

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 22.05.2024

Date of Decision : 09.08.2024

Misc. Application No. 292 of 2024

And

Misc. Application No. 309 of 2024

And

Appeal No. 69 of 2024

Venkatraman Ranganathan
90, Brindavan,
3rd Cross SVK Layout
West of Chord Road,
Bangalore – 560 079.

..... Appellant

Versus

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

...Respondent

Mr. Dhruwin Timbadia, Advocate for the Appellant.

Mr. Vishal Kanade, Advocate with Ms. Prapti Kedia and
Mr. Anuj V.R., Advocates i/b Agama Law Associates for the
Respondent.

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

Per : Ms. Meera Swarup, Technical Member

The appellant, Sh. Venkatraman Ranganathan has filed this appeal against the impugned order dated 12th October, 2023 passed by the Adjudicating Officer ('AO' for short) of the Securities and Exchange Board of India ('SEBI' for short) (Respondent) imposing a penalty of Rs. 10 lakh under Section 15-I of the SEBI Act, 1992 for violation of Section 12A(d) and 12A(e) of SEBI Act and Regulation 3(1) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 ('PIT' Regulations' for short).

2. The facts of the case are as follows:-

SEBI investigated the trading done in the scrip of Cerebra Integrated Technologies Limited ('CITL or the Company' for short) during the period 1st October, 2021 to 13th November, 2021 ('IP-Investigation Period'). Based on the investigation, SEBI concluded that the trading in the scrip of CITL during the IP undertaken by Noticees was done while in possession of or having access to Unpublished Price Sensitive Information (UPSI) resulting in violation of the provisions of SEBI Act and PIT Regulations.

3. The UPSI was considered to be the unaudited financial results of CITL for quarter ended 30th September 2021 wherein there was an increase in total income by 197.36% as

compared to the previous quarter ended 30th June, 2021 and by 328.52% from the quarter ended on 30th September, 2020. It is an admitted position that the Appellant (Noticee 1) was in possession of UPSI on 12th October, 2021. SEBI alleged that the Appellant disclosed the UPSI to Noticee No. 3 who was an Independent Director in CITL. Noticee No. 3 in turn passed on the UPSI to Noticee No. 4, the niece-in-law of Noticee No. 3, who executed various trades amounting to purchase of 83000 shares of CITL at a value of Rs. 44,43,700/- and sold them at a value of Rs. 63,41,806/- thus earned a profit of Rs. 18.98 lakh.

4. The allegation against the Appellant is that as an insider he was in possession of the UPSI (i.e. unaudited financial results of the quarter ended on 30th September, 2021) on 12th October, 2021 and communicated the same to another insider, the Noticee No. 3 an Independent Director in the Company. The call data records established that the Noticee No. 3 called the Appellant on 13th October, 2021 and the call tower locations of the Appellant and Noticee No. 3 establish that they had met on the evening of 12th October, 2021. The explanation given by the Appellant and Noticee No. 3, that their communication was regarding preferential issue of

shares, was held not to hold merit. Accordingly, a penalty of Rs. 10 lakh was imposed on the Appellant for violation of Section 12A(d) and 12A(e) of the SEBI Act and Regulation 3(1) of PIT Regulations.

5. We have heard Shri Dhruwin Timbadia, learned counsel for the appellant and Shri Vishal Kanade, the learned counsel for the Respondent.

6. The learned counsel for the Appellant had primarily four arguments. Firstly, the Respondent has penalized the Appellant on the presumption of passing on the UPSI to the Noticee No. 3 on the basis of possibility and conjunctures. The Appellant has not denied that he was in touch with the Noticee No. 3. They were in communication regarding preferential allotment of shares, however, the Respondent has considered this issue as not alive during the investigation period and presumed that the meeting or calls between the Appellant and the Noticee No. 3 were on the UPSI. Though the AO has noted in the impugned order that “I note from the records available on the websites of the Exchange that the intimation regarding preferential allotment was issued on 17 September, 2021”, the AO has wrongfully assumed that the issue was not alive. Secondly, the Appellant was not the only

employee or director privy to the UPSI. It was well known in the Company that the sales have reasonably increased during the quarter which would lead to significant improvement in the financial results. Thirdly, Noticee No. 2, who had passed on the UPSI to the Appellant, was also in touch with Noticee No. 3, however, the Noticee No. 2 has been given benefit of doubt despite the statements of Noticee No. 2 and Noticee No. 3 not corroborating with each other. The Respondent exonerated Noticee No. 2 despite glaring contradictions in their statements giving him benefit of doubt while the Appellant was wrongfully denied the same benefit of doubt. Fourthly, the Appellant has been held liable on the basis of preponderance of probability and merely because the responses of Appellant were “not satisfactory”. Though the Appellant gave clear justification for the allegations against him, the same were not considered though the justification given by Noticee 2 was considered.

7. On the other hand, the learned counsel for the Respondent stated that the preliminary charge against the Appellant i.e. communication of UPSI was found to be established as the call records and the call tower location established that on the relevant date of communication of

UPSI, the Appellant and Noticee No. 3 had a meeting as well as a telephonic conversation. The explanation forwarded by the Appellant was that he communicated with Noticee No. 3 since the Noticee No. 3 was in Mumbai and was their director, he was requested to visit NSE and BSE with regard to the planned preferential issue to raise the moneys for the Company. This explanation was found to be untenable as the information regarding preferential allotment was issued on 17th September, 2021 and the voting by the shareholders of CITL on this subject took place on 24th October, 2021. As the issue of non-approval by the Exchanges could have arisen only after approval by the shareholders, in the absence of cogent explanation for communication between the Appellant and Noticee No. 3, the impugned order correctly holds that UPSI was supplied by the Appellant to Noticee No. 3. Further, the Appellant was in Mumbai on 12th October, 2021 and he could have himself visited NSE and BSE to sort out the issue. Noticee No. 2 was given benefit of doubt as apart from addressing email on UPSI to Appellant on 12th October, 2021 and a call with Noticee No. 3 on 13th October, 2021 no other discriminatory factors were found. As against this, the Appellant offered an implausible explanation and therefore benefit of doubt could not be given to him.

8. As regards the judgment of Hon'ble Supreme Court in ***Balram Garg vs SEBI (2022) 9 SCC 425*** cited by the Appellant to substantiate that it is only through providing cogent material (letters, emails, witnesses etc.) that communication of UPSI can be proved, the Respondent's counsel stated that it is distinguishable on facts. In this case, there is no denial of meetings and calls and the explanation provided by the Appellant for this meeting and calls was found to be improbable.

9. The charge against the Appellant is essentially that of communication of UPSI to the Noticee No. 3 who was an Independent Director in the Company. Admitted facts in the case are that the Appellant, Noticee No. 2 and the Noticee No. 3 were designated as insiders by the Company. Noticee No. 2 communicated the UPSI to the Appellant on 12th October, 2021. One call each was made by Noticee No. 3 to the Appellant and the Noticee No 2 on 13th October, 2021. The Appellant and Noticee No. 3 met at Mumbai on 12th October, 2021. The explanation given by Noticee No. 2 with regard to the call on 13th October, 2021 has been considered plausible by AO and benefit of doubt given even though the Noticee No. 2 and Noticee No. 3 gave different reasons for the call.

However, the explanation given by the Appellant for his communication with Noticee No. 3 was considered implausible by the AO even though both the Appellant and Noticee No. 3 stated that their communication and meeting was with regard to the issue of preferential shares.

10. In our view, the AO has erred in holding that the explanation offered by the Appellant for his meeting with Noticee No. 3 and for his call had no merit. There is no doubt that the Company had informed the Exchange about its intention to issue preferential shares on 17th September, 2021, therefore, the probability of this subject being the topic of discussion between Appellant and Noticee No. 3 cannot be ruled out. From the material on record and submissions made before us, we find that there is no direct evidence / material to indicate that the UPSI was communicated by the Appellant to the Noticee No. 3. The AO has also noted this fact at paragraph 39 of the impugned order. The Noticee No. 3 was an Independent Director in the Company and as per paragraph 5.7 of the impugned order, was one of the 30 persons having access to and in possession of UPSI and thus identified as 'insider'. Further, there is no allegation that the Appellant made any personal gain or traded in securities while in

possession of UPSI. In our view, if Noticee No. 2 could be given benefit of doubt despite the AO noting in paragraph 56 that “*the proximity of calls and email of Noticee 2 does raise some doubts*”, the Appellant should have also been allowed the benefit of doubt.

11. Accordingly, the appeal is allowed. The impugned order passed by the AO *qua* the Appellant is set aside.

12. All pending miscellaneous applications stand disposed of.

Justice P.S. Dinesh Kumar
Presiding Officer

Ms. Meera Swarup
Technical Member

Dr. Dheeraj Bhatnagar
Technical Member

09.08.2024
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