

Securities Appellate Tribunal  
Utsav Pathak vs Sebi on 12 June, 2020  
BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

Order Reserved on: 05.06.2020

Date of Decision : 12.06.2020

Misc. Application No.138 of 2020  
And  
Appeal No.430 of 2019

Utsav Pathak  
C-27/28, Patel Park Society,  
Opp. P&T Quarters,  
Santacruz (East),  
Mumbai - 400 029. ...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 a/w Ms. Shruti Rajan and  
Mr. Rohan Banerjee, Advocates i/b Cyril Amarchand Mangaldas  
for the Appellant.

Mr. Gaurav Joshi, Sr. Advocate a/w Mr. Abhiraj Arora, Mr. Vivek  
Shah, Advocates i/b ELP for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer

Dr. C. K. G. Nair, Member Justice M.T. Joshi, Judicial Member Per : Justice Tarun Agarwala,  
Presiding Officer

1. The appeal was listed for hearing on 16th April, 2020, but, on account of the lockdown declared by the Government on account of the COVID-19 pandemic, the case was adjourned to 24th June, 2020. An Application No.138/2020 was filed by the appellant praying that the appeal may be heard through video conference on any date convenient to the Tribunal. The said application was considered and accordingly we preponed the matter and heard the appeal on 3rd June and 5th June, 2020 whereafter the judgment was reserved and the Application No.138/2020 is accordingly disposed of.
2. The present appeal has been filed against the order dated 30th August, 2019 passed by the Adjudicating Officer (AO for short) of Securities and Exchange Board of India (SEBI for short) holding that the appellant was guilty of insider trading. The AO, however, did not impose any penalty.
3. The facts leading to the filing of the appeal is, that a Confidentiality Agreement between the McGraw Hill Asian Holdings and Morgan Stanley was executed on 4th April, 2013. Based on this agreement, Morgan Stanley was engaged on 1st May 2013 by McGraw Hill Asian Holdings to work on the open offer assignment for acquisition of the shares of CRISIL Ltd. This open offer was considered as a sensitive information under the SEBI (Prohibition of Insider Trading) Regulations, 1992 (PIT Regulations for short). The appellant was an employee of Morgan Stanley and, during the relevant period, was directly involved with the activities pertaining to the said offer.
4. CRISIL is a credit rating agency and is registered with SEBI and its shares are listed on the Bombay Stock Exchange (BSE) and National Stock Exchange (NSE).
5. On 3rd June, 2013 McGraw Hill Asian Holdings along with persons acting in concert(PAC) namely, McGraw Hill Financial Inc. S&P India LLC and Standard & Poor International LLC made an announcement of an open offer to acquire up to 1,56,70,372 equity shares of CRISIL which amounted to 22.23% of the total shareholding of CRISIL. The open offer was made @ Rs.1210/- per share even though the price of the share on that date on the stock exchange was Rs.1129.90 ps. per share. The announcement of the public offer led to an increase in the price of the shares by almost 20%.
6. SEBI made an investigation on the trading activities in the scrip of CRISIL and submitted an investigation report. Based on the said investigation report, a show-cause notice dated 9th August, 2017 was issued which was supplanted by another show- cause notice dated 27th April 2018 directing the appellant to show-cause as to why penalty should not be imposed. The charge against the appellant was that he was privy to unpublished price sensitive information(UPSI), namely, impending open offer and was also privy to the probable pricing of the open offer. The show-cause notice alleged that the appellant is the Tipper and had passed on the price sensitive information to his sister (Tippee-1) and to the mother-in-law of his sister (Tippee-2) and to the brother-in-law i.e., the husband of sister (Tippee-3), and father-in-law of sister (Tippee-4). The show-cause notice further alleged that Tippee-1 and Tippee-2 traded in the shares of CRISIL and made a profit of Rs.37,98,969/-. The trading pattern of the Tippees indicated that they had inside information since the Tippees only traded in the shares of CRISIL and did not trade in any other shares. It was alleged

that the appellant was not only a connected person but also an insider under the PIT Regulations.

7. The appellant denied the allegations and pointed out that even though Tippee-1 was his sister, he did not maintain any close relationship and, that his sister and Tippees-1, 3 & 4 were independent persons and were professionals in their own right to trade in the securities market. The appellant further contended that there is no evidence in the investigation report to suggest that the appellant had passed on any information to the Tippees.

8. The AO after considering the material evidence on record and after giving an opportunity of hearing to the appellant, found that the appellant was a 'connected person' under Regulation 2(c)(ii) of the PIT Regulations. The AO also found that the appellant was an insider" as per Regulation 2(e) and that the Tippees were persons deemed to be connected as per Regulation 2(h)(viii) of the PIT Regulations. The AO further came to the conclusion on the basis of circumstantial evidence that the appellant tipped the Tippees with regard to the price sensitive information and, therefore violated Regulation 3(ii) read with Clause 2.0 and 2.1 of Schedule I Part B of Model Code of Conduct for Prevention of Insider Trading for Other Entities. The AO found that on the basis of the information supplied by the appellant, the Tippees purchased large quantities of shares of CRISIL during unpublished price sensitive information (UPSI) period and sold the said shares immediately after the open offer was announced. The AO also found that the Tippees' trading record indicates that earlier they had never traded in large quantities. The AO after holding the appellant guilty of insider trading, however, did not impose any penalty.

9. The appellant being aggrieved by the findings of the AO on the charge of 'insider trading' has filed the present appeal.

10. We have heard Mr. Somasekhar Sundaresan, learned counsel along with Ms. Shruti Rajan and Mr. Rohan Banerjee, learned counsel for the appellant, and Mr. Gaurav Joshi, learned Senior Counsel along with Mr. Abhiraj Arora and Mr. Vivek Shah, learned counsel for the respondent.

11. Mr. Somasekhar Sundaresan, learned counsel for the appellant contended that the case of the appellant was not considered by the AO. It was urged that the statements given by his sister and by his brother-in-law and father-in-law of his sister were not considered. If the said statements were considered, one would find that the Tippees were all independent professional persons who could take their own decisions logically. Further, their statements would adequately prove that the appellant was not having good terms with his sister and the family. The learned counsel further submitted that the finding of the AO that the appellant had tipped the Tippees was based on surmises and conjectures and was not based on any foundational facts. It was contended that it was based on no evidence. The learned counsel submitted that merely because the appellant was closely related to the Tippees could not lead to a finding of guilt without considering the second part of Regulation 2(e)(i) of the PIT Regulations which defines an 'insider'. The learned counsel further submitted that SEBI in its investigation report investigated one Ajay Bhalla and his firm Kotak Premier Investment and found that they had traded far more than the Tippees in question and made a profit of more than Rs.5 crores. The learned counsel submitted that whereas Ajay Bhalla, etc. has been let off, the appellant has been found guilty merely on the ground that he had close relationship

with the Tippees. The learned counsel contended that merely having a close relationship with the Tippees by itself would not hold him to be guilty unless there was some further material to draw an inference from the foundational facts. In this regard, the learned counsel relied upon a decision of the Supreme Court in *Chintalapati Srinivasa Raju v. SEBI*, (2018) 7 SCC 443. Reliance was also made of a decision passed by the Whole Time Member of SEBI in the matter of *A.Vellayan & A R Murugappan* dated 12.05.2016 in which the Whole Time Member held that the finding of guilt on the basis of family relationship was not proper. Similar view was taken in the matter of *Sanjay Gala* decided by the AO on 02.12.2016. The learned counsel also contended that the decision relied on by the AO was not applicable and was distinguishable, especially the decision of the Supreme court in *SEBI vs. Kishore R Ajmera* (2016) 6 SCC 368 which has no application to the present facts and circumstances of the case as the said decision was based on circumstantial evidence.

12. Mr. Gaurav Joshi, learned senior counsel for the respondent defended the order of AO and contended that in a case of insider trading, there is hardly any direct evidence and that from the foundational facts one can infer on a preponderance of probability or can infer from a circumstantial evidence as to whether a person is guilty of insider trading. The learned counsel contended that in the instant case the appellant was a connected person; was an insider and was privy to the price sensitive information and, based on these foundational facts the AO rightly came to a conclusion that the appellant had tipped the Tippees. The learned senior counsel further contended that the appellant had access to the price sensitive information. There was a close relationship between the appellant and the Tippees. Further, the appellant tried to conceal his relationship with the Tippees before SEBI and the pattern of trading by the Tippees leads to an irresistible inference that the appellant had passed on the information to the Tippees and, therefore, the appellant had violated Regulation 3(ii) of the PIT Regulations read with Clause 2.20, 2.1 Schedule I of Part B of the Model Code of Conduct and Regulation 12(1) of the PIT Regulations. In support of his submission, the learned senior counsel placed reliance on the decision in *USA vs. Raj Ratnam*, 09Cr.1184 (RJH), *V.K. Kaul vs SEBI* in Appeal No.55/2012 decided on 08.10.2012, *Chintalapati Srinivasa Raju vs SEBI* (2018) 7 SCC 443, *Rajiv Gandhi v. SEBI* in Appeal No.50/2007 decided on 09.05.2008, *SEBI vs Kishore R Ajmera* (2016) 6 SCC 368, *SEBI vs Kanaiya Lal Baldevbhai Patel* (2017) 15 SCC 753 and *SEBI vs Rakhi Trading Pvt. Ltd.* (2018) 13 SCC 753.

13. Having heard the learned counsel for the parties at length, we find that the appellant before us has not denied the fact that he was privy to the price sensitive information during the UPSI period. The appellant has also not denied the fact that he was a connected person as per Regulation 2(c)(ii) of the PIT Regulations. The appellant has also not denied the fact that he was an insider as defined under Regulation 2(e) of the PIT Regulations. The appellant has also not denied the fact that he had close relationship with the Tippees and therefore, the Tippees were persons deemed to be connected as defined under Regulation 2(h)(viii) of the PIT Regulations. In the light of the aforesaid admitted position which has not been disputed, it is not relevant for us to dwell on these aspects.

14. The crux of the assertion is, that the appellant has been found guilty of imparting price sensitive information to the Tippees based only on proximity of his relationship with the Tippees. The contention is, that this by itself is not sufficient and no adverse inference could be drawn only on the basis of proximity of relationship between the Tipper and the Tippee.

15. In order to appreciate the aforesaid submissions, it would be appropriate to refer to Regulation 2(e)(i) of the PIT Regulations which defines insider as under:-

"2(e) "insider" means any person who,

(i) is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company.."

16. The aforesaid regulation 2(e)(i) is in two parts. The first part has reference to any person which is connected with the company or is deemed to be connected with the company. In the instant case, the fact that the appellant is a connected person has not been denied nor can there be any doubt that the definition of a connected person contained in regulation 2(c) would rope in the appellant under sub-clause (i) thereof, as the appellant was employed by the Merchant Banker, i.e., Morgan Stanley, and was deputed to work on the open offer and including its pricing was thus privy to the price sensitive information, being directly involved with the activities pertaining to the open offer. The second part of the Regulation 2(e)(i) is also required to be satisfied, namely, that such person must reasonably be expected to have access to unpublished price sensitive information by virtue of such connection in respect of securities of a company.

17. According to the appellant, there is no finding of the AO with regard to the second part of the definition of insider in Regulation 2(e)(i), and thus, according to the appellant, the inference drawn only on the strength of proximity of relationship with the Tippees could not be made the basis of a finding of guilt under Regulation 3.

18. The submission of the appellant in this regard is patently erroneous. Both parts of Regulation 2(e)(i) are fully applicable upon the appellant namely, that he is a connected person which is admitted by the appellant and that he was in possession and had access to the unpublished price sensitive information. In this regard, there is ample evidence on record, namely, the statement of the Managing Director of Morgan Stanley who stated that the appellant was one of the employees who was working on the open offer assignment of CRISIL and was privy to the price sensitive information. Thus, in our view, both parts of the definition clause of insider as defined under Regulation 2(e)(i) are fully applicable upon the appellant.

19. The contention of the learned counsel for the appellant that the inference of providing sensitive information by the appellant to the Tippees was not inferred from any foundational facts is patently erroneous. In this regard, we may note that it is a fundamental principle of law that proving of an allegation levelled against a person can be derived either from direct substantive evidence or can be inferred by a logical process of reasoning from the totality of attending facts and circumstances surrounding the allegations made and levelled. The Supreme Court in SEBI vs. Kishore Ajmera( 2016) 6 SCC 368 held that in the absence of direct evidence, the court cannot become helpless and that the court can take notice of immediate and proximate facts and circumstances surrounding the events and reach to a reasonable conclusion. The Supreme Court held that the test would always be as to what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion.

20. In this regard, the decision in Raj Ratnam's case is relevant wherein the relevance of circumstantial evidence relating to an insider has been culled out as under:-

"...Moreover, several other Courts of Appeals have sustained insider trading convictions based on circumstantial evidence in considering such factors as "(1) access to information; (2) relationship between the tipper and the tippee; (3) timing of contact between the tipper and the tippee; (4) timing of the trades; (5) pattern of the trades; and (6) attempts to conceal either the trades or the relationship between the tipper and the tippee." United States v. Larrabee, 240 F.3d 18, 21-22 (1st Cir. 2001)..."

21. Taking a cue from the decision in Ajmera's case and Raj Ratnam's case, we find the foundational facts as under:-

A. The appellant was a connected person and was an insider as per the PIT Regulations and was privy to the price sensitive information and was directly involved with the activities pertaining to the open offer.

B. The appellant had close relationship with the Tippees. C. During the investigation, the appellant made attempts to conceal his relationship with the Tippees, as well as tried to dilute his role in the open offer process. D. The trading pattern of the Tippees makes it apparently clear that the Tippees had prior information with regard to the open offer. To elaborate, we find that the Tippee-1 i.e., the sister of the appellant purchased 4000 shares of CRISIL on 31/5/2013 and sold it on the day when the open offer announcement was made on 3/6/2013. Similarly, Tippee-2 purchased 15000 shares on 14/5/2013, 20/5/2013, 21/5/2013 and 24/5/2013 and sold it on 4/6/2013.

E. The Tippees only traded in the shares of CRISIL and did not trade in any other shares.

F. Tippee 2 had borrowed large amount [Rs. 1 cr] and sold off existing holdings etc to finance the buy orders of CRISIL shares thereby effectively putting all her eggs in one basket which is a highly abnormal investment behavior.

G. Purchase of large chunks of shares and selling it immediately after announcement of the open offer without any plausible cause is suspicious. H. The Tippees were also charged for insider trading and violation of the PIT Regulations. The Tippees filed a Settlement Application which was allowed on payment of an amount.

22. 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.

23. In the light of the aforesaid, the decisions cited by the learned counsel for the appellant on the issue that a person cannot be held guilty only on the strength of proximity of relationship with the Tippee are distinguishable on facts and are not applicable in the instant case. We find from the record that there is ample evidence to draw a reasonable inference that the appellant had passed on the price sensitive information to the Tippees and, consequently, we are of the opinion that the order of the AO does not suffer from an error of law.

24. The appeal fails and is dismissed with no order as to costs.

25. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the Registry. In these circumstances, this order will be digitally signed by the Presiding Officer on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.

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Justice Tarun Agarwala

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