

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 20.07.2022

Date of Decision : 02.02.2023

Appeal No. 49 of 2021

Quantum Securities Pvt. Ltd.
103 AVG Bhawan M-3 Connaught Circus,
New Delhi -110001.

..... 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

**With
Appeal No. 103 of 2021**

Mr. Sanjay Dutt
697 Asiad Village,
Kamaljit Sandhu Block,
New Delhi - 110049.

..... 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

**With
Appeal No. 104 of 2021**

1. Ms. Prenita Dutt
697 Asiad Village,
Kamaljit Sandhu Block,
New Delhi - 110049.
2. SAL Real Estate Private Limited
M 74 Greater Kailash 2, M Block Market,
2nd Floor, New Delhi - 110048.
3. Taj Capital Partners Private Limited
M 74 Greater Kailash 2, M Block Market,
2nd Floor, New Delhi- 110048. 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. Mustafa Doctor, Senior Advocate with Mr. Sandeep Parekh,
Mr. Dinkar Singh, Mr. Rahul Das, Mr. Mihir Deshmukh, Mr. Parker
Karia, Advocates i/b Finsec Law Advisors for the Appellants.

Mr. Gaurav Joshi, Senior Advocate with Mr. Mihir Mody, Mr. Arnav
Misra, Mr. Mayur Jaisingh, Advocates i/b K. Ashar & Co. for the
Respondent.

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

Per : Justice M. T. Joshi, Judicial Member

1. The learned Whole Time Member (hereinafter referred to as 'WTM') of the respondent Securities and Exchange Board of India (hereinafter referred to as 'SEBI') vide impugned order dated November 27, 2020 held the appellant Sanjay Dutt in violation of Section 12A(d), (e) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Regulations 3(ii) and 4 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations, 1992') and Regulation 12 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as 'PIT Regulations, 2015').

Rest of the appellants besides in violation of Section 12A(d), (e) of the SEBI Act were also found in violation of Regulations 3(i) and 4 of the PIT Regulations, 1992 and Regulation 12 of the PIT Regulations, 2015.

2. In essence, the learned WTM found that all the appellants except Sanjay Dutt had made a wrongful gain of Rs. 2.2 crore by making

insider trading in the shares of New Delhi Television Ltd. (hereinafter referred to as 'NDTV' or 'the company'). Therefore, the respective appellants were directed to disgorge the said amount jointly and severally with an interest at the rate of 6% per annum from April 17, 2008 till the date of actual payment. Further, all the appellants were restrained from accessing the securities market or dealing with securities for a period of two years. Aggrieved by this common order, the present appeals are preferred.

3. The issue being common all the appeals were heard together.

4. In nutshell, the allegations are that the appellant Sanjay Dutt being advisor / team member of the NDTV group having complete responsibility and accountability for the Corporate Finance and Strategic Planning Function of NDTV during the relevant period had reasonable access to all the Price Sensitive Information (hereinafter referred to as 'PSI'), etc. of the company. He himself has 16.78% shareholding of appellant Quantum Securities Pvt. Ltd. (hereinafter referred to as 'QSPL') alongwith his brother Sandeep Dutt who also had the similar shareholding. Appellant Prenita Dutt is his wife. Appellant Prenita Dutt alongwith her sister was during the relevant period the promoter and the director of appellant SAL Real Estate Pvt.

Ltd. (hereinafter referred to as 'SREPL'). Appellant Sanjay Dutt was also promoter and director of appellant Taj Capital Partners Pvt. Ltd. (hereinafter referred to as 'TCPPL') who has holding 25 to 50% of the paid-up share capital of this appellant.

Thus, according to SEBI, all these appellants are closely interconnected. Therefore, alleged Unpublished Price Sensitive Informations (hereinafter referred to as 'UPSI') in all reasonable probability had been communicated by Sanjay Dutt to them who, in turn, traded in the shares of NDTV during the relevant period.

The appellants denied the same and also raised an issue of delay.

5. The learned WTM however came to the above conclusion. Hence, the present appeals.

6. We have heard Mr. Mustafa Doctor, the learned senior counsel with Mr. Sandeep Parekh, Mr. Dinkar Singh, Mr. Rahul Das, Mr. Mihir Deshmukh, Mr. Parker Karia, the learned counsel for the appellants and Mr. Gaurav Joshi, the learned senior counsel with Mr. Mihir Mody, Mr.

Arnav Misra, Mr. Mayur Jaisingh, the learned counsel for the respondent.

7. The summary of the alleged price sensitive informations which, according to SEBI, remained unpublished for a certain period as given in Table No. 3 by the learned WTM in the impugned order is as under :-

Details of PSI(s)

PSI	Start date of UPSI	Date & Time when the PSI was disclosed on exchange website	UPSI Period
PSI-1: Expansion of the company in areas beyond news to develop NDTV into a bouquet of channels with entertainment and lifestyle and initiate a major thrust in New Media including the internet.	July 31, 2006	October 17, 2006 17:58:34 (NSE) October 17, 2006 19:06:47 (BSE)	July 31, 2006 to October 17, 2006
PSI-2: Strategic alliance with Karan Johar and Dharma Productions Private Limited, for the Company's entertainment business	September 21, 2006	November 29, 2006 09:48:38 (NSE) November 29,	September 21, 2006 to November 28, 2006

		2006 13:49:09 (BSE)	
PSI-3: The Company signed an agreement with Comventures VI, L.P, a venture capital fund, for investment of US\$ 20 million from Comventures in of NDTV Network Plc for funding of its non-news businesses	November 22, 2006	March 12, 2007 11:35:08 (NSE) March 12, 2007 11:07:27 (BSE)	November 22, 2006 to March 11, 2007
PSI-4: Closure of the Bonds transaction, pursuant to which NDTV Network Plc had issued Step up coupon convertible Bonds and raised an amount of US\$ 100 million for funding the operations of its subsidiaries in India	March 22, 2007	May 31, 2007 14:21:48 (NSE) May 31, 2007 13:42:56 (BSE)	March 22, 2007 to May 30, 2007
PSI - 5: Memorandum of Agreement (MOA) signed with NBC Universal, Inc. (NBCU) with respect to NBCU's proposed acquisition of indirect 26% stake in non - news business of NDTV group.	January 19, 2008	January 22, 2008 15:41:30 (NSE) January 22, 2008 15:23:54 (BSE)	January 19, 2008 to January 22, 2008
PSI-6: Board decided to evaluate options for reorganization of the		April 16, 2008	

Company, which could include De-merger/ Split of the Company into News related businesses and investments in 'Beyond News' businesses which are currently held through its subsidiary NDTV Networks Plc	September 07, 2007	16:13:09 (NSE) April 16, 2008 17:45:31 (BSE)	September 07, 2007 to April 16, 2008
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8. The details of the trading made by the respective appellants are also given in a tabular form by the learned WTM vide Table No. 4 is as under :-

Trading Details of the Noticees

Name	UPSI period pertaining to	Buy Quantity	Sell Quantity	Buy Value (₹)	Sell Value (₹)	Net Buy Quantity	Average Buy Price (₹) based on actuals	Average Sell Price (₹) based on actuals
		A	B	C	D	E = A - B	F = C / A	G = D / B
Prenita Dutt	PSI - 6	25000	0	10117773	0	25000	404.71	-
Prenita Dutt Total		25000	0	10117773	0	25000	404.71	-
QSPL	PSI - 6	1000	0	408000	0	1000	408.00	
QSPL Total		1000	0	408000	0	1000	408.00	
SREPL	PSI-1	356533	94964	68349994	19533651	261569	191.71	205.70
	PSI- 2	350000	0	80881473	0	350000	231.09	
	PSI-3	240000	0	57274662	0	240000	238.64	
	PSI-4	10000	0	3049928	0	10000	304.99	
SREPL TOTAL		1015079	104964	231751516	23559183	910115	228.31	224.45
TCPPL	PSI - 1	0	5000	0	1115165	-5000	-	223.03
TCPPL Total		0	5000	0	1115165	-5000	-	223.03
Grand Total		1041079	109964	242277288	24674347	931115	232.72	224.39

9. The learned WTM calculated net buy and net sell position of these appellants vide Table Nos. 5 and 6 and arrived at a wrongful gain allegedly made by the respective appellants is as under :-

Trading details of Net Buyers

Name	UPSI period pertaining to	Net Buy Quantity	Average Buy Price (₹) based on actuals	Closing Price on the day announcement of PSI at NSE (₹)*	Wrongful gain (₹)#
		A	B	C	D = A x (C-B)
Prenita Dutt	PSI – 6	25000	404.71	411.10	1,59,750.00
Prenita Dutt Total		25000	-	-	1,59,750.00
QSPL	PSI-6	1000	408.00	411.10	3,100.00
QSPL Total		1000	-	-	3,100.00
SREPL	PSI -1	261569	191.71	220.50	75,30,571.51
	PSI- 2	350000	231.09	230.35	(2,59,000.00)
	PSI-3	240000	238.64	287.75	1,17,86,400.00
	PSI-4	10000	304.99	396.90	9,19,100.00
	PSI-6	48546	379.11	411.10	15,52,986.54
SREPL Total		910115	-	-	2,15,30,058.05
Grand Total		931115	237.72		2,16,92,908.05

Trading details of Net Sellers

Name	UPSI period pertaining to	Sell Quantity	Average Sell Price (₹) based on actuals	Opening Price (₹) UPSI period starting day at NSE	Wrongful gain
		A	B	C	D = A x (B-C)
TCPPL	PSI – 1	5000	223.03	155.10	340,150.00
TCPPL Total		5000	-	-	340,150.00

10. There is no denial to the fact that Mr. Sanjay Dutt was associated with NDTV as described above as per the Memorandum of Understanding dated September 1, 2006 and agreement dated July 1, 2007 between him and NDTV. Having this Consultancy Agreement of becoming advisor, etc. appellant Sanjay Dutt was having information about all the activities and more particularly financial activities of NDTV. It appears that the relation between appellant Sanjay Dutt and NDTV did not remain cordial after few years. The record would show that appellant Sanjay Dutt had filed a suit for damages for defamation against NDTV and others. Thereafter, NDTV shot three complaints to SEBI on July 16, 2013, December 27, 2013 and January 9, 2014

regarding this alleged insider trading. According to SEBI, on the basis of these complaints, it had investigated into the matter which led to the issue of show cause notice to all the present appellants. One of the defense of the appellants before SEBI was that there was an inordinate delay in starting proceeding vide a common show cause notice dated August 31, 2018 regarding the alleged transactions of the year 2006-08.

11. On merit, the common contention of the appellants was that merely because appellant Sanjay Dutt was the advisor to NDTV as detailed supra, it cannot be concluded that he has communicated the informations to other appellants. Further, none of the informations was PSI. None of the appellants traded on the basis of only such information and the trading pattern of the appellants would clearly show that the trades were not motivated by any of the informations. The learned WTM did not agree with any of the submissions.

12. Additionally, Mr. Mustafa Doctor, the learned senior counsel for the appellants submitted before us that the calculation of the period of informations remaining unpublished is also wrong. He also tried to take us through the various documents, communications, emails, etc. to show as to when actually the informations had crystalized. It is however to be noted that no such plea was taken before the learned

WTM. The said plea taken first time before the appellate Tribunal, therefore, needs no consideration.

13. Before coming to the merit of the entire case, either issue of the delay or as to whether it can be inferred that appellant Sanjay Dutt had communicated any of the informations what strikes us clearly is that PSI No. 6 as detailed in the Table no. 3 cannot be called as a PSI. To repeat this PSI-6, is to the effect that the board decided to evaluate options for reorganization of the company which could include the de-merger / split of the company into news related businesses / investment in “beyond news businesses” which was then held through its subsidiary, NDTV Networks Plc.

The definition of UPSI in Regulation 2(ha) of the PIT Regulations 1992 is as under :-

“(ha). “price sensitive information” means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

Explanation – The following shall be deemed to be price sensitive information:-

- (i) periodical financial result of the company;*
- (ii) intended declaration of dividends (both interim and final);*
- (iii) issue of securities or buy-back of securities;*

- (iv) any major expansion plans or execution of new projects;*
- (v) amalgamation, mergers or takeovers;*
- (vi) disposal of the whole or substantial part of the undertaking;*
- (vii) and significant changes in policies, plans or operations of the company,”*

14. The alleged PSI - 6 would show that the board of the company merely decided to evaluate various options for re-organization of the company on the line as detailed therein. No definite decision either of de-merger or of split or any other re-organization was taken by the board. Clause (vii) of the definition of PSI declares that significant changes in policies, plans or operations of the company would be deemed to be a PSI. In the present case, there was no change in policies, plans or operations of the company, but merely the board decided to evaluate the options regarding the same. It is a common knowledge when the board evaluates various options and ultimately makes some proposal, the same is placed before the shareholders and thereafter a definite decision is taken. In the present case, the board had not even contemplated any specific plans, but merely thought to explore the possibility. The same, therefore, cannot be called as PSI within the definition of the same as found in the Regulations.

15. This Tribunal in the case of *Pia Johnson & other connected appeal vs. SEBI Appeal No. 59 of 2020 decided on April 8, 2022*, had occasion to deal with the issue as to when information can be said to be crystalized to brand it as a PSI.

In that case, appellant Pia Johnson was a non-executive director of one listed company, namely, IVL during the relevant period. Appellant nos. 2 Mehul Johnson was her husband. They had purchased the shares of the company from April 1, 2015 to March 14, 2017. It was alleged that the sale of one of the subsidiary of IVL, namely, Indiabulls Distribution Services Ltd. (hereinafter referred to as 'IDSL') was the UPSI for a period from February 16, 2017 to February 22, 2017. The facts were that board of directors of IDSL had meeting on May 4, 2016 and resolved to sell the entire investment in ILPL. Even the shareholders had approved the said proposal on a meeting dated July 20, 2016. Appellant Pia Johnson therein was a member of the managing committee who was authorised to sell the stacks. Thereafter, however on January 14, 2017, a proposal for grant of loan to ILPL from another company IIL was made. This IIL, in its Extra Ordinary General Meeting (EGM) dated March 1, 2017, resolved to invest its surplus funds by way of loan to IIL or to buy it. Further,

discussion on grant of loan continued on January 24, 2017. In principle, it was agreed to go through the transaction of loan. Thereafter, however in the EGM of IIL, it was decided to purchase the shareholding of ILPL. Thereafter, a definite agreement dated March 14, 2017 for sale and purchase of this entity ILPL to IIL was entered into. The learned WTM, in that case held that the resolution passed on July 15, 2017 was only raw information and there was no crystalized offer to identify purchaser. The learned WTM held that the UPSI came into existence on January 24, 2017. It was a date on which in fact a discussion regarding grant of loan was held and there was nothing to say just that any offer for purchase of ILPL was made by the relevant parties. This tribunal finding that till February 3, 2017 there was no talk of purchase did not agree with the findings of the WTM that UPSI relating to sale/purchase came into existence prior to it.

16. Alleged PSI-6 therefore cannot be termed as PSI. Taking this into consideration, if we consider trading details of the respective appellants as reproduced hereinabove, it would show that appellant Prenita Dutt and appellant QSPL has traded only during this alleged PSI/UPSI – 6. Therefore, their tradings cannot be called as insider trading, leaving aside the issue of delay in issuing the show cause

notice or the issue as to whether any of them can be called as insider i.e. having communicated the information by appellant Sanjay Dutt. Similarly, appellant SREPL though traded during all the alleged PSI period except UPSI – 5, it has also traded during PSI – 6 and, therefore, the charge of insider trading for that period cannot be sustained. The appeals of Prenita Dutt and QSPL, therefore, deserve to be allowed on this short ground while the appeal of SREPL would have to be partly allowed as regards PSI-6.

17. On the issue of delay, the appellants pleaded that the trading had taken place between the year 2006-08. The show cause notice however was issued on August 31, 2018 i.e. after a period of 10-12 years. It was further argued that though SEBI claims that it came to know of the alleged trading vide the complaints of NDTV, those complaints are of the year 2013-14. Still the show cause notice was issued after a period of 4-5 years. It was strenuously submitted that as per the relevant rules either of income tax or any other commercial laws, the documents are required to be preserved for not more than 6 years and, therefore, the appellants did not have access to the relevant documents to defend the case.

18. The learned WTM reasoned that SEBI came to know of the insider trading when it received complaints from NDTV. Thereafter, SEBI was required to make investigation. It was further held that no period of limitation is provided. Support of various authorities to show that when the issue is complex and various violators are involved, the delay may not be taken as causing prejudice in every case. It was further found by the learned WTM that after receipt of the complaints, SEBI was required to take steps for investigation and, therefore, the delay has occurred.

19. The issue as to whether the delay has caused prejudice to the person against whom the proceeding is initiated is also required to be considered. This apparently has not been dealt with by the learned WTM though vide paragraph no. 16 of the impugned order the grievance of the appellants is noted in the impugned order.

20. Besides, of all the other submissions made by the appellants, we find that the learned WTM has not dealt with the submissions that none of the trades was motivated by any of the PSI / UPSI. The appellants had pleaded that the trades were carried in ordinary course of business. The relevant appellants had large number of trades in various shares during the relevant period and the trades in NDTV were

comparatively miniscule. Learned WTM vide paragraph no. 54 onwards had dealt with this issue. However, relying on the strict interpretation of Regulation 3 of the PIT Regulations, 1992 he held that when the insider merely trades in the stock of a company when he or she has access to the PSI the act of insider trading is complete. The learned WTM, therefore, refused to go into the issue as to whether the impugned trades were motivated by the PSI/ PSIs or not.

21. Regulation 3 of the PIT Regulations, 1992 is as under :-

“3. No insider shall—

- (i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or*
- (ii) communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities:*

***Provided** that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.”*

22. In paragraph No. 55, the learned WTM has held as under :-

“55.The scheme of the Regulations does not carve out any exception for any person who may be trading in the ordinary course of business. In fact, possession of unpublished price sensitive information and trading while in possession of such information is prohibited by the Regulations irrespective of the profession of the concerned entity. The emphatic assertions made by the Noticees that they were financially independent and employed their own fund while placing the trades in the ordinary course of business and that the quantities of their trades are too miniscule to warrant any charge of insider trading is futile and constitutes no defense to the charge of insider trading.”

23. In fact, Section 15G of the SEBI Act which prescribed penalty for the insider trading which reads as under :-

Penalty for insider trading.

“15G. If any insider who, —

- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or*
- (ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or*

(iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,

shall be liable to a penalty [which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher].”[Emphasis supplied]

24. This Tribunal has in number of cases while dealing with this issue had concluded that to penalize an entity for insider trading, it is necessary to find that the trading should be motivated by the PSI in possession of the said entity. In the case of ***Abhijit Rajan vs. SEBI, Appeal No. 232 of 2016 decided on November 8, 2019***, this Tribunal has dealt with the said issue and the Hon’ble Supreme Court in the same case of ***Abhijit Rajan (supra)*** had also confirmed the said decision. The principle is based on a logic that there must be some relation between the trading and the motivation to encash the PSI. The learned WTM however refused to go into this issue.

Since we have no benefit of consideration of issue of delay and the consideration on the issue as to whether the trade was carried by appellant SREPL on the basis of PSI 1, 2, 3 and 4, it would be necessary to remand the matter to the learned WTM to decide all the

issues afresh as regards the SREPL, appellant TCPPL and appellant Sanjay Dutt.

25. In the result the following order :-

ORDER

26. The impugned order is hereby quashed and set aside.

Appeal No. 49 of 2021 filed by appellant Quantum Securities Pvt. Ltd., Appeal no. 104 of 2021 as regards appellant no. 1 Ms. Prenita Dutt only and appellant no. 2 SAL Real Estate Private Limited as regards PSI No. 6 only are hereby allowed without any order as to costs.

27. Rest of the matters are remanded back to the learned WTM to decide all the issues afresh including the issue of delay by providing a personal hearing to these appellants. For that purpose, respective appellants shall appear before the learned WTM on March 1, 2023. The learned WTM is directed to decide the matter within a period of four months thereafter.

28. No order as to costs.

29. 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

02.02.2023
PTM