REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7054 OF 2021

BALRAM GARG .....APPELLANT

VERSUS

SECURITIES AND EXCHANGE BOARD OF INDIA .....RESPONDENT

WITH

CIVIL APPEAL NO.7590 OF 2021

MS. SHIVANI GUPTA & ORS. .....APPELLANTS

VERSUS

SECURITIES AND EXCHANGE BOARD OF INDIA .....RESPONDENT

J U D G M E N T

Vineet Saran, J.

1. The present Civil Appeals arise out of a common judgement and order dated 21.10.2021 passed by the Securities Appellate Tribunal (for short "SAT"), wherein the Tribunal dismissed the

Appeals No.375 and 376 of 2021 filed by the Appellants herein and upheld the order dated 11.05.2021 passed by the Whole Time Member (for short "WTM") of Securities and Exchange Board of India (for short "SEBI")

2. Brief facts relevant for the purpose of the present appeals are that P. Chand Jeweller Pvt. Ltd. was incorporated on April 13, 2005 under the Companies Act, 1956 as a Private Limited Company. However, pursuant to a resolution passed by the shareholders on July 5, 2011, the company was converted into a Public Limited Company, following which the name of the company was changed to "PC Jeweller Ltd." (for short "PCJ") and a fresh certificate of incorporation was issued.

3. The genesis of the present dispute is rooted in the action of Respondent/SEBI against the appellants vide an impounding order dated 17.12.2019 and a show-cause notice dated 24.04.2020. The crux of the allegations of the impounding order and the show-cause notice are as follows:

   i. Padam Chand Gupta (P.C. Gupta) was the Chairman of PCJ during the relevant period and was a "connected person" in terms of Regulation 2(1)(d)(i) and an "insider" under Regulation 2(1)(g) of the SEBI

(Prevention of Insider Trading Regulations), 2015 (for short "PIT Regulations").

ii. Balram Garg, who is the brother of P.C. Gupta and the Managing Director of PCJ is also a "connected person" in terms of Regulation 2(1)(d)(i) and an "insider" under Regulation 2(1)(g) of the PIT Regulations.

iii. That allegedly, the appellants in C.A. No.7590/2021, namely, Sachin Gupta, Smt. Shivani Gupta and Amit Garg traded on the basis of Unpublished Price Sensitive Information (for short "UPSI") received by them on account of their alleged proximity to P.C. Gupta and Balram Garg between the period from 01.04.2018 to 31.07.2018.

iv. The above proximity was alleged on the basis of the fact that Sachin Gupta and Smt. Shivani Gupta are the son and daughter-in-law of Balram Garg's deceased brother late P.C. Gupta. Moreover, Amit Garg is the son of Amar Garg, who was also the brother of Balram Garg. It was also alleged that all the appellants shared the same residence.

4. Balram Garg, the appellant in C.A. No.7054/2021, filed his reply

(dated 07.08.2020) to the allegations made against him, wherein he stated the following:

i. That the foundational facts were not there to prove or 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 Mr. 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 consulted Balram Garg in any decision related to trading in securities. Presumption is a rule of evidence which cannot be drawn unless and until such foundational facts are proved.

ii. That no material was brought on record to prima facie show any transfer of information to the appellants in C.A. No.7590 of 2021

iii. That merely being a family/relative cannot by itself be a ground for the offence of insider trading, especially when in furtherance of a family agreement, the family was partitioned in 2011 and there had been no

connection between them ever since.

iv. Moreover, Sachin Gupta resigned from the post of President (Gold Manufacturing) held by him in the company on 31.03.2015 pursuant to the family partition. Since then, neither Sachin Gupta nor his wife Mrs. Shivani Gupta had anything to do with the business of the PCJ.

5. After granting an opportunity of personal hearing to the appellant on 24.12.2020, the Whole Time Member of SEBI passed final order dated 11.05.2021, imposing a penalty of Rs.20 lakhs on the Appellants along with restraining the appellants from accessing the securities market and buying, selling or dealing in securities, either directly or indirectly, in any manner for a period of 1 year from the date of the order and also restrained the appellants from dealing with the scrip of PCJ for a period of 2 years.

6. Aggrieved by the order of the WTM of SEBI, the Appellants filed appeals before the SAT. The Tribunal, vide its common judgement and order dated 21.10.2021, dismissed the Appeals preferred by the Appellants and held that:

> *"Upon hearing both the sides, in our view, the reasoning of the Ld. WTM cannot be faulted with. The facts as highlighted by the Ld. WTM would show that though there was a family arrangement*

within the family on two occasions, there was no estrangement, as can be seen from the facts highlighted by the Ld. WTM (supra). Additionally, in our view, the very fact that appellant Shivani had authorized her cousin brother-in-law i.e. appellant Amit to trade on her behalf, would belie the case of the appellants that family settlements means family estrangement. It cannot be gainsaid that the appellants are residing at the same address and even appellant Mr. Balram Garg's address is 'the front side' of the premise. The trading pattern of the concerned appellant i.e. withholding of the selling of trade once buy back talk started within the company and again selling spree the shares by them once the buy back offer was made public till the rejection of the proposal by the State Bank of India was made known to the public, would clearly show that the concerned appellants were aware of both the UPSI.

It is true that there is no direct evidence as to who had disseminated this insider information to the appellants in Appeal no. 376 of 2021. Late Shri Padam Chand Gupta was the father of the appellant Mr. Sachin Gupta and father-in-law of the appellant Ms. Shivani Gupta and uncle of appellant Mr. Amit Garg. Similarly, appellant Mr. Balram Garg is the uncle of appellant Mr. Sachin Gupta and appellant Mr. Amit Garg. All of them were residing in the same address. Appellant Mr. Sachin Gupta had financial transactions with the company of which appellant Mr. Balram Garg was Managing Director. Considering all of the above facts, on preponderance of probability, it can very well be concluded that Late Padam Chand as well as appellant Mr. Balram disseminated both UPSI to the appellants in appeal no. 376 of 2021."

7. Aggrieved by the above order of the SAT dated 21.10.2021, the appellants filed the present appeals (C.A. No.7054/2021 by

Balram Garg and C.A. No.7590/2021 by Mrs. Shivani Gupta, Sachin Gupta, Amit Garg and Quick Developers Pvt. Ltd.) under section 15Z of the Securities and Exchange Board of India Act, 1992. Since, P.C. Gupta expired in January 2019 after the notices were issued, hence the case was dropped as against him.

8. Mr. Dhruv Mehta, learned Senior Counsel for the Appellant Balram Garg (in C.A. No.7054 of 2021) has submitted that the WTM has held that the appellants no.1 to 3 in C.A. No.7590 of 2021, namely, Mrs. Shivani Gupta, Sachin Gupta and Amit Garg (also referred to as Noticee no.1 to 3 in the show-cause notices) were not *"connected persons"* or *"immediate relatives"* qua the appellant Balram Garg and that this finding of the WTM has become final. It was further submitted that the appellant Mr. Balram Garg was found to have violated only Regulation 3 of PIT Regulations, 2015 and that unlike Regulation 4(2) of PIT Regulations, there is no provision to raise any presumption under the said Regulation 3.

9. It was also contented that to prove the violation of Regulation 3 of PIT Regulations, the burden of proof was on SEBI to establish any "communication" of UPSI by placing on record cogent evidence viz. call details, emails, witnesses etc. It was submitted that the

Respondent in this case has failed to place any such evidence on record. Moreover, it was submitted that the presumption against *"immediate relative"* is provided in the Regulations to ensure that relatives who are financially or otherwise under the complete control of a connected person are not used for insider trading. However, in this case, no such possibility existed in relation to the appellant Mr. Balram Garg and the other appellants in C.A. No.7590 of 2021, namely, Mrs. Shivani Gupta, Sachin Gupta and Amit Garg.

10. The learned Senior Counsel further contented that the reliance of the respondent on the transactions between appellant Sachin Gupta and the Company (PCJ) is against the principles of natural justice as these allegations were not part of the show cause notices. It was also submitted that the name of the appellant Balram Garg has been used inter-changeably with that of late P.C.Gupta and 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 appellants in C.A. No.7590 of 2021.

11. Mr. V. Giri, learned Senior Counsel for the appellants in C.A. No.7590 of 2021, namely, Mrs. Shivani Gupta, Sachin Gupta,

Amit Garg and Quick Developers Pvt. Ltd., has contended that the entire case of insider trading is set up against these appellants only on the basis of the close relationship between the parties. However, he submitted that the appellants have placed sufficient material on record to demonstrate that there was a complete breakdown of ties between the parties, both at personal and professional level and that the said estrangement was much prior to the UPSI having coming into existence.

12. The learned Senior Counsel has further contented that even assuming that the appellants have not been able to demonstrate a complete breakdown of ties between the parties, it was not open for the SAT to turn the Statute on its head by reversing the burden of proof on the appellants by conveniently ignoring the fact that the onus was actually on SEBI to prove that the appellants were in possession or having access to UPSI.

13. It was also contended that the charges against the appellants in C.A. No.7590 of 2021 have been sustained solely on the basis of circumstantial evidence viz. trading patterns and timing of trades by the appellants. Moreover, it was not open to the WTM and SAT to hold the appellants guilty of the offence of insider trading in the absence of any other concrete evidence as SEBI failed to produce

such evidence. The learned Senior Counsel also emphasized on the fact that the charges against the appellants that they were *"connected persons"* within the meaning of Regulation 2(1)(d) of the PIT Regulations was expressly rejected by the WTM and that the burden of proving that the appellants are *"insiders"* by invoking Regulation 2(1)(g)(ii) of PIT Regulations was completely upon the SEBI and that they failed to discharge this burden.

14. Per contra, Mr. Arvind Datar, learned Senior Counsel for the Respondent has submitted that on April 25, 2018, PCJ initiated discussions regarding buy-back of fully paid up equity shares. On 10.05.2018, pursuant to the discussion and approval by the Board, the company, after market hours, informed the stock exchange of their offer of buy-back of 1,21,14,285 fully paid up equity shares of Rs. 10/- each at a price of Rs. 350/- per equity share. As before this date, the information about buy-back was not disclosed, and since the information pertained to change in capital structure of the company, this information qualified as Unpublished Price Sensitive Information-1 (for short "UPSI-1"). Accordingly, the period from April 25, 2018 to May 10, 2018 has been taken as the period of UPSI-1.

15. It was further submitted that on July 7, 2018, the lead Banker of

PCJ, State Bank of India (for short "SBI"), refused to give No Objection Certificate (for short "NOC") for the buy-back of equity shares. Hence, on July 13,2018, the Board approved the withdrawal of the buy-back offer and the same was informed to the Exchanges after market hours. It was submitted that this information has been considered as Unpublished Price Sensitive Information-2 (for short "UPSI-2") as the same was likely to materially affect the price of the shares of the company. Moreover, the information pertaining to proposed buy-back of equity shares of the company came into existence on July 7, 2018 and became public on July 13, 2018. Accordingly, the period from July 7, 2018 to July 13, 2018 has been taken as period of UPSI-2.

16. It has been contended that appellant Balram Garg contravened Regulation 3(1) of the PIT Regulations and Section 12A(c) of the SEBI Act,1992, by communicating the UPSI to the appellants in C.A. No.7590 of 2021, by being an "insider" and "connected person" within the meaning of PIT Regulations, and by being privy to discussions and communications pertaining to buy-back and withdrawal of equity shares. Additionally, by virtue of being the Managing Director (MD) of the PCJ, Balram Garg was in possession of UPSI-1 and UPSI-2.

17. Mr. Datar has contended that during the period 02.04.2018 to 31.07.2018, trades were executed by Appellants in C.A. No.7590 of 2021 while in possession of UPSI and that they made unlawful gains and avoided losses. Trades were executed from the trading account of Mrs. Shivani Gupta from 02.04.2018 and continued till 24.04.2018. No trades were undertaken in May and June 2018 and then sell trades were undertaken from July 6, 2018 till July 13, 2018 i.e. during UPSI-2. Appellant Mrs. Shivani Gupta had 100% concentration in the scrip of PCJ and these trades were executed by Mrs. Shivani Gupta, Sachin Gupta and Amit Garg, i.e. Appellant No. 1,2, and 3 respectively in C.A. No.7590 of 2021.

18. The learned Senior Counsel further contented that the Appellant No. 4 (in C.A. No.7590 of 2021) i.e. Quick Developers Pvt. Ltd, took short position on 13.07.2018 i.e. just before information pertaining to withdrawal was communicated to the Exchanges. It is submitted that such short positions were taken in anticipation of a price fall. Appellant Amit Garg and his wife are 100% shareholders of Quick Developers Pvt. Ltd., hence they, through the trades executed from the account of Quick Developers Pvt. Ltd., avoided losses and also made profit.

19. In the context of the family settlement, learned Senior Counsel

has contended that such a settlement, at best, was an internal division and does not imply that all ties between the family members were severed or that relationship of appellant Balram Garg with appellants in C.A. No.7590 of 2021 was estranged. It was further argued that the appellants did not cease to have association with each other, which is established by the following facts:

i. Sachin Gupta continued to have business transactions with PCJ. PCJ even paid rent to Sachin Gupta to the tune of Rs.4 lakhs for Financial Year 2015-16, Rs.77 lakhs for the Financial Year 2016-17 and Rs.78 lakhs for the financial Year 2017-18.

ii. Sachin Gupta was the nominee of the Demat Account of late P.C. Gupta and after his death, the holdings of P.C. Gupta in the company were held by Sachin Gupta. Hence, it cannot be said that the father and son relationship was estranged.

iii. Appellant Balram Garg and the Appellants No. 1,2, and 3 in C.A. No.7590 of 2021 i.e. Mrs. Shivani Gupta, Sachin Gupta and Amit Garg share the same residential address.

20. Reliance was placed on the SAT order in ***Utsav Pathak vs. SEBI***

(order dated 12.07.2020 in Appeal No. 430 of 2019) wherein the SAT had laid down the following ratio by relying upon the judgement of this court in ***SEBI vs. Kishore R. Ajmera [(2016) 6 SCC 368]*** and US District Court's order in ***United States of America vs. Raj Rajaratnam and Danielle Chiesi [09 Cr 1184 (RJH)]***:

> *"From the aforesaid foundational facts, the circumstantial evidence or on a preponderance of probability by a logical process of reasoning from the totality of the attending facts and circumstances as stated aforesaid, an irresistible inference can be drawn that the appellant had passed on the price sensitive information regarding the open offer to the Tippees. Such inference taken from the immediate and proximate facts and circumstances surrounding the events is reasonable and logical which any prudent man would arrive at such a conclusion. The Supreme Court in Kanhaiyalal Patel (supra) held that an inferential conclusion from proved and admitted facts would be permissible and legally justified so long as the same is reasonable."*

The learned Senior Counsel also submitted that the abovementioned proposition has been followed by the SAT in ***Navin Kumar Tayal & Anr. Vs SEBI*** in order dated 02.08.2021 in Appeal No. 08 of 2018.

21. Mr. Datar concluded his submissions by stating that the close relationship of the appellants in C.A. No.7590 of 2021 with the

appellant Balram Garg, especially in view of the trading pattern makes it abundantly clear that the appellants Mrs. Shivani Gupta, Sachin Gupta and Amit Garg were in possession of UPSI-1 & 2, who could not have got it from anywhere else except Balram Garg, who by virtue of being the MD of the company, possessed the crucial UPSI.

22. For ready reference, the relevant provisions of the concerned Acts and Regulations are extracted below:

Section 11(2)(g) of the Securities and Exchange Board of India Act, 1992

> *"11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.*
>
> *(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—*
> *(a)...*
> *(b)...*
> *(c)...*
> *(d)...*
> *(e)...*
> *(f)...*
> *(g) prohibiting insider trading in securities;*
> *(h)...*
> *.....*
> *....."*

Section 11(4) of the Securities and Exchange Board of India

Act, 1992

"[(4) 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.]"*
(emphasis supplied)

Section 12A of the Securities and Exchange Board of India Act, 1992

"Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

(a) *use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

(b) *employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*

(c) *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

(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;*

(f) *acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.]"*
(emphasis supplied)

Section 15G of the Securities and Exchange Board of India Act, 1992

"Penalty for insider trading.

15G.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 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) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,

shall be liable to a penalty 81[which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher]."

(emphasis supplied)

Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015

Definitions.

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:–

(a) *"Act" means the Securities and Exchange Board of India Act, 1992 (15 of 1992);*

(b) *"Board" means the Securities and Exchange Board of India;*

(c) *"compliance officer" means any senior officer, designated so and reporting to the board of directors or head of the organization*

in case board is not there, who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information, monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be.

(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.

(e) *"generally available information" means information that is accessible to the public on a non-discriminatory basis;*

NOTE:*It is intended to define what constitutes generally available information so that it is easier to crystallize and appreciate what unpublished price sensitive information is. Information published on the website of a stock exchange, would ordinarily be considered generally available.*

(f) ***"immediate relative"*** *means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities;*

NOTE:*It is intended that the immediate relatives of a "connected person" too become connected persons for purposes of these regulations. Indeed, this is a rebuttable presumption.*

(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 or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances.

(h) *"promoter"……*
(i) *"securities"……..*
(j) *"specified"……*
(k) *"takeover regulations" ……*
(l) *"trading" means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly;*

NOTE:*Under the parliamentary mandate, since the Section 12A (e) and Section 15G of the Act employs the term 'dealing in securities', it is intended to widely define the term "trading" to include dealing. Such a construction is intended to curb the activities based on unpublished price sensitive information which are strictly not buying, selling or subscribing, such as pledging etc when in possession of unpublished price sensitive information.*

(m) *"trading day" ……*

(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;*
(v) *changes in key managerial personnel.*
(vi) *material events in accordance with the listing agreement*

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.*

(2) Words and expressions used and not defined in these regulations but defined in the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Securities Contracts (Regulation) Act,

1956 (42 of 1956), the Depositories Act, 1996 (22 of 1996) or the Companies Act, 2013 (18 of 2013) and rules and regulations made thereunder shall have the meanings respectively assigned to them in those legislation.

CHAPTER – II

RESTRICTIONS ON COMMUNICATION AND TRADING BY INSIDERS

Communication or procurement of unpublished price sensitive information.

3. (1) No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

NOTE:*This provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when transacting their business strictly on a need-to-know basis. It is also intended to lead to organisations developing practices based on need-to-know principles for treatment of information in their possession.*

(2) No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

NOTE:*This provision is intended to impose a prohibition on unlawfully procuring possession of unpublished price sensitive information. Inducement and procurement of unpublished price sensitive information not in furtherance of one's legitimate duties and discharge of obligations would be illegal under this provision.*

(3) Notwithstanding anything contained in this regulation, an unpublished price sensitive information may be communicated, provided, allowed access to or procured, in connection with a transaction that would:–

(i) *entail an obligation to make an open offer under the takeover regulations where the board of directors of the 9[listed] company is of informed opinion that 10[sharing of such information] is in the best interests of the company;*

NOTE*:It is intended to acknowledge the necessity of communicating, providing, allowing access to or procuring UPSI for substantial transactions such as takeovers, mergers and acquisitions involving trading in securities and change of control to assess a potential investment. In an open offer under the takeover regulations, not only would the same price be made available to all shareholders of the company but also all information necessary to enable an informed divestment or retention decision by the public shareholders is required to be made available to all shareholders in the letter of offer under those regulations.*

(ii) *not attract the obligation to make an open offer under the takeover regulations but where the board of directors of the*

11[listed] company is of informed opinion 12[that sharing of such information] is in the best interests of the company and the information that constitute unpublished price sensitive information is disseminated to be made generally available at least two trading days prior to the proposed transaction being effected in such form as the board of directors may determine 13[to be adequate and fair to cover all relevant and material facts].

NOTE:*It is intended to permit communicating, providing, allowing access to or procuring UPSI also in transactions that do not entail an open offer obligation under the takeover regulations 14[when authorised by the board of directors if sharing of such information] is in the best interests of the company. The board of directors, however, would cause public disclosures of such unpublished price sensitive information well before the proposed transaction to rule out any information asymmetry in the market.*

(4) For purposes of sub-regulation (3), the board of directors shall require the parties to execute agreements to contract confidentiality and non-disclosure obligations on the part of such parties and such parties shall keep information so received confidential, except for the purpose of sub-regulation (3), and shall not otherwise trade in securities of the company when in possession of unpublished price sensitive information.

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:

Provided that the insider may prove his innocence by demonstrating the circumstances including the following: –

(i) *the transaction is an off-market inter-se transfer between 18[insiders] who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.*

(ii) *in the case of non-individual insiders:-*

a. the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and

b. appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;

(iii) *the trades were pursuant to a trading plan set up in accordance with regulation 5.*

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. Once this is established, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.

(2) In the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the Board.

(3) The Board may specify such standards and requirements, from time to time, as it may deem necessary for the purpose of these regulations.

23. We have heard learned counsel for the parties at length and have carefully perused the record.

24. The submission of the Respondent that appellant Balram Garg contravened Regulation 3(1) of the PIT Regulations and section 12A(c) of the SEBI Act, by communicating the UPSI to the appellants in C.A. No.7590 of 2021, being an "insider" and "connected person" within the meaning of PIT Regulations is not worthy of acceptance. The Securities Appellate Tribunal has erred in upholding the order of the Whole Time Member of SEBI as it

has failed to independently assess the evidence and material on record while exercising its jurisdiction as the first appellate court. As reiterated by this Court in a catena of judgements, it is the duty of the first court of appeal to deal with all the issues and evidence led by the parties on both, the questions of law as well as questions of fact and then decide the issue by providing adequate reasons for its findings. Unfortunately, the SAT failed to apply its mind on the issues raised by the parties and routinely affirmed the findings of the WTM without dealing with the issues at hand. In this context, this Court has held in ***H.K.N. Swami v. Irshad Basith [(2005) 10 SCC 243]*** that:

> *"The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title."*

The above position was reiterated by this Court in ***UPSRTC vs Mamta [(2016) 4 SCC 172]***.

25. The SAT again fell in error when in spite of observing that there is no direct evidence which suggests as to who had disseminated the

insider information to the appellants in C.A. No.7590 of 2021, it concluded on mere "preponderance of probability" that it was late P.C. Gupta as well as appellant Balram Garg who disseminated both UPSI to the appellants in C.A. No.7590 of 2021.

26. Importantly, the WTM arrived at the finding that the appellants in C.A. No.7590 of 2021, namely, Mrs. Shivani Gupta, Sachin Gupta, Amit Garg and Quick Developers Pvt. Ltd. were not *"connected persons"* qua the appellant Balram Garg. The WTM held that:

> *"I also note that it is not the case in the SCN that Noticee no.1, 2 and 3 were in any contractual, fiduciary or employment relationship with the company, or were the director or officer of the company, during the past 6 months of the alleged act of insider trading. Noticee No. 1 and 2 seem to be in the employment of the company but that was way back in 2015. I also note that the SCN has also not identified that Noticee no. 1,2,3 or 4 had any professional or business relationship with the company, that allows the said Noticees, directly or indirectly, access to unpublished price sensitive information. In view of the above, I find that Noticee no. 1,2,3 and 4 cannot be treated as 'connected persons' in terms of Reg. 2(1)(d)(i) of PIT Regulations, 2015."*
> *[emphasis supplied]*

27. In our opinion, two important findings of the WTM and SAT need to be re-examined by this Court to adequately decide the present set of appeals. ***Firstly,*** Whether the WTM and SAT rightly rejected

the claim of estrangement of the appellants in C.A. No.7590 of 2021, namely, Mrs. Shivani Gupta, Sachin Gupta and Amit Garg?

Secondly, could the aforementioned appellants be rightly held to be "insiders" in terms of Regulation 2(1)(g)(ii) of the PIT Regulations, only and entirely on the basis of circumstantial evidence?

28. The appellants in C.A. No.7590 of 2021, namely, Mrs. Shivani Gupta, Sachin Gupta and Amit Garg, claimed before the WTM and SAT that they were estranged from the family and did not have the required connection with the appellant Balram Garg, who was the MD of the PCJ at the relevant time period. However, we are of the opinion that the WTM and SAT wrongly rejected this claim of the Appellants in C.A. No.7590 of 2021 without appreciating the facts and evidence as was produced before them. The WTM and SAT ought to have appreciated the relevant facts for ascertaining the true nature of relationship between the parties.

29. To understand the abovementioned relationship, it is pertinent to note that PCJ was promoted in 2005 by three brothers viz. P.C. Gupta [since deceased], Amar Chand Garg and Balram Garg (Appellant in C.A. No.7054 of 2021). Subsequently, due to certain differences, Amar Chand Garg and his branch of the family exited

the Company by entering into a family arrangement dated 01.07.2011 whereby their shareholding in the company was reduced to a meagre 0.70%. In September, 2011, Amar Chand Garg also resigned as the Vice Chairman of the company and disassociated himself from the company. Further, the record reveals that the son of Amar Chand Garg, i.e. Amit Garg (3rd Appellant in C.A. No.7590 of 2021) was never associated with the company. On 31.03.2015, on account of certain disputes that had arisen between Sachin Gupta (2nd Appellant in C.A. No.7590 of 2021) and his parents P.C. Gupta and Smt. Krishna Devi, Sachin Gupta, so as to exit the company along with his family, resigned from his position as President (Gold Manufacturing) of the Company and Mrs. Shivani Gupta (1st Appellant in C.A. No.7590 of 2021 and wife of Sachin Gupta) also resigned from her post of Senior Assistant Manager, Karol Bagh Store of PCJ. Importantly, both Sachin Gupta and Smt. Shivani Gupta were, at no point of time, Directors of PCJ.

30. Subsequently, late P.C. Gupta and his son Sachin Gupta entered into another family arrangement dated 10.04.2015 whereby P.C. Gupta and his wife agreed to transfer at least 1,60,00,000 shares of the company to Sachin Gupta and his family, and in lieu

thereof Sachin Gupta and his family agreed not to have any right whatsoever in the immovable and movable property of P.C. Gupta and his wife. However, Sachin Gupta and his wife Smt. Shivani Gupta were permitted to use the property at 1-C, Court Road, Civil Lines, Delhi for residential purposes only. It is pertinent to note here that the said plot of land is a large tract of land and separate buildings were constructed thereon. P.C. Gupta and Sachin Gupta, along with their families, resided in separate floors of the same building, whereas Amit Garg and Balram Garg resided in separate buildings.

31. Post the agreed transfer of shares by P.C. Gupta and his wife, Sachin Gupta and his wife Smt. Shivani Gupta *inter alia,* sold some shares of the company from 02.04.2018 to 13.07.2018. This aforesaid trade in shares was the subject matter of investigation by the Respondent/SEBI as it was contented by SEBI that the abovementioned trade was based on UPSI and hence was in contravention of SEBI Act and PIT Regulations. The WTM and SAT erred in not appreciating the aforementioned facts which adequately establish that the there was a breakdown of ties between both the parties, both at personal and professional level, and that the said estrangement happened much prior to the two

UPSI. Hence, we are of the opinion that when the two family arrangements (dated 01.07.2011 and 10.04.2015) are considered in their right perspective, it adequately demonstrates that there was a breakdown of relations between the parties. Additionally, given the fact that the entire case against the appellants for the offence of insider trading was based on the nature of close relationship between the parties, once it has been rightly held by the WTM that the appellants are neither *"connected persons"* within the meaning of Regulation 2(1)(d) nor "immediate relatives" within the meaning of Regulation 2(1)(f) of PIT Regulation, the question of *ipso facto* relying on the nature of relationship between the parties to come to the conclusion that they were "in possession of or having access to UPSI" while trading with the shares of the company is legally unsustainable.

32. Moreover, we find merit in the submission of the counsel for the appellants in C.A. No.7590 of 2021 that even assuming that the said family arrangements did not result in complete estrangement of social relations between the parties, the SAT could not, by virtue of this very fact, discharge SEBI of the onus of proof placed on them to prove that the Appellants were in possession of UPSI. In our opinion, the approach adopted by the SAT turns the SEBI

Act on its head as it places the burden of proving that there was a complete breakdown of ties between the parties on the Appellants in C.A. No.7590 of 2021 while conveniently ignoring the fact that the onus was actually on SEBI to prove that the appellants were in possession of or having access to UPSI. The legislative note to Regulation 2(1)(g) makes the above position of law explicitly clear. It states that:

> *"... 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."*

33. The second question before us is that could the appellants in C.A. No.7590 of 2021, be rightly held to be "insiders" in terms of regulation 2(1)(g)(ii) of the PIT Regulations, only and entirely on the basis of circumstantial evidence?

34. In this context, it is important to highlight that the two major Corporate Announcements, purportedly related to a change in company's capital structure, which were:

i. **<u>UPSI-1 [Period between 25.04.2018 to 10.05.2018]:</u>**

The announcement of the Company on 10.05.2018 to buy back up to 1,21,14,285 fully paid up equity shares of Rs. 10/- each at a price of Rs. 350/- per equity share.

ii. **UPSI-2 [Period between 07.07.2018 to 13.07.2018]:**

The announcement of the company withdrawing their buy-back offer due to non-receipt of NOC from State Bank of India.

35. After carefully and extensively perusing the records, we have come to the conclusion that 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). The reasoning of the SAT is *ex facie* contrary to the records, as would be evident from the forthcoming discussion wherein our analysis of the alleged transactions has been divided into three phases viz. Phase-I [Period from 02.04.2018 to 24.04.2018], Phase-II [Period from 22.06.2018 to 06.07.2018] and Phase-III [Period from 07.07.2018 to 13.07.2018].

36. **Phase-I [02.04.2018 to 24.04.2018 i.e. Pre UPSI-1 Period]:** Appellant Mrs. Shivani Gupta sold shares gifted to her by P.C. Gupta and Smt. Krishna Devi (as part of the family arrangement

dated 10.04.2015) for personal and commercial reasons. The said shares were sold for a price of Rs. 300 per share during the said period. However, since the price of the shares kept falling, Mrs. Shivani decided to stop selling shares on 24.04.2018. Further, if we presume that she had internal knowledge of the company's affair including the impending buy-back offer, it would be reasonable to assume that she would not have sold such a large chunk of shares (74,35,071 shares) in the pre-UPSI-1 period when the prices of the shares were falling and would have instead chosen to wait for the buy-back offer. This also assumes importance since SEBI itself, vide its show-cause notice dated 24.04.2020 had dropped the charges with respect to the UPSI-1 period. This would mean that the notional loss purportedly avoided by appellant Mrs. Shivani Gupta was only for the shares traded during the UPSI-II Period, and even according to SEBI, there was no case that she made any money or avoided any loss by trading in the shares of the company during the UPSI-1 Period.

37. **Phase-II [22.06.2018 to 06.07.2018 i.e. <u>Pre- UPSI-II Period</u>]:** PCJ had requested SBI to issue a NOC for the proposed buy-back offer on 07.07.2018 and the said request was rejected on the same day by the SBI. However, even before the said refusal by the

SBI, the appellant Mrs. Shivani Gupta had sold 1,00,000 shares on 06.07.2018 at a much lower price than the price at which the shares were sold earlier. On the date on which these shares were sold, the UPSI-2 had not even come into existence. If the arguments of the respondent hold any water, the Appellants should have waited till UPSI-2 and would only have subsequently offloaded maximum number of shares during the said period to avoid any notional loss. However, the records undercut the logic adopted by the respondent/SEBI for the reason that the appellants were not in possession of the UPSI-2 and hence the appellants started selling the shares even before the UPSI-2 came into existence.

38. **Phase-III [07.07.2018 to 13.07.2018 i.e. UPSI-II Period]:** The Appellant Mrs. Shivani Gupta sold only 15,00,000 shares during this period as opposed to the 74,35,071 shares that were sold at an earlier point of time (Pre-UPSI-1 Period). Importantly, notwithstanding the fact that the appellant Mrs. Shivani Gupta sold 15,00,000 shares, she continued to hold 12,84,111 shares of the company, out of the total that were transferred to her by way of the family arrangement. These above factors undercut the argument of SEBI that the appellants sold huge number of shares

during UPSI-2 period because they had the information that once the information of withdrawal of buy-back offer by PCJ was made public, the price of the shares would drastically fall. Moreover, the data reveals that the share price of the PCJ shares consistently fell during the investigation period and therefore it would be incorrect to say that the price of the shares fell only upon announcement of the withdrawal of the buyback offer. In fact, the records reveal that even after the announcement of the buy-back offer, there was no increase in the share prices of the company. Resultantly, the appellants stopped selling shares on 13.07.2018 because they believed that the market price continued to fall so badly that the shares possessed by them were not being valued accurately in the market. Hence, the appellants decided to constitute to hold their shareholdings.

39. In such view of the matter, we are of the 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. The said decisions of selling the shares and the timings thereof were purely a personal and commercial decision undertaken by them and nothing more can be read into those decisions. If the appellants did possess the UPSIs, we are unable to understand that why would the appellant

Mrs. Shivani Gupta sell only 15,00,000 shares during this period as opposed to the 74,35,071 shares that were sold at an earlier point of time (Pre-UPSI-1 Period) and still continue to hold 12,84,111 shares of the company that could have also been sold along with the 15,00,000 shares that were sold during the UPSI-2 period.

40. We are also of the opinion that 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. It would also be pertinent to note here that Regulation 3 of the PIT Regulations, which deals with communication of UPSI, does not create a deeming fiction in law. Hence, it is only through producing cogent materials (letters, emails, witnesses etc.) that the said communication of UPSI could be proved and not by deeming the communication to have happened owing to the alleged proximity between the parties. In this context, even the show-cause notices do not allege any

communication between the Appellant Balram Garg and the other appellants in C.A. No.7590 of 2021. This is evident from the following extract of the order of the WTM:

> *"A perusal of the SCNs shows that allegations of Noticees no. 1 to 4 being connected person under Regulation 2(1)(d)(i) seems to have been proceeded on the basis of inference drawn that Noticees no. 1 to 3 being relatives of Late Shri Padam Chand Gupta who was promotor and chairman of PC Jewellers, and Noticee no. 5 who was the MD of PC Jewellers, would be having frequent communication with Late Shri Gupta and Noticee No. 5. However, here I note that as per Regulation 2(1)(d)(i) , association by virtue of frequent communication with the officer of the company must be arising in the discharge of his/her duty towards the company. The SCNs does not allege that there was any communication between Noticee no. 5 and Noticee no. 1 to 4, arising out discharge of any duty owed by Noticee no. 1,2,3 or 4 to the compoany." [emphasis supplied]*

41. This Court in ***Hanumant vs. State of Madhya Pradesh [AIR 1952 Supreme Court 343]*** has held that:

> *"Assuming that the accused Nargundkar had taken the tenders to his house, the prosecution, in order to bring the guilt home to the accused, has yet to prove the other facts referred to above. No direct evidence was adduced in proof of those facts. Reliance was placed by the prosecution and by the courts below on certain circumstances, and intrinsic evidence contained in the impugned document, Exhibit P-3A. In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind.*

In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore it is right to recall the warning addressed by Baron Alderson, to the jury in Reg v. Hodge ((1838) 2 Lew. 227), where he said :-

> *"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to from parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."*

It is well to remember that in cases where the evidence in of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and pendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. In spite of the forceful arguments addressed to us by the learned Advocate-General on behalf of the State we have not been able to discover any such evidence either intrinsic within Exhibit P-3A or outside and we are constrained to observe that the courts below have just fallen into the error against which warning

was uttered by Baron Alderson in the above mentioned case." [emphasis supplied]

42. This Court in ***Chintalapati Srinivasa Raju vs Securities and Exchange Board of India [(2018) 7 SCC 443]*** has further held that:

"Further, under the second part of Regulation 2(e)(i), the connected person must be "reasonably expected" to have access to unpublished price sensitive information. The expression "reasonably expected" cannot be a mere ipse dixit – there must be material to show that such person can reasonably be so expected to have access to unpublished price sensitive information.

.

.

.

We have already demonstrated that the minority judgment is much more detailed and correct than the majority judgment of the Appellant Tribunal. We accept Shri Singh's submission that in cases like the present, a reasonable expectation to be in the know of things can only be based on reasonable inferences drawn from foundational facts. This Court in SEBI v. Kishore R. Ajmera, (2016) 6 SCC 368 at 383, stated:

> *"26. It is a fundamental principle of law that proof of an allegation leveled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and leveled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and*

> *proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."*
>
> *We are of the view that from the mere fact that the appellant promoted two joint venture companies, one of which ultimately merged with SCSL, and the fact that he was a co-brother of B. Ramalinga Raju, without more, cannot be stated to be foundational facts from which an inference of reasonably being expected to be in the knowledge of confidential information can be formed. The fact that the appellant was to be continued as a director till replacement again does not take us anywhere. Shri Viswanathan has shown us that two other independent non-executive directors were appointed in his place on and from 23.1.2003. What is clear is that the appellant devoted all his energies to the businesses he was running, on and after resigning as an executive director of SCSL, as a result of which the salary he was being paid by SCSL was discontinued."*
>
> *[emphasis supplied]*

43. 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 a rebuttable one. Reverse burden as also statutory*

> *presumptions can be raised in several statutes 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 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 in any decision related to trading in securities.

44. In light of the above principles of law laid down by this Court, it was imperative on the Respondent/SEBI to place on record relevant material to prove that the appellants in C.A. No.7590 of 2021, namely, Mrs. Shivani Gupta, Sachin Gupta, Amit Garg and Quick Developers Pvt. Ltd. were *"immediate relatives"* who were *"dependent financially"* on appellant Balram Garg or *"consult"* Balram Garg in *"taking decisions relating to trading in securities"*.

However, SEBI failed to do so as has been already recorded by the WTM in its order dated 11.05.2021. The said appellants in C.A. No.7590 of 2021 were not *"immediate relatives"* and were completely financially independent of the appellant Balram Garg and had nothing to do with the said Balram Garg in any decision making process relating to securities or even otherwise.

45. In the context of appellant no. 4 (in C.A. No.7590 of 2021), namely Quick Developers Pvt. Ltd., the record clearly reveals that it is neither a *"holding company"* or an *"associate company"* or a *"subsidiary company"* of PCJ nor the appellant Balram Garg has ever been the Director of Quick Developers Pvt. Ltd. Therefore, Quick Developers Pvt. Ltd. cannot be held to be a *"connected person"* vis-à-vis the appellant Balram Garg.

46. Furthermore, reliance of the Respondent/SEBI on transactions between appellant Sachin Gupta and PCJ and the subsequent payments of rent by PCJ is against the principles of natural justice as these allegations were not part of the Show Cause Notices. To cement this proposition, reference could be made to ***Tarlochan Dev Sharma vs State of Punjab [(2001) 6 SCC 260]*** wherein this Court has held that:

> *"We are, therefore, clearly of the opinion that not only the principles of natural justice were violated by the factum of the impugned order having been founded on grounds at variance from the one in the show cause notice, of which appellant was not even made aware of let alone provided an opportunity to offer his explanation, the allegations made against the appellant did not even prima facie make out a case of abuse of powers of President."*
>
> *[emphasis supplied]*

Similar observations have also been made by this Court in ***Hindustan Lever Ltd. vs. Director General (Investigation and Registration) [(2001) 2 SCC 474].***

47. Lastly, we have given our anxious consideration to the judgements relied upon by the learned counsel of the Respondent viz. ***SEBI vs Kishore R. Ajmera [(2016) 6 SCC 368]*** *and* ***Dushyant N. Dalal vs. SEBI [(2017) 9 SCC 660]***. Suffice it to hold that these cases are distinguishable on the facts of the present case, as the former is not a case of insider trading but that of Fraudulent/Manipulative Trade Practices; and the latter case relates to Interests and Penalty rather than the subject matter at hand. Reliance placed on the case of ***Kishore R. Ajmera (supra)*** to show that presumption can be drawn on the basis of immediate and relevant facts is contrary to law already

settled by this Court in the case of ***Chintalapati Srinivasa Raju (supra)*** where it is held that *"a reasonable expectation to be in the know of things can only be based on reasonable inference drawn from foundational facts".* It has further been held that merely because a person was related to the connected person cannot by itself be a foundational fact to draw an inference.

48. To conclude, the entire case of the Respondents was premised on two important propositions, that *firstly,* there existed a close relationship between the appellants herein; and *secondly*, that based on the circumstantial evidence (trading pattern and timing of trading), it could be reasonably concluded that the appellants in C.A. No.7590 of 2021 were "insiders" in terms of Regulation 2(1)(g)(ii) of the PIT Regulations. However, as the discussion above would reveal, the WTM and SAT wrongly rejected the claim of estrangement of the Appellants in C.A. No.7590 of 2021, without appreciating the facts and evidence as was produced before them. The records and facts adequately establish that the there was a breakdown of ties between the parties, both at personal and professional level and that the said estrangement happened much prior to the two UPSI. Secondly, as has already been discussed, 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. The said appellants in C.A. No.7590 of 2021 were not *"immediate relatives"* and were completely financially independent of the appellant Balram Garg and had nothing to do with the him in any decision making process relating to securities or even otherwise. The submission of the learned counsel of the respondent regarding the same residential address of the

appellants also falls flat as admittedly the parties were residing in separate buildings on a large tract of land. Lastly, in our opinion, the SAT order suffers from non-application of mind and the same is a mere repetition of facts stated by the WTM. The Appellate Tribunal was exercising jurisdiction of a First Appellate Court and was bound to independently assess the evidenced and material on record, which it evidently failed to do.

49. Accordingly, the appeals are allowed and the impugned judgement and final orders of WTM and SAT are set aside. The deposits made by the appellants in both the appeals in terms of the impugned orders or interim orders of this Court shall be refunded to the respective appellants.

50. No orders as to costs.

.....J.
[VINEET SARAN]

.....J.
[ANIRUDDHA BOSE]

New Delhi
Dated: APRIL 19, 2022