Securities Appellate Tribunal
Rajiv B. Gandhi, Sandhya R. Gandhi ... vs Securities And Exchange Board Of ... on 9 May, 2008
Equivalent citations: 2008 84 SCL 192 SAT
Bench: N Sodhi, A Bhargava, U Bhattacharya
JUDGMENT N.K. Sodhi, J. (Presiding Officer)

1. Whether the appellants are guilty of 'insider trading' is the short question that arises for our consideration in this appeal filed under Section 15T of the Securities and Exchange Board of India Act, 1992 (hereinafter called the Act) against the order dated November 30, 2006 passed by the adjudicating officer holding them guilty and imposing a penalty of Rs. 5 lacs on each of them.

2. Facts in this case are not in dispute. Rajiv B. Gandhi (Gandhi) appellant No. 1 is the Company Secretary and Chief Financial Officer of Wockhardt Limited (for short the company). Sandhya Gandhi appellant No. 2 is his wife and Amishi Gandhi (appellant No. 3) is his sister. The shares of the company are listed, among others, on the National Stock Exchange of India Limited and the Bombay Stock Exchange Limited (hereinafter referred to as NSE and BSE respectively). Gandhi as the chief financial officer of the company is primarily responsible for the preparation of the accounts of the company including its balance sheets. As per the regulations framed by the Securities and Exchange Board of India (for short the Board) and in terms of the listing agreement executed between the company and the BSE where its securities are listed, the company is required to furnish its unaudited financial results on a quarterly basis in the prescribed proforma within one month from the end of the quarter to the stock exchange(s) and it is also required to make an announcement to the stock exchanges where the company is listed immediately within 15 minutes of the closure of the board meeting in which unaudited financial results are placed and also within 48 hours of the conclusion of the meeting in atleast one English daily newspaper circulating substantially in the whole of India and in one newspaper in the regional language where its registered office is situate. A meeting of the board of directors of the company was held on January 21 1999 at 5 p.m. to consider the quarterly financial results for the quarter ending December 31, 1998. The financial results were adopted and approved in the said meeting and the requisite disclosures were made to the stock exchanges. The board of directors in this meeting also declared an interim dividend @ 35% and this was the first time that the company paid an interim dividend without waiting for the full year's financial results. It is common ground between the parties that Amishi Gandhi sold 600 shares of the company and Sandhya Gandhi sold 1500 shares of the company on January 21, 1999 at 1442 hrs. and 1237 hrs. respectively. It is also not in dispute that the quarterly results were disclosed to BSE on January 22, 1999 before the start of the trading hours. Amishi Gandhi and Sandhya Gandhi again sold 1000 shares and 500 shares of the company respectively on January 22, 1999 at 0959 hrs. and 1004 hrs. Again, Amishi Gandhi and Sandhya Gandhi purchased 1600 and 2000 shares of the company respectively at an average price of Rs. 306/-. Thereafter Amishi Gandhi sold another 2300 shares of the company on April 21, 1999 at an average price of Rs. 342/- to Rs. 355/- at 1016 hrs. She sold another 1200 shares of the company on the following day that is, on April 22, 1999 at 1133 hrs. at an average price of Rs. 363-369. A meeting of the board of directors of the company was held on April 22, 1999 at 11.30 a.m. to consider the quarterly results for the quarter ending March 31, 1999. During this quarter, the company had also announced the demerger of its pharmaceutical business. A press release was published stating that

the demerger of the company was to enable the company to focus on its core business of pharmaceuticals and that each of the company's business had their own potential and that demerger would allow each of the businesses to expand and grow to their full potential. The company again made the necessary disclosures to BSE including the corporate action of demerger. It is pertinent to mention that the scheme of demerger was approved by the shareholders and creditors of the company and that it was also approved by the Bombay High Court. One day after the board meeting, Amishi Gandhi purchased 3500 shares of the company at an average rate of Rs. 321-329 at 1008 hrs. when the price had fallen. On October 14, 1999 Sandhya Gandhi purchased 200 shares of the company at an average price of Rs. 757760 and on October 18, 1999 a meeting of the board of directors was held to consider the quarterly results for the quarter ending September 1999. This meeting was held at 12 noon. On the same day at 1017 hrs., that is, before the start of the board meeting Sandhya Gandhi purchased another 1000 shares at 1017 hrs.

3. In view of the aforesaid trades executed by Gandhi and the other two appellants, the Board was prima facie of the view that the trades had been executed on the basis of unpublished price sensitive information and, therefore, the appellants had violated regulations 3 and 4 of the Securities and Exchange Board of India (Insider Trading) Regulations, 1992 (hereinafter called the regulations) read with Section 15G of the Act. Adjudication proceedings were initiated under Chapter VIA of the Act and the adjudicating officer issued a notice dated October 17, 2005 calling upon the appellants to show cause why an enquiry should not be held against them and why a penalty should not be imposed on them under Section 15G of the Act. It was alleged that Gandhi was the company secretary and chief financial officer of the company and had access to the price sensitive information pertaining to the financial position of the company and that the other two appellants were his wife and sister and they were all insiders within the meaning of regulation 2(3) read with 2(c) of the regulations. The case set up by the adjudicating officer was that the results for the quarter ending December 1998 showed a negative performance of the company over the previous quarter and it was because of this reason that they sold 3600 shares on 21.1.1999 and 22.1.1999 before the board meeting and before the market could react to the financial results. It is alleged that the appellants traded in the scrip of the company before and after the meetings of the board of directors held to consider the financial results and traded on the basis of the price sensitive information which they had and which was not available to the investors in general. A charge had also been made that the appellants had failed to comply with the summons issued to them from time to time during the course of the investigations. Since they have been absolved of this charge, it is not necessary to deal with this at all. The appellants filed a detailed common reply controverting the allegations levelled against them. They disputed that they traded on the basis of any unpublished price sensitive information or that the quarterly results of the company in any way showed negative performance of the company. It was pleaded that the adjudicating officer was in error in comparing the results of the quarter ending December 1998 with the immediately preceding quarter of that year and, according to the appellants, he ought to have compared the results with the corresponding quarter of the previous year as is the mandate of the listing agreement and the format provided by the BSE which has the approval of the Board. According to the appellants, the results for the quarter ending December 1998 when compared with the results of the corresponding quarter of the previous year were positive and that the board of directors of the company had also declared interim dividend @ 35%. Similar was the plea with regard to the financial results for the quarter ending March 1999 and

it has been pleaded that during that quarter the company had also made a corporate announcement regarding the demerger of its pharmaceutical business which, according to the appellants, is not normally taken as a negative factor by the market and the investors. It was also pleaded that appellants No. 2 and 3 were not insiders within the meaning of the regulations and, therefore, the notice qua them deserved to be set aside on that ground. It was further pleaded that Gandhi himself had not executed any trades and could not be held liable for insider trading.

4. On a consideration of the reply filed by the appellants and having regard to the dates and timing of the trades executed by appellants No. 2 and 3 in the scrip of the company and in view of their close relationship with Gandhi, the adjudicating officer came to the conclusion that they were insiders within the meaning of the regulations. He further found that the trades were executed on the basis of the unpublished price sensitive information which was in possession of Gandhi as the chief financial officer and company secretary. By his order dated November 30, 2006 he held the appellants guilty of insider trading and imposed a penalty of Rs. 5 lacs on each of them. Hence this appeal.

5. We have heard the learned Counsel for the parties. At the outset we may mention that even though the stand taken by the appellants in their reply before the adjudicating officer was that appellants No. 2 and 3 were not insiders as they had no access to the unpublished price sensitive information which plea has not been accepted by the adjudicating officer, they conceded before us that they were insiders along with Gandhi. It was also conceded before us that Gandhi traded on their behalf and that he was in possession of price sensitive information. The main plank of the argument of Shri Somasekhar learned Counsel for the appellants is that even though the appellants are insiders and were in possession of unpublished price sensitive information, they did not trade on the basis of that information. In view of the fair concession made by the learned Counsel for the appellants, we are only called upon to decide whether the appellants traded on the basis of the unpublished price sensitive information which was in possession of Gandhi.

6. Regulation 3 of the Regulations prohibits an insider to deal either on his own behalf or on behalf of any other person, in securities of a company listed on any stock exchange on the basis of any unpublished price sensitive information. The relevant portion of regulation 3 of the regulations with which we are concerned reads as under:

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

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

(ii) ...

(iii) ...

Regulation 4 then provides that any insider who deals in securities or communicates any information or counsels any person dealing in securities in contravention of the provisions of regulation 3 shall be guilty of insider trading. Insider is a person who is or was connected with the company and who is reasonably expected to have access by virtue of such connection to unpublished price sensitive information in respect of securities of the company. A person who has received such information or has had access to such information is also an insider. Unpublished price sensitive information has been defined in the regulations to mean any information which relates to any of the matters referred to in Sub clauses (i) to (viii) of regulation 2(k) and is not generally known or published by the company for general information but which, if published or known, is likely to materially affect the price of the securities of the company in the market. In other words, any information which is not known but, if known, could either way affect the price of the scrip of the company would be unpublished price sensitive information. This includes, among others, financial results of the company, intended declaration of dividends - both interim and final, amalgamations, mergers and takeovers.

7. Let us now examine whether Gandhi traded on the basis of the information that was in his possession and not available to any other investor/trader. On a plain reading of regulation 3 it appears to us that the prohibition contained therein shall apply only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise. The words "on the basis of" are significant and mean that the trades executed should be motivated by the information in possession of the insider. To put it differently, the information in possession of the "insider" should be the factor or circumstance that should induce him to trade in the scrip of the company. It is then that he will be said to have dealt with or traded "on the basis of" that information. We are of the considered opinion that if an insider trades or deals in securities of a listed company, it would be presumed that he traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary. Facts necessary to establish the contrary being especially within the knowledge of the insider, the burden of proving those facts is upon him. The presumption that arises is rebuttable and the onus would be on the insider to show that he did not trade on the basis of the unpublished price sensitive information and that he traded on some other basis. He shall have to furnish some reasonable or plausible explanation of the basis on which he traded. If he can do that, the onus shall stand discharged or else the charge shall stand established. Let us illustrate to explain what we mean. If an insider who sold the shares were to plead that he wanted to raise funds to meet an emergency in his family say, marriage of his daughter or bypass surgery of a close relation and could establish that fact, it would be reasonable to hold that even though he was in possession of unpublished price sensitive information, the motive of the trade was to meet the emergency. He would not be guilty of the charge of insider trading.

8. In view of the interpretation that we have placed on regulation 3 and on the admitted facts of this case, there would be a presumption that the appellants being insiders, traded on the basis of the unpublished price sensitive information in possession of Gandhi and the onus to rebut that presumption was on them. They have not only failed to rebut the presumption but have not even attempted to offer an explanation as to the basis which prompted them to trade. Faced with this situation, the learned Counsel for the appellants contended that at no stage of the proceedings were they asked for an explanation as to the basis of their trade and, therefore, there was no occasion for

them to offer an explanation. We cannot accept this contention. The appellants were clearly informed in the show cause notice that they "had sold 3600 shares on 21.1.1999 (before the board meeting) and 22.1.1999 (in the first half hour before the market could react to the news) on the basis of unpublished price sensitive information". In view of this specific allegation and considering the fact that the appellants are insiders there was a presumption against them and it was for them to have offered an explanation to rebut that presumption. The facts which prompted the appellants to trade in the scrip of the company while in possession of unpublished price sensitive information were only within their knowledge and it was for them to spell out those facts to rebut the presumption raised by regulation 3 against them. So much so, we asked the learned Counsel for the appellants during the course of the hearing to tell us the reasons which prompted/motivated the appellants to trade in the scrip, being insiders. He was unable to offer any explanation. It is, thus, clear that the appellants have failed to discharge the onus of rebutting the presumption raised against them under regulation 3 of the regulations. They must, therefore, fail.

9. In view of our findings recorded above, it is not necessary to deal with the other contentions raised by the learned Counsel for the appellants.

10. In the result, the question posed in the earlier part of the order is answered in the affirmative and we hold that the appellants were guilty of insider trading. The penalty levied on them is not on the higher side keeping in view the seriousness of the charge and, therefore, it does not call for any interference in appeal. The appeal is accordingly dismissed with no order as to costs.