI (as opposed to "when in possession of UPSI" after the 2002 Amendment) as far as the sale of shares by the Appellant prior to 20.02.2002 is concerned.

95. There is no finding recorded in the Impugned Order that the Appellant sold shares on the basis of UPSI. The majority opinion gives relief to Ms. Jhansi Rani on this count and the same yardstick has to be applied to the case of three CSR Group appeals also.

96. The appellant, CSR has adduced evidence in support of his assertion that there was no reasonable expectation of access to UPSI by virtue of his connection as a Non-Executive Director since the fabrication of financial statements was suppressed from the Board. Appellant also showed the SFIO Report and the CBI Court judgement which held that the former management and statutory auditors suppressed the actual position from the Board of Directors and Audit Committee. The SFIO Report at Para 4.6.39 found that the manipulation of financial statements was suppressed from the Board of Directors:

> "*... As the sales figures were being manipulated as a result of conspiracy among the then Chairman Shri B. Ramalinga Raju of SCSL, then MD Shri B. Rama Raju, Shri S. Valdamani, the then CFO of SCSL and Shri G. Ramakrishna, the head of the AR Team in connivance with Statutory Auditors from 2001-02 till the date of disclosure of this fact made by the then Chairman of SCSL it resulted in inflation of profits and creation of non-existent reserves which was adjusted in the books in the form of false current account balances and fixed deposit balances with banks. However this fact was in the knowledge of the then Chairman, the then CFO and Shri G. Ramakrishna and D. Venktapathi Raju and Shri C. Sriselam and Statutory*

> *Auditors but was never revealed to the Company or to the Board of Directors SCSL and by doing so, these persons concealed this fact of falsification of accounts from the company, the body of shareholders of SCSL as well as the Board of Directors of SCSL and thereby these persons practiced deception upon the company."*

97. If the fabrication of the financial results (which is the UPSI herein) was suppressed from the Board of Directors of Satyam, it will be difficult to hold that the Appellant was even in possession of UPSI, leave alone trading on the basis of UPSI. If the Appellant as a director had knowledge of the fabrication of the financial statements (which is UPSI herein), he must be held to have violated the PFUTP Regulations. However, in the Impugned Order, the WTM drops the charge of PFUTP violation for lack of evidence. This clearly shows that the appellant CSR was never in possession of UPSI. In view of this, the finding of the WTM that the Appellant violated PIT Regulations during this period is held to be not legally sustainable.

98. This category (sale of shares from 20.02.2002 to 23.07.2003) is carved out because the 2002 Amendment came into effect from 20-02-2002. As discussed above, the 2002 Amendment amended the definition of "Insider". After this Amendment, SEBI is no longer required to establish expectation reasonable access to UPSI "by virtue of such connection." After the 2002 Amendment, for the Appellant to be an "Insider" SBI has to establish

> (a) Appellant was a connected person or a deemed connected person; AND
>
> (b) Appellant was reasonably expected to have access to UPSI.

Applying this clause, the Appellant would be a connected person till 23.07.2003 since he ceased to be a director on 23.01.2003. During this period,

CSR would be a connected person as he was a non-executive director during this period. The issue is – whether Appellant had reasonable expectation of access to UPSI during this period?

99. In the Impugned Order, the WTM held that the Appellant was reasonably expected to have access to UPSI based on three reasons –

a. Appellant was a Promoter
b. Appellant was a Relative of B. Ramalinga Raju
c. Appellant did not buy shares during this period.

100. The WTM in para 44 held that the CSR was a periodically disclosed as a Promoter. The WTM has not disclosed the date of these filings in the Order, but only observed that "*over a considerable period of time after January 2003, when Mr Chintalapati Srinivasa Raju had ceased to be a director of Satyam Computers, he was declared as a Promoter in the periodical disclosures filed by Satyam Computers in the stock exchanges*". The timing is crucial since the CSR ceased to be a connected person from 23.07.2003. If the Appellant was disclosed as a Promoter after January 2003, that cannot be a basis for "reasonable expectation of access to UPSI". On this ground alone the finding is liable to be set aside.

101. Mr. Khambata, Learned Senior Counsel, submitted that the Appellant was never a Promoter. CSR has placed before us the Annual Reports of 2000-2001, 2001-2002 & 2002-2003. These Annual Reports give the composition and the category of directors. In the Annual Report of 2002-2003 the report on Corporate Governance dealing with the Board of Directors is extracted below:

Name of the Director	**Category**	**Designa-tion**	**No. of Meetings held during the last financial year**	**No. of Meetings attended**	**No. of membership in boards of other Companies**	**Attendance of each director in the last AGM**
Mr. B. Ramalinga Raju	Promoter & Executive Director	Chairman	4	4	2	Yes
Mr. B. Rama Raju	Promoter & Executive Director	Managing Director	4	4	3	Yes
Mr. C. Srinivasa Raju	Non-Executive Director	Director	4	2	-	Yes
Mr. P.V. Rama Rao	Independent and Non-Executive Director	Director	4	4	5	No
Mr. C. Satyanarayana	Independent and Non-Executive Director	Director	4	4	2	No
Dr (Mrs) Mangalam Srinivasan	Independent and Non-Executive Director	Director	4	2	-	No
Prof Krishna G. Palepu	Independent and Non-Executive Director	Additional Director	4	-	3	-
Mr. Vinod K Dham	Independent and Non-Executive Director	Additional Director	4	-	2	-

102. The same pattern is there for the Annual Reports 2000-2001 and 2002-2003. While the Appellant is described just as a Non-Executive Director, Mr. B. Ramalinga Raju and Mr. B. Rama Raju are described as "Promoter & Executive Director". This contrast is striking. When the Appellant was not described as a Promoter in the Annual Reports of 2000-2001, 2001-2002 and 2002-2003 when he was in the Company, he cannot logically be named as a promoter after he had left the Company. SEBI has also not placed any material before us to show that the Appellant has given his consent to be treated as a Promoter. Instead SEBI relies on certain filings made by the Satyam when it

was under the control of B. Ramalinga Raju wherein the Appellants name was disclosed as a Promoter.

103. The SFIO Report has given a correct context for these filings. From the report of the SFIO it emerges that the actual promoters of Satyam began selling their shareholding in Satyam from 2005 onwards. To avoid market detection of the sale of shareholding by the actual promoters, the former management of Satyam inflated the promoter list by adding the shareholding of the CSR in the others category. Thus SIFO concludes that the filings made on promoter holding are incorrect. The relevant finding is extracted below:

> "*... The Company (SCSL) thus made incorrect filings of promoter holding with stock exchanges during the period from 30.06.2001 to 31.03.2006.* ***The company made incorrect filings in order to camouflage sale of shares by promoters group.*** *Copies of shareholding pattern filed with BSE are placed at annexure (Annexure D-23). This is in violation of the requirement of clause 35 of the listing agreement with the stock exchanges. The persons who were in the knowledge of this incorrect filing have thus violated provisions of SC (R) Act and SEBI Act and are liable for prosecution according to the relevant Acts.* ***This matter may therefore be brought to the notice of SEBI****". Para 4.7.21-22.*

104. Instead of taking action based on the correct promoter holdings, SEBI has, beyond my understanding, chosen to place reliance on the factually incorrect filings clearly held to be so by SFIO. Further, SEBI has done so without giving any reason as to why, if at all, the findings of SFIO can be faulted with. Moreover, one of the biggest indications of the fact that Appellant was not a promoter of Satyam is that his shares were not subject to a lock-in period at the time of merger of SES into Satyam, as the law required promoters' shares to be subjected to lock-in.

105. Further, the SFIO Report recounts the interrogation of the noticees in its Investigation Report. While questioning Mr. B. Rama Raju in question no.

83, the SFIO makes certain observations which make it abundantly clear that the SFIO considered Appellant to be one of the persons duped by B. Ramalinga Raju and B. Rama Raju. These observations being of paramount importance are reproduced herein below for the sake of convenience:

> "*Q. No. 83. SCSL from time to time submitted quarterly shareholding of the Company to the stock exchanges in compliance with clause 35 of the listing Agreement…….Investigations further revealed that all family members of you and your two brothers and entities controlled by them sold shares of SCSL in excess of Rs. 750 crores since allotment/acquisition of shares (excluding shares transferred to SRSR Holdings Ltd.). On one hand, the company manipulated their accounts and on the other hands, the promoter group sold the shares of Satyam, further in order to show that promoter group were still holding shares of SCSL, the company included Mr. C. Srinivasa Raju, Satyam Associates Trust and Others (sub-category) in the promoters category and submitted to the stock exchanges, which is misleading to the shareholders and investors…".*

106. The observations of the SFIO reproduced above go a long way in proving that CSR's shares, along with the shares in the Satyam Associates Trust in the form of Employees Stock Option Scheme, were mischievously shown in the promoter's quota in order to disguise the well planned and orchestrated sale of shares by the actual promoters of Satyam, i.e. the B. Ramalinga Raju family. In other words, the inclusion of appellant CSR's name in the filings before the stock exchanges, was a shrewdly orchestrated smokescreen to cover up the fact that all the actual promoters of Satyam had sold off their respective shareholdings, in a company which was fast turning into one committing, and further perpetuating, astronomical fraud.

107. The SFIO also gives a list of the sale of shares by all the persons in the actual promoter group. The name of the Appellant is not in the list. From the material brought on record, it is noted that even the CBI Court identified the list of the actual promoters based on the Company records from July, 1992 to

31.12.2008 (Ex.No. P-2945 - Promoter Shareholdings). As stated above, the name of the CSR is missing from the list.

108. This is consistent with the finding in the SFIO Report that the declining shareholding of the promoters prompted the fraudulent Byrraju brothers to inflate the promoter list by adding shareholders who were not promoters in any sense of the term. I therefore agree with Ld. Sr. Counsel Mr. Khambatta that the CSR was a victim of the fraud perpetrated by the former management. It is also ironical that SEBI having found that filings on financial statements prepared by Satyam under the control of B. Ramalinga Raju were fabricated now chooses to place reliance on the same fabricated promoter filings made by the former management which committed the fraudulent activities in the first place, merely because it wrongly bolsters SEBI's case against CSR. Further, even the promoter filings do not appear to be conclusive. In their Convenience Compilation, the Appellants have extracted the Annexure to the SFIO Report which contains the filings made by the former management under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. These filings disclose the list of promoters and their shareholding from March, 2003 to 19.11.2008. The name of the Appellant is missing from this as well. It is, therefore, evident that the conclusions are inconsistent and do not speak in the same voice. Therefore, no reliance can be placed on the promoter filings made by the former management of Satyam from 2001 to 2008.

109. In Para 44, WTM asserts that CSR made a belated protest about his inclusion in the promoter holdings. Since it is now evident based on the SFIO Report and the Judgment of the CBI Court that the promoter filings are incorrect, the Appellant's belated protest is irrelevant and no inference can be assigned to the same. In any case, when the Appellant ceased to be a connected person on July 23, 2003, any subsequent filings by Satyam showing

the Appellant as one of the promoters were beyond his control and, hence, are irrelevant in determining whether CSR was an insider or not within the parameters prescribed by the PIT Regulations.

110. Turning to the submission advanced by SEBI that CSR was in possession of UPSI while executing trades during the relevant period by virtue of CSR allegedly being a "Relative" of Mr. B. Ramalinga Raju owing to the fact that Appellant was Mr. B. Ramalinga Raju's wife's sister's husband. As stated hereinabove, the expression used by SEBI is that of "co-brother". To begin with, the term co-brother does not denote a legally recognized relationship. As stated above, Appellant is Mr. B. Ramalinga Raju's wife's sister's husband and that relation which has been defined by SEBI as "co-brother" does not find any place in the law to be considered as relative. Neither "brother-in-law", nor "brother-in-law of wife" has been included in the list of relatives in the erstwhile Companies Act, 1956, which is applicable to the instant case. The definition of "relative" in the PIT Regulations of 1992 refers to the definition of "relative" as provided in Section 6 of Companies Act, 1956, which is reproduced hereunder for the sake of convenience:

"6. MEANING OF "RELATIVE"

A person shall be deemed to be a relative of another, if, and only if,

(a) they are members of a Hindu undivided family ; or
(b) they are husband and wife ; or

(c) the one is related to the other in the manner indicated in Schedule IA".

Schedule IA:
1. Father.
2. Mother (including step-mother).
3. Son (including step-son).
4. Son's wife.
5. Daughter (including step-daughter).
6. Father's father.

7. Father's mother.
8. Mother's mother.
9. Mother's father.
10. Son's son.
11. Son's son's wife.
12. Son's daughter.
13. Son's daughter's husband.
14. Daughter's husband.
15. Daughter's son.
16. Daughter's son's wife.
17. Daughter's daughter.
18. Daughter's daughter's husband.
19. Brother (including step-brothers).
20. Brother's wife.
21. Sister (including step-sister).
22. Sister's husband.

111. From a perusal of section 6 of Companies Act, 1956 read with Schedule IA, it becomes evident that the term co-brother is not used anywhere to depict a relative. In fact, even the wife's brother has not been considered as a relative as per Schedule IA. Therefore, to consider a wife's sister's husband, which is an even distant relation, as a relative, is not tenable on the Respondent's part. It is important to note that S.6 uses the phrase "if, and only, if". This means only those listed can be considered as a Relative. In the Impugned Order, the WTM at Para 35 places extensive reliance on the definition of "Relative" for other Appellants, but chooses to completely disregard the same when it comes to the case of CSR.

112. The only logical conclusion that emanates from a simple reading of the law in existence at the relevant time is that CSR was not, legally speaking, a relative of Mr. Ramalinga Raju and cannot be termed as such owing to anything on the record. The finding as to the "relative" against CSR is therefore totally unwarranted and patently against the law**.** Further, under the PIT Regulations of 1992, a relative is usually relevant for identifying a "deemed connected person" under Regulation 2(h)(viii), and not for the

purposes of establishing reasonable expectation of access to UPSI and possession of UPSI.

113. It is pertinently noted that in Para 44 the WTM also asserts that the CSR has failed to buy any shares during the relevant period and therefore draws an inference that he is reasonably expected to have UPSI and possession of UPSI.

114. In response CSR asserts that he had compelling reasons to sell shares and the same was not done while in the possession of UPSI, since he was never in possession of UPSI. Appellant asserts that his trading pattern also demonstrates that he was not in possession of UPSI. Specifically, CSR asserts that

> a. he was selling shares even before the relevant period to fund his newly created venture capital investment business (Appellant sold 70,000 shares between 28.12.1999 to 20.06.2000, he again sold 2,00,000 shares in 2000-2001).
> b. Unlike other Appellants, the Appellant did not sell his entire shareholding at one go, but sold his shareholding as and when he had a business requirement. Appellant explained that he had setup his own venture capital investment business which purchased the shares in unlisted companies and therefore there was no rationale for him to purchase the shares of Satyam.
> c. While the actual promoters sold their entire shareholding by 2005, the Appellant continued to have his shareholding till the year 2008.
> d. Appellant disposed off his entire shareholding following the collapse of Satyam shares price after the announcement of the merger and subsequent cancellation of the merger between Satyam and the Maytas entities (promoted by Mr. Ramalinga Raju and his sons)
> e. The sale proceeds went to fund the Appellant's business requirement over a period of time. The Appellant adduced evidence to show the utilization of sale proceeds for genuine business requirements

115. In my considered opinion, the failure to purchase shares is not by itself conclusive to show reasonable expectation of access to UPSI. On the contrary, the Appellant's trading pattern clearly demonstrates that trades were not

undertaken while in possession of UPSI, and that shares were disposed of as and when the Appellant's independent business ventures required an inflow of capital. This is evident from the SFIO Report. A review of the SFIO Report and the CBI Judgment shows that 2005-06 was a crucial year. By this year all the actual Promoters disposed of their shareholding in Satyam because they were aware of the credit crunch faced by Satyam, which was not reflected in the published financial statements. The Appellant was only person who continued to retain a substantial shareholding in the Satyam. I find that this clearly points to the lack of possession of UPSI. The relevant extract of the SFIO Report is extracted below :

> "*.. As the scrip price [was] dropped in June 2006, it appears that the company in order to boost the sentiment announced bonus issue and issued bonus shares in October 2006. Thereafter, price of the scrip was range bound between Rs. 400- Rs 520 till September 2008.*
>
> *... This could be the trigger point to the promoters of SCSL, as almost all members of the promoters group (except Shri B Ramalinga Raju, Smt B Nandini Raju and Smt B Radha Raju) sold their entire shareholdings by September 2005 and the company could be facing credit crunch on account of falsified funds to meet their financial obligations by way of sale of shares of SCSL. Through this process all family members exhausted their shareholding. This left only core promoters holding shares of SCSL and they have no-other option other than raising funds by pledging of shares of listing its group company shares..."* Para 4.7.27.4.

116. CSR sold 16,66,356 shares of Satyam during January 2007 to December 2008. The last transaction of sale of shares on 22-12-2008 is significant. As evident from the SFIO Report and the CBI Court Judgement, the Board of Satyam based on representations of former management announced a merger of Satyam with Maytas Infra Ltd and Maytas Properties Ltd on 16-12-2008. Both these Maytas entities were promoted and controlled by B. Ramalinga Raju and their family members. However, when the merger

was announced, there was an adverse market reaction compelling the Satyam Board to withdraw the merger proposal. Once this news of the announcement of the merger and its subsequent abortion became public, there was hysteria in the market which resulted in a steep drop in the price of the shares of Satyam. There was a wide spread sell off in the shares of Satyam. was a wide spread sell off in the shares of Satyam.

117. CSR also disposed of his remaining shareholding at one go on 22-12-2008, along with many other shareholders of Satyam, as a reaction to the news of the merger falling through. This negates the inference drawn by the WTM that there was a strong probability that there was an "information flow" between B. Ramalinga Raju, B. Rama Raju and CSR. If there was really an information flow, there was no reason for CSR to retain his shareholding till December 2008, when the actual promoters and the family members of B. Ramalinga Raju and B. Rama Raju sold their entire shareholding by 2005. Therefore, the clear contrast between the trading pattern of the actual promoters of Satyam and that of CSR negatives any suggestion of "information flow".

118. Moreover, CSR also highlights the fact that he did not have any professional or business relationship with B. Ramalinga Raju, B. Rama Raju or their family members unlike the other Appellants who were closely involved with the companies floated by B. Ramalinga Raju and others. Specifically, the Appellant highlights that

> a. he was neither a promoter or owner or director or shareholder of any of the 327 companies floated by B. Ramalinga Raju and others;
>
> b. he was not a promoter or owner or director or shareholder of any of the 3 investment companies of the Promoter Group of Satyam– i.e. - Elm, Fincity and Hi Grace;

c. he was not promoter or owner or director or shareholder of SRSR, nor did he transfer any shares of Satyam to SRSR.

119. All these factors do not support the inference drawn by WTM that there was a close connection between the Appellant and B. Ramalinga Raju. This is also supported by the SFIO Report which found that the Appellant had no connection with any entities floated by B. Ramalinga Raju, unlike other Appellants.

> *".. During the course of investigation it was found out that the Promoters of SCSL and their family members had incorporated about 374 companies over a period of past 8 to 10 years for the purposes of venturing into infrastructure development business including eight investment companies. The profiles of these companies included the names of directors, paid-up share capital, loans taken and advances given by them along with the names of statutory auditors. On scrutiny of these profiles, it was found out that all these companies were mainly promoted by about 15 individuals whose names are given below..." (*Para 5.1.5 and 5.1.6 of SFIO Report)

120. In light of the above, the conclusion drawn by the WTM with regard to the connection drawn between Appellant and B. Ramalinga Raju and the probability of information flow with CSR cannot be sustained. I am, therefore, of the considered view that the Appellant is not an "Insider" under the PIT Regulations during the relevant period.

121. Once it is held that CSR is not an "Insider" under the PIT Regulations the inquiry should end there itself. Since the Majority has opined that CSR was in possession of UPSI, I am compelled to deal with the same.

122. As stated above, merely being a connected person or even if a person is termed as "insider" would not be sufficient to attract provision under Regulation 3. SEBI also has to establish that the concerned person sold shares while in possession of UPSI based on accessibility to the said Unpublished Price Sensitive Information.

123. Further, for the period after 20.02.2002, SEBI is only required to demonstrate that CSR as an insider dealt in shares while in possession of UPSI. In the impugned Order, the WTM relies on the very same three factors for establishing reasonable access to UPSI to also demonstrate possession of UPSI (promoter, relative, failure to buy shares). I had already dealt with these factors at length on the aforesaid paragraphs. Suffice it to say that these circumstances do not establish possession of UPSI by the Appellant.

124. Assuming for the sake of argument that CSR as a director had knowledge of the fabrication of the financial statements (which is UPSI herein), he would have been guilty of violating the PFUTP Regulations. However, in the Impugned Order, the WTM drops the charge of PFUTP violation, and rightly so for lack of evidence. It is amply clear from the records that the appellant was neither involved in hatching of the fraud nor was he one of the perpetrators of the said fraud. Therefore, there was no accessibility to the fraud as the Appellant was never in possession of UPSI regarding the fabrication and falsification of the accounts. In such a scenario, it cannot be said that CSR was in possession of UPSI by any stretch of the imagination.

125. However, SEBI in its oral and written submissions raised several new arguments which were neither in the SCN or the Impugned Order to suggest that CSR's role and responsibilities as an Executive Director in Satyam upto 31.08.2000 continued even after he ceased to be an Executive Director and became a Non-Executive Director from 01.9.2000 to 23.01.2003.

126. The Majority opinion has relied on these submissions which are not present either in the Show Cause Notice or in the Impugned Order. Specifically the Majority opinion refers to CSR's association with Satyam's management from 1993 to August 2000. In my view these events have no

relevance since they were outside the relevant period and even before UPSI came into existence on 31.03.2001. The WTM has rightly not considered these facts as they are irrelevant for a determination of violation of PIT Regulations.

127. The majority opinion refers to CSR being a Director of Satyam Infoway till 2005 which was one of the companies floated by Ramalinga Raju and his family members. Based on these circumstances, the Majority opinion concludes that the Appellant was closely connected with several companies floated by Ramalinga Raju and his family members. This finding is neither present in Show Cause Notice nor in the Impugned Order**.** Mr. Khambata, Learned Senior Counsel, in the Clarificatory hearing took us through the new submissions made by SEBI in the written submissions. SEBI in its Written Submissions also fairly stated that all this material about CSR being a Director of Satyam Infoway was not part of the SCN or the Impugned Order. Mr. Khambatta, Learned Senior Counsel also pertinently brought to the attention of this Tribunal the fact that since CSR was not a nominee of Satyam on Satyam Infoway Board, but of another third party investor.

128. The majority opinion holds that even though CSR relinquished his position as an Executive Director on 31.08.2000, he continued as a Non-Executive Director till a suitable replacement was found and there is nothing on record to suggest that the duties of Appellant as a Non-Executive Director were different from the duties discharged by him as an Executive Director of Satyam. I find this distinction untenable. There is a well settled distinction in law between an Executive Director and a Non-Executive Director. An Executive Director participates in the day to day affairs of the Company, whereas the Non-Executive Director participates only in the Board Meetings.

129. Further, there is nothing on the record to show this was considered by the WTM. This was also never put to the Appellant. On the contrary, it is the Appellants stand that as the Non-Executive Director his role was only confined to attending Board Meetings and was not part of the management of day-to-day business of Satyam, which is also recorded in the Impugned Order at para 32. The Annual Report extracted above shows limited participation of Appellant in the board meetings of Satyam. On the contrary, SEBI has not presented any material to show that CSR was involved in the day to day affairs of Satyam as an Non-Executive Director

130. The Majority opinion holds that CSR was involved in business development, diversification plans and advising on new ventures of Satyam during the year 2001 and 2002. Once again, I have scanned through the entire Show Cause Notice and WTM's Order to see if there was any such averment or finding, I find these circumstances were neither put to the Appellant in the Show Cause Notice nor is there a finding in the impugned order to this effect. Neither WTM in the Impugned Order nor SEBI in its submissions before this Tribunal has produced any material to show that the Appellant was involved in business development, diversification plans of Satyam during the year 2001 and 2002. On the contrary, the Appeal Memo and the List of Dates submitted by CSR during the hearing depict that he was involved in the said activities during 1992-1993 and not during 2001 or 2002. This was almost a decade before the UPSI came into existence.

131. The Majority opinion holds that "*on account of close relationship with Ramalinga Raju, the Appellant was made as a Joint Venture Partner of various group companies floated by Ramalinga Raju and his family members. In fact on account of merger of one joint venture with Satyam, Chintalapati Srinivas*

Raju got 8,00,000 shares of Satyam which eventually became 76,50,000 shares on account of bonus and stock split within a period of one year."

132. I have scanned the entire Show Cause Notice and the impugned Order to see, if there was any such mention of CSR becoming a director of Joint Venture Partner of various group companies floated by Ramalinga Raju on account of his close relationship. There is no such allegation in the Show Cause Notice nor is there a finding in the Impugned Order to this effect. On the contrary, as Mr. Khambatta pointed out in the List of Dates and the Appeal Memo, the Appellant formed SES Pvt. Ltd. in which he held 20% stake. In the Appeal, it is stated that he was the founding MD and CEO of SES Ltd.

133. When Satyam Enterprise Solutions Pvt. Ltd (SES) merged with Satyam, CSR received about 8 lakhs equity pursuant to a Scheme of Amalgamation approved by the AP High Court. As Mr. Khambatta rightly pointed out in the clarificatory hearing, the 8 lakh shares became 76 lakh shares on account of stock split and bonus issue which happened for all shareholders and not just for the Appellant, and more importantly without any action on the CSR's part. In the clarificatory hearing, Mr. Khambata, Ld. Senior Counsel, took us through the Written Submissions filed by SEBI and showed how SEBI has made some startling new submissions which were neither present in the Show Cause Notice nor in the Impugned Order and therefore CSR did not have an opportunity to meet the same.

134. I agree with Mr. Khambatta, the Learned Senior Counsel, that this approach of SEBI of introducing new submissions without any foundation in the SCN or Impugned Order is impermissible and unfair. The Supreme Court

in **Mohinder Singh v. Election Commission of India [1978 (1) SCC 405]** has observed

> *8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16] :*
>
> > *"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."*
>
> *Orders are not like old wine becoming better as they grow older."*

135. CSR cannot be condemned as an insider, once he has been held neither to be a promoter nor a relative on fact and law. Further, the Appellant has been absolved of all blame by SEBI itself with respect to the conspiracy, contrived primarily by the Byrraju brothers, while holding that the Appellant had nothing to do with the fabrication and manipulation of accounts of Satyam.

Appeal No. 452/2015 (Chintalapati Holdings Pvt Ltd Vs. SEBI)

136. This Appeal can be disposed of on a short point. The Appellant here is in the same position as the Appellant in Appeal No. 462 of 2015 (Jhansi Rani). Consequently this Appeal can be disposed on the same grounds.

137. The Appellant sold 8 lakh shares from 04-01-2001 to 14-03-2001. After 31-03-2001, there was no dealing in securities by the Appellant, but Appellant only retuned 24 lakh shares which were never sold, but were merely returned to CSR. These shares which were returned were sold by CSR subsequently and were included in the Impugned Order against CSR. The SCN and the Impugned Order consider only the transactions between 04-01-2001 to 14-03-2001. The fabrication of financial statements (which is the UPSI herein) commenced after 31.03.2001. Since the transactions undertaken by the Appellant were prior to the UPSI coming into existence, it would not fall within the prohibition in Regulation 3.

138. The similarity does not end there. Like Jhansi Rani, this Appellant also sold its shares prior to 2002 Amendment to the PIT Regulations. As discussed above, the prohibition under Regulation 3 prior to the 2002 Amendment can only be invoked if the insider sold shares on the basis of UPSI. There is no finding in the impugned Order that CHPL sold shares on the basis of UPSI. Ironically majority view has not applied the same yardstick on which Ms. Jhansi Rani's appeal was allowed to this Appellant. I fail to discern any plausible reason for doing so in the majority view. The Appellant has been held to be a person deemed to be connected under Reg 2(h)(i). The said Regulation states

> *(h) "person is deemed to be a connected person", if such person— (i) is a company under the same management or group, or any subsidiary company thereof within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956) or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be; or*

139. The Impugned Order does not elaborate how the Appellant which is promoted by CSR is under the same management of Satyam or any company promoted by B. Ramalinga Raju. The Impugned Orders fails to examine the issue of same management with reference to the provisions of Monopolies and Restrictive Trade Practices Act, 1969 or the Companies Act, 1956. A cursory review of the provisions does not show how the Appellant would fall within the ambit of these provisions.

140. The Majority opinion relies on Regulation 2(h)(ix). This Regulation was inserted by the SEBI (Insider Trading) (Amendment) Regulations, 2002, w.e.f. 20-02-2002. Again it was amended by the SEBI (Prohibition of Insider Trading) (Second Amendment) Regulations, 29-11-2002. Since the Appellant sold securities even before this Amendment came into effect, this Regulation cannot be invoked. I respectfully differ from the view taken by the Majority opinion on the applicability of Reg. 2(h)(ix).

141. This Appeal is essentially consequent to the determination of the Appeal of CSR. Since I have held herein above that CSR himself was not an "insider" because SEBI has failed to establish reasonable access to UPSI. When CSR is not an Insider, this Appellant CHPL cannot be considered as a person deemed to be connected. In view of the above, the Appeal filed by CHPL is allowed and the Order of WTM is set aside.

Appeal No.453/2015 (Late Anjiraju Chintalapati Vs. SEBI)

142. The Appellant was the father of CSR. The Appellant sold 2,50,000 shares on 04.08.2005. Appellant expired on 03.12.2007. The Impugned Order holds the Appellant to be a person deemed to be connected under Regulation 2(h)(viii), since he was a relative of a connected person (CSR) (Para 37). However, as discussed above, CSR ceased to be a connected person on 22.07.2003. Consequently, when the Appellant sold the shares on 04.08.2005, he could not be "a deemed to be connected person" since CSR himself ceased to be a connected person. On this short point alone, the order of the WTM is liable to be quashed and set aside.

143. However, this appeal raises important questions of law on invoking PIT Regulations against a dead person. The following questions arise:

a. Do proceedings under PIT regulations abate upon the death of a person who is alleged to have committed insider trading?

b. Can proceedings under PIT Regulations even be issued against a dead person?

c. Can SEBI proceed against the legal heirs for disgorgement of unlawful gain?

144. In answering these questions, two situations arise :

First, when an alleged offender dies after SEBI has made a determination of violation of the PIT Regulations. In this category, SEBI can subject to the provisions of SEBI Act and the PIT Regulations can recover the unlawful gain from the legal heirs, if it is found that the unlawful gains accrued to the estate.

Second, an alleged offender dies before proceedings under the PIT Regulations are initiated or during proceedings under PIT Regulations. This is more difficult case, because the determination under PIT Regulations cannot be done in the absence of a person. Without given a hearing to a person, SEBI cannot make a determination that the person had reasonable access to UPSI and was in possession of UPSI when he sold the shares. The finding of insider trading can only be done in the presence of the person concerned since these proceedings are personal to the alleged offender. The legal heir may not be in a position to represent the alleged offender. However, we do not intend to say more and reserve this matter for further consideration in an appropriate matter. In light of the abovesaid, I allow this appeal and hereby set aside the WTM Order.

145. Accordingly, the impugned order qua the appellants in Appeal Nos. 458/2015 (B. Appalanarasamma), 459/2015 (B. Teja Raju), 460/2015 (B. Rama Raju Jr.), 461/2015 (B. Suryanarayana Raju) and 463/2015 (SRSR Holdings Pvt. Ltd.) is upheld and the appeals are dismissed with no order as to costs.

146. However, for reasons recorded herein above, the impugned order qua the appellants in Appeal No. 451/2015 (Chintalapati Srinivasa Raju), 452/2015 (Chintalapati Holding Pvt. Ltd.), 453/2015 (Late Shri Anjiraju Chintalapati) and 462/2015 (Ms. B. Jhansi Rani) is quashed and set side and the Appeals are, accordingly, allowed with no order as to costs.

Sd/-
Jog Singh
Member

11.08.2017
Prepared & Compared By: PTM

Per Tribunal (Majority View):

As per the majority view, all the appeals are disposed of in terms set out in para 23 and 24 of the order.

(Minority View):

As per the minority view, the impugned order qua the appellants in Appeal Nos. 458/2015 (B. Appalanarasamma), 459/2015 (B. Teja Raju), 460/2015 (B. Rama Raju Jr.), 461/2015 (B. Suryanarayana Raju) and 463/2015 (SRSR Holdings Pvt. Ltd.) is upheld and the appeals are dismissed with no order as to costs.

However, for the reasons recorded herein above, the impugned order qua the appellants in Appeal No. 451/2015 (Chintalapati Srinivasa Raju), 452/2015 (Chintalapati Holding Pvt. Ltd.),. 453/2015 (Late Shri Anjiraju Chintalapati) and 462/2015 (Ms. B. Jhansi Rani) is quashed and set aside and the Appeals are, accordingly allowed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

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

11.08.2017
Prepared & Compared By: PK

* Paragraphs in the order passed by Mr. Jog Singh (Member-I) are renumbered pursuant to order dated 16.08.2017.