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National Stock Exchange of India
Circular

Department: Investigation	
Download Ref No: NSE/INVG/54747	**Date: December 07, 2022**
Circular Ref. No: 195/2022	

To All NSE Members

Sub: **SAT Order in the matter of United Spirits Limited**

This is with reference to NSE Circular no. NSE/INVG/43209 dated January 13, 2020 referring to SEBI Order no. WTM/MPB/EFD-I-DRA-IV/88/2020 dated January 10, 2020.

The Honorable SAT now, vide its Order dated November 30, 2022, has directed that the impugned order passed by the WTM against the below mentioned entities cannot be sustained on the ground of violation of principles of natural justice and are set aside.

No.	Entity's Name	PAN
1	Poonam Haresh Jashnani	ADUPJ8724H
2	Varun Haresh Jahnani	AIGPJ8710L
3	Haresh Parmanand Jashnani	AAJPJ7020L
4	Nishat Shailesh Gupte	AQDPG4932E

The detailed order is available on SAT website (http://www.sat.gov.in).

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page under "Home-Regulation-Members-Action against Members-Regulatory Actions".

Members are advised to take note of the above and ensure compliance.
In case of any further queries, members are requested to contact the following officials:

Mr. Abhishek Goenka (Extension: 23449), Mr. Anand Jangir (Extension: 22385)
Direct No: 022-26598417/18 Fax: 022-26598195

National Stock Exchange of India

For and on behalf of
National Stock Exchange of India Limited

Anand Jangir
Manager

National Stock Exchange of India

ANNEXURE: SAT Order in the matter of United Spirits Limited

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 30.11.2022

Misc. Application No. 865 of 2021
And
Appeal No. 249 of 2020

Varun Haresh Jashnani
12-A, Cenced Apartments,
Pali Hill Road,
Khar (West),
Mumbai- 400 052 …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

WITH
Appeal No. 251 of 2020

Poonam Haresh Jashnani
12-A, Cenced Apartments,
Pali Hill Road,
Khar (West),
Mumbai- 400 052 …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

WITH
Appeal No. 252 of 2020

Haresh Parmanand Jashnani
12-A, Cenced Apartments,
Pali Hill Road,
Khar (West),
Mumbai- 400 052 …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

AND
Appeal No. 255 of 2020

1. Haresh Parmanand Jashnani
   12-A, Cenced Apartments,
   Pali Hill Road,
   Khar (West),
   Mumbai- 400 052

2. Poonam Haresh Jashnani
   12-A, Cenced Apartments,
   Pali Hill Road,
   Khar (West),
   Mumbai- 400 052

3. Varun Haresh Jashnani
   12-A, Cenced Apartments,
   Pali Hill Road,
   Khar (West),
   Mumbai- 400 052 …Appellants

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. Haresh Jashnani, Appellant in Person.

Mr. Mustafa Doctor, Senior Advocate with Mr. Manish Chhangani, Ms. Samreen Fatima and Mr. Sumit Yadav, Advocates i/b The Law Point for the Respondent SEBI.

CORAM: Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per: Justice Tarun Agarwala, Presiding Officer (Oral)

1. All the appeals are against a common order dated January 10, 2020 and are being taken up together.

2. The appellants have challenged the order dated January 10, 2020 passed by the Whole Time Member ("WTM" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) directing the appellants to disgorge the wrongful gain made by them along with interest @ 12% per annum from April 11, 2014 till the date of payment. The appellants were further restrained from accessing the securities market for a period of 7 (seven) years from the date of payment of the disgorgement amount along with the interest.

3. The facts leading to the filing of the present appeal is, that Relay B.V (Relay/Acquirer) together with Diageo Plc as Persons Acting in Concert made a public announcement on

April 15, 2014 for acquisition of shares of the United Spirits Limited ("USL" for convenience). Based on the public announcement the price in the scrip of USL went up drastically registering an increase of 11.57%. SEBI initiated an investigation to ascertain whether trading in the scrip of USL by certain entities was based on Unpublished Price Sensitive Information ("UPSI" for convenience).

4. Based on the investigation report, a show cause notice dated March 29, 2017 was issued to the appellants and other entities. The show cause notice alleged that the open offer announcement by Relay and Diageo Plc on April 15, 2014 to acquire equity shares of USL was a price sensitive information and that the price sensitive information ("PSI" for convenience) came into existence on March 12, 2014 and since the announcement of the open offer was made to the stock exchanges on April 15, 2014 the UPSI period was from March 12, 2014 to April 14, 2014.

5. It was alleged that based on inside information given by Shri Nishat Shailesh Gupte who was insider the appellants traded in the scrip of USL and made unlawful gains. It has also come on record that the insider Shri Nishat Shailesh Gupte was the son-in-law of one of the appellants and after selling the

shares transferred the entire funds to the bank account of the wife of Shri Nishat Shailesh Gupte who was the daughter of one of the appellants. The show cause notice therefore alleged that the appellants indulged in insider trading activity on the basis of UPSI and made unlawful gains which was liable to be disgorged.

6. The WTM after considering the material evidence on record and after collecting some further material after the closing of the hearing of the matter found that the price sensitive information was crystalized on March 12, 2014 vide email dated March 12, 2014 issued by Diageo and that the UPSI period was from March 12, 2014 to April 14, 2014. The WTM also found that the son-in-law of one of the appellants was the insider and based on the information given by him the appellants traded and made unlawful gains. The WTM accordingly passed the impugned order directing disgorgement of the wrongful gains and debarred the appellants from accessing the securities market.

7. We have heard Shri Haresh Jashnani, the appellant in person and Shri Mustafa Doctor, Senior Advocate for the Respondent.

8. Without going into the merits of the appeal, we find there is a stark violation of the principles of natural justice and, on this short ground, the appeals are liable to be allowed.

9. In the instant case, we find that the hearing was concluded before the WTM on January 23, 2019 after which written submissions were filed on February 28, 2019. It transpires that the respondent did further investigation in the matter after the conclusion of the hearing and procured certain documents which has been relied upon in the impugned order. These documents were neither part of the show cause notice nor were provided to the appellants before the passing of the impugned order. These facts have been alleged in paragraph 8.25 of the memorandum of appeal which has not been denied specifically in paragraph 7 of the reply of the respondent. One of the documents relied upon by the WTM is an email dated March 12, 2014 on the basis of which a finding has been given that the UPSI period started from March 12, 2014.

10. In addition to the aforesaid email, the appellants have filed a list of documents Exhibit "W1" which has been relied upon by the WTM in the impugned order and copies of such documents

was not provided. This Exhibit "W1" has also not been denied by the respondents.

11. In addition to the aforesaid, we find from paragraph 8 of the reply that the information and documents gathered post conclusion of hearing held on January 08, 2019 was provided to another noticee Nishat Shailesh Gupte, who was the insider. In view of the aforesaid, we find it hard to digest as to why the additional documents was not provided to the appellants if the same set of documents was provided to another noticee. Such non-supply of documents is clearly discriminatory especially when the appellants were represented by another counsel and the insider was represented by another counsel.

12. In the light of the aforesaid, it is clear that after the conclusion of hearing and based on further investigation certain documents were collected and relied by the WTM which documents have not been supplied to the appellants. Such non-supply of documents is in violation of the principles of natural justice.

13. This Tribunal in ***Shruti Vora vs. SEBI (Appeal Lodging No.28 of 2020 decided on 12.02.2020)*** held:-

> *"**18.** In the light of the aforesaid, we are of the opinion that concept of fairness and principles of natural justice are in-built in Rule 4 of the Rules of 1995 and that the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence.*

14. The Supreme Court in ***Natwar Singh vs Director of Enforcement and Another (2010) 13 SCC 255*** was considering Rule 4(1) of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 ('FEMA Rules' for short) which is more or less pari materia of the present Rules of 1995. While considering Rule 4, the Supreme Court held:-

> *"**31.** The concept of fairness may require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue show-cause notice requiring the noticee to explain as to why an inquiry under Section 16 of the Act should not be initiated. To this extent, the principles of natural justice and concept of fairness are required to be read into Rule 4(1) of the Rules. Fair procedure and the principles of natural justice are in-built into the Rules. A notice is always entitled*

> *to satisfy the adjudicating authority that those very documents upon which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by the authority are required to be furnished to the notice enabling him to show a proper cause as to why an inquiry should not be held against him though the Rules do not provide for the same. Such a fair reading of the provision would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose of the statute."*

15. The Supreme Court in ***T. Takano vs. Securities and Exchange Board of India and Another 2022 SCC OnLine SC 210*** also reiterated that documents relied upon by the prosecution should be provided in compliance with the principles of nature justice.

16. The learned counsel for the respondent contended that the appellants must show prejudice and it is not sufficient to say that the principles of natural justice was violative. The argument raised is patently erroneous and as in the instant case

the documents relied upon was not part of the show cause notice nor were supplied to the appellants. These documents have been relied upon without affording an opportunity to the appellants to rebut the same. Such non-supply of documents causes prejudice by itself.

17. For the reasons stated aforesaid, the impugned order passed by the WTM and Adjudicating Officer cannot be sustained on the ground of violation of principles of natural justice and are set aside. The matters are remitted to the authorities who are directed to supply the documents as requested in Exhibit "W1" in Appeal No. 255 of 2020 and, upon supply of the documents and, after giving an opportunity to rebut the same and file additional reply, and after giving an opportunity of hearing, a fresh order would be passed. In this regard, the appellants will appear before the authorities on December 09, 2022 on which date the documents would be supplied as prayed for. Thereafter the authorities will grant three weeks' time to the appellants to rebut those documents and file documents if so required. The matters would be heard thereafter and authorities will pass a fresh order within three months from the date of conclusion of hearing. The misc. application is disposed of accordingly.

18. 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

Ms. Meera Swarup
Technical Member

30.11.2022
PK