BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved: 08.2.2022
Date of Decision: 25.4.2022

Appeal No.689 of 2021

Mr. Pranshu Bhutra
#569, 14th Main Road,
23rd Cross, Banashankari,
II Stage, Bengaluru,
Karnataka-560070. ...Appellant

Versus

Securities and Exchange Board of India
(SEBI), Plot No.C4/A,
G Block, BKC, Bandra (East),
Mumbai-400051, India. …Respondent

Mr. Mustafa Doctor, Senior Advocate with Mr. Anirudh Hariani, Mr. Anil Choudhary, Mr. Rahul Das and Ms. Sudarshana Basu, Advocates i/b. Finsec Law Advisors for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Ms. Binjal Samani, Ms. Aditi Palnitkar and Ms. Moksha Kothari, Advocates i/b. Vidhii Partners for the Respondent.

With
Appeal No.744 of 2021

Venkata Subramaniam V.V.
Olive 106, SJR Redwoods,
Haralur Raod, Bangalore-560102. ...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
G Block, Bandra Kurla Complex,
Bandra (E), Mumbai-400051. …Respondent

Mr. Pramod Nair, Senior Advocate with Ms. Aakansha Luhach and Ms. Payal Saraogi, Advocates for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Ms. Binjal Samani, Ms. Aditi Palnitkar and Ms. Moksha Kothari, Advocates i/b. Vidhii Partners for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M.T. Joshi, Judicial Member

Per: Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed questioning the confirmatory order dated 15th September, 2021 confirming the ex-parte ad-interim order dated 31st May, 2021 whereby the appellant was restrained from

buying or selling any securities, either directly or indirectly, till further orders.

2. The facts leading to the filing of the present appeal is, that Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an examination in respect of the trading activities of two partnership firm, namely, M/s. Capital One Partners and M/s. Tesora Capital in the scrip of M/s. Infosys Ltd. In the preliminary examination, it was prima facie observed that corporate announcement of audited financial results for the quarter ended 30th June, 2020 was made by Infosys on 15th July, 2020. The information relating to the financial results was an Unpublished Price Sensitive Information ('UPSI' for short) which came into existence on 29th June, 2020 and came to an end on 15th July, 2020 when the final results were announced. It was also found that the appellant was a Senior Corporate Counsel of Infosys

and, being an officer/employee of Infosys, was reasonably expected to have access to the UPSI and, on a preponderance of probability basis, the appellant was in possession of UPSI and thus, was an insider under Regulation 2(1)(g) of the PIT Regulations. The preliminary examination further revealed that he was in close connection with another employee Mr. Venkata Subramaniam who was a Senior Principal, Corporate Accounting Group and was a designated person and who was reasonably expected to have access to and be in possession of UPSI and, therefore, Mr. Venkata was also an insider. It was alleged that Mr. Venkata has been in frequent communication with the appellant through telephonic communication and, therefore, on a preponderance of probability, being in possession of UPSI, must have communicated the UPSI to the appellant. The examination further revealed that the appellant was closely connected to

Mr. Amit Bhutra through frequent telephonic communication and that Mr. Amit Bhutra was a partner in Capital One Partners and Tesora Capital and it was reasonably expected that the appellant had passed on the UPSI to his cousin Mr. Amit Bhutra, who in turn traded in the scrip of the Company prior to the announcement of the financial results. The examination further revealed that the two partnership firms through their trading had generated proceeds of Rs.279.51 lakhs in Capital One Partners and Rs.26.82 lakhs on Tesora Capital.

3. Accordingly, an ex-parte ad-interim order dated 31st May, 2021 was passed against the appellant.

4. The appellants and other entities against whom the interim order was passed filed their replies and contested the matter. The appellant contended that his role in the Company was to advise the Company and its subsidiaries relating to the issues involving

employment law and that he was not required to interact with any team involved in the formulation or tracking of financial results, such that he would be reasonably expected to have access to UPSI related to financial results. The appellant submitted that he did not possess any UPSI nor can in any manner it could be reasonably expected that he had access to UPSI. It was also contended that as per the structured digital data base, his name did not appear amongst the persons who had either shared or received the UPSI during the UPSI period. This fact is based on the structured digital data base which is made under Regulation 3(5) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as 'PIT Regulations'). The appellant further contended that his conversation with Mr. Venkata Subramainiam was with regard to life insurance and health insurance policies of the group

and issues relating to provident fund contribution, etc. The appellant specifically denied any discussion relating to financial results or relating to the UPSI. It was also contended that as per the structured data base Mr. Venkata did not receive any UPSI nor had any access to UPSI. It was also stated that the conversation which the appellant had with Mr. Venkata on 9th July, 2020 was relating to maternity benefits at the cost of the Company only to those employees who were not eligible to receive maternity benefits from Employees' State Insurance Corporation. The appellant, however, admitted that he was related to Mr. Amit Bhutra who were second cousins but denied passing on any sensitive information relating to Infosys to Mr. Amit Bhutra. The appellant further denied having knowledge of any transactions done by Amit in Infosys or any other Company.

5. The Whole Time Member ('WTM' for short) inspite of noting the stand of the appellant and inspite of observing that the appellant to some extent was successful in making out a case warranting modification in the directions was, however, enamoured by the fact that the appellant was working in a senior position in the Company and was expected to have reasonable access to UPSI and since the appellant was connected to Mr. Amit Bhutra, confirmed the interim order.

6. We have heard Mr. Mustafa Doctor, Senior Advocate assisted by Mr. Anirudh Hariani, Mr. Anil Choudhary, Mr. Rahul Das and Ms. Sudarshana Basu, Advocates for the appellant in appeal no.689 of 2021 and Mr. Pramod Nair, Senior Advocate assisted by Ms. Aakansha Luhach and Ms. Payal Saraogi, Advocates for the appellant in appeal no.744 of 2021 and Mr. Shiraz Rustomjee, Senior Advocate assisted by Ms.

Nidhi Singh, Ms. Deepti Mohan, Ms. Binjal Samani, Ms. Aditi Palnitkar and Ms. Moksha Kothari, Advocates for the Respondent.

7. Section 2(1)(g) of the PIT Regulations defines "Insider" as

> "*2.(1) In these regulations, unless the context otherwise requires, the following words, expressions and derivations therefrom shall have the meanings assigned to them 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 leveling the charge after which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances."

8. A perusal of the aforesaid definition indicates that an insider is a person who is a connected person or who is in possession or having access to UPSI. "Connected person" has been defined under Section 2(1)(d) of the PIT Regulations which is extracted hereunder:

"*2.(1) In these regulations, unless the context otherwise requires, the following words, expressions and derivations therefrom shall have the meanings assigned to them as under:-*

…….

(d) "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.

(ii) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established,

(a) an immediate relative of connected persons specified in clause (i); or

(b) a holding company or associate company or subsidiary company; or

(c) an intermediary as specified in section 12 of the Act or an employee or director thereof; or

(d) an investment company, trustee company, asset management company or an employee or director thereof; or

(e) an official of a stock exchange or of clearing house or corporation; or

(f) a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or

(g) a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013; or

(h) an official or an employee of a self-regulatory organization recognised or authorized by the Board; or

(i) a banker of the company; or

(j) a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent of the holding or interest;

NOTE: It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable. This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's

operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information."

9. The WTM prima facie came to the conclusion that the appellant is an insider on the ground that he is working as a Senior Corporate Counsel and is, therefore, expected to have access to UPSI or expected to be in possession of UPSI, being a connected person. Further, prima facie emphasis was made by the WTM on the fact that appellant was in communication with Mr. Venkata who was a designated person in Infosys and was, therefore, deemed to have access to and in possession of UPSI. On this basis, WTM prima facie opined that the appellant must have access to UPSI from someone and, in any case, from Mr. Venkata and in turn had passed on this information to his cousin Mr. Amit Bhutra who in turn traded in the scrip of the Company in his partnership firm.

10. Whereas, on this basis, it was sufficient for the WTM to pass an ad-interim order but when further evidence comes forward which is taken note of then in our opinion the continuation of the ex-parte ad-interim order in so far as it relates to the appellant cannot continue and, therefore, in our opinion the impugned order confirming the ex-parte ad-interim order cannot be sustained for the following reasons:-

a) Under Regulation 3(5) of the PIT Regulations, 2015 all listed companies are mandated to maintain SD data base containing details of all the persons with whom UPSI is exchanged alongwith the date and time stamping and verifiable audit trails. A specific finding has been given by the WTM that the SD data base which captures details of only those designated persons who had direct access to UPSI does not include the name of the appellant or of the

designated person Mr. Venkata Subramaniam. Therefore, prima facie appellant no.1 and other noticee Mr. Venkata apparently did not have direct access to UPSI.

b) WTM further notes that there were 600 odd employees in Infosys who were classified as designated persons and further found that such classification as designated persons itself does not mean per se that such designated persons ipso facto were in possession of UPSI coupled with the fact that Mr. Venkata's name was not found in the SD data base and, therefore, he had no direct access to UPSI.

c) Further, telephonic conversation between the appellant and Mr. Venkata alognwith proof of certain emails exchanged between them indicates that the telephone calls were relating to some official matters regarding their respective

domain of responsibilities in the Company. The telephone call discussions were relating to maternity benefits through Employees' State Insurance Corporation rather than through Infosys and, consequently, the initial burden upon the appellant stood discharged, namely, that he was not having any UPSI nor UPSI was passed on from Mr. Venkata to appellant in this telephonic conversation.

d) Burden of proof was wrongly placed upon the appellant that he did not pass on UPSI to Mr. Amit Bhutra. It is settled law that the burden of proof is always upon the prosecution, namely, SEBI to prove that he had access to UPSI or that he was an insider.

e) In any case, the onus has been successfully discharged in the instant case and, therefore, at this stage, continuation of the interim order on

prima facie suspicion or preponderance of probability or reasonably expected to have access to UPSI appears to be farfetched only on the strength that the appellant is an employee in the Company and is expected to have inside information.

11. Consequently, in the absence of any direct or indirect evidence coming forth at this stage and the fact that the investigation is still continuing which may take time for issuance of a show cause notice, we are of the opinion that the continuation of the interim order against the appellant is unjustified especially when the appellant has not traded in the scrip nor there is any finding that he is a party to the unlawful gain.

12. Admittedly, the appellant has not traded in the scrip. The two partnership companies have traded in the scrip in which admittedly the appellant is not a partner. Direction to deposit the unlawful gain have

already been issued against the two partnership companies. The interest of the securities market is thus safeguarded.

13. The investigation has not yet concluded and, therefore, it would take some time for issuance of a show cause notice. Final orders will come much later. Considering the aforesaid when only prima facie observations are being made which the appellant has sufficiently explained and discharged his burden we are of the opinion that at this stage debarring a person from accessing the securities market is not justified in the facts of the case.

14. We further observe that the investigating party will not be influenced by any observation made by us in the present order which are tentative in nature and will not be utilised to the advantage of either party.

15. In view of the aforesaid, the confirmatory order as well as the interim order in so far as it relates to the

appellants cannot be sustained and are quashed. The appeals are allowed. In the circumstances of the case parties shall bear their own costs.

16. 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. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Justice M.T. Joshi
Judicial Member

25.4.2022
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