BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

**Order Reserved on: 12.01.2021**

**Date of Decision : 24.03.2021**

**Appeal No. 272 of 2020**

Mr. B. Renganathan
502 Laxcon Plaza,
Sector 29, Nerul (E),
Navi Mumbai – 400 706. …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. Somasekhar Sundaresan, Advocate with Mr. Abishek Venkataraman, Mr. Rohan Banerjee and Ms. Anushka Shah, Advocates i/b Cyril Amarchand Mangaldas for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Abhiraj Arora, Advocate i/b ELP for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M.T. Joshi, Judicial Member

Per : Dr. C.K.G. Nair, Member

1. This appeal has been filed aggrieved by the order of the Adjudicating Officer of Securities and Exchange Board of India (‘SEBI’ for short) dated July 16, 2020 whereby a penalty of Rs. 5

lakh has been imposed upon the appellant for failure to close the trading window during the period of alleged Unpublished Price Sensitive Information ('UPSI' for short). It is held in the impugned order that the appellant has violated provisions of Clause 4 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders under Schedule B read with Regulation 9(1) of SEBI (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations' for short). The core legal issue raised in this appeal is whether an acquisition of a company, directly or indirectly by a listed entity, in itself, irrespective of its materiality, becomes an UPSI under the PIT Regulations thereby making it obligatory on the Compliance Officer to close the trading window.

2. Basic facts relating to the matter are as follows:-

Ecap Equities Limited ('Ecap' for short), a wholly owned subsidiary of Edelweiss Financial Services Ltd. ('Edelweiss' for short) acquired a fintech company by name Alternative Investment Market Advisors Private Limited ('AIMIN' for short) by acquiring 100% of the latter's equity capital. A disclosure to this effect was made to the stock exchanges by Edelweiss on April 5, 2017. However, a Term Sheet in respect of the said transaction was signed between Ecap and AIMIN on January 25, 2017.

Though Edelweiss made a disclosure to the stock exchanges regarding the acquisition of AIMIN on April 5, 2017 consequent to the signing of the Share Purchase Agreement (SPA) under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations' for short), the company did not close the trading window at any point in time. Accordingly, the Compliance Officer, who is mandated to ensure implementation of the code of conduct relating to PIT disclosures and compliances as well, violated the code of conduct and hence the penalty as in the impugned order.

3. Since, the crux of the issue is regarding interpretation of the relevant provisions of the regulations, they are listed below for convenience:-

> **"PIT Regulations, 2015**
>
> ***Code of Conduct.***
>
> *9.(1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner."*
>
> ***"SCHEDULE B***
>
> ***Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders***

*Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed."*

**"Regulation 2(1)(n) of PIT Regulations, 2015**

*"(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, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;*
*(v) changes in key managerial personnel*
*(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.*

***Regulation 30 of LODR Regulations, 2015:-***

***"Disclosure of events or information.***

*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).*

*……*

*SCHDEULE III*

*PART A*

*DISCLOSURE OF EVENTS OR INFORMATION: SPECIFIED SECURITIES*
*(See Regulation 30)*

*The following shall be events/information, upon occurrence of which listed entity shall make disclosure to stock exchanges(s):*

*A. Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation 30:*

*1. Acquisition(s) (including agreement to acquire), Scheme of Arrangement (amalgamation/merger/demerger/restructuring), or sale or disposal of any unit(s), division(s) or subsidiary of the listed entity or any other restructuring.*

> ***Explanation*** *–For the purpose of this sub-para, the word 'acquisition' shall mean, –*
>
> *(i) acquiring control, whether directly or indirectly; or*
> *(ii) acquiring or agreeing to acquire shares or voting rights in, a company, whether directly or indirectly, such that–*
>
> *(a) the listed entity holds shares or voting rights aggregating to five per cent or more of the shares or voting rights in the said company, or*
>
> *(b) there has been a change in holding from the last disclosure made under sub-clause (a) of clause (ii) of the Explanation to this sub-para and such change exceeds two per cent of the total shareholding or voting rights in the said company. etc……..*

4. The learned counsel Shri Somasekhar Sundaresan appearing on behalf of the appellant contended that the test of UPSI as defined under 2(1)(n) of PIT Regulations is the likelihood of an event materially affecting price of the securities. Though certain events are listed under this regulation for convenience of identification of such events, the materiality question has to be examined by the board of directors of a listed company and then decide an event to be material for treating it as a UPSI or not. By no stretch of imagination, the learned counsel contended, that acquisition of AIMIN by Ecap was a material event for Edelweiss,

the parent company of Ecap or even to Ecap itself because the value of acquisition was only Rs. 4 crore which was a small fraction of both the companies' revenue/profit/assets. Gross income of Edelweiss for the financial years ending 2015-16 and 2016-17 were respectively Rs. 5268 and Rs. 6618 crore and the net worth respectively was Rs. 414 crore and Rs. 609 crore and the contribution of Ecap was about 20 percent of these figures. Similarly, gross assets of Edelweiss for the same financial years were respectively Rs. 36984 crore and Rs. 44823 crore.

5. The learned counsel for the appellant further contended that a disclosure under Regulation 30 of LODR Regulations was made since under this regulation disclosures have to be made without consideration of materiality. Such a disclosure made under the LODR Regulations, which is obligatory on the part of a listed entity, it was contended by the learned counsel, cannot be imported to enforce a violation under the PIT Regulations relating to UPSI where it has to muster the additional test of materiality. This according to the learned counsel has not been proved to any extent in the impugned order. Therefore, the impugned order is liable to be quashed in its entirety.

6. The learned counsel further submitted that instead of treating the alleged violation, if at all, only as technical violation the AO proceeded to travel beyond the show cause notice by charging the appellant with unfounded allegations and thereby making the violation repetitive. Because in the impugned order it is held that during the period from financial years 2015-16 to financial year 2020-21 the appellant did not close the trading window on various occasions when corporate announcements were made by Edelweiss except mainly on financial results. Hence, instead of applying the mitigating grounds under 15J of SEBI Act the AO proceeded to hoist unfounded charges on the appellant without doing any investigation or judicial process and thereafter held the violations to be repetitive and imposed a penalty of Rs. 5 lakh.

7. The learned counsel further contended that the period of UPSI is irrelevant since there was no UPSI at all. However, since the impugned order claims the UPSI period from January 25, 2017 to April 5, 2017, for arguments sake, it was contended that the acquisition became final only on April 5, 2017 (not on January 25, 2017) when the SPA was signed. Reliance placed by the AO on the Term Sheet as the starting point of the UPSI is based on a newspaper article which is quite unscientific and untenable.

8. It was also contended that the acquisition of AIMIN was only for helping to strengthen the technology enabling the fixed income business; it was neither a new business nor an expansion of any existing business to make it material enough to become UPSI. It was only addition to the technological process and if the technology itself was bought it was not liable to be disclosed.

9. The learned counsel further submitted that the descriptive items under the definition of UPSI as at Regulation (2)(1)(n) of PIT Regulations got amended with effect from April 1, 2019 in terms of SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2018 whereby item (6) in the 2015 definition i.e. “material events in accordance with the listing agreement” was omitted. Therefore, the provision held to be violated in the impugned order does not even exist after April 1, 2019. This according to the learned counsel was an explicit understanding by the Regulator that all the events disclosable/disclosed under the LODR Regulations are not material events for deciding upon the existence of UPSI under the PIT Regulations.

10. In a nutshell, the learned counsel for the appellant contends that neither in terms of its materiality nor in terms of a fair interpretation of the PIT Regulations, acquisition of a 4 crore

company by the subsidiary of a very large company having huge profits, revenues and assets like Edelweiss would constitute a material event for deciding on UPSI and hence no UPSI existed on the said acquisition. The company fairly made a disclosure under the LODR Regulations following best practices and there was no ground for invoking a PIT violation in the matter. The learned counsel also distinguished the following judgments relied on by SEBI ***(i) Order of SAT dated July 8, 2020 in the matter of ICICI Bank Limited vs SEBI in Appeal No. 583 of 2019, (ii) SAT order dated September 9, 2020 in Sandeep Batra vs SEBI in Appeal No. 520 of 2019, (iii) Chairman SEBI vs Shriram Mutual Fund and Anr. [(2006) 5 SCC 361], (iv) SEBI vs. Saikala Associates Ltd. [(2009) 7 SCC 432], (v) SEBI Adjudication Oder No. AK/AO-7-11/2017 in M/s. Falcon Tyres Limited and SAT Order dated November 7, 2019 in Jubilant Stock Holding Pvt. Ltd. and Ors. vs SEBI.***

11. Learned senior counsel Shri Gaurav Joshi appearing on behalf of SEBI, on the other hand, submitted that under the LODR Regulations acquisition of even 5% of the equity capital of a company becomes disclosable and any material event in accordance with the LODR was disclosable under PIT Regulations at the relevant time. Even assuming that provision

was omitted by a subsequent amendment to the PIT Regulations, a 100% acquisition of a company cannot be outside the ambit of disclosure under the LODR and as UPSI under the PIT Regulations. In addition, item 4 under the definition of UPSI; "mergers, de-mergers, acquisitions, delisting, disposals and expansion of business and such other transactions" also emphasize the need for disclosing acquisition in/of a company. The value of transaction is immaterial when a full company is acquired and it is disclosed under the LODR Regulations with the statement that "this acquisition will help grow Edelweiss fixed income advisory business" or when the said disclosure did not specify the value of acquisition or any other details including the relative size / magnitude of the books of the acquirer (Ecap) and/or Edelweiss on the one hand and the acquired company AIMIN on the other.

12. It was further submitted by the learned counsel for SEBI that if a 100% acquisition of an entity is held to be non-UPSI in a disclosure based regime and further evaluation is done based on the absolute value or the relative value etc. the disclosure based regime is bound to become murky leading to all round confusion and hence multiple violations.

13. The learned counsel also emphasized the various judgments referred to in paragraph 10 of this order.

14. Having heard the learned counsel for the parties and having closely examined the provisions of the relevant regulations as quoted at paragraph 3 in this order we are of the considered view that while materiality with respect to the price of the securities or to the company is a benchmark for defining UPSI such interpretation of materiality cannot be done arbitrarily. Hence, while making the regulations the authority itself has given certain events as material *ipso fact*. One such category of events as existed till April 1, 2019 was ‘material events in accordance with the listing agreement’. Another category which existed and still exists in PIT Regulations is ‘acquisition’. The LODR Regulations mandate disclosure of acquisition of even 5% of the equity capital of a company directly or indirectly by a listed entity. Certainly a 100% acquisition becomes material even after omitting item 6 from the PIT Regulations with effect from April 1, 2019. If entities resort to interpreting acquisitions by their sizes or magnitudes it becomes muddled as different parties will define the sizes and magnitudes and the relative ratios in their own ways leading to all round confusion and throw out regulatory certainty which is a cardinal requirement for an effective regulatory regime.

Therefore the submission that a Rs. 4 crore acquisition by a 40 thousand crore company is not a material event cannot be *prima facie* accepted. Moreover, it is a fact that the company Edelweiss did not make the disclosure under Regulation 30 of LODR Regulations giving all the details of the financial magnitudes and business volumes and stating that the acquisition, though 100% of a company, is only an addition to the fintech having no impact on the business volumes etc. For convenience we are quoting the disclosure made to BSE and NSE on April 5, 2017 by Edelweiss as follows:-

> "In accordance with Regulation 30 of the SEBI (Listing Obligations & Disclosure Requirements) Regulations 2015, this is to inform you that Ecap Equities Limited (Ecap), a wholly owned subsidiary of the Company, has today entered into a Share Purchase Agreement ('Agreement') for purchase of 100% stake in Alternative Investment Market Advisors Private Limited (AIMIN) from its existing shareholders, subject to the terms of the Agreement AIMIN will become a wholly owned subsidiary of Ecap and in turn of the Company.
>
> AIMIN is a fintech company for fixed income analytics with innovative trade protocols that aids bond markets with efficient price discovery. FinTech is playing a vital role in transforming the financial industry worldwide as well as in India. Edelweiss is actively looking to adopt innovative FinTech solutions to aid in matters related to illiquidity, accessibility and seek to improve our offering to our customers. **This acquisition will help grow Edelweiss's Fixed income advisory business.** (emphasis supplied)

The above disclosure only talks of 100% acquisition of a company by a subsidiary of Edelweiss which would help grow Edelweiss fixed income advisory business. No caveats are given; rather certainly the disclosure is clearly as a positive addition to help the business growth of Edelweiss.

15. A disclosure-based regulatory regime is founded on timely and adequate disclosure of all events material to a company or to its securities in any manner. Further hair-splitting will result in confusion; so the best way to deal with the event is to disclose without doing further analysis. Disputes regarding actual price sensitiveness is irrelevant as brought out in this matter by both the sides; with SEBI holding that prices increased by a few rupees in the opening trades on April 6, 2017 while the appellant holding that prices had already been on the rise several days prior to that and prices increased due to disclosure of an insurance license. What is relevant is whether the event in question is likely to have a material effect irrespective of whether it actually impact or not. Therefore, in our considered view any event like a 100% acquisition of a company, irrespective of its value or size, is material and liable to bring in UPSI and consequently liable for regulatory compliances under LODR and PIT regulations. Hence, we do not find any error in the impugned order in holding that the

appellant violated the Model Code of Conduct under Regulation 9(1) of PIT Regulations, 2015 by not closing the trading window during the UPSI period. At the same time, however, we do not find it necessary to dwell deeply into what is the exact period of UPSI; whether starting with the discussion, or agreeing on the Term Sheet on January 25, 2017 or finalization of the terms and conditions in the last week of March 2017 etc. These are irrelevant for the issue under consideration since the trading window was never closed. In our considered view a UPSI existed prior to signing the SPA on April 5, 2017 and disclosed to the stock exchanges on the same day, and since the trading window was not closed there is a violation.

16. However, we do not agree with the approach adopted by the AO in making a single violation repetitive. Whether there were earlier violations or not had to be probed into following the procedure, rules and regulations; the AO cannot come to a catch-all conclusion based on just obtaining the information in a lump sum manner as to whatever disclosures were made in the past and what all were not made. The materiality or otherwise of each such event had to be probed, analyzed and conclusion arrived at as per the provisions of the Act and Regulations before attributing

violations and imposing any penalty. Even civil liabilities cannot be imposed on persons/entities in such a casual manner.

17. Section 15HB of SEBI Act states that 'penalty shall not be less than one lakh rupees but which may extend to one crore rupees'. Further, in this matter, it is an admitted fact that no contravention is involved in terms of any designated person or insider trading in the securities nor anyone else benefitted illegally during the period of UPSI in question. Given these factors and since we do not find merit in the part of the order aggravating the violation of the appellant, a minimum of penalty as given in Section 15HB is sufficient to meet the ends of justice in this matter.

18. Accordingly, appeal is partly allowed. While upholding the finding in the impugned order to the extend that the appellant has committed a violation in terms of the Model Code of Conduct under Regulation 9(1) of PIT Regulations, 2015 by not closing the trading window during the UPSI period we reduce the amount of penalty imposed on the appellant from Rs. 5 lakh to Rs. 1 lakh as we do not agree with an aggravated penalty imposed assuming repeated violation. No orders on costs. Appellant is directed to pay the penalty within 30 days from the date of this order.

19. 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

Dr. C.K.G. Nair
Member

Justice M.T. Joshi
Judicial Member

24.03.2021
msb

RAJALAKSHMI H NAIR
Digitally signed by RAJALAKSHMI H NAIR
Date: 2021.03.25 15:47:15 +05'30'