IN THE SECURITIES APPELLATE TRIBUNAL AT MUMBAI

DATED THIS THE 10th DAY OF OCTOBER, 2024

CORAM : Justice P. S. Dinesh Kumar, Presiding Officer
Ms. Meera Swarup, Technical Member
Dr. Dheeraj Bhatnagar, Technical Member

Appeal No. 314 of 2021

Between

1. Affluence Fincon Service Pvt. Ltd.
   A-6, 4th Floor, Safal Profitaire,
   Corporate Road, Pralhadnagar,
   Ahmedabad, Gujarat – 380051.

2. Amee Dhiren Shah
   T-31, Sambhav Simandhar City,
   Trimandar Sankul, Adalaj,
   Gandhi Nagar, Gujarat – 382 421.

3. Dhiren Mahendrakumar Shah HUF
   T-31, Sambhav Simandhar City,
   Trimandar Sankul, Adalaj,
   Gandhi Nagar, Gujarat – 382 421.

…. Appellants

Mr. P. N. Modi, Senior Advocate with Mr. Kunal Katariya, Mr. Sahebrao Wamanrao Buktare, Ms. Ashmita Goradia, Mr. Shubham Sawant, Advocates and Mr. Shardul Shah, Chartered Accountant i/b Shah & Ramaiya, Chartered Accountants for the Appellants.

And

Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.

…. Respondent

Mr. Sumit Rai, Advocate with Mr. Manish Chhangani, Mr. Atul Kumar Agrawal, Mr. Abhay Chauhan, Mr. D Kalyan Reddy, Advocates i/b The Law Point for the Respondent.

THIS APPEAL IS FILED UNDER SECTION 15T OF SEBI ACT, 1992 TO SET ASIDE ORDER DATED APRIL 27, 2021 (EX-A) PASSED BY AO, SEBI.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS ON JULY 11, 2024, COMING ON FOR PRONOUCEMENT OF ORDER THIS 10TH DAY OF OCTOBER 2024, THE TRIBUNAL MADE THE FOLLOWING:

O R D E R

Per : Dr. Dheeraj Bhatnagar, Technical Member

This appeal has been jointly filed by M/s. Affluence Fincon Services Pvt. Ltd. (Appellant no. 1), Mrs. Amee Dhiren Shah (Appellant no. 2) and Dhiren Mahendrakumar Shah HUF through its

Karta, Mr. Dhiren Shah (Appellant no. 3), against the order dated April 27, 2021 passed by the WTM[1], SEBI[2] under Section 11(1), 11(4) 11B (1) and (2) of the SEBI Act, 1992[3] read with SEBI (PIT Regulations), 2015[4].

2. Brief facts of the case are as under:-

Mr. Dhiren Shah is engaged in the business of trading in shares and securities. He is a Director in various group companies, *namely*, M/s. Affluence Fincon Services Pvt. Ltd. (Appellant No. 1) and M/s. Affluence Shares and Stock Pvt. Ltd. (hereinafter referred to as 'ASSPL'), the latter is engaged in the business of providing share-broking services. Appellant No. 2 Mrs. Amee Dhiren Shah is wife of Mr. Dhiren Shah. Mr. Dhiren Shah is also the Karta of Dhiren Mahendrakumar Shah HUF (Appellant No. 3). Admittedly, Mr. Dhiren Shah generally takes investment decisions on behalf of the appellant Nos. 1 and 2. All three appellants, Mr. Dhiren Shah and ASSPL are referred to as "Dhiren Shah Group".

2.1 M/s. IAL[5] and M/s. IMGPL[6] are another set of companies promoted by one Mehta Family ("Mehta Group"). In IAL, Mr.

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1 WTM – Whole Time Member
2 SEBI – Securities and Exchange Board of India
3 SEBI Act, 1992 (Securities and Exchange Board of India Act, 1992)
4 SEBI (Prohibition of Insider Trading) Regulations, 2015
5 M/s. IAL (Infibeam Avenues Ltd.)

Vishal Mehta is the MD; his brother Malav Mehta is a non-executive director; their father Mr. Ajit Mehta is the Chairman and their mother Jayshree Mehta is a promoter-shareholder. IAL is engaged in the e-commerce business. Mr. Malav Mehta is Director in another Mehta group company namely IMGPL.

2.2 **Relationship between Dhiren Shah group and Mehta group –**

Prior to listing of IAL, Mr Dhiren Shah and his wife (Appellant No. 2) had made investment of Rs 49.99 Crore in preferential shares in IAL. Further, M/s ASSPL (a Dhiren Shah group company), a share broking firm - provided services to IMGPL (a Mehta group company) for trading in the shares of IAL. Based on these findings, the appellants have been held as *insiders* under the PIT Regulations in respect of their trading in shares of IAL.

2.3 SEBI had carried out investigation to ascertain whether certain Group of persons/entities had traded in the scrip of IAL while in possession of Unpublished Price Sensitive Information ('UPSI') during November 22, 2016 till June 26, 2017 (hereinafter referred to as 'investigation period'), in contravention of provisions of Section 12A of the SEBI Act and PIT Regulations, 2015.

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[6] M/s. IMGPL (Infinium Motors (Gujarat) Pvt. Ltd.)

2.4 Based on the investigation, a show cause notice-cum-impounding order dated August 24, 2020 was issued to appellants, wherein, *prima-facie* inference was drawn that Dhiren Shah group entities were connected to the promoters/ directors/ KMPs of IAL and had access to UPSI, while trading in the scrip of IAL during the investigation period. Vide the aforesaid *ex-parte interim* order dated August 24, 2020, the respondent issued directions for impounding notional unlawful gains of Rs. 2.61 Crore and restrained the Appellants from disposing of any assets.

2.5 The appellants challenged the aforesaid *ex-parte interim* order in Appeal 269 of 2020 before this Tribunal and vide order dated September 7, 2020, this Tribunal has

a) set aside the said ad interim ex-parte order;

b) directed the Appellants to-

1. file reply before SEBI; and

2. make an FD for Rs. 2.61 Cr; and

c) directed the SEBI not to encash the FD till 3 months after the passing of the final order.

2.6. Subsequently, the Ld. WTM passed the final order on April 27, 2021, whereby Appellants were held to have violated PIT

Regulations and Section 12A(d) and (e) of the SEBI Act, 1992, and in view of this, were:

a) restrained from accessing securities market for 1 year;

b) restrained from dealing in scrips of IAL for 2 years;

c) levied penalty of Rs. 15 Lakhs (separately on each appellant); and

d) directed to deposit the following amounts as disgorgement of unlawful profits made in IAL shares by way of insider trading:

Appellant	Amount (in Rs.)
(i) Appellant No. 1:	Rs. 2,00,46,131.20
(ii) Appellant No. 2:	Rs. 24,50,030.65
(iii) Appellant No. 3:	Rs. 35,96,924/-.

The present Appeal challenges this final order dated April 27, 2021.

3. In passing the impugned order, the Ld. WTM has reached to the above findings based on the following observations :

3.1 On June 26, 2017, IAL made a corporate announcement with the Stock exchanges for holding a board meeting on July 13, 2017, with an agenda for '*issue of splitting of 1 equity share of the face value of Rs. 10/- per share into 10 equity shares of face value of*

Rs. 1/- per share'. The discussion for finalizing agenda items for the proposed Board meeting was held on June 24, 2017 but the decision was disclosed to stock exchange on June 26, 2017 due to stock exchange holidays. Considering that the information of 'splitting of shares' was material and likely to impact on the market price of the IAL shares (by improving its affordability for the investors), such information was held to be "Unpublished Price Sensitive Information" (UPSI) under the PIT regulations. Accordingly, trading window was closed for directors, promoters, KMPs and employees from June 27, 2017 till 48 hours after the scheduled Board meeting.

3.2 The investigation by SEBI revealed that the UPSI had actually come into existence for the first time on November 22, 2016 itself (and not on June 26, 2017), when a PPT presentation was made by the Chief Financial Officer (CFO) Mr. Hiren Padhya before Mr. Vishal Mehta, the MD of IAL. Through the said PPT, copy of which was made available to us by the appellant in their rejoinder, the CFO gave initial introduction of the concept of stock split with its advantages and disadvantages. In view of this, it was alleged in the SCN and later in the impugned order that the UPSI had come into existence on November 22, 2016 and accordingly the "UPSI period" commenced from November 22, 2016 till June 26, 2017 when the information was made public. Further, it was also found that

Appellants no. 1, 2 and 3 had significantly traded in the scrip of IAL during the said UPSI period.

3.3 Based on the facts ascertained as in Para 1.3 above, the Ld. WTM held the Appellants as "connected persons' within the meaning of the PIT Regulations and that - through Mr. Dhiren Shah, appellants had access to the above-mentioned UPSI, while they traded in the scrip of IAL. This finding was based on the following reasoning:-

(i) Mr. Dhiren Shah and Mrs. Amee Dhiren Shah (appellant no. 2) each were allotted 5,88,235 preferential shares in IAL, by the promoters of IAL during pre-IPO preferential allotment made in 2014. As confirmed by the Company Secretary, Mr. Shyamal Trivedi in his statement, such an allotment is made when promoters reach out to the allottees or *vice versa* and Mr. Vishal Mehta had personally reached out to some of the investors, though no specific reference was made with regard to Mr Dhiren Shah and Mrs. Amee Shah in the statement of Mr. Trivedi.

(ii) The other Mehta group company, i.e. IMGPL was a client of ASSPL (another Dhiren shah company engaged in share broking and advisory services). [Though the SCN incorrectly

mentions the name of Appellant no. 1 in place of ASSPL, the same has been amended in the final order passed by the WTM].

(iii) The appellants did not deal in the shares of IAL in the pre-UPSI period.

(iv) Considering appellant's trading pattern, it was held that the appellant's investment decisions were guided by access to the UPSI. It was alleged that appellant had significantly traded in IAL scrip from April 3, 2017 to June 22, 2017 during the UPSI period, which shows that they had access to UPSI.

Table - 1 Trading of Dhiren Mahendrakumar Shah HUF, Amee Dhiren shah and Affluence Fincon Service (P) Ltd. (Dhiren Group)

Trade date(s)	***Buy quantity***	***Weighted Average Purchased Value (Rs.)***	***Sell Quantity***	***Weighted Average Sell Value (Rs.)***
Prior to UPSI Period (August 1,2016 to November 21,2016)				
No trades observed by Dhiren Mahendrakumar Shah HUF, Amee Dhiren Shah and Affluence Fincon Service (P) Ltd				
During UPSI Period (November 22,2016 to June 26, 2017)				
Dhiren Mahendrakumar Shah HUF				
01-Jun-17	*40,016*	*3,84,13,873.55*	*0*	*0*
Amee Dhiren Shah				
05-June-2017	*50,000*	*4,99,94,976.45*	*0*	*0*
19-June-2017	*50,000*	*5,25,39,992.90*	*0*	*0*
Affluence Fincom Service (P) Ltd				
03-Apr-17	*3,00,000*	*28,05,00,000.00*	*0.00*	*0.00*
04-May-17	*0.00*	*0.00*	*1,00,000*	*10,38,94,280.50*
17-May-17	*0.00*	*0.00*	*2,00,000*	*19,80,05,585.50*
07-Jun-17	*2,00,000*	*19,70,99,995.60*	*0.00*	*0.00*
09-Jun-17	*42,000*	*4,16,45,100.00*	*0.00*	*0.00*

13-Jun-17	*75,000*	*7,48,12,500.00*	*0.00*	*0.00*
15-Jun-17	*25,000*	*2,52,74,973.20*	*0.00*	*0.00*
21-Jun-17	*25,000*	*2,63,87,500.00*	*0.00*	*0.00*
22-Jun-17	*25,000*	*2,62,75,000.00*	*0.00*	*0.00*
Total (Affluence)	***6,92,000***	***67,19,95,068.80***	***3,00,000***	***30,18,99,866.00***
Total (Dhiren Group)	***8,32,016***	***81,29,43,911.70***	***3,00,000***	***30,18,99,866.00***

(v) There was a price rise of 1.46% (on BSE) and of 1.25% (on NSE) in the IAL shares after the announcement dated June 27, 2017, which shows that the information was price sensitive and appellants' decision to make investment in IAL shares during the UPSI period was guided by the UPSI as they had access to the UPSI. Reliance was placed on the stock split in the case of HDFC Bank, Eicher Motors, Britannia Industries, in which price rise was noted with the stock split.

(vi) As per the information provided by IAL vide letter dated June 21, 2019, Mr. Vishal Mehta, MD was the person having access to the UPSI of IAL. The Ld. WTM held that as ASSPL (Director: Mr. Dhiren Shah) was the share-broking firm for IMGPL (MD: Malav Mehta, brother of Mr Vishal Mehta), the appellants had access to the UPSI of IAL through Mr. Malav Mehta, with whom Mr. Dhiren Shah was held to be a 'connected person'.

3.4 Based on the above, it was held that the appellants had made unlawful gains by trading in the scrip of IAL during the UPSI period.

4. Before us, the appellants raised following grounds of appeal:-

a) Appellants were supplied with redacted version of the investigation report, in violation of principle of natural justice.

b) Appellants are not *insiders* in terms of the PIT Regulations.

c) 'Connection' cannot be established in 2016-17, on the basis of the preferential allotment done in 2014.

d) 'Connection' cannot be established on the basis of IMGPL being a client of Affluence (Appellant no. 1).

e) Respondent has not discharged its burden to prove nor shown the preponderance of probabilities that the appellants were "connected persons" or "insiders" in terms of the PIT Regulations, 2015.

f) A stock split cannot be said to be UPSI.

g) Direction for disgorgement cannot be made on the basis of *notional* gains (as significant number of IAL shares acquired by the appellants have not been sold).

4.1 On the merits of the case, the Learned Senior Advocate for the appellants vehemently argued that the possibility of stock split was only an idea under discussion on November 22, 2016, when CFO made a presentation to the MD. The same was not discussed before the Board of directors nor was any decision taken in the matter. Therefore, no UPSI could be held to have existed on November 22, 2016. It was submitted that the appellants had furnished detailed chronology of events in relation to the said announcement for stock split. They have furnished the details of IAL meetings in the matter, through the rejoinder as under :-

Table – 2 Chronology of Events

Date	***Discussions (Phone/ meetings/ approvals etc.)***	***Event Details***	***Name, Designation of the person(s) associated with event***	***Proof***
22.11.2016	*Meeting*	***Initial introduction and understanding of stock split concept with advantages and disadvantages and with real life examples***.	*Mr. Vishal Mehta -MD and Mr. Hiren Padhya – CFO*	*Presentation by the CFO*
20.03.2017	*Meeting*	• *Review impact of Goods and Services Tax* ***("GST")*** *on economy and business budget.* • *Analysed budget for next fiscal, along with* ***sensitivity analysis to many scenarios*** *including but not limited to impact of demonetization, GST,* ***share split****, dividends, etc.*	*Mr. Vishal Mehta -MD and Mr. Hiren Padhya – CFO*	-
24.06.2017	*Meeting*	*It was discussed and proposed that since the Board meeting was going to be held in July, 2017 for approval of SAR scheme and the Scheme of Merger, it would be better to* ***include an agenda item on split of equity shares and process to be followed*** *for discussion of split*	*Mr.Vishal Mehta –MD; Mr. Hiren Padhya -CFO; and Mr. Shyamal Trivedi - CS*	-

		ratios and consideration of the entire Board. *Main objective was to improve the liquidity of equity shares with higher floating stocks and to make the equity shares more affordable to the investors.*		
26.06. 2017	*Intimation/ Corporate/ Announcem ent*	*Announcement related to split of equity shares to be discussed in Board meeting.*	*Mr.Vishal Mehta –MD;* *Mr. Shyamal Trivedi – CS*	*Board meeting Intimation to stock Exchange*
26.06.2017	*Email*	*Trading window closure for directors, promoters, KMP(s), employees and other connected persons.*	*Mr.Vishal Mehta –MD* *Mr. Shyamal Trivedi – CS*	*Email Dated 26.06.2017*
27.06.2017 to 15.07.2017	*TRADING WINDOW CLOSURE*			*Stock Exchange Announcem ent*

4.2 The Ld. Senior Advocate also argued that stock split in any event cannot be held as UPSI, as no money was raised nor assets acquired or was there any change in capital structure through stock split and only the Face Value of existing shares was sub-divided.

4.3 It was also argued that the announcement made about stock split on June 27, 2017 had minimal impact on the share price of IAL, which increased by 1.46% on BSE and 1.25% on NSE with an increase in trading volume by 11.71% on BSE and decline of 9.61% on NSE. It was argued that such a price movement is normal, irrespective of any UPSI. The learned senior Advocate urged that during 2016 and 2017 on BSE & NSE, there were 48 instances when change in price of IAL shares was more than 1.46% and 54 instances when price change was more than 1.25%, which implies that the said

UPSI had insignificant effect on the price, after the same was made available to public. Furthermore, countering the allegation with the rise in price of IAL shares was more than the movement in SENSEX and NIFTY on June 27, 2017, it was argued that this is an untenable argument with unnecessary emphasis on movement of price in any scrip to be in line with the index, which are derivatives of all scrips traded.

4.4 Further, refuting the examples of post stock split price rise in other cases relied upon in the impugned order, i.e. HDFC bank, Eicher Motors, Britannia Industries, etc., it was argued that in such companies, the rise was after actual implementation of the stock split and not at the time of making the information available to public. It was argued that since IAL had closed its trading window from June 26, 2017 to July 15, 2017, it implies that there was no UPSI prior to June 26, 2017.

4.5 With regard to the alleged ‘connection’, the Learned Senior Advocate strongly argued that there is no co-relation between the Dhiren Shah group and Mehta group and there has been no allegation that appellants had any contact with any promoters/management of IAL. With regard to the reasoning given for existence of ‘connection’, that appellant No. 2 and her husband Mr Dhiren Shah

were pre-IPO allottees of preferential shares of IAL in 2014, for which subscription was made through direct interaction between the two group entities, it was argued that IAL had furnished before SEBI, details of preferential allottees, as per Companies (Shares Capital and Debentures) Rules, 2014, which were classified as 'unrelated parties' or 'promoters', and the appellants were shown as "Unrelated parties" in the list of 2014 preferential share allottees. The learned Senior Advocate argued that purported conclusion is based on wrong interpretation that preferential allottees are "connected persons" within the meaning of the PIT Regulations. It was argued that the investment in IAL shares was based on enormous growth potential of IAL and such bonafide acquisition cannot be a ground for subsequently holding that the appellants had access to UPSI in 2016-17.

4.6 With regard to the definition of "insider" it was argued in the ex-parte interim order (which was to be treated as SCN) appellants were held as insiders by being "connected persons" as per Regulation 2(1)(g)(i) whereas in the impugned order, that the appellants are treated as insiders being allegedly in possession of or having access to UPSI under Regulation 2(1)(g)(ii). It was submitted that the same amounts to gross violation of natural justice and a total deviation in the charge. Further, it was urged that there is not a shred of evidence

to support the allegation that the appellants had possession of or access to the alleged UPSI.

4.7 The Ld. Senior Advocate contended that in the impugned order, the Ld. WTM paid no credence to the clear finding given in SEBI's Investigation report (page 22) that 'based on UCC/KYC details, off-market transactions, broker's replies and bank statements, no connection was found between Dhiren group with other suspected entities or directors/promoters of the company IAL.

4.8 It was submitted that in the impugned order, it is alleged that after the disclosure of the UPSI, the market rate reached to Rs. 1049.85, which was higher by 1.46% compared with the last closing price on BSE.

4.9. The Ld. Senior Advocate drew our attention to the details of trades made by the appellants [Table – 1 at para 3.3(iv)], which was also reproduced in the impugned order and submitted that Affluence had sold off 3 lakh shares during the alleged UPSI period and made significant profit, much before the said UPSI was made public and that bulk of shares are still being held by the appellants as on date.

4.10 It was submitted that the appellants started trading in IAL only in April 2017, since in the last week of March 2017, the market prices had fallen by approximately 35% and, therefore, it was considered a good opportunity to buy additional shares of IAL and additional shares were brought in tranches to average the cost. With regard to the directions in the impugned order for disgorgement of notional profit and gains made by the appellants, it was argued that 2,77,020 shares were still held by the appellants, and hence the appellants had not made profits thereon.

4.11 It was also submitted that prior to UPSI was made public on June 27, 2017, the price of IAL had already reached/exceeded Rs. 1049.85 and shares had been bought by the appellants at higher prices on at least 3 days i.e. at Rs. 1051/- on June 19, 2017 and on June 22, 2017 and at Rs. 1056/- on June 21, 2017. In view of this, it was argued that the alleged UPSI was not price sensitive, and hence, the allegation of notional or illegal gain due to the trades being guided by in UPSI is baseless. Our attention was drawn to the judgment of this Tribunal in the case of ***Dhyana Finstock Ltd. vs. SEBI***[7], and it was argued that disgorgement cannot be directed based

[7] Dhyana Finstock Ltd. vs. SEBI (Appeal No. 299 of 2021 decided on June 10, 2022)

on notional gains and it was prayed that the impugned order may be set aside.

5. Refuting the arguments of the appellants, following submissions were made by the respondent :-

(i) That the contention that mere possibility of a stock-split is not price sensitive information is untenable. Events such as stock-split, declaration of bonus etc. are well known to have impact on the scrip price both when the event is discussed and when the event actually happens. Reliance was placed on the decision of this Tribunal in the matter of ***Ms. Pallavi Navinchandra Mehta & Ors. vs. SEBI,***[8] and argued that the day on which discussions took place on the possibility of a buy-back by the company, was the appropriate starting point to consider it as the UPSI.

(ii) The contention that there was already an upward trend in IAL price and therefore the stock-split announcement had no impact on the price of the scrip, is incorrect. As per the definition of UPSI under Regulation 2(1)(n), it is the *likelihood* of an information which may *materially* affect the

[8] Ms. Pallavi Navinchandra Mehta & Ors. vs. SEBI (Appeal No. 606 of 2021 decided on February 6, 2023)

price of the securities and not the actual impact caused by it which makes it as price sensitive information.

(iii) With regard to the contention that the impugned order does not look into the fact that the prices had increased within the month on other trading as well, it was argued that the impact of an event such as a possible stock split can only be assessed with reference to the micro trend which can be seen from the price movement witnessed immediately before and after publication of such information. The impugned order shows that three days prior to the announcement of stock-split i.e. on June 27, 2024, the price of the scrip had decreased, even though the Market indices had increased. Such downward trend in the scrip of IAL had reversed immediately on the day of announcement when price of the scrip increased even though the market index had decreased.

5.1 We have heard both sides at length and considered the facts of the case and perused the records.

5.2 The respondent has held appellants no. 1, 2 and 3 (of Dhiren Shah group) as insiders qua the IAL Ltd (a public company promoted by Mehta group) under Sec. 2(g)(ii) of the PIT Regulations; and held that their dealings in the scrip of IAL during the UPSI period (from

22.11.2016 till 27th June, 2017), were guided by their access to the UPSI.

In the light of rival contentions, following points arise for our consideration.

A. Whether the information of stock split could be inferred as UPSI in nature? If so, on which day UPSI commenced?

B. Whether the appellants can be held as 'insiders' within the meaning of PIT regulations?

Reg. - A. Whether the information of stock split could be inferred as UPSI in nature?

5.3 It is appellants' case that the information regarding the '*Stock split'* cannot be called as Price Sensitive Information within the meaning of the PIT Regulations and that, as on November 22, 2016, no information came into existence, which may be termed as Unpublished Price Sensitive information qua IAL.

5.4 The term *"unpublished price sensitive information" has been defined in Clause (n) of section 2 of the PIT Regulations as under :-*

> *(n) "unpublished price sensitive information" means any information,* ***relating to a company or its***

> ***securities,*** *directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following : –*
>
> *(i) financial results;*
> *(ii) dividends;*
> *(iii)* ***change in capital structure;***
> *(iv) Mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;*
> *(iv) changes in key managerial personnel.*
>
> *NOTE:*
>
> *It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain.*
>
> *The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.*

5.5 On careful consideration of rival submissions, we are in agreement with respondent's contention that splitting of stock *per se* is a Price sensitive information, since splitting of stock is an important decision for a company, (requiring approval of general body of shareholders under Section 61 of the companies Act, 2013), which is intended to improve the liquidity of stock and its affordability, which is likely to make an impact on price. In our considered view, splitting of shares results in shares of smaller face

value, which makes the shares affordable, and thereby allows new sets of shareholders to come into picture with the resulting impact on demand and liquidity, that is likely to influence the price trends. Further, instances of three cases of stock split brought out by the respondent show that it resulted in price rise on the day of split, compared to the previous day:

5.6 In our view the appellant's argument that there was insignificant price rise of 1.46% on BSE and of 1.25% on NSE on June 27, 2016 upon disclosure of the information compared to the previous trading day, is not relevant as it is the *likelihood of materially* affecting the price of the securities, which is the main factor to determine price sensitivity of information and not actual price rise. In holding so, we are guided by this Tribunal's decision in the case of **ICICI Bank Ltd. Vs. SEBI**[9] wherein it is held as under :-

> *"What is relevant for disclosure is the materiality and the ex-ante possibility of impacting prices of the securities, which may not come true ex-post due to several other factors affecting the company concerned or/and the securities market in general".*

[9] ICICI Bank Ltd. Vs. SEBI (Appeal No. 583 of 2019 decided on July 8, 2020)

Lastly, in appellant's own admission, the information regarding stock split was UPSI, which in their view, came into existence on June 26, 2017 and was hence disclosed on the same date. If it were not a price sensitive information, there was no need to close the trading window.

On which day UPSI commenced ?

The next question that falls for consideration is on which date UPSI period started?

5.7 According to the SEBI, UPSI came into existence on November 22, 2016, as was held by the Ld. WTM. It was submitted on behalf of the appellants that on November 22, 2016, there was a mere discussion of the concept of stock split between the MD and the CFO and that the discussion remained between the MD and the CFO until June 24, 2017, when the company made due disclosure regarding the proposed Board meeting to discuss the subject of the UPSI, as an agenda item. In this regard, the Ld. Senior Advocate submitted that in the SCN and the Impugned Order, respondent has surreptitiously omitted the column in relation to '*who was involved in the discussion'*, while the said column was present in the chronology submitted by IAL to the Respondent, which was supplied to the

Appellants at the time of inspection of documents. A copy of the same was furnished before us as Exhibit "A" to the rejoinder.

5.8 Relying upon Exhibit ‘A’, it was submitted that on November 22, 2016, the CFO made a general presentation before the MD in a one to one meeting to explain to him the general concept of stock split. A copy of the Powerpoint presentation made by the CFO was furnished before us as Exhibit-B to the Rejoinder affidavit. It was submitted that the said presentation was not specific to the company. It was informed that, later in the internal discussions of IAL held on March 20, 2017, along with discussions on other issues such as demonetization, GST, Union Budget, etc., the issue of stock split was discussed with a view to increase the liquidity of shares and to make equity shares more affordable. It was also decided to place the agenda pertaining to stock split in the next meeting of the board for its consideration. The said information about stock split was treated as a price sensitive information by IAL when it was decided to hold a Board meeting and accordingly, trading window was closed from June 26, 2017 to July 15, 2017 i.e. till 48 hours after the proposed board meeting on July 13, 2017.

5.9 On careful consideration of the facts and in particular the contents of presentation made by CFO to the MD of IAL on

November 22, 2016 (which is the only documentary evidence with regard to the meeting in question), in our view on that date, the MD of IAL was at best appraised by the CFO about general concepts relating to Stock split. The presentation was made in a one-to-one meeting and covered impact of stock split, advantages/disadvantages, etc. without any specific analysis of impact of stock split of IAL.

The term "Unpublished Price sensitive Information" as per Section 2(n) of PIT Regulations is defined as- *".. any information,* ***relating to a company or its securities,*** *directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities….."*.

It is evident that in the meeting held on November 22, 2016, the discussion was in the nature of a general briefing on the concept of stock split, without any specific reference to *securities of IAL*. Hence it cannot be held that the UPSI period started from November 22, 2016. Nevertheless, in subsequent 'one to one' meeting between the MD and CFO held March 20, 2017, the discussion specifically included '*analysis of budget for next fiscal, along with sensitivity analysis to many scenarios including but not limited to impact of demonetization, GST, share split, dividends, etc*.'. Since this discussion was specifically with regard to the stock split for company

IAL, it may be construed that the UPSI period started from March 20, 2017.

Reg. B - Whether the appellants can be held as 'insiders' within the meaning of PIT regulations?

6. Having held that the UPSI period commenced from March 20, 2017, we need to decide whether the appellants may be termed as *Insiders* within the meaning of Section 2(g)(ii) of the PIT Regulations, and whether they had *access* to the UPSI while undertaking transactions in the scrip of IAL, as held by the Ld. WTM.

6.1 The SEBI PIT Regulations, 2015 define an "insider" 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 information. 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 levelling 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 he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances.*"

6.2 There is no dispute that all four entities of Dhiren shah group namely, the appellants No. 1, 2 and 3 and Mr. Dhiren Shah himself are connected with each other. Similarly, there is no dispute regarding connection amongst various Mehta Group entities namely; Mr. Vishal Mehta, promoter and Managing Director of IAL, his brother Malav Mehta, director of IMGPL, and the two Mehta group companies namely; IAL and IMGPL. The issue in question is whether the appellants may be held as 'connected person' qua the Mehta group.

6.3 In the SCN, the appellants were alleged as *insiders* within the meaning of Reg. 2(1)(g)(i) of PIT Regulations, being '*connected persons'* [as defined under Reg. 2(1)(d)], who were reasonably expected to have access to UPSI. The fulcrum of the aforesaid connection was alleged to be Mr. Dhiren Shah, director of ASSPL, a company engaged in providing share broking and advisory services, which was alleged to have provided such services to IMGPL, a group

company of IAL. The second reasoning for alleging the said connection was significant investment of Rs 49.99 Crore by Mr. Dhiren Shah and Mrs. Amee Shah in IAL in 2014, in pre-IPO allocation of its preferential shares.

6.4 It was urged on behalf of the appellants that preferential allotment in IAL was made in 2014 and that IMGPL traded only in the scrip of IAL through ASSPL on October 19, 2017 and hence keeping in view the definition of 'connected person' as in Regulation 2(1) (d) of PIT Regulations, they cannot be held as '*connected person'* with IAL. Under the said regulation, *connected person" means,* -

> *"(i) any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access…."*

Thus, Appellants' case is that they are not *connected persons* within the above definition, as the preferential allotment in IAL was made in 2014 (two years prior to start of UPSI period) and secondly,

IMGPL's trade in IAL scrip through ASSPL was in October 2017 (four months after the UPSI period).

6.5 As per the explanatory notes to Regulation 2(1)(g) *"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 levelling the charge".*

In order to treat the appellants as *insiders* under Regulation 2(1)(g) (ii), Ld. WTM has referred to the disclosure requirements under Companies (Share Capital and Debenture Rules, 2014), which requires an issuer company to disclose the names of the preferential share allottees. In his view, this implies that the company knew the prospective allottees and held that a *relationship* could be established between Mr. Vishal Mehta (MD, IAL) and the appellants. The second reasoning given for establishing the connection was that IMGPL was a client of ASSPL.

6.6 In our considered view, none of the above reasonings, directly or indirectly, suggest that appellants were *in possession of* or *had access to* the aforesaid UPSI at the time of trading in IAL scrip. With regard to the first reasoning relating to the pre-IPO allocation of preferential shares of IAL in 2014 for Rs. 49.99 crores, the Ld. Senior advocate for the appellants furnished a list of all such

allottees, which was filed in compliance of the Companies (Share capital and debenture) Rules, 2014. The list shows that apart from the Appellant No. 2 and her husband, there were more than 80 such allottees, who had subscribed to the preferential allotment. The last column of the prescribed form makes disclosure of such allottees as 'Unrelated party' or 'promoter / promoter group'. Majority of such preferential allottees including appellant No. 2 and her husband were shown as 'unrelated party'. Therefore, in our view, in contrast with the 'promoters', such unrelated parties cannot be held as 'connected persons', unless otherwise provided in the regulation.

Further, in establishing the connection, the Ld. WTM presumes that a *relationship* is developed between the company/promoters with preferential allottees, since such subscription was through personal reach. However, such an undefined '*relationship*' cannot be construed to be in the nature of 'connection' within the meaning of Regulation 2(1)(d). It is generally seen that prior to listing, subscription to its capital comes through reaching out to potential investors, directly or indirectly, since till the company remains unlisted, the benefit of the faceless digital platform of Stock exchange is not available to it. The assumption that in that process *relationship* is built among the

investors, which may make them *insiders* is only an assumption and lacks credence.

6.7 The Second reasoning that IMGPL was a client of ASSPL- a share broking firm of Dhiren Shah group- also falls flat, as the only transaction ASSPL carried out for IMGPL in IAL shares was in October 2017, nearly four month after UPSI period was over. This fact was not rebutted by the respondent at any stage. Moreover, merely because ASSPL served as share broking agency for a related company of IAL does not *ipso facto* imply that appellants had access to UPSI relating to IAL in the absence of any cogent material on hand. In any case, a share broking entity is expected to serve in a fiduciary capacity. Moreover, why should a client be assumed to disclose to his share-broker, an information being UPSI of another group company, for which he might be held as an *insider* just because it has engaged such share brokers for trading in securities. It was informed that ASSPL provides sharebroking and advisory services to more than 4500 clients and, therefore, in the absence of any specific evidence, such a wild presumption that share-broking entities could have access to UPSI of their client's group companies, is baseless. In our considered view, keeping in view the decision of

this Tribunal in the case of ***Samir Arora vs. SEBI***[10]**,** it is obligatory on the part of the Respondent to clearly establish as to how Appellants had "access" to the alleged UPSI, which it has failed in the present case.

6.8 With regard to the presumption of the respondent about appellants having access to UPSI, which is the main basis for this litigation, Hon'ble Supreme Court's decision in the case of ***Balram Garg vs. SEBI***[11] provides valuable guiding principle :-

> *"This Court has also held in a catena of cases that the foundational facts must be established before a presumption is made. In this context, in* ***Seema Silk & Sarees vs. Directorate of Enforcement [(2008) 5 SCC 580]*** *this Court has held that:*
>
> > *"The presumption raised against the trader is rebuttable one. Reverse burden as also statutory presumptions can be raised in several statures as, for example, the Negotiable Instruments Act, Prevention of Corruption Act, TADA, etc. Presumption is raised only when certain foundational facts are established by the prosecution. The accused in such an event would be entitled to show that he has not violated the provisions of the Act."*
>
> *In the present case, as rightly argued by the learned counsel of the appellant, the foundational facts were*

[10] Samir Arora vs. SEBI (Appeal No. 83 of 2004 decided on October 15, 2004)
[11] Balram Garg vs. SEBI (Civil Appeal No. 7054 of 2021 decided on April 19, 2022)

> *not proved which could raise the alleged presumption. SEBI failed to place on record any material to prove that the appellants in C. A. No. 7590/2021 were "Connected persons" to Balram Garg as required by Regulation 2(1)(d)(ii)(a) read with Regulation 2(1)(f) of the PIT Regulations as none of the appellants C. A. No. 7590/2021 were financially dependent on Balram Garg or even alleged to have consulted Balram Garg or even alleged to have consulted Balram Garg in any decision related to trading in securities."*

6.9 The respondent's case is built on preponderance of probabilities produces in the case of **Chintalapati Srinivasa Raju vs. SEBI**[12]**,** Hon'ble Apex Court held that,-

> "…… *A reasonable expectation to be in the know of things can only be based on reasonable inferences drawn from fundamental facts."*

It was further held that merely because a person was related to the connected person cannot by itself be a foundational fact to draw an inference.

6.10 To substantiate that appellants had access to UPSI, learned WTM has relied on the following observations as circumstantial evidences suggesting that the trades in the IAL scrip by the appellants were guided by their access to UPSI:

[12] Chintalapati Srinivasa Raju vs. SEBI [(2018) SCC Online SC 586]

(a) The appellants did not make trades in IAL during the pre-UPSI period; and

(b) Trades in IAL scrip in significant volume and value were made by the appellants during the UPSI period, while no trades in other scrips were made by them.

(c) The IAL scrip price rose by 1.46% on BSE and by 1.25% on NSE with increase in volume, when UPSI was made public.

The Ld. WTM has held that as a result, the appellants made unlawful gains, which he has computed by deducting the purchase price of IAL scrip for the appellants on different dates from Rs 1049.85, the price of the scrip on June, 27, 2017, the date when UPSI was made generally available to public, irrespective of whether such shares were sold or not. In reaching out to this conclusion, the Ld. WTM relied upon his finding that the appellants were in possession of UPSI. Invoking the provisions of Regulation 4(1) of PIT Regulations, he has held that the trades undertaken by the appellants in the IAL scrip were motivated by UPSI.

6.11 Regulation 4(1) of PIT Regulations reads as under:

Trading when in possession of unpublished price sensitive information.

> *"4.(1) No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:*
>
> *NOTE:* ***When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.*** *The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation.* ***He traded when in possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge.****"*

We have already held that there is no evidence suggesting that the appellants had *access* to or mere in possession of UPSI. Therefore, it cannot be held that trades made by the appellants during the alleged UPSI period were motivated by knowledge of UPSI.

7. It has been held that considering the serious nature of charges, there should be higher preponderance of probabilities. In holding so, we are guided by this Tribunal's decision in the case of ***Dilip Pendse vs. SEBI***[13]**.**

> *"13. The charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same. In Mousam Singha Roy v. State of West Bengal (2003) 12 SCC 377, the learned judges of*

[13] Dilip Pendse vs. SEBI (Appeal No. 80 of 2009 decided on November 19, 2009)

the Supreme Court in the context of the administration of criminal justice observed that, "It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused." This principle applies to civil cases as well where the charge is to be established not beyond reasonable doubt but on the preponderance of probabilities. The measure of proof in civil or criminal cases is not an absolute standard and within each standard there are degrees of probability. In Hornal v. Neuberger Products Ltd. (1956) 3 All E.R.970 Hodson, L.J. observed as under:

"Just as in civil cases the balance of probability may be more readily tilted in one case than in another, so in criminal cases proof beyond reasonable doubt may more readily be attained in some cases than in others."

We are also tempted to refer to what Denning, L.J. observed in Bater v. Bater (1950) 2 All E.R. 458 wherein he was resolving the difference of opinion between two Lord Justices regarding the standard of proof required in a matrimonial case. This is what he said:

"It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion."

7.1 The Hon'ble Supreme court in the case of ***Balram Garg vs. SEBI (Supra)*** has held as under :-

> *"The SAT erred in holding the appellants in C. A. no. 7590 of 2021 to be "Insiders" in terms of Regulation 2(1)(g)(ii) of the PIT Regulations, on the basis of their trading pattern and their timing of trading (circumstantial evidence). We are of the firm opinion that there is no correlation between the UPSI and the sale of shares undertaken by the appellants in C. A. No. 7590 of 2021."*
>
> *"Moreover, in the absence of any material available on record to show frequent communication between the parties, there could not have been a presumption of communication of UPSI by the appellant Balram Garg. The trading pattern of the appellants in C. A. No. 7590 of 2021 cannot be the circumstantial evidence to prove the communication of UPSI by the appellant Balram Garg to the other appellants in C. A. No. 7590 of 2021. There is no material on record for the WTM and the SAT to arrive at the finding that both late P. C. Gupta and the appellant Balram Garg communicated the UPSI to the other appellants in C. A. No. 7590 of 2021."*

We find that in the instant case also, there is no evidence or inkling of communication of UPSI by insiders of IAL to the appellants. In view of this, there is no merit in the allegations that appellants traded in IAL based on knowledge of UPSI in their possession.

7.2 On careful consideration of facts and circumstances, we hold as under :-

(a) It is not denied by the respondent that Mr. Dhiren Shah has significant experience in share trading and investment and his Company M/s ASSPL provides share broking and investment advisory service to more than 4500 clients.

(b) It needs deeper analysis of the company, sector, macro-economic trends, etc. to make decision for equity investment. The scrip of IAL is not new for Dhiren Shah (and Ms. Amee Shah), and he made significant investment of Rs. 49.99 Crore in IAL, a company engaged in e-commerce, in its preferential issue way back in 2014, when the company was still unlisted. They are still holding this investment. Even the equity investment in IAL, 40,016 shares purchased by Appellant No. 3 and 2,46,000 shares purchased by Appellant No. 1 during the alleged UPSI period, continue to be held in the post-UPSI period. Hence, there is no reason not to assume that the impugned subscription in IAL scrip and its sale / holding decision were based on domain knowledge of Dhiren Shah.

(c) It is observed that much before June 23, 2017, (when the date of Board meeting for considering the agenda contained in UPSI was announced), Appellant No. 3 had purchased 300,000 shares in IAL on June 3, 2017, which were sold on May 4, 2017

(1,00,000 shares) and on May 17, 2017 (2,00,000 shares), resulting in significant profit (average profit of 7.6%). By then, there was no information about any Board meeting in the matter and the rising market price may have been impacted by any other factor other than the UPSI in question. If access to UPSI was the guiding factor for such subscription, appellants would have waited for the impact of UPSI to manifest upon public disclosure and would not have sold 3 lakh shares. Even then, such sale resulted in significant profit (7%), during the UPSI period, before UPSI was made public.

(d) Considering that there were higher price rise seen on 54 instances above price rise of 1.25% on NSE on June 27, 2017, no great significant impact of UPSI is noted on market, when it was made public. Moreover, considering the decision of this Tribunal in the case of ***ICICI Bank Ltd. (supra)*** we have already held that it is only materiality and likelihood of price rise and not actual impact on price, that counts in determining price sensitivity. In view of this, even circumstantial evidences do not suggest that the investment decision by the appellants were guided by knowledge of UPSI.

7.3 The appellants have challenged the impugned order on the ground of denial of natural justice also. Further, they have also challenged directions of the Ld WTM for disgorgement of *notional* profit under Section 11B of the SEBI Act, 1992, on the ground that there cannot be any direction to "disgorge" any "notional" gains, since appellants are still holding shares purchased during UPSI period. However, in view of our aforementioned findings, these alternative grounds need no consideration.

8. In view of the above, we hold that the order passed by the WTM is untenable and cannot be upheld. In the result,-

a. The appeal is allowed;

b. The impugned order No. WTM/AB/IVD/ID16/04/2021-22 dated April 27, 2021 passed by the WTM is set aside;

c. No costs.

Justice P. S. Dinesh Kumar
Presiding Officer

Ms. Meera Swarup
Technical Member

Dr. Dheeraj Bhatnagar
Technical Member

10.10.2024
PTM