

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 22.03.2018

Appeal No. 53 of 2018

Poonam Garg
H. No. 32, Sector- 15,
Sonapat- 131 001
(Haryana)

...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

Ms. Rinku Valanju, Advocate with Ms. Hiral Shah, Advocate for the Appellant.

Mr. Vishal Kanade, Advocate with Mr. Chirag Bhavsar, Advocate i/b MDP & Partners for the Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer
Dr. C.K.G. Nair, Member

Per: Justice J.P. Devadhar (Oral)

1. Appellant is aggrieved by the order passed by the Adjudicating Officer (“AO” for short) of the Securities and Exchange Board of India (“SEBI” for short) on 27.11.2017. By the said order penalty of ₹ 15 lac is imposed on the appellant under Section 15 G of the Securities and Exchange Board of India Act, 1992 (“SEBI Act”) for violating regulation 3(i) and (4) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (“PIT Regulations” for short) read with Section 12A (d) and (e) of the SEBI Act.

2. Appellant is the Promoter and Non-Executive Director of Mudit Finlease Limited (“Company” for convenience). Husband of the appellant Mr. Pavel Garg is Promoter/Managing Director/ Compliance Officer of the company.

3. Relevant facts admitted by the company in its letter dated 30.01.2015 are as follows:-

- a) On 01.02.2012 accountant of the company finalized the financial result for the quarter ended December 2011.
- b) On 02.02.2012 the company issued notice of Board Meeting for considering the financial results for the quarter ended December 2011.
- c) On 13.02.2012 statutory Auditors completed the limited review of the financial results and presented the same for further review by the Audit Committee and for consideration of the Board of Directors.
- d) On the same day i.e. on 13.02.2012 the financial results were reviewed by the Audit Committee and the same were taken on record by the Board of Directors at their meeting.

e) On the same day i.e. on 13.02.2012 the Board including the appellant met at 10:30 a.m. and approved the financial results.

f) On 21.02.2012 official public announcement was made to the Stock Exchange in relation to the financial results for the quarter ended December 2011.

4. It is not in dispute that finalizing the financial results is a price sensitive information and till that information is made known to the public, it continues to be Unpublished Price Sensitive Information (“UPSI”).

5. In the present case, the AO has recorded a finding that on 02.02.2012 when the Managing Director (husband of the appellant) issued a notice convening the Board Meeting for considering the financial results, Price Sensitive Information (“PSI”) under the PIT Regulations came into existence and that information continued to be UPSI till it was informed to the Stock Exchange on 21.02.2012.

6. Admittedly, the appellant had sold 15000 shares, 14,900 shares and 12,600 shares of the company on 07.02.2012, 08.02.2012 & 15.02.2012 respectively. By the impugned order the AO has held that Mr. Pavel Garg (Promoter/ Managing Director/ Compliance Officer of the company) and the appellant (wife of Mr. Pavel Garg) being ‘insider’ under the PIT Regulations, sale of the shares of the company by them during the UPSI was in violation of the PIT Regulations and SEBI Act.

7. Mr. Pavel Gag, (husband of the appellant) had also filed appeal against the impugned order. However, that appeal is withdrawn by Mr. Pavel Garg today i.e. on 22.03.2012.

8. Ms. Valanju, learned counsel appearing on behalf of the appellant did not dispute that the appellant was an 'insider' under the PIT Regulations, however, submitted that the impugned order cannot be sustained for the following reasons:-

- a) Notice dated 02.02.2012 convening the Board Meeting on 13.02.2012 was neither served on the appellant nor the same was available in the public domain. Thus, the appellant being a Non-Executive Director of the company was not aware of the finalization of account on 01.02.2012 and issuance of the alleged notice dated 02.02.2012. Appellant came to know about the UPSI on 13.02.2012 when the appellant was orally informed about the Board Meeting fixed at 10:30 A.M. on 13.02.2012 for considering the PSI viz., approving the quarterly financial results.
- b) Regulation 41 (III), (b) of the Listing Agreement provides that the notice convening the Board Meeting Scheduled for considering the financial results must be published in at least one English daily newspaper and one daily newspaper in the language of the

region. In the present case, the company had not published the notice convening the Board Meeting on 13.02.2012 and therefore, appellant could not be said to be in possession of UPSI till 13.02.2012. Consequently, sales effected by the appellant on 07.02.2012 and 08.02.2012 cannot be said to be sales effected when in possession of UPSI.

- c) As per Clause 41 (VI) of the Listing Agreement and as per Clause 7 in the Second Schedule to the PIT Regulations, the company on 15.02.2012 had published the quarterly results. Therefore, sales effected by the appellant on 15.02.2012 could not be said to be when in possession of UPSI.
- d) Under Clause 41 (I) (f) of the Listing Agreement the financial results are required to be submitted to the Stock Exchange within 15 minutes of conclusion of Board Meeting in which the financial results are approved. Similarly, as per Clause 3.2.4 of Schedule 1, Part A of PIT Regulations the trading window shall be opened 24 hours after the declaration of financial results. Appellant was not aware that the financial results approved on 13.02.2012 were not intimated to the Stock Exchange. Therefore, the appellant was justified in considering that on 14.02.2012 i.e. 24 hours after the financial results were approved, the

UPSI came to an end. Consequently, sales effected on 15.02.2012 cannot be said to be in violation of PIT Regulations.

- e) Appellant was not involved in the finalization of the financial results for the quarter ended December 2011. Therefore, the appellant cannot be said to be in possession of UPSI relating to finalization of financial results. Consequently, the appellant cannot be said to have violated the PIT Regulations.

9. We see no merit in the above contentions.

10. Under regulation 2(e) (i) of the PIT Regulations, an ‘insider’ is inter alia a person who is or was connected with the company and who is reasonably expected to have access to UPSI in respect of the securities of the company. In the present case, very fact that the appellant is a Promoter/Non- Executive Director of the company and her husband is also a Promoter/ Managing Director/ Compliance Officer of the company is sufficient to hold that the appellant is an ‘insider’ and was privy/ reasonably privy to the PSI which came in to existence on 02.12.2012. Section 3 of the PIT Regulations prohibits an insider to deal in the securities of the company when in possession of UPSI. Therefore, in the facts of present case, decision of the AO that the appellant by selling the shares of the company when in possession of UPSI has violated the PIT Regulations cannot be faulted.

11. Counsel for the appellant has enumerated various violations committed by the company in relation to serving/ publishing the notice convening the Board Meeting for considering the financial results and also violation relating to closing of trading window during UPSI. Admittedly, the appellant is the Promoter/ Non-Executive Director of the company and her husband is the Promoter/ Managing Director/ Compliance Officer of the company. In such a case, it is not open to the appellant to feign ignorance about the PSI and take shelter under the violations committed by her husband as Promoter/ Managing Director/ Compliance Officer of the company. Therefore, in the facts of present case, decision of the AO that the appellant sold the shares of the company when in possession of UPSI in violation of the PIT Regulations cannot be faulted.

12. Penalty imposable for such violations under Section 15G of SEBI Act is up to ₹ 25 crore. However, in the facts of present case, after considering all mitigating factors, the AO has imposed penalty of ₹ 15 lac which cannot be said to be excessive or unreasonable.

13. In the result, we see no merit in the appeal.

14. Accordingly, the appeal is dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member