

**BEFORE SECURITIES AND EXCHANGE BOARD OF INDIA
EXECUTIVE DIRECTOR, SHRI V. S. SUNDARESAN**

FINAL ORDER UNDER SECTIONS 11(1), 11(4), 11B(1), 11B(2) AND 11(4A) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF INSIDER TRADING BY CERTAIN ENTITIES IN THE SCRIP OF APEX FROZEN FOODS LTD., IN RESPECT OF:

Table 1

Noticee No.	Name	PAN
1	Mrs. Gottumukkala Subha Satya Pramila	AWTPG4745K
2	Mr. G V Raghava Raju	ATAPG4505B

Table 2

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1. Background of the Case:

- 1.1 Apex Frozen Foods Ltd (hereinafter referred to as “**AFF**” or “**Company**”) disclosed its financial results for the quarter ended September 30, 2017 on November 14, 2017 on BSE at 16:36 hrs. and on NSE at 16:45 hrs. respectively. It was observed from the said financial results that AFF made a profit of ₹ 2,204.32 lakh in the quarter ended September 2017 as against the profit of ₹1,664 lakh in the previous quarter.
- 1.2 A significant impact was observed on the price of scrip of the AFF post the said announcement. The price of the scrip moved from a closing price of ₹461.95 on November 14, 2017 to ₹485 on November 15, 2017. Thereafter, on November 16, 2017, it went up further to ₹ 509.25 and then to ₹534.70 on November 17, 2017. The price of the scrip hit the price band of 5% every day until November 22, 2017. Subsequently, in the month of November and December 2017, it kept on increasing and moved to a closing price of ₹ 841.65 on December 29, 2017 i.e. it registered a rise of 73.54% in 32 trading days after touching a high price of ₹939 on December 7, 2017.
- 1.3 In view of the above, Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had conducted an investigation in the scrip of AFF to ascertain whether certain suspected entities had traded in the aforesaid scrip during the period from September 4, 2017 to February 28, 2018 (hereinafter referred to as the “**Investigation Period**”) on the basis of unpublished price sensitive information (hereinafter referred to as “**UPSI**”), in contravention of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) read with Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as “**PIT Regulations**”).
- 1.4 The Company is an integrated producer and exporter of shelf stable quality aquaculture products. It supplies ready-to-cook products to a diversified

customer base consisting of food companies, retail chains, restaurants, club frozen stores and distributors spread across the developed markets of USA, UK and various European Countries.

1.5 The Company has its Registered Office at 3-160, Panasapadu, Kakinda, East Godavari District, Andhra Pradesh – 533005. The Company was listed on September 4, 2017 on the BSE Limited (hereinafter referred to as ‘**BSE**’) and National Stock Exchange of India Limited (hereinafter referred to as ‘**NSE**’) respectively.

2. Details of relationship among the Noticees as found during the investigation period:

Table 3

Noticee No.	Name of the Noticees	Position held by the Noticee in AFF	Relationship amongst Noticees
1	Mrs. Gottumukkala Subha Satya Pramila	-	Wife of Noticee no.2
2	Mr. G V Raghava Raju	Purchase Manager at AFF	Husband of Noticee No. 1

3. Details of Show Cause Notices and summary of allegations made therein:

3.1. Pursuant to the investigation, a common show cause notice dated October 20, 2022 (“SCN”) was issued to Mrs. Gottumukkala Subha Satya Pramila (Noticee No.1) and Mr. G.V.Raghava Raju (“Noticee No..2”) (“Collectively referred to as “Noticees”) for the alleged violations stated therein. The summary of allegations made in the SCN is as under:

3.2. During the investigation period, Noticee No.1 was the wife of Noticee No. 2 who was the Purchase Manager at AFF.

3.3. AFF disclosed its financial results for the quarter ended September 30, 2017 on November 14, 2017 on BSE at 16:36 hrs. and on NSE at 16:45 hrs.

respectively. It was observed from the said financial results that AFF made a profit of ₹ 2,204.32 lakh in the quarter ended September 2017 as against the profit of ₹1,664 lakh in the previous quarter.

3.4. In terms of regulation 2(1)(n)(i) of PIT Regulations, “financial results” of a company are covered within the definition of “unpublished price sensitive information”.

3.5. AFF submitted the following chronology of events regarding preparation and approval of the aforesaid financial results:

Table 4 : Chronology of events

S. No.	Event	Date
1	Management had informally taken concurrence of Directors to convene the Board Meeting on November 14, 2017 for considering the Unaudited financial results for the half year ended September 30, 2017	3.11.2017 and 4.11.2017
2	Company informed BSE regarding date of Board Meeting, which was to be held on November 14, 2017	5.11.2017
3	Published notice about date of board meeting in newspapers namely, Andhra Bhoomi and Deccan Chronicle respectively	5.11.2017 and 6.11.2-017
4	Company sent notice of Board meeting to all the Directors	6.11.2017
5	Company informed NSE regarding date of Board Meeting, which was to be held on November 14, 2017	6.11.2017
6	Audit committee meeting and Board Meeting held and approved unaudited financial results for the second quarter and half year ended on September 30, 2017	14.11.2017

3.6. As per the information received from the Company vide letter/email dated September 17, 2020, the following persons were involved in the preparation and discussion of the financial information of the Company and who were privy to the UPSI for the quarter ended September 30, 2017: -

Table 5 – Persons who were privy to the UPSI

S.No.	Full Name	Designation
1	Ch Vijaya Kumar	CFO
2	P. Durga Prasad	Manager accounts
3	Boda Anand Kumar	Partner of Statutory Audit firm
4	R V S N Sastri	Senior Staff of Statutory Audit firm
5	Karuturi Subrahmanya Choudary	Whole-time Director
6	Karuturi Satyanarayana Murthy	Chairman & Managing Director
7	Smt. Karuturi Neelima Devi	Whole -time Director
8	M.Lakshmipathi Raju	Independent Director
9	D. Venkata Subba Raju	Independent Director
10	S.Sarojini	Company Secretary

3.7. During the investigation, the Company was advised to provide details of the various Management Information System (MIS) Reports or any other reports with regard to financial performance of the Company that were generated/ prepared during the quarter July 1 – September 30, 2017. The Company was further advised to provide the details of the Directors/ KMPs with whom such Reports were shared along with the dates. In response thereto, the company submitted that several reports were generated during the quarter namely, *Sales during the period, Purchases during the period, Inventory valuation, Outstanding debtors, Outstanding creditors and Export incentives reports*. The company further informed that these reports were shared with K. Satyanarayana Murthy [CMD], K. Subrahmanya Chowdary [WTD], Ch.

Vijaya Kumar [CFO], P. Durga Prasad [Accounts Manager] and B. Anand Kumar [Statutory auditor] and their respective staff.

3.8. From the above information, it was observed that any recipient of the reports, generated and shared by the company with the Directors / CFO/ Auditor and their respective staff, would have had an understanding of the financial performance of the Company. Thus, by the end of the quarter, any person with whom the said reports were shared, would have known whether the Company had made profit in the said quarter. Accordingly, while the account finalization process (as per the Company) would have started from November 4, 2017, the price sensitive information regarding the company making noticeable profits during the quarter ended September 30, 2017, was known to every person who had access to the reports generated by the company as mentioned above. The Company disclosed its financial results for the quarter ended September 30, 2017 on November 14, 2017 after market hours. Considering the above, the period from October 3, 2017 to November 14, 2017 has been taken as the UPSI period.

3.9. Based on the above, the following periods have been taken as pre-UPSI, UPSI and post-UPSI periods:

Table 6: Periods

Pre-UPSI Period	UPSI Period	Post-UPSI Period
04/09/2017 to 30/09/2017	03/10//2017 to 14/11/2017	15/11/2017 to 31/12/2017

*AFF got listed on 4/9/17; 1/10/17 and 2/10/17 were trading holidays;
30/12/17 and 31/12/17 were trading holidays*

3.10. Noticee No. 2 was working as the Purchase Manager of AFF during the investigation period. Vide email dated February 17, 2022, the Company submitted that Noticee No. 2 was a designated employee and a Key

Managerial Person of the Company. The Company also submitted that Noticee No. 2 might have possession of material information pertaining to the Company. Therefore, it was alleged that Noticee No. 2 was a 'connected person' in terms of Regulation 2(1)(d)(i) of PIT Regulations.

3.11. Noticee No. 1 had purchased 25,400 shares and 5,998 shares (off market) during the pre-UPSI period. Then Noticee No. 1 purchased a total of 16,320 shares at an average price of ₹397.87 per share during UPSI period and sold 22,318 shares at an average price of ₹653.60 per share after the UPSI period.

3.12. Noticee No. 2 and his wife i.e. Noticee No. 1 have a common email address i.e. raghavaraju@apexfrozenfoods.com and also a common address. On seeking rationale for trading in the scrip of AFF during the UPSI period, Noticee No. 1 vide email dated October 3, 2020 stated that these trades were undertaken based on her own decision. However, in her statement recorded before Investigating Authority on February 09, 2022, Noticee No. 1 submitted that her husband, Noticee No. 2 was managing the trading account and she did not know anything about trading. Noticee No. 2 also admitted during his statement recorded on February 09, 2022 that he was handling the trading and banking activities of his wife (Noticee No. 1). Thus, it was alleged that Noticee No. 1 was a 'connected person' in terms of Regulation 2(1)(d)(ii)(a) of PIT Regulations.

3.13. It was further observed during the course of investigation that during the UPSI period, Noticee No. 2 had purchased a total of 10,972 shares at an average price of ₹400.18 per share and sold 5,000 shares at an average price of ₹474.19.

3.14. On seeking rationale for trading in the scrip of AFF during the UPSI period, Noticee No. 2 vide email dated September 28, 2020 informed that he received shares of AFF through off market route during the investigation

period and these trades were undertaken on mutual understanding between seller and him without any relationship with the transferor. It was observed that during the UPSI period Noticee No. 2 traded only in the scrip of AFF. He did not buy or sell any shares during Post UPSI period.

3.15. As mentioned earlier, any recipient of the reports, generated and shared by the company with the Directors / CFO/ Auditor and their respective staff, would have had an understanding of the financial performance of the company. Thus, by the end of the quarter, any person with whom the reports mentioned earlier were shared, would have known whether the company had made profit in the said quarter. As per the response of AFF, Noticee No. 2 was designated person of AFF and also its KMP. Further, as stated by the company vide its email dated September 24, 2021, it was a common practice in AFF to share the reports amongst its staff, auditors and management for finalization of books of account and declaration result. As a connected person of AFF and being a designated person, purchase manager and the KMP, Noticee No. 2 had access to the UPSI. Thus, Noticee No. 2 was considered an Insider as per Regulation 2(1)(g)(ii) of PIT Regulations. Noticee No. 1 is the wife of Noticee No. 2 and as per their own respective statements, her transactions were being managed by Noticee No. 2. Thus, the UPSI available to Noticee No. 2 was procured by Noticee No. 1. In view of the above, it was alleged that Noticee No. 2, being the insider of the Company, was in possession of UPSI and communicated the UPSI to Noticee No. 1, thereby violating the provision of regulation 3(1) of PIT Regulations. At the same time, by procuring the UPSI from Noticee No. 2, Noticee No. 1 has allegedly violated the provisions of regulation 3(2) of PIT Regulations.

3.16. It was further alleged that trades were executed by Noticee No. 1 in the scrip of AFF during UPSI period while being in possession of UPSI which was communicated by Noticee No. 2. Similarly, the transactions by Noticee No. 2 were also carried out by him while in possession of UPSI. It was

therefore, alleged that Noticee No. 1 and Noticee No. 2 have violated the provisions of sections 12A(d) and (e) of SEBI Act and regulation 4(1) read with regulation 4(2) of PIT Regulations.

- 3.17. It was also alleged that the Noticee No. 1 by indulging in the transactions made notional unlawful gains of ₹14,21,962/- from trading of 16,320 shares of AFF when in possession of UPSI, calculated with reference to the price of the scrip on November 15, 2017 (i.e. next day after the disclosure to stock exchanges).
- 3.18. It was further alleged that the Noticee No. 2 by indulging in the transactions made notional unlawful gains of ₹ 9,30,645/- from trading 10,972 shares of AFF when in possession of UPSI, calculated with reference to the price of the scrip on November 15, 2017 (i.e. next day after the disclosure to stock exchanges).
- 3.19. In view of the aforesaid alleged violations, the Noticees were called upon to show cause as to why directions under Sections 11B(1) and 11(4) read with Section 11(1) of SEBI Act, including debarment for an appropriate period and disgorgement of notional unlawful gains alleged in the SCN, should not be issued against them for the alleged violations of provisions of law mentioned above. Noticees were also called upon to show cause as to why suitable directions for imposing monetary penalty under sections 11B(2) and 11(4A) read with section 15G of SEBI Act should not be issued against them for the aforesaid violations.

4. Summary of submissions made by the Noticees:

- 4.1. Noticees No. 1 and 2 submitted their combined reply to the SCN vide letters dated November 10, 2022 (received by SEBI on November 23, 2022). An opportunity of personal hearing was provided to the Noticees on January 18, 2023. However, the same was adjourned to February 1, 2023 at the request

of the Noticees. On February 1, 2023, the authorized representative for the Noticees appeared and made submissions in line with their reply on record.

4.2. The replies / submissions made by the Noticees in their reply (made by Noticee No. 2 for himself and his wife, Noticee No. 1) and during personal hearing are summarised as under:

4.3. Noticee No. 2 was employed with AFF as a Purchase Manager and Ms. Satya Pramila is my wife. My responsibilities as a purchase manager was procurement of raw material from local farmers and it involves mostly field work.

4.4. Since I was a Purchase Manager and not associated with the Finance Department and involved in any manner whatsoever with the preparation / finalisation of accounts, I am not aware of the date / time of disclosure of the financial results.

4.5. My responsibilities did not require me to interact with the statutory auditor and I am not aware of the details submitted by them.

4.6. My name does not figure in the list of entities who were involved in the preparation and discussion of financial results. Hence as per SEBI's own statements, I am not privy to any UPSI.

4.7. I had no access to any of the reports mentioned in SCN and hence did not have any understanding of the financial performance of the Company for the quarter ended September 30, 2017. It has been specifically stated in SCN that, "... Any person with whom the reports mentioned earlier were shared would have how whether the company had made profit in the said quarter". Since the reports were not shared with me as confirmed in SCN, this sentence cannot be applied to me and hence, I had no idea of the performance of the company during the quarter ended September 2017.

4.8. I deny the statement given by the Company that "I might have material information pertaining to the Company". Although I was a designated person and identified as a KMP by the Company, the submission given by the Company is too general and vague and has no evidence or backing. I also object that I be treated as "Connected Person" as there is no evidence or proof providing facts as to how I am connected to any of the persons whose name has been listed in SCN for being an employee of the Company.

4.9. I admit that I managed the accounts of my wife as she is my dependent. My wife bought 16,320 shares of AFF and sold the same to make profits from the investment. I confirm that I had also bought 10,972 shares by way of an off-market purchase and sold 5,000 shares in the market. All these investments were done by me (on behalf of my wife as well) only with an intention of making an investment and earning a profit as the shares were listed only at that time and the share price was very attractive.

4.10. I had no access whatsoever to any of the reports pertaining to the finance function. There is a contradiction within the SCN where on one hand, it was said that the Company had expressed that there might have been a possibility of sharing and on the other hand it was stated here that they had a practice of sharing the reports with the staff of the Company. I would like to humbly submit that the email of the Company is being misinterpreted as they probably meant that the reports pertaining to the finance function was shared with the staff in the finance / accounts department and as I had no connection whatsoever I had no access to this information.

4.11. I would also like to rely on the SAT Order dated October 15, 2015 in the matter of Ms. Chandana Ghosh, (Appeal No.228 of 2014) where Ms. Chandana who was working as the Head - Human Resources was not to be treated as an Officer under the PIT Regulations. SAT had directed that the SEBI Order be quashed and the matter be restored to the file of the AO. The Adjudicating Officer vide Order dated March 22, 2016 had disposed of the

matter stating that Ms. Chandana Ghosh was not an "Officer" within the meaning of the PIT Regulations and could not be considered to be in possession of UPSI. Similar orders were also passed in the matter of Mr. A K Chowdary, who was the head of the Operations, Education and Stationery department of the concerned company in February 2015 and he was not an "Officer" who had access to UPSI.

4.12. There is no iota of proof in the entire show cause as to whether I had access to UPSI / financial reports. The entire allegation has been made without any evidence and is only a figment of imagination. I further deny that my trades as well as that of my wife are on the basis of possession of UPSI and that we have made the notional gain.

4.13. In view of the submission made I would like to reiterate that we have not violated any of the provisions of the SEBI Act or the PIT Regulations and request you to take a lenient view and drop all further proceedings us.

5. Issues for consideration:

5.1 On a perusal of the observations and allegations brought out in the SCN, replies filed by the Noticees, oral / written submissions filed by them and other material available on record, the following issues arise for consideration in the present proceedings:

- (1) Whether the information relating to financial results of the September 2017 quarter was "unpublished price sensitive information" in terms of the provisions of PIT Regulations and if so, what was the period during which it remained in existence?
- (2) Whether Noticees No. (1) and (2) are "insiders" within the definition of the term under the PIT Regulations?
- (3) If the answer to issues Nos. 1 and 2 is in the affirmative, whether the Noticees

by trading in the scrip of AFF and communicating / procuring the UPSI, have violated the provisions of SEBI Act and PIT Regulations as alleged in the SCN?

- (4) If the violations alleged against the Noticees have been established, what directions are required to be issued and what is the amount of monetary penalty that is required to be imposed on the Noticees?

5.2 I now proceed to address the above issues in light of the specific facts of the case and the submissions made by the Noticees.

6. Findings on issues:

Issue No. 1—Whether the information relating to financial results of the September 2017 quarter was “unpublished price sensitive information” in terms of the provisions of PIT Regulations and if so, what was the period during which it remained in existence?

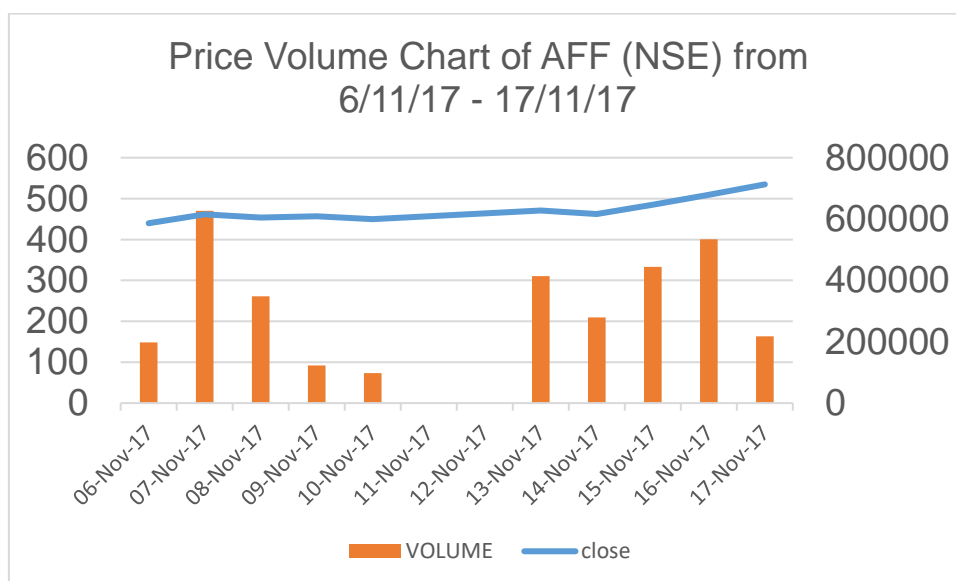
7. I note that in terms of Regulation 2(1)(n)(i) of the PIT Regulations, “financial results” of a company are covered within the definition of “unpublished price sensitive information”. As defined in the said regulation, *“unpublished price sensitive information” means any information, relating to a 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.* On the subject of “financial results” being UPSI, the following findings of Hon’ble SAT in the matter of *Rajeev Vasant Sheth and others v. SEBI* (Order dated April 19, 2022) are noteworthy:

“10. The UPSI as provided under Regulation 2(n) means any information relating to a company or its security which is likely to materially affect the price of the securities and shall ordinarily include, namely, financial results, etc. It was urged that the word “ordinarily” does not mean that the financial results will always be considered as unpublished price sensitive information

and would have to be considered on a case to case basis as to whether in the given circumstances the financial results were a price sensitive information or not. In this regard, we find that the losses had increased by 25 times from quarter ended June 2017 to quarter ended September 2017, the net loss increased from ₹ 6.62 crores to ₹ 166.80 crores which was a substantial jump and, therefore, in our opinion, the financial results for the quarter ended September 2017 was an UPSI which the appellants had in their possession.”

8. In the instant case, it is important to note that the financial results for the quarter ended September 30, 2017 (disclosed to stock exchanges on November 14, 2017) reflected an increase in net profit of AFF from ₹16.64 crore (in Quarter ended June 30, 2017) to ₹ 22.04 crore (in Quarter ended September 30, 2017) i.e. an increase of 32.45% (quarter on quarter).
9. As brought out in the SCN, a significant impact was observed on the price of scrip of AFF post the announcement of financial results and the price of the scrip was observed to have moved on NSE and BSE from a closing price of ₹461.95 and ₹461.95 respectively on November 14, 2017 to ₹485 and ₹484.90 respectively on November 15, 2017. Thereafter, on November 16, 2017, it went up further to 509.25 and ₹ 509.10 respectively and then to ₹534.70 and ₹ 534.55 respectively on November 17, 2017. It is pertinent to highlight that the price of the scrip hit the upper price band of 5% on all the above mentioned days on NSE and BSE respectively. Price movement in the scrip of AFF during the week when the financial results were disclosed and a week prior to that is noted below in a chart and tabular format:

Figure 1



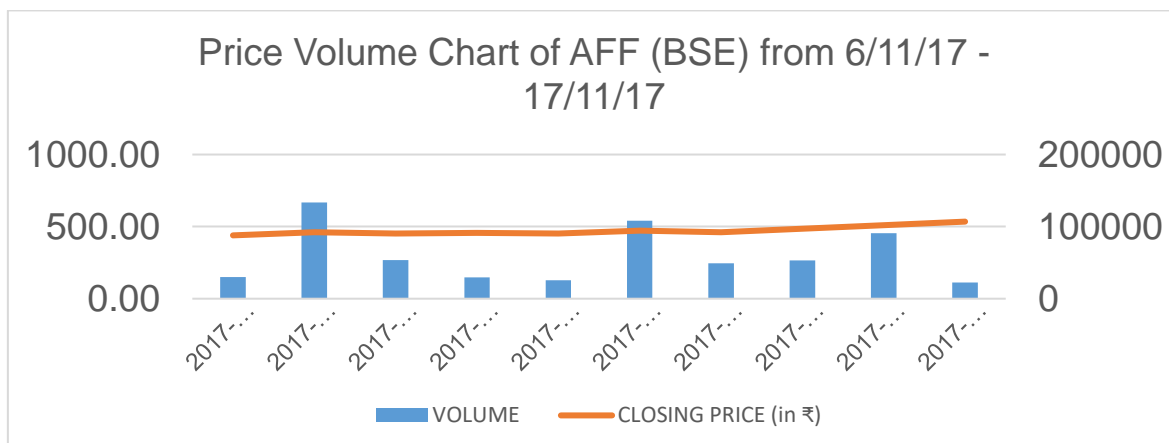
(Source: NSE)

Table 7 - Price and Volume movement in the scrip of AFF (NSE) from 6/11/17 - 17/11/17

DATE	VOLUME	CLOSEING PRICE (in ₹)	Change in Percentage (%)
17-Nov-17	217937	534.7	5.00
16-Nov-17	533720	509.25	5.00
15-Nov-17	444123	485.0	4.99
14-Nov-17	279595	461.95	-1.95
13-Nov-17	413574	471.15	4.71
10-Nov-17	97688	449.95	-1.56
09-Nov-17	122209	457.1	0.77
08-Nov-17	347870	453.6	-1.74
07-Nov-17	626282	461.65	4.99
06-Nov-17	197586	439.7	4.99

(Source: NSE)

Figure 2



(Source: BSE)

Table 8 - Price and Volume movement in the scrip of AFF (BSE) from 6/11/17 - 17/11/17

Date	Volume	Closing Price (In ₹)	Close To Previous Close %
6-Nov-17	29984	439.40	4.99
7-Nov-17	133670	461.35	5.00
8-Nov-17	53422	452.80	-1.85
9-Nov-17	29742	457.45	1.03
10-Nov-17	25411	451.95	-1.20
13-Nov-17	108181	471.55	4.34
14-Nov-17	48969	461.85	-2.06
15-Nov-17	53217	484.90	4.99
16-Nov-17	90818	509.10	4.99
17-Nov-17	22420	534.55	5.00

(Source: BSE)

10. As can be seen from the price volume charts and the tables above, the disclosure of the information relating to financial results did have a substantial positive impact on the price of the scrip. This clearly substantiates that the quarter on quarter increase in profit of AFF by 32.45% (as reflected in the

financial results for quarter ended September 2017) was a positive news as brought out in the SCN and qualified as UPSI till it was eventually disclosed to the stock exchanges.

11. With the above understanding, the related question that needs to be answered in the present case is when did the "unpublished price sensitive information" relating to the financial results of AFF for the quarter ended September 30, 2017, came into existence. On this point, the AFF informed that the account finalisation process started from November 4, 2017 and the results were eventually disclosed on November 14, 2017 after market hours, while as alleged in the SCN, the UPSI came into existence immediately upon end of the quarter and accordingly, the UPSI period (i.e. during which the price sensitive information remained unpublished) has been reckoned from first working day thereafter i.e. October 3, 2017 to November 14, 2017. In order to address the question as to duration of the UPSI period, I find it important to note that during the investigation, AFF was asked to provide details of the various MIS Reports or any other reports with regard to its financial performance that were generated/prepared during the quarter July 1 – September 30, 2017 and also the details of the Directors/ KMPs to whom such Reports were provided along with the dates. In response thereto, AFF vide email dated September 24, 2021 submitted that reports namely, *Sales during the period, Purchases during the period, Inventory valuation, Outstanding debtors, Outstanding creditors and Export incentives reports* were generated and shared, *inter alia*, with K. Satyanarayana Murthy [CMD], K. Subrahmanya Chowdary [ED], Ch. Vijaya Kumar [CFO], P. Durga Prasad [Accounts Manager] and B. Anand Kumar [Statutory auditor] and their respective staff.

12. As brought out in the SCN, AFF is an integrated producer and exporter of shelf stable quality aquaculture products and supplies ready-to-cook products to a diversified customer base consisting of food companies, retail chains, restaurants, club frozen stores and distributors spread across the developed markets of USA, UK and various European Countries. Accordingly, considering

the nature of the business of AFF, even as a layman, one can reasonably conclude that any person who had access to reports such as *purchases, sales, inventory, outstanding debtors, outstanding creditors*, etc. can estimate the ballpark financial performance of the company. Thus, I am in agreement with the inference drawn in the SCN that any recipient of the reports, generated and shared by the company with the Directors / CFO/ Auditor and their respective staff, would have had an understanding of the financial performance of the company. Hence, by the end of the quarter, any person with whom the reports mentioned earlier were shared, would have known whether the company had made profit in the said quarter. Considering the above, I am of the view that that information relating to the financial results of AFF for the quarter ended September 30, 2017 was UPSI and remained in existence during the period from October 3, 2017 to November 14, 2017 (i.e. till it was disclosed to the stock exchanges).

Issue No. 2— Whether Noticees no. (1) and (2) are “insiders” within the definition of the term under the PIT Regulations?

13. As brought out in the SCN and also as per the combined reply of both the Noticees, it is noted that Noticee No. 2 handled all the transactions on behalf of his wife (Noticee No. 1) and therefore, if it is established that Noticee No. 2 had possession of / access to the UPSI, then there would be no separate requirement of establishing the same in respect of Noticee No. 1 since because of their own admission, knowledge of Noticee No. 2 would be attributable to knowledge of Noticee No.1.
14. It has been mentioned in the SCN that Noticee No. 2 was working as the Purchase Manager of AFF during the investigation period, and vide AFF's communication dated July 17, 2019, name of Noticee No. 2 (amongst others) was given in “details of persons including promoters/ directors/ employees and/or any other persons (whether connected to Apex Frozen Foods Limited or not) who were having access to and/or in possession of the announcement

dated November 14, 2017 titled 'Financial Results for Sep 30, 2017'" and also as a Key Managerial Personnel of the Company. Thereafter, vide a communication dated September 17, 2020, the company submitted that Noticee No. 2 was a designated person of the company. Later, vide email dated February 17, 2022, the Company also submitted that Noticee No. 2 might have possession of material information pertaining to the Company. In light of these facts, it has been alleged in the SCN that Noticee No. 2 was a 'connected person' in terms of regulation 2(1)(d)(i) of PIT Regulations. Further, on the basis of the submission of Noticee No.1 that her husband was handling transactions on her behalf, she was also alleged to be a 'connected person'.

15. From the above, it is noted that the allegation in the SCN that Noticee No. 2 was a "connected person" and hence an "insider" is, inter alia, based on the statement made by AFF (contained in an email dated February 17, 2022) that Noticee No. 2 might have possession of material information pertaining to the Company. In this regard, it is important to mention that vide the same email dated February 17, 2022, AFF had also communicated that Noticee No. 2 (along with 2 other persons named therein) was not involved in preparation of the financial results for the quarter ended September 30, 2017. Thus, the statement made by AFF that "They are designated employees & KMP's of Company, hence they might have possession of material information pertaining to company" was unsubstantiated and unsupported by any specific fact or material.
16. Further, it is also a matter of record that the name of Noticee No. 2 does not figure in the list of entities who were involved in the preparation and discussion of financial results. Also, AFF did not include Noticee No. 2's name in the list of persons with whom the reports generated during the quarter July – September 2017 namely, Sales during the period, Purchases during the period, Inventory valuation, Outstanding debtors, Outstanding creditors and

Export incentives reports, were shared. In relation thereto, the investigation also does not bring out any material to show that the financial results (while being finalized) and the aforesaid reports reached Noticee No. 2 through other means or that Noticee No. 2 was communicated about the inference that can be drawn from the reports by any recipient of these reports.

17. As regards the standard of proof required to prove the charge of insider trading, Courts / Tribunals in various orders have stressed upon a higher degree of preponderance of probability to establish a serious charge such as insider trading. Hon'ble SAT in the matter of Dilip S. Pendse vs. SEBI (Order dated November 19, 2009) held as under:

“13. The charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same. In Mousam Singha Roy v. State of West Bengal (2003) 12 SCC 377, the learned judges of the Supreme Court in the context of the administration of criminal justice observed that, “It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused.” This principle applies to civil cases as well where the charge is to be established not beyond reasonable doubt but on the preponderance of probabilities.”

18. In another order in the matter of Top Class Capital Markets Pvt. Ltd. v. SEBI (Order dated March 8, 2022), Hon'ble SAT highlighted the requirement of a higher scale / degree of preponderance of probability for establishing that a person is an insider and that he traded while in possession of UPSI. Hon'ble SAT observed as under:

“22. In our view, when a person can be called as insider and whether has traded when in possession of such UPSI is essentially a question of fact to

be determined in the facts and circumstances of each case by applying the standard of preponderance of probability albeit in higher scales.”

19. Having perused the above, I am of the considerate view that the mere fact that Noticee No. 2 was the purchase manager of AFF and was named as a ‘designated person’ and a KMP by AFF in compliance with the Code of Conduct for listed companies specified under the PIT Regulations, cannot be stated to be the foundational fact from which an inference of the Noticee No. 2 reasonably being expected to be in the knowledge of the UPSI relating to the financial results can be formed. This is so because in the very mail in which AFF made the unsubstantiated statement that Noticee No. 2 (amongst others) “might have possession of material information pertaining to company”, it categorically stated that Noticee No. 2 was not involved in preparation of financial results for the quarter ended September 30, 2017. The investigation also did not bring any specific fact to demonstrate that Noticee No. 2 had access to the UPSI by virtue of his position (i.e. purchase manager) in AFF, nor did it bring out anything to establish the communication of UPSI from any other “insiders” to Noticee No. 2.

20. After assessing the standard of proof required to prove “insider trading”, the allegations levelled in the SCN and the material available on record including what has been brought forth by investigation, I find that that the preponderance of probability, in the present case, lies in favor of Noticee No. 2. Resultantly, in the facts and circumstances of the case, Noticee No. 2 cannot be said to be a “connected person” or an “insider” who can be reasonably expected to have access to or be in possession of UPSI.

21. In light of the above discussion, since Noticee No. 1 has been alleged to be an insider because of his relationship with Noticee No. 2 and the material on record is insufficient to show that Noticee No. 2 was a connected person or an insider,

the charge against Noticee No. 1 also falls.

Issue No. 3 - If the answer to issues No. 1 and 2 is in the affirmative, whether the Noticees by trading in the scrip of AFF and communicating / procuring the UPSI, have violated the provisions of SEBI Act and PIT Regulations as alleged in the SCN?

Issue No. 4 - If the violations alleged against the Noticees have been established, what directions are required to be issued and what is the amount of monetary penalty that is required to be imposed on the Noticees?

22. In the instant case, it has already been noted that the information relating to the financial results of AFF for the quarter ended September 30, 2017 was UPSI and remained in existence from October 3, 2017 to November 14, 2017 but the Noticees cannot be said to be “insiders” on the basis of the material available on record. Having observed as above, I find that the question of examination of issues nos. 3 and 4 does not arise.

7. Directions and Penalty:

23. In view of the foregoing, I, in exercise of powers conferred upon me under sections 11(1), 11(4), 11B(1), 11B(2) and 11(4A) read with Section 15G and Section 19 of the SEBI Act, hereby dispose of the proceedings initiated, vide SCN dated October 20, 2020 against the Noticees without issuance of any directions and without imposing any monetary penalty for the reasons stated above.

24. This order is without prejudice to any other action that may be initiated against the Noticees by SEBI or any other authority in accordance with law.

25. The order shall be served upon the Noticees.

Sd/-

V. S. SUNDARESAN

EXECUTIVE DIRECTOR

Date: March 28, 2023

Place: Mumbai

SECURITIES AND EXCHANGE BOARD OF INDIA