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**(2021) 11 SEBI CK 0002**

**In the Securities Appellate Tribunal Mumbai**

**Case No : Appeal No. 651, 652, 653 Of 2021**

Bijal Shah And Others

APPELLANT

Vs

Securities & Exchange Board Of India

RESPONDENT

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**Date of Decision : 09-11-2021**

**Acts Referred:**

**Citation : (2021) 11 SEBI CK 0002**

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

**Bench : Division Bench**

**Advocate : Somsekhar Sundaresan, Sneha Prabhu, Yugandhara Khanvilkar, Janhvi P. Durve, J. P. Durve, Shiraz Rustomjee, Mihir Mody, Shreya Parikh, Prateek Pai, Arnav Misra, Mayur Jaisingh, Pesi Modi, Kunal Katariya, Ashmita Goradia, Agam Doshi, Etc.**

**Final Decision : ?Allowed**

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## **Judgement**

M. T. Joshi, J

1. Aggrieved by the common order of the learned Whole Time Member (hereinafter referred to as 'WTM') of the respondent Securities and Exchange Board of India (hereinafter referred to as 'SEBI') dated September 27, 2021 restraining the present appellants from anyway dealing in the securities except through mutual funds units, the present appeals are preferred.

2. Respondent SEBI had initiated proceedings against 15 entities. Ad-interim ex-parte cum show cause notice dated August 12, 2021 was passed by the learned WTM. The present appellants are the five noticees out of those noticees. Vide the said ad-interim ex-parte order the alleged proceeds of the profits derived as a result of alleged unpublished price sensitive information (UPSI) was directed to be impounded from all the concerned entities. All of them were restrained from dealing in the securities.

3. Aggrieved by the ad-interim ex-parte order the present appellants had preferred appeals in this Tribunal vide appeal nos. 576, 577 and 578 of 2021.

This Tribunal vide order dated September 3, 2021 disposed of the appeals and directed the learned WTM to pass an appropriate order on or before September 25, 2021 after considering the reply, etc. of the appellants. Thereafter, upon hearing the appellants the present impugned order is passed. In the meantime, the order of impounding the alleged proceeds of the profit is already complied with. Only issue in the present appeals now is as to whether the restraint order passed against the appellants till the final order is passed by the WTM, shall be continued or not till the final order is passed by the learned WTM.

4. Learned counsel for the respondent SEBI submitted that due to time required in the investigation, show cause notice now can be issued in the final proceedings after 7 to 8 months. In the circumstances, the appeals were heard on the issue as to whether the restraint order should be continued or not.

5. We have heard Mr. Somsekhar Sundaresan, the learned counsel and Mr. Pesi Modi, the learned senior counsel and Mr. Kunal Katariya, the learned counsel for the appellants and Mr. Shiraz Rustomjee, the learned senior counsel for the respondent through video conference.

6. The record would show that the appellant Bijal Shah during the relevant period was the connected person being head of Financial Planning & Analysis, Strategy and Investor Relations of Zee Entertainment Enterprises Ltd. (hereinafter referred to as 'ZEEL'). He alongwith others had handled the process of finalizing three concerned financial results for the period ending June 2020, September 30, 2020 and September 2019. The periods finalizing the financial results were considered as three Unpublished Price sensitive Informations (hereinafter referred as UPSI ) by the learned WTM. In addition to it, the launch of Cinema 2 Home Service - Zee Plex by ZEEL vide announcement dated September 1, 2020 was also considered as one UPSI by the learned WTM.

7. It is alleged that the appellant Bijal Shah was in regular contact with the appellant Gopal Ritolia and Jatin Chawla as can be seen from the all detailed records. Further, during the relevant period Bijal Shah had phone calls with them. The appellant Gopal Ritolia and Jatin Chawla are and were operating the accounts of their respective mothers, namely, Mrs. Gomati Devi Ritolia and Mrs. Daljit Chawla. It is alleged that as appellant Bijal Shah had communicated the information not generally known to the public i.e. the above UPSI, these rest of appellants traded (appellant Jatin and Gopal through the accounts of their respective mothers) in the shares of ZEEL during the respective period and, therefore, made profit as detailed in table no. 24 of the earlier ex-parte interim order. This profit was directed to be impounded which has been complied with.

8. The case of the appellants is that the appellant Bijal Shah, Gopal Ritolia and Jatin Chawla are knowing each other since decade. They used to have conversation with each other often including during the disputed period. Their case however is that the learned WTM failed to appreciate the facts regarding the alleged UPSI. It was submitted that three financial results were not favorable to

the market and, therefore, the presumption that on the basis of that information allegedly communicated by the appellant Bijal Shah to the appellants Gopal Ritolia and Jatin Chawla, the trades were made itself is wrong. They had given facts and figures regarding each of the financial results. It was submitted that on Year over Year (YoY). The results were dismal and in fact, the prices on the stock exchange had come down on the publication of the results. In one case, due to the decision of the Hon'ble Bombay High Court between ZEEL and Yes Bank, the prices on the same day moved upward. So far as announcement of launch of Cinema 2 Home Service is concerned, it was submitted that it was not at all the information of material substance. Upon query from the learned WTM, the Company ZEEL had even given list of each person who was concerned with the same. The name of Bijal Shah does not find place in this list. The launching of Cinema 2 Home Service was of such a negligible consequence in day to day affairs of ZEEL that even ZEEL had not made any announcement of it as material event on the platform of exchanges as required by the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. It was, therefore, submitted that the order of the learned WTM is required to be set aside.

9. On the other hand, the learned counsel for the respondent submitted that in fact the financial results were found positive when earning calls were made by the board of ZEEL. Further, the information relating to launch of Cinema 2 Home Service was also material. It was further submitted that the appellant Jatin Chawla during the relevant period was an employee of the First Voyager Advisors Pvt. Ltd. and was contractually barred from trading in the securities market directly or indirectly. Still he through his mother's accounts made the trades. The appellant Bijal Shah was the responsible officer of the ZEEL. The case is of multiple violations of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as 'PIT Regulations') and, therefore, the learned counsel submitted that the appeal be dismissed.

10. Upon hearing both the sides, in our view, the appeals deserve to be allowed for the following reasons.

11. The issue is to whether the four instances were of such a nature to be called as UPSI is yet to be finally decided by the learned WTM after causing further investigation and upon issuing show cause notices. According to the learned counsel for the respondent, the issuance of show cause notice may take at least 7 to 8 months from now. Appellant Bijal Shah is now not concerned with ZEEL. Appellant Gopal Ritolia has also moved from the company First Voyager Advisors Pvt. Ltd. It was submitted that there he was prohibited from making insider trading only and not general trading as claimed by the respondent. The learned counsel for the appellants meticulously took us through each of the instances to impress upon us as to how the inference of the learned WTM that in the conversation between the appellant Bijal Shah and Gopal Ritolia and Jatin Chawla, the information was spilled by Bijal Shah to them. However since the

learned WTM has to take final call on the subject after having complete investigation, we refrain ourselves from making any comment on this aspect.

12. The learned WTM has reasoned in the order that the appellants are associated with the securities market for last 15 to 17 years by virtue of their work with some leading firms, BRICS, UBS, Credit Suisse, etc. They had a good educational background and therefore, they had a large and wide social and corporate connection / network with equally high placed officials in other companies and firms related to securities market. It was further reasoned that this is a case of multiple violations. However, the said cannot be reason for restraining the appellants in considering the balance of qualities between the appellants and the respondent.

13. In our view, passing of the final order would take time. Whether the disputed events were UPSI or whether those were communicated by Bijal to others is yet to be decided finally. The disputed amount is already impounded. Appellant Bijal Shah is no more connected with ZEEL. The educational and social backgrounds of the appellants need not be considered at this stage. The appeals therefore deserve to be allowed

14. In the circumstances, the following order :-

#### ORDER

15. The appeals are hereby allowed without any order as to costs. The order of the learned WTM restraining the appellants from dealing in the securities market, in any manner, as detailed in the impugned order is hereby set aside. The order of the learned WTM as regards impounding of the amount as detailed in the impugned order shall continue subject to the final order to be passed by the WTM.

16. 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.