
(2023) 10 SEBI CK 0003

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 557, 558 Of 2020, 51, 52, 53 Of 2021, Miscellaneous
Application No. 560, 561, 583 Of 2020, 109 Of 2021

Dr. Prannoy Roy And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 05-10-2023

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations,
1992 — Regulation 2(e), 2(ha), 3, 3(i), 4, 12(1), 12(2)
Securities And Exchange Board Of India Act, 1992 — Section 12A(d), 12A(e)

Citation : (2023) 10 SEBI CK 0003

Hon'ble Judges : Tarun Agarwala, Presiding Officer; Meera Swarup, Technical
Member

Bench : Division Bench

Advocate : Darius Khambata, Fereshte Sethna, Abhishek Tilak, Ameya Pant,
Mohit Tiwari, Karan Rukhana, Vidhi Shah, Gaurav Joshi, Mihir Mody, Arnav Misra,
K. Ashar, Manish Chhangani, Sumit Yadav, Abhay Chauhan, Atul Kumar Agrawal,
Somasekhar Sundaresan, Yugandhara Khanwilkar, Robin Shah

Final Decision : Disposed Of

Judgement

Tarun Agarwala, Presiding Officer

1. All these appeals arise from a common investigation. The issues are common and, even though, separate orders have been passed by the Whole Time Member ("WTM" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) pursuant to separate show cause notices, the issue involved is common and, consequently, all these appeals are being taken up together.

2. The WTM has found the appellants to be guilty of insider trading under the Prohibition of Insider Trading Regulations, 1992 ("PIT Regulations, 1992" for convenience) and has consequently directed the appellants to disgorge the amount of unlawful gains along with interest and has further restrained them from accessing the securities market for specified periods.

3. Appeal Nos. 557 of 2020 and 558 of 2020 are against the order of the WTM dated 27.11.2020 whereas Appeal Nos. 51, 52 and 53 of 2021 are against another order dated 27.11.2020 passed by the WTM.

4. The facts leading to the filing of the present appeal is, that SEBI received certain complaints dated July 16, 2013, December 27, 2013 and January 09, 2014 from New Delhi Television Limited ("NDTV" for convenience) alleging that Sanjay Dutt and certain other entities, namely, Quantum Securities Private Limited and SAL Real Estate Private Limited were involved in dealing in securities of NDTV in violation of the provisions of the PIT Regulations during the period September 2006 to June 2008.

5. SEBI conducted an investigation in the scrip of NDTV. During investigation, it revealed that Mr. Sanjay Dutt and his associated entities had indulged in insider trading in the scrip of NDTV. The investigation also revealed that the promoters of the complainants Prannoy Roy and Radhika Roy also carried out insider trading in the scrip of NDTV during the investigation period. The investigation further revealed that Vikramaditya Chandra, Group Chief Executive Officer and Executive Director in NDTV, Ishwari Prasad Bajpai, Senior Advisor, Editorial and Projects in NDTV and Saurav Banerjee, Director Finance and Group Chief Financial Officer in NDTV had traded during the investigation period while in possession of price sensitive information. The investigation revealed that the Company, namely, NDTV had filed six price sensitive information for disclosure during the investigation period. The details of the price sensitive events and the respective period of the unpublished price sensitive information ("UPSI" for convenience) with regard to each of the price sensitive information is depicted hereunder:-

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, 2006

13:49:09 (BSE)

September 21, 2006 to

November 28, 2006

PSI-3: The Company signed an agreement with Com ventures VI, L.P, a venture capital fund, for investment of US\$ 20 million from Com ventures 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

March 22, 2007

May 31, 2007

14:21:48 (NSE)

March 22, 2007 to

May 30, 2007

Step up coupon convertible Bonds and raised an amount of US\$ 100 million for funding the operations

of its subsidiaries in India

May 31, 2007

13:42:56 (BSE)

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.

January19, 2008

January 22, 2008

15:41:30 (NSE)

January 22, 2008

15:23:54 (BSE)

January19, 2008 to

January 22, 2008

PSI-6: Board of the Company decided to evaluate options for reorganization of the 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

April 16, 2008

16:13:09 (NSE)

April 16, 2008

17:45:31 (BSE

September 07, 2007 to

April 16, 2008

6. Based on the aforesaid investigation report separate show cause notice was issued to Sanjay Dutt and entities, Prannoy Roy and Radhika Roy and to Vikramaditya Chandra, Ishwari Prasad Bajpai and Saurav Banerjee. The WTM after considering the replies passed separate orders against these three set of

entities.

7. The allegation against Sanjay Dutt, Quantum Securities Pvt. Ltd. and other connected entities was that they had inside information and traded in the scrip of NDTV during PSI-1, 2, 3, 4, and 6. The WTM found that except Sanjay Dutt all the other entities had made a wrongful gain of Rs. 2.2 Crores through inside trading in the shares of NDTV. The WTM accordingly directed the said entities to disgorge Rs. 2.2 Crores jointly and severally along with the interest @ 6% per annum. Further, the said entities were restrained from accessing the securities market for a period of 2 years.

8. Against the order of the WTM dated November 27, 2020, Quantum Securities Pvt. Ltd., filed Appeal No. 49 of 2021, Sanjay Dutt filed Appeal No. 103 of 2021, Ms. Prenita Dutt and others filed Appeal No. 104 of 2021. This Tribunal quashed the impugned order and allowed the aforesaid appeals. This Tribunal found that PSI-6 cannot be termed as a price sensitive information and, therefore, the entities who had traded during the PSI-6 period cannot be found guilty of violating the PIT Regulations as they were not insiders. This Tribunal by its order of February 02, 2023 allowed the Appeal No. 49 of 2021 filed by Quantum Securities Pvt. Ltd., Appeal No. 104 of 2021 filed by Ms. Prenita Dutt and Appellant No. 2 SAL Real Estate Private Limited as their trades related to PSI-6 period.

9. This Tribunal, with regard to PSI-6 held:-

"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.

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.”

10. With regard to the trades executed by Quantum Securities Pvt. Ltd. and other connected entities for the PSI-1,2,3 and 4 this Tribunal quashed the directions issued by the WTM and remanded the matter back to the WTM to decide all the issues afresh including the issue of delay. This Tribunal held:-

“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.

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."

11. Appeal No. 557 of 2020 and 558 of 2020 have been filed by Prannoy Roy and Radhika Roy against the order of the WTM dated November 27, 2020 pursuant to the show cause notice August 31, 2018. The trades executed by Prannoy Roy and Radhika Roy was during the UPSI period pertaining to PSI-6, namely, September 07, 2007 to April 16, 2008. Prannoy Roy and Radhika Roy had traded on December 26, 2007 by buying NDTV shares during the PSI-6.

12. The show cause notice dated August 31, 2018 issued against Prannoy Roy and Radhika Roy alleged:-

"3. On the basis of the afore-stated findings from the investigation, a common show cause notice (hereinafter referred to as "SCN") dated August 31, 2018 was issued to Mr. Prannoy Roy and Mrs. Radhika Roy (hereinafter individually referred to by their respective names and collectively referred to as "Noticees"). The salient aspects thereof are as under:

(a) That Mr. Prannoy Roy and Mrs. Radhika Roy were insiders in terms of regulation 2(e) of the PIT Regulations, 1992;

(b) That Mr. Prannoy Roy and Mrs. Radhika Roy indulged in the act of insider trading by trading in the scrip of NDTV while in possession of UPSI relating to the proposed reorganization of the Company, which included a possible de-merger/split of the Company into News related businesses and investments in 'Beyond News' businesses with an objective of unlocking shareholder value and to promote focused growth of Company's various businesses and therefore, have violated the provision of sections 12A(d) and (e) of the SEBI Act, 1992 read with regulations 3(i) and 4 of the PIT Regulations, 1992.

(c) That Mr. Prannoy Roy and Mrs. Radhika Roy sold their shares of NDTV on April 17, 2008, during trading window closure period, i.e., within 24 hours of the public announcement pertaining to PSI-6 on April 16, 2008 and as such have violated NDTV's Code of Conduct and the provisions of regulation 12(2) read with regulation 12(1) of the PIT Regulations, 1992.

(d) That Mr. Prannoy Roy and Mrs. Radhika Roy together have made a wrongful gain of ₹ 16.97 crores by trading in the shares NDTV while in possession of UPSI relating to the reorganization of the Company."

13. The WTM found that Prannoy Roy and Radhika Roy had traded while in possession of price sensitive information and accordingly directed them to disgorge the unlawful gains and also prohibited them from accessing the securities market for a period of 2 years.

14. The trades of Prannoy Roy and Radhika Roy is during PSI-6. In Quantum Securities (Supra) we have already held that PSI-6 was not a price sensitive information and, therefore, the charge of insider trading during that period cannot be sustained. The matter of Prannoy Roy and Radhika Roy is thus squarely covered by the decision of this Tribunal in Quantum Securities (Supra) which fact is not disputed by the learned counsel for the respondent.

15. It was urged, that Prannoy Roy and Radhika Roy had sold their shares on April 17, 2008 when the trading window was closed and, therefore, have violated NDTV's Code of Conduct and the provisions of Regulation 12(2) read with Regulation 12(1) of the PIT Regulations, 1992. In this regard, we find that since we have already held in Quantum Securities that PSI-6 was not a price sensitive information and that the appellants Prannoy Roy and Radhika Roy are not

insiders the question of violating the NDTV's Code of Conduct for trading during the window closure period becomes immaterial. In any case, we find that Prannoy Roy and Radhika Roy had secured pre-trade clearance from the Compliance Officer of NDTV which is an admitted fact in the show cause notice and, therefore, the trades executed by these two entities was in conformity with the NDTV's Code of Conduct and the PIT Regulations. There is no finding in the impugned order to the effect that the Compliance Office had acted improperly in granting permission to these two entities to sell during the period when the trading window was closed.

16. In view of the aforesaid, the impugned order passed by the WTM against Prannoy Roy and Radhika Roy cannot be sustained.

17. Appeal No. 51 of 2021 has been filed by Vikramaditya Chandra, Appeal No. 52 of 2021 has been filed by Ishwari Prasad Bajpai and Appeal No. 53 of 2021 has been filed by Saurav Banerjee.

These entities did not buy any shares during the investigation period. They were allotted shares in tranches by the Company NDTV under Employee Stock Option Scheme-ESOP's. The show cause notice alleged that Vikramaditya Chandra and Ishwari Prasad Bajpai had traded in the shares of the Company during PSI-3 and that Vikramaditya Chandra and Saurav Banerjee had traded in the shares of the Company during PSI-6.

18. In view of the decision of this Tribunal in Quantum Securities (Supra) holding that PSI-6 is not a price sensitive information, the trades made by Vikramaditya Chandra and Saurav Banerjee during PSI-6 are not violative of the PIT Regulations and, therefore, the order of the WTM to that extent cannot be sustained.

19. However, the trades executed by Vikramaditya Chandra and Ishwari Prasad Bajpai during PSI-3 is required to be reconsidered in the light of the observations made by this Tribunal in Quantum Securities Private Limited (Supra).

20. In view of the aforesaid, the impugned order passed by the WTM dated November 27, 2020 against Prannoy Roy and Radhika Roy in Appeal No. 557 of 2020 and 558 of 2020 cannot be sustained and is quashed. Both the appeals are allowed with no order as to costs.

The impugned order in so far as it relates to Saurav Banerjee cannot be sustained and is quashed. Appeal No. 53 of 2021 filed by Saurav Banerjee is allowed with no order as to costs.

Appeal No. 51 of 2021 filed by Vikramaditya Chandra and Appeal No. 52 of 2021 filed by Ishwari Prasad Bajpai are partly allowed. The finding against them relating to PSI-6 is quashed. The matters are remitted to the WTM to decide the issue relating to PSI-3 in the light of the observation made by this Tribunal in Quantum Securities Private Limited (Supra).

21. In the circumstances of the case, parties shall bear their own costs. All the misc. applications are disposed of accordingly.