BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 11.04.2022
Date of Decision : 19.04.2022

Appeal No. 536 of 2021

1. Rajeev Vasant Sheth
   3, Villa Ramona,
   37A, Nepean Sea Road,
   Mumbai – 400 036.

2. Aarti Sheth
   Aventa, 5th Floor,
   16a, Altamount Road,
   Mumbai – 400 036.

3. Divya Sheth
   1803C, Raheja Vivarea,
   Arthur Road, Jacob Circle,
   Mumbai – 400 011. ….. Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. … Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Mihir Mekal, Advocate i/b ALMT Legal for the Appellants.

Mr. Mustafa Doctor, Senior Advocate with Mr. Manish Chhangani, Mr. Ravishekhar Pandey, Ms. Samreen Fatima, Advocates i/b The Law Point for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per : Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated May 24, 2021 whereby the appellants were found to have indulged in the insider trading in the shares of Tara Jewels Ltd. (hereinafter referred to as 'the company') on which basis the appellant nos. 1 was debarred from accessing the securities market for a period of one year and the appellant nos. 2 and 3 for a period of six months. The appellants were further directed to deposit an amount of Rs. 1,38,31,472.60/- towards alleged loss avoided by the appellants alongwith interest at the rate of 12% p. a. from November 30, 2017 for the insider trading as well as to pay the penalty amount aggregating to Rs. 52 lacs.

2. The appellant nos. 1 was the chairman and the managing director of the company at the relevant moment of time. The appellant nos. 2 and 3 are the daughters of the appellant nos. 1. The

company was listed on BSE Ltd. (hereinafter referred to as 'BSE') as well as on the National Stock Exchange of India Ltd. (hereinafter referred to as 'NSE'). Since 2016, the company was facing financial difficulties on account of slowdown in the jewellery market. The sales turnover of the company dropped from Rs. 1356 crores as on March 31, 2016 to Rs. 435 crores in the year ended March 31, 2018. This resulted in the share price of the scrip of the company dropping from Rs. 57.50 in the year 2015 to Rs. 20.25 in October / November 2017. Since the company was facing severe financial crunch and was under a constraint to repay its loan obligations, the appellant nos. 1, as a promoter, decided to sell his shareholding and shareholding of the appellant nos. 2 and 3 to enable them to infuse funds in the company so that the liabilities could be discharged. Accordingly, the appellants sold shares of the company between October 2017 to December 2017. The funds received from the sale of the shares were promptly invested into the company and no part of the sales proceeds was retained by the appellants. While selling shares, the appellants made disclosures as required under the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as 'LODR Regulations').

3. It was contended that the urgency to sell the shares arose as in October 2017 the repayment of the loan taken from Comfort Fincap Ltd. (hereinafter referred to as 'Comfort Fincap') became imminent and, therefore, the appellants sold their unencumbered shares to payoff Comfort Fincap and unpledged three times the shares held by them. Upon repayment of the loan, the shares were unpledged which were again sold by the appellants the proceeds of which were infused in the company as a working capital. Through the sales, the appellants received Rs. 11,29,72,156/- and transferred more than the said amount to the company, namely, Rs. 11,67,75,000/-.

4. After two years of making disclosures, Securities and Exchange Board of India (hereinafter referred to as 'SEBI') started investigation in December 2019 and, based on the initial investigation, passed an ex-parte order dated September 4, 2020 impounding the alleged unlawful notional loss avoided by the appellants on account of the trades carried out during the Unpublished Price Sensitive Information (hereinafter referred to as 'UPSI') period and further restrained the appellants from accessing the securities market. The basis of the impounding order was that during October 1, 2017 to December 31, 2017, the appellants had

entered into suspected insider trading, being privy to the UPSI of declining profits of the company and, accordingly disposed of fully the shareholding of the appellant nos. 2 and 3 and partly of the appellant nos. 1 and thereby avoided losses. The appellants being aggrieved by the ex-parte order, filed an appeal no. 297 of 2020 before this Hon'ble Tribunal. This Tribunal by an order dated October 1, 2020 set aside the ex-parte ad-interim order except that part relevant to the show cause notice and directed the appellants to reply to the show cause notice within four weeks and the respondent were directed to decide the matter thereafter. Further, this Tribunal directed the appellants to deposit the alleged amount towards avoided losses in an interest bearing escrow account with SEBI.

5. Based on the aforesaid directions of this Tribunal, the appellants filed its response and thereafter upon consideration of the material evidence on record, the impugned order was passed. The Whole Time Member (hereinafter referred to as 'WTM') found that the appellant nos. 1 was the managing director of the company and the appellant nos. 2 and 3 are the daughters of the appellant nos. 1 and were also the promoters of the company. The WTM found that the company had incurred a loss of Rs. 166.80 crores during the quarter ended September 2017 as compared to net loss of Rs. 6.62

crores during the quarter ended June 2017 which was an increase in the net loss by more than 25 times between the two consecutive quarters. The WTM further found that the quarterly financial results of the company for quarter ended September 2017 was disclosed to the stock exchanges after closing of the market on September 29, 2017. Further, the appellant nos. 1, being the chairman of the company was privy to the UPSI, namely, the financial results as he was in the supervision, control and management of the affairs of the company and that he was in possession of the UPSI from October 2, 2017 till the disclosure of the financial results on November 29, 2017. The WTM accordingly found that the UPSI period was from October 2, 2017 to November 29, 2017. The WTM also found that during this UPSI period, the appellants had sold the shares of the company in order to avoid future losses knowing fully well that the company was incurring losses and that the shares were sold in order to avoid future losses thereby violated Section 12A(d) and (e) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Regulation 4(1) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as 'PIT Regulations'). The WTM also concluded that the appellant nos. 1 had communicated the UPSI to his daughters, appellant nos. 2 and 3 who had also violated

Regulation 3(1) of the PIT Regulations. The WTM concluded that the appellant nos. 1, 2 and 3 have avoided the notional loss of Rs. 1,26,59,481.50, Rs.2,09,930.40 and Rs. 9,62,060.70 respectively. The WTM further found that the appellants had not obtained pre-clearance for the trades executed by them during the investigation period and, consequently, violated the Model Code of Conduct and Regulation 9 of the PIT Regulations.

6. We have heard Mr. Somasekhar Sundaresan, the learned counsel with Mr. Mihir Mekal, the learned counsel for the appellants and Mr. Mustafa Doctor, the learned senior counsel with Mr. Manish Chhangani, Mr. Ravishekhar Pandey, Ms. Samreen Fatima, the learned counsel for the respondent.

7. It was urged that the fact that the company was running in losses was known to the public and was not a price sensitive information. The company was in debts and the losses were mounting which were required to be repaid and consequently, a decision to sell the shares were made so that the money is infused to the company to repay the debts and bring in working capital. It was contended that the justification made by the appellants was not considered and that the appellants had discharged their burden by demonstrating that the trades were made with certain justification as

provided under Regulation 4 of the PIT Regulations. It was further urged that the financial results for the quarter ended September 2017 was not price sensitive information as per the Regulation 2(n) of the PIT Regulations.

8. On the other hand, the learned senior counsel for the respondent supported the judgment and contended that it was a clear case of insider trading as the appellants were in possession of the UPSI and had traded during the UPSI period.

9. At the outset, the appellants does not dispute that they were insiders as defined under the Regulation 2(g) read with Regulation 2(d) which defines “insider” and “connected person”. Thus, it is not necessary for us to delve on this aspect.

10. The UPSI as provided under Regulation 2(n) means any information relating to a company or its security which is likely to materially affect the price of the securities and shall ordinarily include, namely, financial results, etc. It was urged that the word “ordinarily” does not mean that the financial results will always be considered as unpublished price sensitive information and would have to be considered on a case to case basis as to whether in the given circumstances the financial results were a price sensitive

information or not. In this regard, we find that the losses had increased by 25 times from quarter ended June 2017 to quarter ended September 2017, the net loss increased from Rs. 6.62 crores to Rs. 166.80 crores which was a substantial jump and, therefore, in our opinion, the financial results for the quarter ended September 2017 was an UPSI which the appellants had in their possession.

11. Thus, Regulation 4 of the PIT Regulations prohibits any insider from trading in securities while in possession of UPSI. The proviso further provides the insider may prove his innocence by demonstrating the circumstances for trading in securities while in possession of UPSI. For facility, Regulation 4 of the PIT Regulations is extracted hereunder :-

> *"4. (1) No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information.*
>
> *[Explanation. - When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.]*
>
> ***Provided** that the insider may prove his innocence by demonstrating the circumstances including the following :-*
>
> *(i) the transaction is an off-market inter se transfer between [insiders] who were in possession of the*

same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision:

*[**Provided** that such unpublished price sensitive information was not obtained under sub-regulation (3) of these regulations:]*

*[**Provided further** that such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such trades to the stock exchange on which the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information;]*

(ii) the transaction was carried out through the block deal window mechanism between persons who were in possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision:

***Provided** that such unpublished price sensitive information was not obtained by either person under sub-regulation (3) of regulation 3 of these regulations.*

(iii) the transaction in question was carried out pursuant to a statutory or regulatory obligation to carry out a bona fide transaction.

(iv) the transaction in question was undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance with applicable regulations.

(v) in the case of non-individual insiders :-

(a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision making individuals

were not in possession of such unpublished price sensitive information when they took the decision to trade; and

(b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;

(vi) the trades were pursuant to a trading plan set up in accordance with regulation 5.

***Note** : When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession. The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation. He traded when in possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge. Once this is established, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.*

(2) In the case of connected person the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the Board.

(3) The Board may specify such standards and requirements, from time to time, as it may deem necessary for the purpose of these regulations."

12. A perusal of the aforesaid Regulation indicates that no insider shall trade in securities when in possession of UPSI and a person who has traded in the securities while in possession of UPSI his trades would be presumed to have been motivated by the knowledge and awareness of the price sensitive information which was in his possession. The proviso however gives a window to the insider to prove his innocence by demonstrating the circumstances under which he has traded. The words "including" under the proviso to Regulation 4 is inclusive and is not exhaustive. It is not confined to the circumstances provided under Clause (i) to (vi) of the proviso to Regulation 4(1) of the PIT Regulations. There could be other circumstances on the basis of which the insider could prove his innocence. The finding of the WTM in paragraph no. 30 of the impugned order that the utilization of the sale proceeds by the appellants or the company is not a "permissible exonerating circumstances" is patently erroneous.

13. In the instant case, the explanation provided by the appellants for selling the shares during the UPSI period has been noted by the WTM in paragraph no. 6 of the impugned order, namely, that the jewellery market all over the world was facing

difficulties since 2015-16 leading to delayed payments, cancellation of orders, failure to receive timely payments and cancellation of orders placed a substantial strain on the business and financials of the company. The crash of the Chinese stock market in 2015 affected the global diamond market across the world as a result the company started defaulting in payment of interest against the working capital facilities of approximately Rs. 750 crores availed from several banks in November 2016. The appellants requested the consortium member banks for relief so as to secure working capital for larger orders, to avoid cancellation of those orders, but the banks refused to grant further loans which compelled the appellant nos. 1 to raise funds so as to avoid the company from being down-graded to a non-performing asset. The WTM also noted that all the assets of the company were charged to the consortium banks and the appellant nos. 1 had pledged 40% of the shares as additional collateral. The appellant no. 1, thus, had no option but to sell his unencumbered shares of the company in order to raise some capital. The WTM further noted that total number of 29,75,000 shares of noticee nos. 1 were pledged with Comfort Fincap against the short term loan of Rs. 3 crores in addition to pledging shares having a value of three times the loan amount. The repayment of the short term loan became due in October 2017 and, therefore, it became imperative for the

appellants to sell the unencumbered shares to repay the loan taken from Comfort Fincap. By doing so, the appellant got his shares unpledged which were again sold in order to bring the working capital into the company.

14. We find that this explanation demonstrated the circumstances for selling the shares of the company during the UPSI period in order to avoid the company from down-graded to a non-performing asset. In our view, such explanation given by the appellants which has not been considered by the WTM is sufficient to prove his innocence of trading while in possession of the UPSI. Such explanation will come within the purview of the proviso to Regulation 4(1) of the PIT Regulations and consequently, the appellants cannot be charged for violating Regulation 4(1) of the PIT Regulations.

15. We also find that the WTM has committed a manifest error in distinguishing the decision of this Tribunal in ***Abhijit Rajan vs. SEBI Appeal No. 232 of 2016 decided on November 8, 2019***. In that appeal, the charge was that the said appellant had sold the shares during the UPSI period. The said appellant was charged for selling the shares during the UPSI period and had avoided the probable loss. This Tribunal held that the said appellant cannot be blamed as an

insider trading as he was able to show his dire need to infuse fund in the entity. The said decision, in our opinion, is squarely applicable in the instant case since, admittedly, the appellants after selling the shares, had infused the entire money in the company to bring in the required working capital. In ***Rajiv B Gandhi & Ors. vs. SEBI Appeal No. 50 of 2007 decided on May 9, 2008,*** this Tribunal has held that if the appellants were able to rebut the presumption that they had traded on the basis of UPSI as they had a necessity to sell the shares then they would not be guilty of the charge of insider trading. Similar proposition was also held in the case of ***Gujarat NRE Mineral Resources Ltd. Appeal No. 207 of 2010 decided on November 18, 2011 and Mrs. Chandrakala Appeal No. 209 of 2011 decided on January 31, 2012.***

16. A finding has been given that the appellants were aware of the losses incurred by the company and, therefore, they have sold off their shares in order to avoid further losses. In this regard, we find that the financial results were declared on November 29, 2017 on that date the closing price of the scrip of the company was Rs 21.60 per share. The declaration of the financial results on November 29, 2017 did not have a great impact in the price of the scrip on November 30, 2017. We find that the closing price of the scrip of the

company on November 30, 2017 was Rs. 20.20 on NSE and Rs. 20.25 on BSE. Thus, there was hardly any price difference in the price of the scrip between 29th and 30th November 2017 and, therefore, it is incorrect to contend that the sale of the shares was made by the appellants for the purpose of avoiding further losses.

17. We are also find that the sale amount of the shares was not retained by the appellants for their personal use or gain. But the said money was infused in the company for its working capital.

18. In the light of the aforesaid, we are satisfied that the appellants have successfully discharged their burden under Regulation 4(1) of the PIT Regulations. We find that in the given circumstances, the appellants cannot be charged for insider trading.

19. For the reasons stated aforesaid, the impugned order cannot be sustained and is quashed. The appeal is allowed with no order as to costs. Any amount deposited by the appellants pursuant to the order of the Tribunal will be refunded along with interest accrued within a week from today.

20. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on

the digitally signed copy of this order. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

19.04.2022
PTM

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