
(2021) 10 SEBI CK 0110

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No.375, 376 Of 2021

Balram Garg And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 21-10-2021

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 2015 — Regulation 2, 2(g)
Securities And Exchange Board Of India Act, 1992 — Section 11(1), 11(4), 11(4A), 11B(1), 11B(2), 19

Citation : (2021) 10 SEBI CK 0110

Hon'ble Judges : Tarun Agarwala, Presiding Officer; M. T. Joshi, J

Bench : Division Bench

Advocate : K. V. Viswanathan, Anil Kaushik, Abhishek Mishra, Shashi Sharma, Gaurav Joshi, Abhiraj Arora, Rashmi Dalmia, Karthik Narayan, Somsekhar Sudaresan, Abhishek Venkatraman, Joby Mathew, Anshuman Sugla, Tanya Gupta, Gaurav Joshi, Abhiraj Arora, Etc.

Final Decision : Dismissed

Judgement

M.T. Joshi, J

1. Both the present appeals arise out of the common order passed on May 11, 2021 by the Ld. Whole Time Member ("WTM" for short) of the Securities and Exchange Board of India ("SEBI" for short) in exercise of the powers under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) read with Section 19 of the Securities and Exchange Board of India Act, 1992 ("SEBI Act" for short) for violation of SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations" for short). Vide the impugned order all the present appellants were restrained from accessing the securities market, in any manner, for a period of one year. All the appellants are also restrained from buying, selling or dealing in the securities of PC Jeweller Limited ("the Company" / "PC Jeweller" for short) directly or indirectly, in any manner, for a period of two years and to disgorge an amount from Appellants in Appeal no. 376 of 2021 as detailed in the impugned

order with a direction to credit the said amount into Investor Protection and Education Fund (IPEF) of the respondent SEBI.

2. In nutshell, the allegations against the appellant Ms. Shivani Gupta and other appellants in Appeal no. 376 of 2021 is that they being insider to two Unpublished Price Sensitive Informations ("UPSI" for short) regarding the buy-back of it's share by the Company and had traded in the shares while holding theses informations.

3. The informations relate to the buy-back of the shares by the Company which later on was withdrawn. It is alleged that since these appellants were privy to the information of impending decision of buy-back of the shares at the rate of Rs. 350/-, the appellants withheld selling of the scrip at the prevailing less price which otherwise they had started. Secondly, when the lending bank refused to accede to the proposal of buy-back, till this next information was disseminated by the Company to the Stock Exchanges, they sold the shares at a higher price.

4. Insofar as appellant Mr. Balram Garg is concerned during the relevant period he was the Managing Director of the said Company as well paternal uncle of appellant Mr. Sachin Gupta and appellant Mr. Amit Garg. Appellant Ms. Shivani Gupta is wife of appellant Mr. Sachin Gupta while Appellant no. 4 Quick Developers Private Limited is the firm of appellant Mr. Amit Garg and previously appellant Ms. Shivani Gupta was it's director and shareholder. Further, some fund transfers were made between the appellant Quick Developers Private Limited, and appellant Mr. Amit Garg which were utilized for trading in the scrip of the Company.

5. Appellant Mr. Balram Garg denied that though he was Managing Director of the Company he disseminated any information to the rest of the appellants. The other appellants also denied the allegations of having any insider knowledge of these events and wanted that they be exonerated. The WTM, however, passed the impugned order. Hence the present appeals.

6. Heard Shri K.V. Viswanathan, the learned senior counsel and Shri Somasekhar Sundaresan, the learned counsel for the appellants and Shri Gaurav Joshi, the senior counsel for the respondent.

7. The facts on record would show that the Company PC Jeweller Ltd. had on May 10, 2018 after market hours announced that the board of directors had a meeting on the same date and had approved buy-back of 1,21,14,285 shares of Rs. 10/- each at a price of Rs. 350/- per equity share. On July 13, 2018 however Company after market hours announced that the said offer is withdrawn due to non-receipt of requisite no objection certificate from its banker, namely, State Bank of India.

8. The investigation carried out by respondent SEBI prior to issuing of show cause notice cum ex-parte order dated December 17, 2019 showed that preliminary discussion regarding buy-back started between Managing Director,

Chief Financial Officer, Chairman etc. of the Company on April 25, 2018 which continued till April 20, 2018 as detailed in table-4 of the impugned order. As a result of the same on April 29, 2018 the Company made the announcement as detailed above. Thereafter, the Company and its officials started discussion with merchant bankers, its lending bankers etc. Ultimately, on May 10, 2018 the Company informed Stock Exchanges of the final decision of buy-back of equity shares at a price of Rs. 350/- per equity share. On July 7, 2018 it's lending bank-State Bank of India was requested to issue no objection certificate. On the same date State Bank of India communicated it's refusal. Thereafter, on July 10, 2018 meeting of the independent directors and officials was held to discuss further course of action. On July 12, 2018 Chief Finance Officer of the Company met State Bank of India officials requesting to reconsider the bank's refusal. Ultimately, on July 13, 2018 the board has approved the withdrawal of the buy-back offer and the same was informed to the Stock Exchanges. Thus, the discussion leading to the decision of making a buy-back offer, according to respondent SEBI was UPSI-I till it was disseminated to the Stock Exchanges. Further, the communication from State Bank of India refusing to grant no objection certificate on July 7, 2018 was UPSI-II till the Company disseminated the information of withdrawal of buy-back to the Stock Exchanges on July 13, 2018.

9. In this situation, respondent SEBI collected the information regarding the trading of these appellants in Appeal no. 376 of 2021. It was gathered that prior to the UPSI-I appellant Mr. Shivani Gupta her husband Mr. Sachin Gupta and Mr. Sachin's brother Appellant no. 3 Mr. Amit Garg (through the account of appellant Ms. Shivani Gupta) net sold shares of the Company. This selling was stopped from the date discussion regarding buy back of shares started. Thereafter again once buyback proposal was published till it's withdrawal was published shares were sold by Ms. Shivani Gupta. The figures are detailed in table-8 of the impugned order. It is alleged that though the appellants wanted to sell the shares earlier to this episode, as the decision to buy-back the shares was in the process during UPSI-I, the sell of the same was stopped and only during UPSI-II the sell of the shares was started as detailed herein above.

10. Price - volume analysis made in the impugned order vide table-6 would show that before the decision regarding buy-back was announced the price of the share was ranging between Rs. 288.10. to Rs. 328.60. While the UPSI-I was in existence not known to the general investors the price range was between Rs. 290.55 to Rs. 294.55. When the information about buy-back was disseminated the price soared and it hit upper circuit of 10%. The detailed analysis is found in the Table III of the impugned order. When the announcement regarding withdrawal of the buy-back offer was made the price of the share on the Stock Exchanges touched lower circuit at 20% as can be found vide the same table. It is, therefore, alleged that the appellants in Appeal no. 376 of 2021 withheld selling when the buy-back offer was being discussed within the Company and sold at the higher price when buy back offer was in currency and till the State

Bank of India had refused to grant no objection certificate for the buy-back before the dissemination of this information by the Company to the Stock Exchanges. The details of the same are given in the impugned order.

11. The respondent SEBI has alleged that the appellants in Appeal no. 376 of 2021, namely, Ms. Shivani Gupta, Mr. Sachin Gupta, Mr. Amit Garg and Quick Developers Private Limited became the insider as they got the knowledge of both the UPSI from their near and dear one including appellant Mr. Balram Garg.

12. Admitted facts are that Late Padam Chand Gupta - the father of appellant Mr. Sachin Gupta and father-in-law of Ms. Shivani and paternal uncle of appellant Amit - was the Chairman of the Company. Before the show cause notice could be issued to him he died on January 20, 2019. Said Late Padam Chand Gupta, appellant Mr. Balram Gupta and father of appellant Mr. Amit Garg, namely, Mr. Amar Chand Garg were the brothers. While Late Padam Chand Gupta was the Chairman of the Company, appellant Mr. Balram Garg was the Managing Director during the relevant period. Their brother Mr. Amit Garg was the Ex-Vice Chairman of the Company. All of them were the promoters of the Company. Before the decision regarding the buy-back was taken i.e. between April 2, 2018 to April 20, 2018 Late Padam Chand Gupta gifted 1.03 crore shares of the Company to his daughter-in-law i.e. appellant Ms. Shivani Gupta. All of them were residing at a common address. Appellant Mr. Amit Garg was authorized by appellant Ms. Shivani Gupta to trade on her behalf in respect of her trading account maintained with stock broker Karvy Stock Broking Ltd. Appellant Mr. Sachin Gupta was authorized to trade on her behalf from the trading account maintained with stock broker SS Corporate Securities Limited. In all these circumstances along with their relationship with appellant Quick Developers Private Limited as detailed (supra) respondent SEBI concluded that UPSI on both the occasions were disseminated to the appellant Ms. Shivani Gupta and others in Appeal no. 376 of 2021 by appellant Mr. Balram Garg in Appeal no. 375 of 2021 as well Late Padam Chand Gupta.

13. On the other hand, the present appellants took the following defense:-

(i) That the appellant Ms. Shivani Gupta, Mr. Sachin Gupta and Mr. Amit Garg cannot be termed as connected person as defined by Regulation 2 of the PIT Regulations. They also cannot be termed as insider as there is no iota of evidence to show that any UPSI was disseminated to them or they traded when in possession of any of the UPSI.

(ii) Appellant Mr. Balram Garg submitted that except the fact that Mr. Amit Garg was nephew of Late Padam Chand Gupta and son of Amar Chand Garg and he himself was Managing Director of the Company, there is nothing on record to show that he at any time disseminated the information to them. Additionally, it was submitted that family settlement between Mr. Amar Chand Garg with the joint family comprising of the three brothers had taken long back in the year 2011. The family therefore was separated in two branches. One of Mr. Amar

Chand Garg and another of Late Padam Chand Gupta and appellant Mr. Balram Garg.

(iii) In view of the said settlement appellant Mr. Balram Garg and Late Padam Chand Gupta were to hold a substantial shareholding in the Company and Mr. Amar Chand Garg and his family would have no interest in the Company. Appellant Mr. Sachin Gupta who was previously President of Gold Manufacturing Division of the Company had resigned from the post on March 31, 2015 pursuant to a next family settlement between Late Padam Chand Gupta and appellant Sachin in 2015. Since then appellant Ms. Shivani Gupta and appellant Mr. Sachin Gupta separated from Late Padam Chand Gupta, therefore he had nothing to do with the business of the Company.

(iv) The allegations that these appellants have common residential address is wrong. All these families are residing in separate houses built on piece of a land and do not share any common dwelling house.

(v) It was submitted that due to these two estrangements of the year 2011 and 2015, the joint family was disrupted. Therefore no occasion arose for appellant Mr. Balram Garg to disseminate any information to other appellants. It was further additionally submitted by the appellant Mt Balram Garg that he has not traded in the shares of the Company during this period.

14. The learned counsel for the appellants in Appeal no. 376 of 2021 vehemently submitted that appellant Ms. Shivani Gupta, Mr. Sachin Gupta and appellant Mr. Amit Garg cannot be called as connected persons merely because appellant Mr. Shivani Gupta and Mr. Sachin Gupta were immediate relative of Late Padam Chand Gupta. It should, however, be noted that though in the show cause notice they were termed as connected persons and insider, the Ld. WTM considering the ingredients of the definition of connected person as found in PIT Regulations 2015 ultimately held that they cannot be treated as connected persons. As regards the facts as to whether all the appellants in Appeal no. 376 of 2021 were insiders within the meaning of definition. It would be fruitful to advert to the definition as found in Regulation 2(g) of the PIT Regulations which reads as under:-

"(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. 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 leveling 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 or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances."

15. Upon appreciation of the facts before him, the Ld. WTM recorded a finding that the nature of relationship between the parties, their residence at the same address, financial transactions between them as well as the trading pattern of the concerned appellants during UPSI-I & II show that all of them had traded when in possession of both the UPSI, meaning thereby that those UPSI were disseminated to the appellants in Appeal no. 376 of 2021 by Late Padam Chand Gupta and Mr. Balram Garg- the appellant in Appeal no. 375 of 2021.

16. The appellants placed heavy reliance on the facts of two family settlements made in the year 2011 and 2015 which according to them would show an estrangement in the joint family. Further, according to them on large piece of land separate buildings are built by the separate families and their merely because a common address is shared by them, it cannot be called that they were residing together.

17. The Ld. WTM had meticulously appreciated all the facts on record which are as under:-

(i) The annual reports of the Company for the year 2015-16 till 2017-18 showed that appellant Mr. Sachin Gupta was receiving rent in different figures. In 2015-16 he received a rent of Rs. 77 lakh while in 2017-18 he received rent of Rs. 78 lakh from the Company. In the year 2016-17 he paid rent of Rs. 66 lakh to the Company. The appellant Mr. Sachin Gupta was nominee of the demat account of Late Padam Chand Gupta even after the separation and till the death of Late Padam Chand Gupta. The Ld. WTM was aware that the appellant was successor of Late Padam Chand Gupta but he pointed out that nomination is a position of a trust and responsibility and in case there is an "estrangement" between the families this trust would not have been reposed by Late Padam Chand Gupta upon appellant Sachin, as he also had an option to nominate his another son Mr. Nitin Gupta or his wife Smt. Krishna Devi. Further, the Ld. WTM took note that all these appellants share same residential address though they reside in separate dwelling units.

(ii) The trading pattern of the appellants during the relevant period as detailed (supra) was also taken into consideration vide the tables placed by the Ld. WTM in paragraph 23 of the impugned order. From the said trading pattern the Ld. WTM observed that appellant Ms. Shivani Gupta had 100% concentration in trading in the scrip of the Company only during pre-UPSI Period I & UPSI

II. Further, she was gifted shares of the Company through off market transfer of

shares from Late Padam Chand Gupta on April 2, 2018. She continued to trade in that scrip from this very day till April 24, 2018, while the preliminary discussion on the proposal of buy-back of shares at Rs. 350/- per share started on April 25, 2018. The Ld. WTM observed that it is not a mere co-incidence that no sooner the discussion on buy-back proposal started, appellant Ms. Shivani Gupta halted selling spree of the shares of the Company. Further, the selling of shares of appellant Ms. Shivani Gupta during this period was at an average price traded during the Pre UPSI - I which was Rs. 303.82 which was stopped on the day the discussion for buy-back at the rate of Rs. 350/- was started.

(iii) Further, the appellant Ms. Shivani Gupta again started selling shares of the Company from July 6, 2018 onwards. She continued selling spree those shares from July 6, 2018 till July 13, 2018 though in the meantime communication from State Bank of India had reached the Company refusing no objection certification for the buy-back offer. Further, she had net sold 15,00,000 shares in the scrip which constituted 15.79% of the total market deliverable quantity. Once the buy back offer was withdrawn and the price tumbled, appellant Shivani stopped selling the shares. From all these facts the Ld. WTM concluded that appellant Ms. Shivani Gupta as well as Mr. Sachin Gupta and Mr. Amit Garg (both of whom traded on behalf of appellant Ms. Shivani Gupta) were in the know-how of the events taking place in the Company with regard to the buy-back proposal of the shares. Therefore, the Ld. WTM concluded that all these appellants were insider within the meaning of the definition.

(iv) As regards Appellant no. 4 Quick Developers Private Limited the Ld. WTM noted that this appellant received an amount of Rs. 1 crore from appellant Mr. Amit Garg on June 1, 2018. Further there was a credit of Rs. 3 crore in the form of pay-out from Karvy on 20th and 25th July, 2018 out of which Rs. 2 crore was remitted from the account of Mr. Amit Garg and his wife Nisha Garg. They were the authorized signatories to the bank account even after they ceased to be Directors of Appellant no. 4 Quick Developers Private Limited. Appellant no. 3 Mr. Amit Garg had placed orders for the trade of Appellant no. 4 Quick Developers Private Limited, including the trading in the scrip of Company. From all these facts the Ld. WTM concluded that Appellant no. 4 Quick Developers Private Limited was nothing but a front entity of Appellant no. 3 Mr. Amit Garg for trading in the securities market including trading in the scrip of the Company. In the circumstances the Ld. WTM found that Appellant no. 4 Quick Developers Private Limited was a wholly owned and controlled by appellant Amit.

(v) The Ld. WTM further found that Appellant no. 4 had 100% concentration in the scrip Futures trading of the Company during UPSI - II. He inferred that when this appellant squared-off short positions on July 11, 2018 i.e. during UPSI period II it avoided loss of Rs. 89.82 lakh. Further, during UPSI-II this appellant opened another short position of Rs. 3 lakh futures of the Company (which trader normally does when he anticipates fall in the price) on July 13, 2018 and by squaring-off the aforesaid short position on July 20, 2018, this appellant had

made a profit of Rs. 133.04 lakh.

(vi) As regards appellant Mr. Balram Garg in Appeal no. 375 of 2021 it was noted that he was the Managing Director of the Company. The chronology of events as detailed (supra) would show that he was insider and the relationship between the parties, their residence at the same place and same address would show that there must be dissemination of the information regarding both UPSI by him to the appellants in Appeal no. 376 of 2021.

(vii) Appellant nos. 1 to 4 in Appeal no. 376 of 2021 has either traded or avoided to trade during these UPSI, the Ld. WTM in paragraph 36 and 37 of the impugned order prepared the table regarding the notional loss avoided by each of the appellants or gain made by them on the basis of weighted average sale price of the shares of the Company.

18. Upon hearing both the sides, in our view, the reasoning of the Ld. WTM cannot be faulted with. The facts as highlighted by the Ld. WTM would show that though there was a family arrangements within the family on two occasions there was no estrangement, as can be seen from the facts highlighted by Ld. WTM (supra). Additionally, in our view, the very fact that appellant Shivani had authorized her cousin brother-in-law i.e appellant Amit to trade on her behalf, would belie the case of the appellants that family settlements means family estrangement. It cannot be gainsaid that the appellants are residing at the same address and even appellant Mr. Balram Garg's address is "the front side" of the premises. The trading pattern of the concerned appellants i.e. withholding of the selling of trade once buy-back talk started within the Company and then again selling spree the shares by them once the buy-back offer was made public till the rejection of the proposal by the State Bank of India was made known to the public, would clearly show that the concerned appellants were aware of both the UPSI.

19. It is true that there is no direct evidence as to who had disseminated this insider information to the appellants in Appeal no. 376 of 2021. Late Shri Padam Chand Gupta was the father of appellant Mr. Sachin Gupta and father-in-law of appellant Ms. Shivani Gupta and uncle of appellant Mr. Amit Garg. Similarly, appellant Mr. Balram Garg is the uncle of appellant Mr. Sachin Gupta and appellant Mr. Amit Garg. All of them were residing at the same address. Appellant Mr. Sachin Gupta had financial transactions with the Company of which appellant Mr. Balram Garg was Managing Director. Considering all the above facts, on preponderance probability it can very well be concluded that late Padam Chand as well appellant Mr. Balram disseminated both UPSI to the appellants in appeal no. 376 of 2021.

20. Taking into consideration all these facts, in our view, the appeals lack merit. Hence both the appeals are hereby dismissed with no order as to costs.

21. 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.