BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 22.07.2022
Date of Decision : 26.07.2022

Appeal No. 491 of 2021

Shreehas P. Tambe
M1101, Hibiscus Tower 6,
Adarsh Palm Retreat,
Devarabisenahalli,
Near Intel Campus,
Bangalore – 560103. ….. 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. Ravichandra S. Hegde, Advocate with Mr. Samyak Pati, Advocate i/b Parinam Law Associates for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Ms. Nidhi Singh, Ms. Binjal Samani, Ms. Aditi Palnitkar, Ms. Moksha Kothari, Advocates i/b Vidhii Partners for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member
Ms. Meera Swarup, Technical Member

Per : Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order of the Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') restraining the appellant from accessing the securities market for a period of three months and also restraining him from associating with any listed public company or any public company for a period of three months. The appellant was further penalized for a sum of Rs. 2 lacs for violation of Regulation 7(2)(a) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as 'PIT Regulations') and Clause 6 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by insiders as specified in Schedule B (hereinafter referred to as 'Code of Conduct') read with Regulation 9(1) of the PIT Regulations.

2. The facts leading to the filing of the present appeal is, that SEBI observed a rise in the scrip of Biocon Ltd. (hereinafter referred to as 'Biocon') pursuant to some public announcement that was made on January 18, 2018 regarding global collaboration between the

Biocon and Sandoz. This public announcement caused fluctuations in the scrip of the Biocon by 5.6%. SEBI conducted an investigation to ascertain as to whether persons / entities have traded in the scrip of Biocon while they were in possession of Unpublished Price Sensitive Information (hereinafter referred to as 'UPSI').

3. Based on the investigation, a show cause notice dated August 3, 2020 was issued to the appellant alleging that the information relating to collaboration with Sandoz was an information that was not generally available information in terms Regulation 2(1)(e) of the PIT Regulations. The said information was a material information and was UPSI under Regulation 2(1)(n)(vi) of the PIT Regulations. It was also alleged that the UPSI period was from December 4, 2017 to January 18, 2018 and that as per the company's letter dated January 14, 2019, the appellant, being a key managerial personnel, was an insider in terms of Regulation 2(1)(g)(ii) of the PIT Regulations. The show cause notice also alleged that the appellant, being an insider had sold 17,440 shares during December 19, 2017 to December 27, 2017 while in possession of UPSI and, therefore, had violated Regulation 4(1) of the PIT Regulations and Section 12A(d) of the Securities and Exchange Board of India Act, 1992 (hereinafter

referred to as ‘SEBI Act’). Show cause notice also alleged that the appellant had violated Clause 6 of the Code of Conduct. Further, the appellant had violated Regulation 7(2)(a) of the PIT Regulations as he had failed to make the requisite disclosure to the company within 48 hrs. from the date he sold the shares. The appellant was accordingly called upon to show cause as to why suitable direction under Section 11 and 11B of the SEBI Act should not be issued and as to why penalty should not be imposed under Section 15HA and 15HB of the SEBI Act.

4. The appellant denied the allegations made in the show cause notice contending that there was no UPSI nor existed during the period when the appellant had traded in the shares of the company. Further, the company had never closed the trading window. It was contended that the appellant had taken pre-clearance from the company and pursuant thereto had sold the shares which were bonafide sales for a requisite purpose. It was contended that the appellant had entered into a Memorandum of Understanding on December 16, 2017 with a developer for purchase of a residential flat pursuant to which the appellant sought pre-clearance for sale of shares which clearance was given by the company and, only

thereafter, had sold the shares which the stipulated period. It was also contended that the sale proceeds were immediately paid to the developer towards part payment of the price of the flat. It was, thus, contended that the sales made were bonafide and that the appellant did not trade while in possession of the UPSI.

5. The WTM after considering the material evidence on record found that the information relating to collaboration of the company with Sandoz was UPSI under Regulation 2(1)(n) of the PIT Regulations and that the three ingredients, namely, that the information directly or indirectly related to the company or its securities and that the information must not be generally available and if became available was likely to materially affect the price of the securities were all present. The WTM further found that the UPSI period did not begin from December 4, 2017 as alleged in the show cause notice but got crystalized from December 20, 2017 and the same was published on January 18, 2018. Thus, the UPSI period was from December 20, 2017 to January 18, 2018. The WTM further came to a conclusion that the appellant, being a Vice President of the company and a key managerial personnel, coupled with the fact that the company vide letter dated January 14, 2019 had

informed that the appellant was aware of the proposed collaboration, held that the appellant was an insider as per the Regulation 2(1)(g) of the PIT Regulations and was also in possession of UPSI on preponderance of probability basis. The WTM further came to the conclusion that the appellant sold the shares while in possession of UPSI which was violative of Regulation 4(1) of the PIT Regulations and, in fact, had also violated the Code of Conduct and Regulation 7(2)(a) of the PIT Regulations. The WTM accordingly debarred the appellant for three months and imposed a penalty of Rs. 2 lacs.

6. We have heard Mr. Ravichandra S. Hegde, the learned counsel with Mr. Samyak Pati, the learned counsel for the appellant and Mr. Mustafa Doctor, the learned senior counsel with Ms. Nidhi Singh, Ms. Binjal Samani, Ms. Aditi Palnitkar, Ms. Moksha Kothari, the learned counsel for the respondent.

7. The learned counsel for the appellant contended that he was not part of the proposed collaboration with Sandoz and was not aware and, therefore, had no knowledge about the UPSI. Further, the appellant was never in possession of UPSI and that the UPSI period calculated by the WTM as starting from December 20, 2017 is incorrect in as much as the proposal between the two companies had

not as yet crystalized. It was further contended that the trades executed by the appellant was bonafide trades and the same were executed without any knowledge of UPSI. In any case, the trades were bonafide and were made for the purpose of paying advance to the developer for the residential flat and, therefore, comes under the exclusion clause as provided under Regulation 4(1) of the PIT Regulations.

8. On the other hand, the learned senior counsel for the respondent supported the decision of the WTM contending that the appellant, being in possession of UPSI, was prohibited under the Code of Conduct to trade in spite of which he traded and thereby violated Regulation 4(1) of the PIT Regulations. The learned senior counsel contended that the illustration given in the proviso to the Regulation 4(1) of the PIT Regulations is only confined to the illustrations pointed therein and is not illustrative.

9. Having heard the learned counsel for the parties and having perused the impugned order, we find that admittedly the appellant is an insider in terms of Regulation 2(1)(g) of the PIT Regulations.

10. Without going into the consideration as to whether the appellant had traded while in possession of UPSI or whether he had knowledge about the intending collaboration and even presuming that the appellant traded while in possession of UPSI, we are of the opinion that the appellant is entitled to the benefit of proviso to Regulation 4(1) of the PIT Regulations.

11. Regulation 4 of the PIT Regulations prohibits any insider from trading in securities while in possession of UPSI. The proviso provides that an 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.

13. In ***Rajiv Vasant Seth vs. SEBI Appeal No. 536 of 2021 decided on April 19, 2022,*** this Tribunal held that the proviso to Regulation 4(1) is inclusive and not exhaustive.

14. Similarly, we find that in the matter of ***Shri Udayant Malhoutra decided by the WTM dated December 18, 2020***, the WTM held as under :-

> *"18.6. Even assuming that the Noticee was in possession of the UPSI, proviso to Regulation 4(1) provides that an insider may prove his innocence by demonstrating the circumstances "including" those mentioned in the said proviso. Therefore, circumstances enumerated in the proviso to Regulation 4(1) to prove innocence, are merely illustrative and not exhaustive and an insider can demonstrate circumstances other than those mentioned in the said proviso, to prove his innocence."*

15. Thus, SEBI also considers the circumstances enumerated in the proviso to Regulation 4(1) to be illustrative and not exhaustive and that the insider may demonstrate the circumstances other than those mentioned in the proviso in order to prove his innocence.

16. In the instant case, we find that the appellant has sought pre-clearance from the company on December 15, 2017 and December 27, 2017 to sell the shares of the company since the trading window

was not closed. The company granted pre-clearance to the appellant to sell the shares. Accordingly, the appellant sold the shares between December 19, 2017 to December 27, 2017. The appellant had also entered into a Memorandum of Understanding on December 16, 2017 with the developer for purchase of a residential flat. The proceeds from sale of the shares were used by the appellant to make part payment to the developer on December 28, 2017. These facts are admitted by the respondent and, therefore, we are of the opinion that the sales made by the appellant was bonafide and was made for the purpose to give advance to the developer for purchase of a residential flat and was not motivated or induced by UPSI. Therefore, the appellant is not guilty of insider trading despite having traded while in possession of UPSI.

17. In ***Mrs. Chadrakala vs. SEBI in Appeal No. 209 of 2011 decided on January 31 2012,*** it was held that if the trades were not induced by UPSI then the said person was not guilty of insider trading despite having traded while in possession of the UPSI.

18. In view of the aforesaid, we are satisfied that the trades executed by the appellant were bonafide trades with a legitimate purpose. The appellant is not guilty of insider trading and, therefore,

has not violated Regulation 4(1) of the PIT Regulations nor has violated the Clause 6 of the Code of Conduct.

19. The sales made by the appellant was required to be disclosed within two days under Regulation 7(2)(a) of the PIT Regulations. Admittedly, two of the trades were not disclosed within the specified period of two days and, therefore, on this score, the penalty of Rs. 1 lac does not suffer from any error of law.

20. In view of the aforesaid, the impugned order passed by the WTM cannot be sustained in so far as it relates to the charge of insider trading. The order is quashed. The appeal is partly allowed. The charge relating to insider trading is quashed as a result the direction restraining the appellant from accessing the securities market as well as prohibiting him from being associated in any listed company, etc is set aside. The penalty of Rs. 1 lac under Regulation 7(2)(a) is upheld. In the circumstances of the case, the parties shall bear their own costs.

21. 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

Justice M. T. Joshi
Judicial Member

Ms. Meera Swarup
Technical Member

26.07.2022
PTM

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