

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 11.02.2022

Date of Decision : 30.03.2022

Appeal No. 782 of 2021

Mr. Keyur Maniar
A-53, Maker Kundan Gardens
Juhu Tara Road, Santacruz (W),
Mumbai – 400 049.

...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

Ms. Shruti Rajan, Advocate with Mr. Anubhav Ghosh, Mr. Vivek Shah, Ms. Vidhi Shah, Advocates i/b Trilegal for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Ms. Aditi Palnitkar, Ms. Moksha Kothari, Advocates i/b Vidhii Partners for the Respondent.

With
Misc. Application No. 1432 of 2021
And
Appeal No. 783 of 2021

Ramit Chaudhri
Q77, Diamond District,
Old Airport Road, Kodihalli,
Bangalore – 560008.

...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 Sunderasan, Advocate with Ms. Janhvi P. Durve,
Mr. Abishek Venkataraman, Mr. Santosh Jadhav, Advocates i/b
Ms. J. P. Durve, Advocate for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Ms. Nidhi Singh,
Ms. Deepti Mohan, Ms. Aditi Palnitkar, Ms. Moksha Kothari,
Advocates i/b. Vidhii Partners for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer

1. The appellants have challenged the confirmatory order dated December 13, 2021 passed by the Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') wherein the ex-parte ad-interim order dated September 27, 2021 was confirmed subject to certain modifications.

2. Both the appeals are against the same order and are being taken up together. SEBI conducted a preliminary examination in the scrip of Infosys Ltd. (hereinafter referred to as 'Infosys') to ascertain whether certain person / entities traded in the scrip while they were in possession of unpublished price sensitive information (hereinafter referred to as 'UPSI') in contravention of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as 'PIT Regulations').

3. In the preliminary examination, it was observed that the corporate announcement of the strategic partnership of Infosys with Vanguard was made by Infosys to BSE Ltd. (BSE) and National Stock Exchange of India Ltd. (NSE) on July 14, 2020. The information relating to the announcement of this partnership was a price sensitive information which period started from June 29, 2020 when a powerpoint presentation was shared with some of the employees of Infosys vide email dated June 29, 2020 and, therefore, the UPSI came into existence on this date i.e. June 29, 2020 and ended on July 14, 2020 when the information was disseminated on the stock exchange platform. It was observed that the appellant

Ramit Choudhri, noticee no. 1 (hereinafter referred to as ‘Ramit’) was the Solution Design Head in Infosys and was directly / indirectly associated with Vanguard deal and was a connected person and was reasonably expected to have access or was privy to the UPSI and, therefore, *prima-facie*, the appellant Ramit, noticee no. 1 was an insider. Similarly, it was observed that Keyur Maniar, noticee no. 2 (hereinafter referred to as ‘Keyur’) was connected with Ramit through frequent telephonic communication and that they too had earlier worked together in Wipro BPS (hereinafter referred to as ‘Wipro’) and, therefore, appellant Keyur was reasonably expected to have access to the UPSI procured from Ramit. Based on the information procured by Keyur from Ramit traded in the scrip of Infosys in the Future & Options (F&O) segment prior to the announcement of Vanguard deal and soon after the announcement off-loaded and squared off its positions and, thus, through this trading Keyur generated Rs. 261.30 lacs.

4. On this basis of the preliminary examination, an ex-parte ad-interim order dated September 27, 2021 was passed against the appellants. The directions are extracted hereunder :-

“55. In view of the above, pending conclusion of detailed investigation, in order to protect the interests of investors and the integrity of the securities market, I, in exercise of

the powers conferred upon me under Sections 11, 11(4), 11B (1) and 11D read with Section 19 of the SEBI Act hereby issue by way of this interim ex-parte order, the following directions, which shall be in force until further orders :-

55.1. Mr. Ramit Chaudhri and Mr. Keyur Maniar are restrained from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever until further orders;

55.2. If Mr. Ramit Chaudhri and Mr. Keyur Maniar have any open position in any exchange traded derivative contracts, as on the date of the order, they can close out / square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. The said entities are permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order;

55.3. The bank accounts of Mr. Ramit Chaudhri and Mr. Keyur Maniar to the extent of amount mentioned in table no. 8 at paragraph 48 above is impounded. Further, Mr. Ramit Chaudhri and Mr. Keyur Maniar are directed to open an escrow account with a scheduled bank, jointly and severally and deposit the impounded amount mentioned therein which has been prima facie found to be proceeds generated from the prima facie insider trading, in this Order, within 15 days from the date of service of this order. The escrow account/s shall be an interest bearing escrow account and shall create a lien in favour of SEBI. Further, the monies kept therein shall not be released without permission from SEBI;

55.4. Mr. Ramit Chaudhri and Mr. Keyur Maniar are directed not to dispose of or alienate any assets, whether movable or immovable, or any interest

or investment or charge on any of such assets held in their name, jointly or severally, including money lying in bank accounts except with the prior permission of SEBI until the impounded amount is deposited in the escrow account.

55.5. Mr. Ramit Chaudhri and Mr. Keyur Maniar are directed to provide a full inventory of all assets held in their name, jointly or severally, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 5 working days from the date of receipt of this order;

55.6. The banks where Mr. Ramit Chaudhri and Mr. Keyur Maniar are holding bank accounts, jointly or severally, are directed to ensure that till further directions, except for compliance of direction at paragraph 55.3, no debits are made in the said bank accounts without the permission of SEBI. The banks are directed to ensure that all the above directions are strictly enforced. On production of proof of deposit of entire amount mentioned in column 4 of table no. 8 in respect of serial No. 1 entities by any of the entities mentioned in column 2 corresponding to serial No.1 of table no. 8, in the escrow account, SEBI shall communicate to the banks to defreeze the accounts corresponding to all the entities mentioned in the column No. 2 of table no. 8 corresponding to serial No.1.

55.7. The Depositories are directed to ensure, that till further directions, no credits are made in the demat accounts of the Noticee No. 1 & 2, held individually or jointly. The depositories are further directed to ensure that till further direction except for compliance of direction mentioned at paragraphs 55.2 and 55.3, no debits are made in the demat accounts of the said Noticees, held individually or jointly.

55.8. The Registrar and Transfer Agents are also directed to ensure that till further directions, no credits are permitted and that except for compliance of direction at paragraph 55.2 and 55.3 the securities / mutual funds units held in the name of the Noticee No. 1 & 2, jointly or severally, are not transferred / redeemed.”

5. After giving an opportunity of hearing, the interim order was confirmed by an order dated December 13, 2021 with slight modifications. The confirmatory directions are extracted hereunder :-

“47. In view of the foregoing discussions and my observations on various aspects of the matter, pending conclusion of investigation, I, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992, read with Sections 11, 11(4) and 11B(1) thereof, hereby confirm the directions issued vide ex-parte ad-Interim Order dated September 27, 2021 subject to following modifications after taking into accounts the specific facts and circumstance of the present matter :

47.1. The directions issued vide para 55.1 of the Interim Order shall not apply to the investments of Noticees No. 1 and 2 in mutual funds; and

47.2 The directions issued vide para 55.7 and 55.8 of the Interim Order stand modified to the extent of allowing credit of securities and credit & debit of mutual fund units in the accounts of Noticees no. 1 and 2.

48. It is clarified here that the funds deposited by Noticee no. 2 in an interest bearing escrow account will remain in the said account with lien in favour of SEBI until further orders.”

6. The facts as culled out from the two orders which is relevant for the purpose of the present appeals is, that the appellant Ramit was an employee in a subsidiary of Infosys and was the Solution Design Head. As per the list provided by the company, the appellant was associated with the Vanguard deal. The appellant was also closely associated with one Sanjay Nayak (hereinafter referred to as ‘Sanjay’) and Muthukrishnan Nagarajan (hereinafter referred to as ‘Muthukrishnan’) who were also associated with the Vanguard deal. Further, Ramit and Muthukrishnan were reporting to Sreenath Ramakrishnan who was also associated with the Vanguard deal. The call data records indicate that frequent calls were made by the appellant with Sanjay and Muthukrishnan during the UPSI period.

7. The appellant Keyur was the Senior Vice President (Capital Market) in Wipro. Wipro categorized the appellant as a “designated person” for the Vanguard deal. The e-mails given by Wipro indicated that the Keyur was actively communicating with Vanguard on behalf of the Wipro for the deal and that Keyur informed at some stage to the senior management of Wipro about the Vanguard decision that they would not be proceeding with Wipro on the deal. Further, Keyur and Ramit knew each other as they had worked in

Wipro between March 2012 to December 2014 and thereafter remained in contact with each other as per the call data records.

8. Infosys and Wipro were the official contender for the Vanguard deal. Wipro lost the race and this fact was known to the appellant Keyur. Contract negotiations between the Vanguard and Infosys were held between March 16, 2020 to June 1, 2020 to discuss the terms and conditions of the proposed master saving agreement. In this regard, a powerpoint presentation through email dated June 29, 2020 was shared with certain employees of Infosys which were marked to Sanjay and Muthukrishnan who were in constant touch with the appellant Ramit. Thus, through this email of June 29, 2020 the UPSI regarding Vanguard deal came into existence and came to an end when this deal was disseminated to the stock exchange platform on July 14, 2020 when corporate announcement of strategic partnership between Infosys and Vanguard was made. This announcement resulted in the rise in the price of the scrip.

9. Based on the aforesaid facts which are not disputed, the WTM found that *prima-facie*, Ramit was associated with the deal as per the Infosys email and were closely associated with Sanjay and Muthukrishnan who were involved in the powerpoint presentation on June 29, 2020 and were in constant touch with each other and,

therefore, *prima-facie*, came to the conclusion that Ramit was reasonably expected to have information regarding Vanguard deal and was reasonably expected to have access / privy to UPSI and, thus, on a preponderance of probability, was in possession of UPSI which he communicated to Keyur on July 8, 2020.

10. On the other hand, the WTM further found that Keyur knew that Wipro was out of the race in the Vanguard deal. He knew that Infosys was negotiating the deal with Vanguard. He gathered information from Ramit. There was a crucial call on July 8, 2020 between Ramit and Keyur which went on for almost 20 minutes and seven minutes after the conclusion of the call, Keyur started placing orders in the scrip of Infosys. The WTM consequently, *prima-facie*, concluded that Keyur procured UPSI from Ramit and was reasonably expected to have access to and was in possession of UPSI based on which Keyur took long positions in option contracts and future contracts of Infosys between July 8, 2020 and July 14, 2020. The WTM further found that announcement was made on July 14, 2020, and Keyur squared off his positions on July 15, 2020 and made unlawful profit of Rs. 261.30 lacs. The WTM while issuing various directions also directed the appellant to deposit this unlawful gain of Rs. 261.30 lacs in an escrow account.

11. We find that the pursuant to the interim order Keyur has deposited the unlawful gain of Rs. 261.30 lacs in an escrow account.

12. The appellant Ramit contended that he was not associated with the Vanguard deal nor the email of June 29, 2020 was marked to him and, therefore, he was not aware of the Vanguard deal. It was also asserted that the calls with Sanjay and Muthukrishnan was not in respect of Vanguard deal but related to other organizational matters of Infosys. The said appellant contended that there is no financial transaction with Keyur and contended that the question of imparting UPSI to Keyur does not arise.

13. Keyur contended that there was no urgency in passing the interim order and that he was not an insider as he was not an employee in Infosys. The trades executed by him were based upon a fundamental analysis as well as from a general information available in the public domain. The said appellant stated that he was a regular investor in the securities market and his trading decisions were consistent with his trading pattern in the past.

14. Having heard the learned counsel for the parties at some length and having perused the record, we are satisfied that, *prima-facie*, observation given by the WTM is correct and does not require

any interference. *Prima-facie*, the appellant Ramit is a “connected person” who was part of the team that was involved in the Vanguard deal and, therefore, *prima-facie*, at this stage, it can be reasonably expected that he had access or was privy to the UPSI and on preponderance of probability was in possession of UPSI which he communicated again on preponderance of probability to Keyur. *Prima-facie*, at this stage we find that Ramit was an insider as per the Regulation 2(1)(g) (i) & (ii) of the PIT Regulations. Further, there is a long association between Ramit and Keyur. They have worked together in Wipro and thereafter had been in touch with each other which is borne out from the call records. The fact that Keyur started trading in the scrip of the company within minutes after the conclusion of the telephonic call with Ramit on July 8, 2020 (which was during the UPSI period) creates a strong suspicion which, on this basis, one can reasonably expect that Ramit passed on the UPSI to Keyur or Keyur on the basis of inputs gathered from Ramit started trading immediately thereafter. The observation of the WTM that *prima-facie*, Keyur being connected to Ramit was also an insider and was reasonably expected to have access and be in possession of UPSI appears to be correct.

15. Admittedly, Keyur has traded in the scrips during the UPSI period and squared off immediately when the UPSI was disseminated on the stock exchange platform. Through this trading Keyur has earned a profit of Rs. 261.30 lacs.

16. Considering the aforesaid, we are not inclined to interfere with the *prima-facie*, findings given by the WTM. The contention that the appellants were not insiders and were not privy to any UPSI will be considered when the show cause notice is issued and final orders are passed. At this stage, it is not appropriate for this Tribunal to delve and decide this aspect as it may influence and hamper the investigation. We are primarily satisfied with the *prima-facie* observation made by the WTM in the impugned order.

17. However, we are of the opinion that various directions given in the interim order should not continue any further. Admittedly, Ramit has not traded in the scrip. Keyur has traded and the alleged profits has been deposited in an escrow account which would be subject to final orders that would be passed pursuant to the show cause notice. The interest of the securities market is thus safeguarded.

18. The learned counsel for the respondent further contended that it will take approximately another six months for the respondent to conclude the investigation and issue a show cause notice. Considering the aforesaid, when only, *prima-facie*, observations are made and a final order as to whether the appellants are insiders and had violated the provisions of the PIT Regulations is yet to come and whether the UPSI was communicated or not, the debarment of the appellants from the securities market on the basis of *prima-facie* suspicion and on the basis of preponderance of probability appears to be harsh and excessive at this stage. Both the appellants are unemployed at this stage because of the interim order. Ramit is no longer working in Infosys and Keyur is also not working in Wipro. At the moment investigation is still in progress. The issuance of show cause notice will take another six months. Final orders will come much later. At this stage debarring a person from the securities market does not appear to be justified in the facts of the case.

19. Thus, ex-parte interim order may be made when there is an urgency. As held in ***Liberty Oil Mills & Ors. vs. Union of India & 18 Ors. [AIR (1984) SC 1271] decided on May 1, 1984***, the urgency must be infused by a host of circumstances, viz. large scale misuse and attempts to monopolise or corner the market. In the said

decision, the Supreme Court further held that the regulatory agency must move quickly in order to curb further mischief and to take action immediately in order to instill and restore confidence in the capital market.

20. In *North End Foods Marketing Pvt. Ltd. vs Securities and Exchange Board of India* in Appeal No. 80 of 2019 decided on March 12, 2019, this Tribunal held as under:-

“13. Having heard the learned senior counsel at length, we find that it is no more res integra that SEBI has power to pass ex-parte interim orders, pending investigation, which power flows from Section 11 and 11B of the SEBI Act. A plain reading of Section 11 and 11B shows that SEBI has to protect the interests of the investors in securities and to regulate the securities market by such measures as it thinks fit and such measures may be for any or all of the matters provided in sub-section 2 of Section 11 of the Act. SEBI has power to pass interim orders and such interim orders can also be passed exparte. Interim orders are passed in order to prevent further possible mischief of tampering with the securities market. If during a preliminary enquiry, it is found prima-facie, that the person is indulging in manipulation of the securities market, it would be obligatory for SEBI to pass an interim order or for that matter an ex- parte interim order in order to safeguard the interests of the investors and to maintain the integrity of the market. Normally, while passing an interim order, the principles of natural justice has to be adhered to, namely, that an opportunity of hearing is required to be given. Procedural fairness embodying natural justice is to be applied whenever action is taken affecting the rights of the parties. At times, an opportunity of hearing may not be pre-decisional and may necessarily have to be post-

decisional especially where the act to be prevented is imminent or where action to be taken brooks no delay. Thus, pre-decisional hearing is not always necessary when ex parte ad-interim orders are made pending investigation or enquiry unless provided by the statute. In such cases, rules of natural justice would be satisfied, if the affected party is given a post-decisional hearing.

14. However, it does not mean that in every case, an ex-parte interim order should be passed on the pretext that it was imminent to pass such interim order in order to protect the interest of the investor or the securities market. An interim order, however, temporary it may be, restraining an entity/person from pursuing his profession/trade may have substantial and serious consequences which cannot be compensated in terms of money.”

21. The aforesaid decisions were considered in ***Dr. Udayant Malhoutra vs. SEBI in Appeal no. 145 of 2020 decided on June 27, 2020*** wherein this Tribunal held as under :-

“9. Further, no order of the like nature can be passed without recording its satisfaction and cannot be based on the basis of possibility.

10. In this regard, we may refer to the provisions of Order 38 Rule 5 to 13 of the Code of Civil Procedure, 1908 which lays down the parameters for attachment before judgment. The said principles are fully applicable in the instant case. The object of attachment before judgment is to prevent any attempt on the part of the appellant to defeat the realization of the final order on disgorgement that may be passed against the appellant. But this principle applies only when it is found that the appellant is about to dispose of the property in question. Further, this principle can only be applied when there is

evidence to show that the appellant has acted, or is about to act with the intent to obstruct or delay the adjudication of the proceedings that may be passed against him. We are of the opinion that there is no finding that the appellant will remove the property or will dispose of all the property or that he would obstruct the proceedings or that he would delay the proceedings pursuant to the show cause notice. In the absence of any such finding, the ex-parte interim order cannot be sustained especially when the trades were of 2016 and from 2016 till the date of the impugned order there is no evidence to show that the appellant was trying to divert the alleged notional gain/loss.

11. As held in *North End Foods Marketing Pvt. Ltd.* (supra) there is no real urgency in the matter to pass an ex-parte interim order especially during the pandemic period. There is no doubt that SEBI has the power to pass an interim order and that in extreme urgent cases SEBI can pass an ex-parte interim order but such powers can only be exercised sparingly and only in extreme urgent matters. In the instant case, we do not find any case of extreme urgency which warranted the respondent to pass an ex-parte interim order only on arriving at the prima-facie case that the appellant was an insider as defined in the SEBI (Prohibition of Insider Trading) Regulations, 2015 („PIT Regulations“ for short) without considering the balance of convenience or irreparable injury.”

22. The decision in *Dr. Udayant Malhoutra* (supra) was upheld by the Hon’ble Supreme Court in ***SEBI vs. Dr. Udayant Malhoutra [(2021) 1 SCC 219]***. Thus, on the basis of prima-facie observation, there was no urgency to take such drastic steps to debar the appellants from the securities market. Such steps could be taken

after final orders are passed. Interest of the securities market is protected by deposit of the alleged unlawful gains. We do not find that the present situation warrants the respondent to take the extreme steps to debar before the trial. Ex-parte ad-interim orders can be issued in case of extreme urgency and the power must be exercised sparingly. Balance of convenience or irreparable injury is also required to be considered. The present issue was not an extreme urgent matter requiring the issuance of such direction given in the impugned orders.

23. Thus, we modify the interim order as well as the confirmatory order to the extent that the direction to deposit the alleged unlawful gain of Rs. 261.30 lacs in an escrow account will continue to operate till final orders are passed by the WTM pursuant to the show cause notice. All other directions given in the interim order and confirmatory order are set aside.

24. We further observe that the investigating authorities will not be influenced by any observations made by us in the present order which are tentative in nature and will not be utilized to the advantage of either party.

25. In the circumstances of the case, the appeals are partly allowed with no order as to costs.

26. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Justice M. T. Joshi
Judicial Member

30.03.2022
PTM