

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 07.12.2021

Date of Decision : 16.12.2021

Appeal No. 581 of 2019

Rupesh Kantilal Savla

12A & 14, Abhishree Coporate Park,

Ambli Bopal Road, Ambli,

Ahmedabad – 380058.

..... Appellant

Versus

Securities & 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 Ms. Fereshte Sethna,
Mr. Abhishek Tilak, Ms. Yugandhara, Advocates i/b DMD for the
Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Abhiraj Arora,
Mr. Karthik Narayan, Mr. Harshavardhan Nankani, Advocates i/b
ELP for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer

Justice M. T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated September 30, 2019 passed by the Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') directing the appellant to disgorge a sum of Rs. 1,74,57,816/- towards wrongful gains made by him and further has restrained him from accessing the securities market for a period of six months.

2. The facts leading to the filing of the present appeal is, that the appellant is the managing director and promoter of Deep Industries Limited (hereinafter referred to as 'the company') which is in the business of oil and gas production, drilling, etc. SEBI conducted an investigation in the scrip of this company for the period from July 17, 2015 to October 14, 2015 in relation to the award of three contracts given to this company by Oil and Natural Gas Corporation Limited (hereinafter referred to as 'ONGC'). The investigation revealed that the first contract was issued on April 14, 2015 for Rs. 86.03 crores. L1 was announced on July 17, 2015 and the award was executed on September 2, 2015. Similarly, the second contract was issued on March 3, 2015 for Rs. 2.72 crores. L1 was announced on August 18, 2015 and the contract was awarded on August 28, 2015. Similarly, the third contract was issued on August 19, 2015 for Rs. 90.33 crore.

L1 was announced on July 27, 2015 and the contract was awarded on October 14, 2015.

3. The investigation found that the appellant had purchased 1,04,000 shares on August 25, 2015 of the company, 65,510 shares on September 8, 2015 and 10,000 shares on September 9, 2015 totaling 1,79,510 shares on an average purchase price for Rs. 122.96 per share.

4. The investigation found that the UPSI period was from July 17, 2015 to October 14, 2015 during which period L1 was declared. Further, during this period, the appellant purchased 1,79,510 shares. Since the appellant was an insider as per the Regulation 2(1)(g) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as 'PIT Regulations'), the WTM passed an ex-parte ad-interim order cum show cause notice against the appellant and other entities impounding the alleged unlawful gains and further freezing the assets of the appellant. Pursuant to the ex-parte ad-interim order dated April 16, 2018, the appellant deposited an amount of Rs.1,74,57,816/- in an escrow account on June 12, 2018.

5. Thereafter, on the basis of the reply filed by the appellant and after considering the material evidence on record and upon hearing

the parties, the WTM passed the impugned order finding the appellant guilty of insider trading and, accordingly, directed the appellant to disgorge the wrongful gains of Rs.1,74,57,816/- and further restrained him from accessing the securities market for a period of six months.

6. We have heard Mr. Somasekhar Sundaresan, the learned counsel with Ms. Fereshte Sethna, Mr. Abhishek Tilak, Ms. Yugandhara, the learned counsel for the appellant and Mr. Gaurav Joshi, the learned senior counsel with Mr. Abhiraj Arora, Mr. Karthik Narayan, Mr. Harshavardhan Nankani, the learned counsel for the respondent through video conference.

7. The contention of the learned counsel for the appellant is, that the three contracts awarded to the company was in the usual course of business and, therefore, the awarding of the contracts was not a price sensitive information. Even otherwise, merely because the tender of the company was found to be the lowest, the announcement of L1 was not a price sensitive information. Further, the value of the contract did not constitute any substantial increase in the annual turnover for the financial years 2014-15 and 2015-16 and, therefore, it leads to an irresistible inference that the announcement of L1 which led to the awarding of the contract was not a price sensitive information. In the alternative, it was urged that the L1 and

the awarding of the contract was not likely to materially affect the price of the securities and, therefore, it was not an unpublished price sensitive information (hereinafter referred to as 'UPSI') as defined under Regulation 2(1)(n) of the PIT Regulations. It was urged that one of the conditions, namely, clause (vi) of the Regulation 2(1)(n) of the PIT Regulations which provided for "material event in accordance with the listing agreement" was deleted with effect from April 1, 2019 and, therefore, the declaration of the contract on the listing agreement thus becomes an event which was not a material event and does not materially affect the price of the securities and, therefore, such information cannot be treated as UPSI. In support of his contention the learned counsel for the appellant has placed reliance on the various judgments which will be referred hereinafter at the appropriate place.

8. On the other hand, the learned senior counsel for the respondent contended that the order of the WTM does not suffer from any error of law. The appellant being the managing director and the promoter of the company had inside information that the contracts would be awarded to its company and having this vital knowledge purchased shares of the company in gross violation of the provisions of the PIT Regulations.

9. In order to appreciate the submission of the learned counsel of the parties, it would be appropriate to refer to certain provisions of the PIT Regulations and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as 'LODR Regulations'). Regulation 2(1)(g) of the PIT Regulations defines "an insider" which means as under :-

"2(1)(g). "insider" means any person who is :

- (i) a connected person; or*
- (ii) in possession of or having access to unpublished price sensitive information;*

NOTE : *Since "generally available information" is defined, it is intended that anyone in possession of or having access to unpublished price sensitive information should be considered an "insider" regardless of how one came in possession of or had access to such information. Various circumstances are provided for such a person to demonstrate that he has not indulged in insider trading. Therefore, this definition is intended to bring within its reach any person who is in receipt of or has access to unpublished price sensitive information. The onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person levelling the charge after which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances."*

10. A perusal of the aforesaid provisions indicates that a person who is a connected person or in possession of or having access to UPSI is an insider. In the instant case, the appellant is the managing director and the promoter of the company in which he purchased the shares. He had personal information that the tender given by the company was the lowest and in all probability the contracts would be awarded. He was, thus, in possession of the price sensitive information and was an insider.

11. Regulation 2(1)(n) of the PIT Regulations defines UPSI as under :-

“2(1)(n). “unpublished price sensitive information” means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following :-

- (i) financial results;*
- (ii) dividends;*
- (iii) change in capital structure;*
- (iv) mergers, demergers, acquisitions, delistings, disposals and expansion of business and such other transactions;*
- (v) changes in key managerial personnel; and*
- (vi) material events in accordance with the listing agreement.*

NOTE : *It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that*

would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.”

With effect from April 1, 2019 Clause (vi) was deleted.

12. A perusal of the aforesaid provision indicates that any information which is not generally available and which upon becoming generally available is likely to materially affect the price of the securities would be an UPSI. Thus, any information which may affect the price of the securities would be an UPSI. Clause (vi) which provided that “material events in accordance with the listing agreement” was deleted on April 1, 2019. The contention that in view of this deletion, any information disclosed on the stock exchange platform under the listing agreement was not a material event which could materially affect the price of the securities. In our view, such contention raised is patently erroneous and is not relevant to the issue.

13. In this regard, we are of the opinion that any information disclosed under the listing agreement or under the relevant provisions of the LODR Regulations may or may not materially affect the price of the securities and it is not necessary that every information disclosed under the listing agreement / LODR Regulations will affect the price of the securities. This deletion of Clause (vi) in Regulation

2(1)(n) of the PIT Regulations has no relevance to the fact as to whether an information which was known to the appellant and which was not generally available to the public was an UPSI or not.

14. In this regard, Regulation 30 of the LODR Regulations reads as under :-

“30. (1) Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material.

(2) Events specified in Para A of Part A of Schedule III are deemed to be material events and listed entity shall make disclosure of such events.

(3) The listed entity shall make disclosure of events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality, as specified in sub-regulation (4).

(4) (i) The listed entity shall consider the following criteria for determination of materiality of events / information:

(a) the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or

(b) the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;

(c) In case where the criteria specified in sub-clauses (a) and (b) are not applicable, an event / information may be treated as being material if in the opinion of the board of directors of listed entity, the event / information is considered material.

(ii) *The listed entity shall frame a policy for determination of materiality, based on criteria specified in this sub-regulation, duly approved by its board of directors, which shall be disclosed on its website.*

(5) *The board of directors of the listed entity shall authorize one or more Key Managerial Personnel for the purpose of determining materiality of an event or information and for the purpose of making disclosures to stock exchange(s) under this regulation and the contact details of such personnel shall be also disclosed to the stock exchange(s) and as well as on the listed entity's website.*

(6) *The listed entity shall first disclose to stock exchange(s) of all events, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information:*

Provided *that in case the disclosure is made after twenty four hours of occurrence of the event or information, the listed entity shall, along with such disclosures provide explanation for delay:*

Provided further *that disclosure with respect to events specified in sub-para 4 of Para A of Part A of Schedule III shall be made within thirty minutes of the conclusion of the board meeting.*

(7) *The listed entity shall, with respect to disclosures referred to in this regulation, make disclosures updating material developments on a regular basis, till such time the event is resolved / closed, with relevant explanations.*

(8) *The listed entity shall disclose on its website all such events or information which has been disclosed to stock exchange(s) under this regulation, and such disclosures shall be hosted on the website of the listed entity for a minimum period of five years and thereafter as per the archival policy of the listed entity, as disclosed on its website.*

(9) The listed entity shall disclose all events or information with respect to subsidiaries which are material for the listed entity.

(10) The listed entity shall provide specific and adequate reply to all queries raised by stock exchange(s) with respect to any events or information:

Provided *that the stock exchange(s) shall disseminate information and clarification as soon as reasonably practicable.*

(11) The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange(s).

(12) In case where an event occurs or an information is available with the listed entity, which has not been indicated in Para A or B of Part A of Schedule III, but which may have material effect on it, the listed entity is required to make adequate disclosures in regard thereof.”

15. The aforesaid provision requires that every listed entity to make disclosures of any event or information which in the opinion of the board of directors of the listed company, is material. Clause (3) requires that the listed entity shall made disclosure of events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality, as specified in sub-regulation (4). Sub-regulation (4) provides various criteria for determination of materiality of events / information which a listed entity is required to consider.

16. Part B of Schedule III reads as under :-

B. Events which shall be disclosed upon application of the guidelines for materiality referred sub-regulation (4) of regulation 30 :

- 1. Commencement or any postponement in the date of commencement of commercial production or commercial operations of any unit / division.*
- 2. Change in the general character or nature of business brought about by arrangements for strategic, technical, manufacturing, or marketing tie-up, adoption of new lines of business or closure of operations of any unit / division (entirety or piecemeal).*
- 3. Capacity addition or product launch.*
- 4. Awarding, bagging / receiving, amendment or termination of awarded / bagged orders / contracts not in the normal course of business.*
- 5. Agreements (viz. loan agreement(s) (as a borrower) or any other agreement(s) which are binding and not in normal course of business) and revision(s) or amendment(s) or termination(s) thereof.*
- 6. Disruption of operations of any one or more units or division of the listed entity due to natural calamity (earthquake, flood, fire etc.), force majeure or events such as strikes, lockouts etc.*
- 7. Effect(s) arising out of change in the regulatory framework applicable to the listed entity.*
- 8. Litigation(s) / dispute(s) / regulatory action(s) with impact.*
- 9. Fraud / defaults etc. by directors (other than key managerial personnel) or employees of listed entity.*
- 10. Options to purchase securities including any ESOP / ESPS Scheme.*

11. *Giving of guarantees or indemnity or becoming a surety for any third party.*
12. *Granting, withdrawal, surrender, cancellation or suspension of key licenses or regulatory approvals.*

17. Item No. 4 of Part B of Schedule III indicates that awarding / bagging of a contract is a material event. Under Regulation 30(1) of the LODR Regulations, the board of directors has resolved that bagging of a contract is a material event which is required to be disclosed on the stock exchange platform. Thus, in our opinion, once the company has taken a position to hold that bagging of contract is a material event, it does not lie in the mouth of the appellant to contend that the disclosure of a contract on the stock exchange platform was not a material event.

18. Thus, in view of the aforesaid, information likely to materially affect the price as provided under Regulation 2(1)(n) of the PIT Regulations would include information relating to a contract. In the instant case, the appellant was aware that its company's tender was found to be the lowest. This information was a material information which was likely to materially affect the price of the scrip and, therefore, was a price sensitive information.

19. Admittedly, the appellant during the UPSI period has purchased 1,79,510 shares of the company. This was in gross

violation of Regulation 4 of the PIT Regulations. 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 the 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 of 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 persons 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.

20. The aforesaid provision clearly indicates that any insider shall not trade in securities while in possession of UPSI. Admittedly, the appellant was in possession of price sensitive information and had traded in the scrip of the company by purchasing 1,79,510 shares during the UPSI period. Thus, the WTM rightly found the appellant guilty and rightly passed the order of disgorgement.

21. The decision cited by the appellant in *Anil Harish vs. SEBI Appeal No. 217 of 2011 dated June 22, 2012* is not helpful wherein the Tribunal was of the opinion that their being a long time gap between the date when the lowest bidder is declared and the contract was awarded. Under such circumstances, the award of the contract cannot be said to be a price sensitive information. In the instant case,

we find that there was no such long time gap between the award of the lowest bid and the grant of the contract. Further, in our view, the announcement of the lowest bidder is a price sensitive information which the appellant was in possession.

22. There is no quarrel with the principles enunciated in the case of *Dilip Pendse vs. SEBI Appeal No. 80 of 2009 decided on November 19, 2009*, wherein this Tribunal held as under :-

“The charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same.... In the light of the aforesaid principles on degree of proof, we have carefully gone through the impugned order and the material on the record and find that the whole time member as miserably failed to establish the charge of insider trading against the appellant with the required degree of probability necessary to establish such a serious charge.” (Bold emphasis, ours)

23. In the instant case, the charge of insider trading has been fully established which is not based on any degree of probability and which is based on clear cut facts.

24. In view of the aforesaid, it is not necessary for this Tribunal to go into the question as to whether the value of the contract had any bearing with the annual turnover which could lead to an inference of a price sensitive information. This is just another facet to find out as

to whether the information is a price sensitive information or not as, in our opinion, the announcement of lowest bidder leading to the granting of the contract was a price sensitive information.

25. In view of the aforesaid, the appeal fails and is dismissed with no order as to costs.

26. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the Registry. In these circumstances, 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. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala
Presiding Officer

Justice M. T. Joshi
Judicial Member

16.12.2021
PTM