BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Date of Hearing : 29.06.2022
Date of Decision : 12.10.2022

Misc. Application No. 535 of 2020
(Urgency Application)
And
Misc. Application No. 536 of 2020
(Stay Application)
And
Appeal No. 499 of 2020

1. Alpana R. Kirloskar
   'Lakaki' Compound,'
   Pune – 411 016, Maharashtra.

2. Arti A. Kirloskar
   "Radha", 453, Gokhale Road,
   Pune – 411 016, Maharashtra.

3. Jyotsna G. Kulkarni
   1, Yena Bungalow,
   Adwait Nagar, Paud Road,
   Kothrud, Pune – 411 038.

4. Rahul C. Kirloskar
   'Lakaki' Compound,'
   Pune – 411 016, Maharashtra.

5. Atul C. Kirloskar
   "Radha", 453, Gokhale Road,
   Pune – 411 016, Maharashtra.

6. Nihal G. Kulkarni
   1, Yena Bungalow,
   Adwait Nagar, Paud Road,
   Kothrud, Pune – 411 038.

7. Ambar G. Kulkarni
   1, Yena Bungalow,
   Adwait Nagar, Paud Road,
   Kothrud, Pune – 411 038. ….. Appellants

Versus

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

Mr. Darius Khambata, Senior Advocate with Mr. Kunal Katariya, Mr. Pheroze Mehta i/b. Mr. Tushar Ajinkya and Ms. Misha Matlani, Advocates for the Appellants.

Mr. Fredun E. De Vitre, Senior Advocate and Mr. Mustafa Doctor, Senior Advocate with Mr. Rahul Lakhiani, Mr. Mihir Mody, Mr. Arnav Misra, Mr. Mayur Jaisingh, Advocates i/b. K. Ashar & Co. for the Respondent.

With
Misc. Application No. 542 of 2020
(Stay Application)
And
Appeal No. 503 of 2020

Anil N. Alawani
Flat No. 5, Yashodeep, C
Rambaug Colony, Navi Peth,
Pune - 411030. ….. 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

Mr. Pesi Modi, Senior Advocate with Mr. Kunal Katariya, Advocate i/b. Ms. Sukanya Sehgal, Advocate for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Rahul Lakhiani, Mr. Mihir Mody, Mr. Arnav Misra, Mr. Mayur Jaisingh, Advocates i/b. K. Ashar & Co. for the Respondent.

With
Appeal No. 504 of 2020

Kirloskar Industries Ltd.
Office No. 801, 8th Floor, Cello Platina

Fergusson College Road, Shivajinagar,
Pune – 411 005. ….. 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

Mr. Dinyar Madon, Senior Advocate i/b Ms. Ankita Kashyap, Advocate for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Rahul Lakhiani, Mr. Mihir Mody, Mr. Arnav Misra, Mr. Mayur Jaisingh, Advocates i/b. K. Ashar & Co. for the Respondent.

With
Appeal No. 505 of 2020

Sanjay Kirloskar
Trustee of Kirloskar Brothers Ltd.
Employee Welfare Trust Scheme
Sr. No. 270, Plot No. 22 & 23,
Pallod Farms, Baner,
Pune – 411045. ….. 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

Mr. Somasekhar Sundaresan, Advocate with Mr. P. R. Ramesh, Ms. Yugandhara Khanwilkar, Advocates for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Rahul Lakhiani, Mr. Mihir Mody, Mr. Arnav Misra, Mr. Mayur Jaisingh, Advocates i/b. K. Ashar & Co. for the Respondent.

With
Appeal No. 506 of 2020

Pratima Sanjay Kirloskar
Sr. No. 270, Plot No. 22 & 23,
Pallod Farms, Baner,

Pune – 411045. ….. 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

Mr. Somasekhar Sundaresan, Advocate with Mr. P. R. Ramesh, Ms. Yugandhara Khanwilkar, Advocates for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Rahul Lakhiani, Mr. Mihir Mody, Mr. Arnav Misra, Mr. Mayur Jaisingh, Advocates i/b. K. Ashar & Co. for the Respondent.

With
Appeal No. 507 of 2020

Karad Projects and Motors Ltd.
Plot No. B-67/68,
MIDC Karad Industrial Area,
Tasawade, Karad - 415 109. ….. 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

Mr. Somasekhar Sundaresan, Advocate with Mr. P. R. Ramesh, Ms. Yugandhara Khanwilkar, Advocates for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Rahul Lakhiani, Mr. Mihir Mody, Mr. Arnav Misra, Mr. Mayur Jaisingh, Advocates i/b. K. Ashar & Co. for the Respondent.

With
Appeal No. 508 of 2020

Prakar Investments Pvt. Ltd.
Sr. No. 270, Plot No. 22 & 23,
Pallod Farms, Baner,
Pune – 411045. ….. 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

Mr. Somasekhar Sundaresan, Advocate with Mr. P. R. Ramesh, Ms. Yugandhara Khanwilkar, Advocates for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Rahul Lakhiani, Mr. Mihir Mody, Mr. Arnav Misra, Mr. Mayur Jaisingh, Advocates i/b. K. Ashar & Co. for the Respondent.

With
Misc. Application No. 569 of 2020
(Urgency Application)
And
Misc. Application No. 570 of 2020
(Exemption from filing certified copy)
And
Misc. Application No. 571 of 2020
(Delay Application)
And
Misc. Application No. 572 of 2020
(Delay Application)
And
Misc. Application No. 540 of 2020
(Interim Application)
And
Appeal No. 44 of 2021

Kirloskar Brothers Ltd.
'Yamuna', Survey No. 98 / (3 to 7),
Plot No. 3, Baner, Pune – 411 045. ….. Appellant

Versus

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

Mr. Janak Dwarkadas, Senior Advocate with Ms. R. Singh, Mr. Chirag Kamdar, Mr. Rustam Gagrat, Ms. Ipshita Sen, Ms. Meghna Talwar, Advocates i/b Gagrats Advocates & Solicitors for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Rahul Lakhiani, Mr. Mihir Mody, Mr. Arnav Misra, Mr. Mayur Jaisingh, Advocates i/b. K. Ashar & Co. for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member
Ms. Meera Swarup, Technical Member

Per : Justice M. T. Joshi, Judicial Member

1. All the present appeals are arising out of the same transactions alleged to be insider trading regarding which all the impugned orders are passed on the same date though separately. All the present appeals are, therefore, heard together and are, therefore, decided together.

2. Appeal nos. 499 of 2020 and 503 of 2020 are against a common order passed on October 20, 2020. Vide this order of the learned Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') the relevant appellants were restrained from accessing the securities market, in any manner, for a different period of time. As regards disgorgement of an amount as against these appellants, WTM

proposed different principles for paying disgorged amount than given in the show cause notice. Therefore, the relevant appellants were directed to first deposit the proposed disgorged amount as calculated vide table no. 18 of paragraph no. 154 of the impugned order and the post decisional hearing was provided thereafter. Further, they were directed to pay penalty as detailed in table no. 20 under paragraph no. 164 of the impugned order.

3. Appeal No. 503 of 2020 is filed by original noticee no. 9 Mr. A. N. Alawani who was authorized to execute the trades. Therefore, penalty is imposed upon him as per the table referred above.

4. Aggrieved by the said common decision, these three appeals are filed.

5. Appeal no. 44 of 2021 is filed by Kirloskar Brothers Ltd. (hereinafter referred to as 'KBL') - the complainant - who claims that on the basis of it's complaint the impugned order is passed, but not to its satisfaction. Therefore, this original complainant has filed the present appeal praying for an increase in the penalty as well as disgorgement amount.

6. Appeal no. 504 of 2020 is filed by Kirloskar Industries Ltd. (hereinafter referred to as 'KIL') which is aggrieved by a separate order of the same date against whom a penalty of Rs. 5 lacs is imposed for non-disclosure of certain events pertaining to the same transactions as required under Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as 'Listing Regulations').

7. Appeal nos. 505 of 2020, 506 of 2020, 507 of 2020 and 508 of 2020 are filed by a separate group allegedly led by Mr. Sanjay Kirloskar, appellant in appeal no. 505 of 2020. They had also transacted in the shares of KBL during the same period. Separate common order against them was passed by the learned WTM for same set of violations as found against the appellants in appeal nos. 499 of 2020 and 503 of 2020.

8. For the sake of convenience, the appellants in appeal nos. 499 of 2020 and 503 of 2020 would be termed as Alpana group while the appellants in appeal nos. 505 to 508 of 2020 would be termed as Sanjay group.

9. The charge against these groups is of insider trading on October 6, 2010 by Alpana group and on October 14, 2010 by Sanjay group in the shares of KBL. In fact those were the bulk trades carried through the platform of the exchanges where under the individual promoters of KBL sold the shares of KBL to another promoter KIL.

The transactions of Alpana group on October 6, 2010 are as under :-

Name	Designation	Buy (Qty)	Sell (Qty)	Avg. Price (Rs.)
Alpana Rahul Kirloskar	Promoter	0	19,49,900	256
Arti Atul Kirloskar	Promoter	0	19,49,900	256
Jyotsna Gautam Kulkarni	Promoter	0	19,49,900	256
Rahul Chandrakant Kirloskar	Director / Promoter	0	16,22,900	256
Atul Chandra - kant Kirloskar	Promoter	0	16,22,900	256
Gautam Achyut Kulkarni since deceased	Vice Chairman / Promoter	0	16,22,900	256
Kirloskar Industries Ltd.	Promoter	1,07,18,400	0	256
Total		**1,07,18,400**	**1,07,18,400**	

Appellant Jyotsna, Nihal and Ambar were arraigned as the notices being legal representatives of deceased Gautam. Nihal additionally

was the director of KIL and insider to the impugned informations alleged to be unpublished price sensitive information. Appellant Alawani though not traded, was the director with same allegation made as against Nihal. Additionally, appellant Alawani bought the above shares on behalf of KBL.

10. The transactions carried by Sanjay group were also admittedly inter se promoters/insiders in the shares of KBL on October 14, 2010. The details are as under :-

Name	**Designation**	**Buy (Qty)**	**Sell (Qty)**	**Avg. Buy / Sell Price (Rs.)**
Pratima Sanjay Kirloskar	Promoter	0	1,43,200*	244.50
Prakar Investments Pvt. Ltd. (PIPL)	Promoter	1,43,200*	0	244.50
Kirloskar Brothers Ltd. Employees Welfare Trust Scheme - Sanjay C. Kirloskar was Trustee**	Promoter/ CMD	78,750	0	244.50
Hematic Motors Pvt. Ltd. (now Karad Projects and Motors Limited)	Promoter	0	78,750	244.50
Total		**2,21,950**	**2,21,450**	

* PIPL bought 1,42,700 shares from Pratima Kirloskar and additional 500 shares of KBL on Oct 14, 2010, from the market ** The shares of Kirloskar Brothers Limited Employees Welfare Trust Schemes are held in the name of its Trustee i.e. Sanjay C Kirloskar

11. Both these groups are found by the learned WTM to have traded when in possession of two Unpublished Price Sensitive Informations (hereinafter referred to as 'UPSI'). First of the UPSI, claimed by the respondent is of information of capital loss of the investment / the advances given by KBL to one of it's subsidiary i.e. Kirloskar Constructions and Engineers Ltd. (KCEL) (hereinafter referred to as 'UPSI-1'). Second information is of financial results of KBL for quarter July to September 2010 (hereinafter referred to as 'UPSI – 2').

12. The Alpana group is charged of violating the provisions of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations, 1992') read with Regulation 12 of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as 'PIT Regulations, 2015') for issuing appropriate directions under Section 11(1), 11(4),

11B(1), 11B(2) read with Section 15G and 15HA and 11(4A) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act'). They were also alleged to have violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act read with Regulation 3(a), (b), (c), (d) and 4(1) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations') for committing fraud on KIL with other stakeholders including the minority shareholders. Certain allegations of violating the Model Code of Conduct were made against the original noticee nos. 1, 3 and 4 i.e. appellant Alpana, appellant Jyotsna and appellant Rahul as one of the entity, namely, Gautam Kulkarni had died after commission of above transactions, SEBI has arrayed appellant Jyotsna, appellant Nihal and appellant Ambar as his legal representatives liable for violations of the above regulations and the orders came to be passed against them. As regards the appellant Nihal in his individual capacity and another noticee Mr. A. R. Sathe it is alleged that they had played fraud upon minority shareholders and, therefore, were liable under PFUTP Regulations.

13. So far as Sanjay group is concerned, they are also alleged to have committed violations of PIT Regulations as well as violations of Model Code of Conduct as regards the appellant Sanjay and appellant Pratima, his wife.

14. We have heard Mr. Darius Khambata, Mr. Pesi Modi, Mr. Dinyar Madon and Mr. Janak Dwarkadas, the learned senior counsel with Mr. Kunal Katariya, Mr. Pheroze Mehta, Mr. Somasekhar Sundaresan, Mr. P. R. Ramesh, Ms. Yugandhara Khanwilkar, Ms. R. Singh, Mr. Chirag Kamdar, Mr. Rustam Gagrat, Ms. Ipshita Sen, Ms. Meghna Talwar, the learned counsel for the appellants and Mr. Fredun E. De Vitre, the learned senior counsel and Mr. Mustafa Doctor, the learned senior counsel with Mr. Rahul Lakhiani, Mr. Mihir Mody, Mr. Arnav Misra, Mr. Mayur Jaisingh, the learned counsel for the respondent.

The record shows that both KBL as well as KIL are part of the Kirloskar group companies. KIL is claimed to be an investing company and is a promoter of KBL along with all the notices as detailed supra.

15. The UPSI – 1 i.e. information of capital loss of the investment / advances given to KCEL a wholly owned subsidiary of KBL, according to SEBI, was a price sensitive information in terms of Regulation 2(ha) of the PIT Regulations, 1992. Regulation 2(ha) reads as under :-

> *"2(ha). Price sensitive information means any information which related directly or indirectly to a company and which if published is likely to materially affect the price of the securities of the company.*
>
> *Explanation – The following shall be deemed to be price sensitive information :- ……..*

16. According to SEBI, the information remained unpublished for the period March 8, 2010 to April 26, 2011. It was alleged that a note was attached to the agenda of the board meeting of KBL held on March 8, 2010. The note had details to consider the performance and strategic options for KCEL. This note would show that KCEL was making losses for three years preceding the above date from Rs. 1.39 crores to Rs. 11.77 crores and the loss for financial year 2009-10 was expected to increase to Rs. 16 crores. Certain reasons for increase in loss were given. It was also expected in the note that the net worth of KCEL would erode by the end of the financial year. Therefore, the

KBL had engaged ICICI Investment Banking Group to identify investors to invest in KCEL. It is noted in the note that KBL felt that it would not be able to turn around the business of KCEL and if KBL were to sell KCEL, KBL would get a valuation of Rs. 53 crores to Rs. 58 crores below the invested amount of Rs. 148 crores in the business of KCEL which included the acquisition price, unsecured loans, term loan, etc.

Further, the minutes of the board meeting of KBL dated July 27, 2010 showed that some of the board of directors of KBL had sought presentation on KCEL. A report on the viability study was shared with the board members. This report also depicted the same picture with a remark that the KCEL was not in a position to repay the funds of KBL and there was a total diminution in the value of the shares of KCEL. It was also observed in the said report that despite KBL financial assistance, KCEL could not improve it's performance.

In the board meeting of KBL dated September 3, 2010, the recommendation made in the viability report was considered and after considering the net loss had approved the sale of KCEL on an "as is where is basis" for a value of Rs. 65 crores.

In the circumstances the final decision was taken in the meeting of the board meeting dated April 26, 2011 of KBL to write off Rs. 67.47 crores towards the loan in the form of advances given to KCEL. This decision was disclosed on the platform of the exchanges, by KBL alongwith financial results for the quarter and year ended on March 31, 2011. During all this period, i.e. since March 8, 2010 to April 26, 2011, according to SEBI, this information of capital losses or loss of advances remained unpublished.

17. As regards the UPSI – 2, it was found by SEBI that the information of financial results of KBL for quarter July – September 2010, which was published on October 28, 2010 was a price sensitive information right from August 6, 2010 to that date. During that period, the financial position of KBL had deteriorated both on monthly as well as quarterly basis in comparison with previous year, and quarter respectively as detailed in paragraph no. 97 of the impugned order passed against the Alpana group. In this regard, it is an admitted position that the relevant appellants used to get Kirloskar group's monthly interim financial information called Kirloskar Group Management Operating Board report (hereinafter referred to as KG-MOB report). For the month of July 2010, the KG-MOB

report is dated August 6, 2010. For the month of August 2010 the KG-MOB report is dated September 3, 2010. These two KG-MOB reports contained balance sheets, figures of profit and loss, fixed cost analysis, fund flow statement, key financial ratio, sales figures, etc. as detailed in paragraph no. 103 of that order.

18. SEBI therefore concluded that these KG-MOB reports were not merely a management information system report but were fairly detailed financial reports of KBL which contained many financial figures and data for each month. These KG-MOB reports were shared in advance with the board members. According to SEBI, these KG-MOB reports of two months already circulated was indeed a price sensitive information and the same remained unpublished till October 28, 2010 i.e when financial result for the quarter July – September 2010 was disclosed. The date of the tradings was October 6, 2010 and October 14th 2010 as detailed supra, therefore, it was held that they have traded when in possession of these two UPSIs.

19. Before SEBI, except appellant Anil Alawani, none of these appellants from Alpana group had specifically denied the existence of the note said to have been annexed to the agenda of the board meeting dated March 8, 2010. Appellant Anil Alawani has in his

reply before SEBI had only qualified the note by affixing term "alleged" as and when he referred the note, etc. without specifically denying the existence of the note.

20. Before us, Mr. Darius Khambata, the learned senior counsel in appeal no. 499 of 2020 of Alpana group (except the appellant Mr. Anil Alawani) strenuously submitted that the note was not at all in existence and the same is the belated innovation of the rival group led by Sanjay Kirloskar. He elaborated this submission from various circumstantial evidences, namely, the first reply by KBL during investigation which would show the absence of the note but later on the note was submitted by KBL to SEBI on June 28th 2019, when the company was under the control of Mr. Sanjay Kirloskar. In the result, he submitted that the alleged UPSI – 1 did not come into existence from March 8, 2010, as alleged by SEBI.

We are however, unable to agree with the submission. The show cause notice dated July 14, 2020 had an independent paragraph on the existence of the said note which was not denied by these appellants. Mr. Darius Khambata in his usual skill however had tried to explain this *non-traverse* by submitting that delay in issuing the show cause notice and supplying of voluminous data by SEBI

alongwith the show cause notice was the cause for not specifically denying the existence of the note.

21. On merit of the substantial case, these appellants submitted that the alleged UPSI -1 was not at all an unpublished information. It was further submitted that the information in question is not in anyway connected to the sale of shares of KBL to KIL by these entities.

22. Following submissions were made by Mr. Darius Khambata :-

The entire transaction was to reorganize the Kirloskar family holdings in the group companies whereby the selling promoters from Alpana group sold their shares of KBL in their possession to another promoter i.e. KIL and then consolidated their holdings in KIL by increasing their stakes therein from 15% to 72%. KIL is a part of promoter group of KBL. Around Rs. 300 crores surplus fund was lying with KIL. It was therefore proposed to gainfully employ this fund. Long term investment expectation of good returns in KBL was expected on the basis of the then stock market scenario. Investment in group companies was one of the objects of KIL and KIL had been

investing in the shares of group companies as long term investment. In the circumstances, the board meeting dated July 28, 2010 of the KIL was held and it was agreed that the transaction would be at the prevailing market price as on the date of acquisition. Since large numbers of shares were to be purchased by KIL from these promoters, it was found that the transactions in the regular market would disturb the price and therefore, bulk transactions through the stock exchange platform were carried out. The transaction was consummated by Alpana group on October 6, 2010 as during that period Late Mr. Gautam Kulkarni, the original noticee nos. 6 was just diagnosed with cancer and the promoters were unclear as to when they would be in a position to sell the holding in KBL to KIL. All these promoters had indicated their preference to sell their shares in KBL to KIL together on the same date and at the same price.

23. He further submitted that though, this UPSI – 1 is alleged to be a negative one i.e. expected to cause adverse effect on the price of the KBL due to the capital loss, yet noticee nos. 9 appellant Anil Alawani is alleged to have dealt with in the shares by holding shares of KIL which is the exact opposite of what would have been the trade.

24. Mr. Khambata pointed out that, appellant Atul Kirloskar, the then chairman of the KIL before beginning of the meeting vacated the chair and the non-interested directors present in the meeting i.e. Mr. A. R. Sathe, occupied the chair. Additionally, the appellant Atul as well as Mr. Nihal being interested in the business did not participate in the discussion of proposal. Mr. A. R. Sathe informed the board i.e. Rs. 288 crore was available with KIL for the proposed investment. Finally, KIL approved the investment by way of purchase of equity shares of KBL from these appellants from Alpana group except appellant Mr. Anil Alawani. Mr. Anil Alawani was the director of KIL. He and the company secretary were authorised to execute the decision of the board i.e. to buy the shares of KBL from these promoters.

25. It was submitted that though according to the learned WTM the financial condition of KBL was deteriorating and write off or capital loss would have additional adverse effect on the price of the shares of KBL, in fact, upon disclosure of the decision, the price of the scrip had risen during the succeeding sessions of public trades as detailed in the order. Further, KCEL was one amongst the many

subsidiaries of KBL and the decision to write off the capital loss was not material.

26. It was emphatically submitted that the facts that KCEL was continuously running into losses was a public information since long as and when the quarterly, half yearly or yearly financial results were disclosed on the exchange platforms. Various alternatives for having solution on this issue were proposed, counter proposed between the promoters/directors as can be seen from the viability report, etc. and ultimately decision to write off the capital loss was taken finding that this subsidiary cannot be sold for a reasonable consideration. This decision was disclosed on the same day i.e. on April 26, 2011 to the stock exchange on the same date alongwith with financial results for the year and quarter ended March 31, 2011.

27. The learned WTM reasoned in the impugned order that while the show cause notice clearly articulated that the information on the capital loss of the investment / advances given to the KCEL is UPSI, these appellants were interpreting the same that the write off all the loans to KCEL in the books of accounts of KBL is an event, the information of which is the UPSI. An illustration of a damage and destruction of certain raw material stored in a warehouse and a

decision regarding sale of remaining raw material, salvage, etc. was given by the learned WTM. It was explained that though the decision may have come into existence on April 26, 2011 and not on March 8, 2010, the information of capital loss remained unpublished right from March 8, 2010. It would be appropriate to quote the finding of the learned WTM as found in paragraph no. 47.6 which is as under :-

> *"47.6. The Noticees seek to interpret the SCN as "the UPSI is the information on the accounting of the loss" which was approved by the Board only 13 months later in April of the following year. And on this basis, they submit that the UPSI came into existence only in April of the following year. Clearly, however, the loss had occurred much earlier and the directors had access to this information much earlier, based on the note circulated to them in March of the previous year itself."*

28. We are unable to agree with the finding recorded by the learned WTM that the information of capital loss / investment / advances given to KCEL was an UPSI. It is not in dispute that the KCEL i.e. the subsidiary of KBL was running in losses since 2006-07 and the financial results of KBL were being published with facts and figures. These figures as detailed by the learned WTM in paragraph no. 40 of the impugned order indicates that KCEL was running into losses which was increasing day by day.

29. Leaving aside the issue as to whether the note said to have been annexed to the agenda of board meeting dated March 8, 2010, existed or not, one thing is clear that the facts and figures mentioned in the note was an information which was in the public domain.

30. A snapshot given in the note is regarding the profit and loss statement of KCEL for financial years 2006-07, 2007-08 and 2008-09. The note cautioned that in future there can be an increase in the loss in case certain projects were not delivered or handed over to the customers. In the circumstances, various options like shifting some projects to Pune, part merger of KCEL with KBL or divesting were given. Though, the minutes of the board meeting dated March 8, 2010 were not supplied to these appellants despite seeking for the same, it is however a fact that no resolution was passed by the board of directors in this regard.

31. It cannot be gainsaid that the facts and figures given in the said note was the publicly available information in view of the disclosure of the results as detailed above.

32. Next is the case of viability report circulated on August 20, 2010 and recirculated on September 1, 2010 which is annexed as

annexure 8 to the show cause notice. In this viability report, by way of background, the entire picture of investment made in the KCEL is given; the auditor's statement account of KCEL to show the net worth was given and again various options were suggested. These options included continuance of KCEL as a standalone entity, merger with the parent company or sale of KCEL. These various options were discussed in the viability report and it was ultimately recommended to sell KCEL on "as is where is basis". The minutes of board meeting dated September 3, 2010 would show that proposal to sell KCEL for a value upto Rs. 65 crores was specifically approved.

33. In these circumstances, minutes of board meeting i.e. dated April 26, 2011 in which the decision to write off the loan given to KCEL requires consideration. The minutes record that though KBL had advanced money to KCEL from time to time depending on the business requirements, despite the best efforts to revive KCEL it suffered huge operational losses which was on increase. Therefore, it was approved to write off the loan given to KCEL.

34. What can be understood from the above admitted facts is that KCEL was running into losses continuously from year to year.

The management was considering various options to find a solution as can be seen from the alleged note as well as the viability report. Various options and counter options like relocating some projects to Pune, making KCEL as a standalone company, divesting the investment or to sell the entity on "as is where is basis" were considered one after another and the last of the options of writing off all the loans was taken in the board meeting dated April 26, 2011.

35. In these circumstances, the definition of UPSI as found in Regulation 2(ha) of the PIT Regulations, 1992 will have to be taken into consideration. The definition would show that a price sensitive information would be an information relating to the company directly or indirectly and if upon its publication it is likely to materially affect the price of the securities of the company, it would be UPSI till it is published.

36. In the present case, the fact that KCEL continued to run into losses was a publicly available information. What was not known to the public was the decision which the management was going to take. The management i.e the board of directors of KBL was considering various options to overcome the said difficulty and ultimately on April 26, 2011, it took the decision to write off the loan and

immediately this decision was disclosed on the platform of the stock exchange alongwith financial results as detailed (supra).

37. This Tribunal had occasion to consider somewhat similar circumstances in the case of ***Pia Johnson & other connected appeal vs. SEBI appeal no. 59 of 2020 decided on April 8, 2022.***

38. In that case, appellant Pia Johnson was a non-executive director of one listed company, namely, IVL during the relevant period. Appellant nos. 2 Mehul Johnson was her husband. They had purchased the shares of the company from April 1, 2015 to March 14, 2017. It was alleged that the sale of one of the subsidiary of IVL, namely, Indiabulls Distribution Services Ltd. (hereinafter referred to as 'IDSL') was the UPSI for a period from February 16, 2017 to February 22, 2017. The facts were that board of directors of IDSL had meeting on May 4, 2016 and resolved to sell the entire investment in ILPL. Even the shareholders had approved the said proposal on a meeting dated July 20, 2016. Appellant Pia Johnson therein was a member of the managing committee who was authorised to sell the stacks. Thereafter, however on January 14, 2017, a proposal for grant of loan to ILPL from another company IIL was made. This IIL, in its Extra Ordinary General Meeting (EGM)

dated March 1, 2017, resolved to invest its surplus funds by way of loan to IIL or to buy it. Further, discussion on grant of loan continued on January 24, 2017. In principle, it was agreed to go through the transaction of loan. Thereafter, however in the EGM of IIL, it was decided to purchase the shareholding of ILPL. Thereafter, a definite agreement dated March 14, 2017 for sale and purchase of this entity ILPL to IIL was entered into. The learned WTM, in that case held that the resolution passed on July 15, 2017 was only raw information and there was no crystalized offer to identify purchaser. The learned WTM held that the UPSI came into existence on January 24, 2017. It was a date on which in fact a discussion regarding grant of loan was held and there was nothing to say just that any offer for purchase of ILPL was made by the relevant parties. This tribunal finding that till February 3, 2017 there was no talk of purchase did not agree with the findings of the WTM that UPSI relating to sale/purchase came into existence prior to it.

39. In the present appeal, what we find is, that the fact that KCEL was suffering losses after losses was a published information. The board of directors was deliberating to come out with the solution over the years as detailed supra and ultimately, on April 26, 2011,

they came out with the final solution of writing off the loan. Thus, the information of loans and advances given to KCEL by KBL being in the public domain, was not an unpublished price sensitive information. The decision to write off the loan came into existence on April 26, 2011 and the said decision was disclosed immediately on the platform of the stock exchange. Hence, in our opinion, the said information cannot be said as UPSI from March 8, 2010 till April 26, 2011.

40. In view of the above, there is no need to consider as to whether the said information was a price sensitive information for KBL as also the arguments and counter arguments as to whether that information was material information likely to materially affect the price of the securities of the company in as much as, the information to write off the loan was made public immediately after the decision was taken.

41. Interestingly, the learned WTM further held that these appellants form Alpana group traded in the stock of KBL while in possession of UPSI-1, but not on the basis of said UPSI. Similar finding were recorded as regards Sanjay group. As detailed hereinafter, similar view was taken as regards UPSI 2 in both the

cases. In fact, when we have already arrived at the conclusion that the information was not at all UPSI 1, consideration of these facts would not arise. Leaving aside this fact for a while, we find that the reasoning of the learned WTM in this regard is mired in confusion for the reasons to follow.

42. The appellants from Alpana group have shown that while the facts and figures as found in the financial results were positive, the appellants had in fact sold the shares in their possession to KBL which would show that they did not act on the basis of this alleged UPSI 1. The learned WTM disputed the said interpretation of the figures, but did not specifically deal with the fact that the price of the share had risen even after, *inter-alia*, disclosure of the decision of write off the loan.

43. The learned WTM noted in paragraph no. 7.2.2. that the quarter ended September 2010, Profit After Tax (hereinafter referred to as 'PAT') was reduced to Rs. 19.49 crore from Rs. 33.40 crores in comparison to previous year quarter ended September 2009. Similarly, for quarter in the June 2010, PAT reduced to Rs. 4.45 crores from Rs. 5.60 crore in the previous year quarter ended June

2009. Further, FY 2010-11, PAT has been reduced to Rs. 61.40 crores from Rs. 117.50 crores for FY 2009-10.

44. The appellants however had interpreted the same figures in different manner to show that the long term prospect of KBL was positive. In paragraph no. 11.7.4. of the impugned order, the appellants' submissions in this regard are recorded by the learned WTM. They submitted that the appropriate manner to evaluate a company's operating performance is to look at profit before tax ('PBT') and earnings before interest, depreciation, tax and amortization ('EBIDTA') and exclude exceptional items. If the figures are looked into from this perspective, it would show that the operating performance was improving year on year by KBL. Cash profit of KBL increased between FY 2009-10 and also in the next year. It was submitted that there is no correlation between the revenue numbers and the corresponding PAT figures. According to them, looking at the numbers for a single quarter in isolation would not provide any trend that can be established performance in deteriorating or otherwise of KBL. The appellants further given the facts and figures which are recorded by the learned WTM in subsequent paragraphs.

45. On the basis of the above submission, the appellants rightly showed that the decision to sell the shares of KBL to KIL was in fact contrary to the indication that they wanted to get rid of the shares while in possession of alleged UPSI. The learned WTM however stuck to the words 'trading when in possession of an UPSI'. To be fair with the learned WTM, it is however recorded in paragraph no. 77 of the impugned order that Section 15G of the SEBI Act, the requirement is to prove that insider has traded not only "while in possession of" any UPSI but also "on the basis of" an UPSI. It was also recorded that there is a presumption, albeit rebuttable, that if trading was done "while in possession of" UPSI, then it was done "on the basis of" UPSI. Learned WTM however recorded in paragraph no. 76 that there is no requirement of establishing the fact of dealing in securities "on the basis of" UPSI for passing appropriate direction under Section 11(4), 11B(1) of the SEBI Act for violation of provisions of Section 12A(d) and (e) of the SEBI Act and Regulation 3 of the PIT Regulations, 1992. The learned WTM has thus, divided the relevant provisions in two categories. One requiring both the ingredients of trading "on the basis of" and "while

in possession of" UPSI and another solely dealing in securities "while in possession of" UPSI.

46. The learned WTM however was alive of the decision of this Tribunal in the matter of ***Mrs. Chandrakala vs. SEBI in Appeal No. 209 of 2011 decided on January 31 2012*** wherein this Tribunal has held that the prohibition contained in Regulation 3 of the PIT Regulations, 1992 applies only when the insider has traded "on the basis of" any UPSI and that the trades executed should be motivated by the information in possession of the insider. Similarly, the learned WTM has also took note of the decision of this Tribunal in the case of ***Mr. Manoj Gaur vs. SEBI in Appeal No. 64 of 2012 decided on October 3, 2012*** where the similar declarations were made.

47. After recording this, the learned WTM rightly recorded that the burden of proof lies on the insider to prove that he has not dealt with the securities of the company on the basis of UPSI but on the basis of other circumstances as there is a rebuttable presumption that the insider is trading on the basis of UPSI. It is also further recorded by the learned WTM that the appellants claim that though the show cause notice alleges the said UPSI as negative, the appellant Mr.

Alawani is alleged to have dealt in the shares by holding to buy the shares which is exact the opposite that what would have been the trade. It was also pointed out that operating performance of KBL as detailed supra was positive still the relevant appellants sold KBL to KIL. The learned WTM however differentiated reasoning in the decisions of ***Mrs. Chadrakala vs. SEBI and Mr. Manoj Gaur vs. SEBI (supra)*** on the ground that in that case, this Tribunal has looked into the trading pattern of the entities. It was noted that the trading pattern in the present appeal is not a specific trading pattern like in the case of ***Mrs. Chadrakala vs. SEBI*** cited (supra). It was noted that the present appellants did not trade in the shares of KBL prior to or after the alleged UPSI – 1 becoming public. Further, the relevant appellants are not in the business of trading and therefore, according to the learned WTM, the ratio of ***Mrs. Chadrakala vs. SEBI and Mr. Manoj Gaur vs. SEBI (supra)*** would not be applicable.

48. Having held so in paragraph no. 84 however, the learned WTM agreed with the submissions of the Alpana group appellants that the surplus funds of Rs. 300 crores of KIL was required to be invested and KIL had expected a good return from long term

investment by making it in KBL. Further, on the basis of documents available on record, the learned WTM agreed that during the period July – October 2010, KIL was in the process of becoming a core investment company having holdings predominantly in group companies. Not only this, in paragraph no. 92, the learned WTM on preponderance of probability basis accepted that the intention of execution of all these block trades on the window of the exchanges was to consolidate the family holdings and the decision to trade taken on or before July 28, 2010 and the actual trade on October 6, 2010 were done on the basis of this probability. In the circumstances, the learned WTM doubted that the appellants had traded on the basis of UPSI - 1.

49. Thus, having agreed with the submission of the relevant appellants that they did not trade on the basis of the alleged UPSI -1, in paragraph no. 95 however again the learned WTM recorded that the relevant appellants traded while in possession of UPSI – 1 and thereby violated the one group of the relevant provisions of regulations as detailed supra in paragraph no. 42 which do not require that the trading should be on the basis of UPSI while another group of provisions has such a requirement.

50. In the paragraph no. 76 of the impugned order, the learned WTM made the following observations regarding the provisions applicable to the present proceeding as under :-

> *"76. The prohibition contained in Regulation 3 of the PIT Regulations, 1992 applies not only when the insider has traded "on the basis of" any unpublished price sensitive information but also applies when the insider has traded "while in possession of" any UPSI. When it comes to imposition of monetary penalty under section 15G of SEBI Act, 1992, the requirement of dealing in securities is "on the basis of" UPSI. Therefore, violation of section 15G of SEBI Act, 1992 read with Regulation 3 of the PIT Regulations, 1992 also requires the proof of dealing in securities "on the basis of" UPSI. However, the same is not the case in respect of passing of appropriate directions under Section 11(4), 11B(1) of SEBI Act, 1992 for violation provision of Section 12A(d) & (e) of SEBI Act, 1992 and Regulation 3 of PIT Regulations, 1992, which requires only establishing the fact of dealing in securities "while in possession of" UPSI."*

51. The reading of the above observations would show that the learned WTM reasoned that while Regulation 3 of the PIT Regulations, 1992 requires, *inter-alia*, two ingredients for violation of PIT Regulations i.e. "on the basis of" and "while in possession of", so far as the issue of monetary penalty is concerned, it is governed by Section 15G of the SEBI Act wherein the requirement is

of the dealing in securities "on the basis of" UPSI. It was further reasoned that violation of Section 15G of the SEBI Act read with Regulation 3 of the PIT Regulations required proof of dealing in securities "on the basis of" UPSI. But so far as the second group of provisions are concerned, the learned WTM reasoned that the power to issue appropriate directions by SEBI under Section 11(4), 11B(1) of the SEBI Act for violation of provisions of Section 12A(d) and (e) of the SEBI Act and Regulation 3 of the PIT Regulations requires only establishing the fact of dealing in securities "while in possession of" UPSI.

52. While categorizing the statutory provisions in two groups, the learned WTM categorized Regulation 3 of the PIT Regulations in both the group, firstly by grouping it with Section 15G of the SEBI Act and then also grouping it with Section 11(4)(a), (b) and (c), 11 B and !2 A (d) and (e)of the SEBI Act as detailed supra.

53. Even though, for the reasons to follow, we find that this grouping is flawed, it is necessary to point out one mistake inadvertently committed by the learned WTM in this regard. Regulation 3 of the PIT Regulations, 1992 as it stood prior to the amendment of 2002 read as under :-

"3. ***Prohibition on dealing, communicating or counseling on matters relating to insider trading.*** *- No insider shall –*

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange on the basis of any unpublished price sensitive information;

(ii) communicate any unpublished price sensitive information to any person, with or without his request for such information, except as required in the ordinary course of business or under any law; or

(iii) counsel or procure any other person to deal insecurities of any company on the basis of unpublished price sensitive information."

(Emphasis supplied)

54. The amendment of 2002 replaced the term "on the basis of" with "when in possession of". As the present appellants had dealt in the shares of KBL in October 2010 i.e. after the amendment of 2002, the observation of the learned WTM that Regulation 3 of the PIT Regulations could be applicable if the insider trades both "on the basis of " as well as "while in possession of any UPSI" is strictly against this provision. May be learned WTM was under the impression that as the provisions of Section 15G of the SEBI Act provides for monetary penalty only when the insider trading is done

"on the basis of", the same can applied to the Regulation 3 of the PIT Regulations to award penalty but not to the protective orders of passing appropriate directions under Section 11B, 11(4) of the SEBI Act for violation of provisions of Section 12A(d) and (e) of the SEBI Act again read with Regulation 3 of the PIT Regulations. However the learned WTM has also directed for payment of penalty vide the impugned order though the learned WTM as pointed above reasoned that the penalty can be imposed as provided by Section 15G of SEBI Act only when the trading is on the basis of UPSI, and in fact these appellants from Alpana group did not trade on the basis of UPSI .

55. It would be relevant to reproduce the relevant provisions grouped into two categories by the learned WTM. Those are as under :-

> *"S. 15G SEBI Act 1992- Penalty for insider trading.—If any insider who,—*
>
> *(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or*
>
> *(ii) communicates any unpublished price sensitive informa-tion to any person, with or without his request for such informa-tion except as required in the ordinary course of business or under any law; or*

(iii) counsels, or procures for any other person to deal in any securities of anybody corporate on the basis of unpub-lished price sensitive information, shall be liable to a penalty [of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher].”

“Regulation 3 PIT Regulations, 1992 -. No insider shall—

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange [when in possession of] any unpublished price sensitive information; or

[(ii) communicate [or] counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities :

***Provided** that nothing contained above shall be applicable to any communication required in the ordinary course of business [or profession or employment] or under any law.]”*

“Section 11[(4) SEBI Act 1992 - Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely :—

(a) suspend the trading of any security in a recognised stock exchange;

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;

(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

(e) attach, after passing of an order on an application made for approval by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder :

Provided that only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation :

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where

the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market :

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned."

"*Section 11B SEBI Act 1992 - Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary —*

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interests of inventors of securities market; or

(iii) to secure the proper management of any such intermediary or person,
it may issue such directions –

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11-A,
as may be appropriate in the interests of investors in securities and the securities market.

Explanation. – For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct

> *any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention."*

> *"Section 12A SEBI Act 1992- No person shall directly or indirectly —*
>
> *(d) engage in insider trading;*
>
> *(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;"*

56. Section 11 of the SEBI Act provides for powers and functions of the board to protect the interest of the investors in securities and to promote the development of as well as to regulate the securities market by such measures as it thinks fit. Sub-section 2 provides for specific powers without prejudice to the generality of sub-section (1). Sub-section 4 specifically provides for passing an order, for reasons to be recorded in writing for taking various steps as enumerated in that sub-section including disgorgement of the amount pursuant to a direction issued under Section 11B of the SEBI Act.

This Section 11B provides for power to issue directions which includes issuing direction to any persons or class of persons referred to in Section 12 or to any person associated with securities market. Section 12A provides for prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control. Clause (d) and (e) deals with prohibition in engagement in insider trading.

57. The division made by the learned WTM that in passing protective orders like restraining from accessing to the security market and to disgorge unlawful gains there is no need to look into the trading to find out as to whether the trading was made on the basis of insider information, is flawed. On the same line, the reasoning of the learned WTM that this requirement is only for dealing with the case while imposing penalty is also wrong.

58. Section 12A of the SEBI Act generally prohibits manipulative and deceptive devices and thereafter enumerates the various devices, including engaging in insider trading. It does not define insider trading. The provision, thus, generally prohibits this manipulative and deceptive device. Section 15G specifically provides for penalty for insider trading by specifically providing that

the person dealing in securities "on the basis of" any UPSI shall be liable for penalty.

59. Section 11(4) and 11B(1) of SEBI Act 1992, referred by the learned WTM are called as general powers to protect the interest of investors, etc. and in that regard pass necessary orders which includes disgorgement of the ill-gotten gains and / or restraining from accessing the securities market. It is nowhere provided that these protective orders can be passed even when trading is not "on the basis of" an UPSI. What these provisions inter alia provides is prohibition of insider trading and for protection from such insider trading either by restraining the person from accessing the securities market in future or by disgorging the ill-gotten amount by him.

60. Insider trading is considered to be a heinous act where a person takes undue advantage of his privilege of having insider information - technically called as UPSI - to the detriment of the general investors unaware of such information.

61. There are number of cases decided by this Tribunal in this regard. ***Mrs. Chadrakala vs. SEBI (supra)*** is itself quoted by the learned WTM but did not appreciate the same in proper perspective.

Even after the requirements of insider trading "on the basis of" UPSI as was found in the subordinate legislation i.e Regulation 3 of PIT Regulation, was deleted by amendment to the PIT Regulations in 2002, still in view the provisions of the principal legislation i.e. Section 15G of SEBI act 1992, this Tribunal in the cases of ***Abhijit Rajan vs. SEBI appeal No. 232 of 2016 decided on November 8, 2019*** and ***Mr. Manoj Gaur vs. SEBI (supra),*** has taken into consideration as to whether there was any co-relation between the trading and existence of UPSI.

62. If the trading of a person is unrelated to the UPSI, naturally it cannot be said that he has taken any undue advantage of any UPSI. Therefore, he would not be liable either for a penalty or for any protective order like restraining from securities market or disgorgement of any amount which naturally would not be an ill-gotten gain. It is illogical to affirm that while SEBI can disgorge the gains of such trade holding it ill-gotten, it cannot impose penalty for the very same trade. The division made by the learned WTM regarding these two types of orders as can be found in paragraph no. 77 above therefore cannot be sustained.

63. As regards the UPSI – 2, i.e. of trading in the shares of KBL while in possession of KG-MOB reports for July and August received by them on August 6, 2010 and September 3, 2010, the learned WTM held that the present appellants in Alpana group have traded in the shares of KBL while in possession of UPSI – 2. However, the learned WTM accepted their plea that in the board meeting of KBL, a decision was already taken on July 28, 2010 KIL to buy the shares of KBL pursuant to which the trading was done on August 6, 2010 and on the date of decision the KG-MOB report of July was not in existence. Therefore, the learned WTM held that none of the appellants had insider information regarding the KBL financial for July 2010 or August 2010 or of September 2010. Thus, no UPSI had existed on the date, the decision was taken. The learned WTM concluded that there is no relevance of the alleged UPSI to the detriment of the appellants who had traded on August 6, 2010. Therefore, the appellants were exonerated by the learned WTM from the charge on this count.

64. In the case of Sanjay group, however, since the appellants simply took a plea of restructuring of family holding, the learned WTM held that these appellants traded when in possession of UPSI

2. However the plea that the trading was not done on the basis of UPSI 2 was accepted for the reasons that the trading was done for restructuring of the family holdings.

65. As we have found that the alleged UPSI – 1 was not at all UPSI and the learned WTM had held that UPSI – 2 was unrelated to the trading of the appellants in Alpana group or trading was not done by Sanjay group on the basis of this UPSI in the shares of KBL, the present appeals deserved to be allowed on merit.

66. Besides this, the appellants have made submissions on the inordinate delay in issuing the show cause notice, violation of principles of natural justice by not providing some documents and non- liability of the legal heirs of deceased – noticee no. 6 Gautam Kulkarni or the appellant nos. 1 and 3 Alpana Kirloskar and Jyotsna Kirloskar had no access to UPSI or the quantum of disgorgement, period of restrainment or quantum of monetary penalty needs no consideration as we have decided the matter on merits. We may however add, that if the WTM departs from the proposed methodology as provided in the show cause notice relating to calculation of disgorgement, then an opportunity has to be provided by the WTM before departing from the methodology provided in the

show cause notice. Passing an order on disgorgement and then providing a post decision hearing is not permissible.

67. Since we find that there was no insider trading, the appeals of Alpana group as well as of Sanjay group are required to be allowed, the grievance of the original complainant i.e. Kirloskar Brothers Ltd. who has filed Appeal No. 44 of 2021 for enhancement of the penalty as well as the disgorgement amount cannot survive. In our view, the complainant cannot be said to be aggrieved by the decision of SEBI and, therefore, also the appeal is not maintainable. In view of the forgoing reasons, the following order :-

ORDER

1. Appeal Nos. 499 of 2020, 503 of 2020, 504 of 2020, 505 of 2020, 506 of 2020, 507 of 2020 and 508 of 2020 are hereby allowed without any order as to costs. The impugned orders dated October 28, 2020 passed against them are hereby set aside.

2. Appeal No. 44 of 2021 filed by the complainant Kirloskar Brothers Ltd. is hereby dismissed without any order as to costs.

3. All the Misc. Applications stands disposed of.

4. 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

Ms. Meera Swarup
Technical Member

12.10.2022
PTM