

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

DATE : 07.05.2019

Appeal Lodging No. 232 of 2019

Mr. Suprabhat Lala Appellant

Versus

Securities & Exchange Board of India Respondent

Mr. Janak Dwarkadas, Senior Advocate with Mr. Joby Mathew,
Mr. Ramesh Gogawat, Mr. Nikhil Shah, Advocates i/b Joby Mathew
& Associates for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Dr. Poornima Advani,
Mr. Anubhav Ghosh, Ms. Rashi Dalmia, Advocates i/b The Law
Point for the Respondent.

**With
Misc. Application No. 238 of 2019
And
Appeal Lodging No. 233 of 2019**

Infotech Financials Pvt. Ltd. & Ors. Appellants

Versus

Securities & Exchange Board of India Respondent

Mr. Janak Dwarkadas, Senior Advocate with Mr. Zerick Dastur,
Ms. Sneha Sheth, Ms. Palak Agrawal, Advocates i/b Zerick Dastur
Advocates & Solicitors for the Appellants.

Mr. Mustafa Doctor, Senior Advocate with Dr. Poornima Advani,
Mr. Anubhav Ghosh, Ms. Rashi Dalmia, Advocates i/b The Law
Point for the Respondent.

**With
Misc. Application No. 239 of 2019
And
Appeal Lodging No. 234 of 2019**

Ajay Shah

..... Appellant

Versus

Securities & Exchange Board of India

..... Respondent

Mr. Shyam Mehta, Senior Advocate with Mr. Zerick Dastur, Ms. Sneha Sheth, Ms. Palak Agrawal, Advocates i/b Zerick Dastur Advocates & Solicitors for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Dr. Poornima Advani, Mr. Anubhav Ghosh, Ms. Rashi Dalmia, Advocates i/b The Law Point for the Respondent.

ORDER :

1. These three appeals are listed for admission and a common order is being passed in all the three appeals. In the Appeal of Infotech Financials Pvt. Ltd. and Ors., Misc. Application No. 238 of 2019 has been filed for exemption from filing a certified copy of the impugned order. Similar Misc. Application No. 239 of 2019 has been filed in the appeal of Ajay Shah. The registry has also reported certain objections. We dispose of the Misc. Applications directing the appellants to file the certified copy of the impugned order within three weeks from today and also clear other objections raised by the

registry within the same period. In the meantime, Registry is directed to allocate a regular number.

2. Infotech Financials Pvt. Ltd. & Ors. has filed the present appeal questioning the legality and veracity of the impugned order dated April 30, 2019 passed by the Whole Time Member (hereinafter referred to as, “WTM”) restraining the appellants from providing services and from being associated, in any manner and in any capacity, with any Stock Exchange, Clearing Corporation, Depository recognized by Securities and Exchange Board of India (hereinafter referred to as, ‘SEBI’) for a period of two years. In Appeal filed by Mr. Suprabhat Lala, the appellant has been restrained from holding any position directly or indirectly with any Stock Exchange, Clearing Corporation, Depository recognized by SEBI for a period of two years. In the Appeal of Ajay Shah, the appellant has been restrained from holding directly or indirectly any position in the management in the Board or be associated, in any manner and in any capacity with any Stock Exchange, Clearing Corporation, Depository recognized by SEBI for a period of two years.

3. Infotech Financials Pvt. Ltd. is a company engaged in delivering customized software solution for different industry sectors. Appellant No. 2 Mr. Krishna Dagli and Appellant No. 3, Ms. Sunita Thomas are the directors in the Appellant No. 1 company. The

Appellant, Mr. Suprabhat Lala is a Vice President in National Stock Exchange of India Ltd. ('NSE') and is the husband of Ms. Sunita Thomas. The Appellant, Ajay Shah is a professor in National Institute of Public Finance Policy and is a researcher in economics, finance and public policy. For his acumen in the securities market, the Appellant Ajay Shah is on the Board of the National Securities Clearing Corporation Ltd. and has also been a Member of various committees of NSE etc.

4. It is alleged that in February 2009, NSE wanted to set up a "Liquidity Index" which is more commonly known as 'LIX' and for this purpose a contract was entered between NSE and Infotech Financials Pvt. Ltd. to develop the Liquidity Index. It is alleged by the respondent that all the five appellants as stated aforesaid acting in concert and in the process of developing the Liquidity Index obtained confidential data from NSE which was utilized to prepare the Algo trading software. It was alleged that the Algo trading software developed by the appellants induced the brokers to trade in securities. It was further alleged that the appellants were involved in programming of trading strategies as part of the customized work for its clients by using the confidential data provided by NSE which was only to be utilized for developing the 'Liquidity Index'.

5. The WTM found the allegations to be correct and, accordingly, passed the impugned order imposing the debarment / penalty.

6. It was urged by Shri Janak Dwarkadas and Shri Shyam Mehta, the learned senior counsels for the appellants that the data provided by NSE was only a historical data which had no relevance for future trading and, in any case, in proceedings initiated by SEBI against NSE, it came out that this data was in the public domain and thus, was not confidential. It was, thus, contended that even though the said data was not utilized for preparation of the Algo trading software but assuming without admitting that the said data was used for developing the Algo trading software no confidentiality clause in the agreement was violated as the said data was in the public domain and was accessible to all, including the appellants. It was contended that the appellants had only prepared the Algo trading software as per the customized work for its clients but the appellants had no part in the execution of the trade done by its clients. The trading strategy adopted by the client had nothing to do with the appellants in relation to the development of the software. It was, thus, urged that the appellants had no control over the trading strategy done by its clients with regard to execution of its trades.

7. It was further urged that in the event, the impugned order is allowed to stand and is allowed to continue during the pendency of

the appeal, it will put an irreparable loss and harm to the appellants business which is violative of Article 19(1)(g) of the Constitution of India. It was contended that the appellants in the appeal of Infotech Financials Pvt. Ltd. are in the business of preparation of Algo trading software and if they are debarred for a period of two years their entire business would come to a standstill. Similarly, it was contended on behalf of the appellant, Mr. Suprabhat Lala that the order against him will amount to termination of his service in the NSE. With regard to the appellant, Ajay Shah, it was contended that he is on the Board of several committees and that if the order is allowed to continue, he would be removed from these committees and that his reputation as a Financial Advisor would take a bashing.

8. Having heard the learned senior counsel for the parties, the fact that the appellants used its influence to get the contract from NSE, the fact that none of the appellants had violated the code of Conduct of the stock exchange or had violated the confidentiality clause under the agreement or there was a conflict of interest would be considered after replies are filed by the respondent. *Prima-facie*, at this stage, we are of the opinion that the alleged violation, if any, was in the year 2009. More than 10 years have elapsed and the appellants were associated with the market during this period and no complaint on any other score has been found against them. We also find that the

data which is alleged to have been used by the appellants for preparation of Algo trading software was explained by NSE to be in the public domain in related proceedings made against NSE.

9. For the reasons stated aforesaid, we find that a *prima-facie* case is made out. Balance of convenience also lies in favour of the appellants for grant of an interim order. We accordingly, direct the respondent to file a reply within six weeks from today. Three weeks thereafter to the appellants to file rejoinder. List these appeals for admission and for final disposal on July 22, 2019. In the meanwhile, the effect and operation of the impugned order shall remain stayed till further orders.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Justice M. T. Joshi
Judicial Member

07.05.2019
Prepared & Compared by
PTM