

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 209 of 2011

Date of Decision : 31.01.2012

Mrs. Chandrakala
962, Poonamallee Road, C-Block
BBC Purnima Apartments,
Chennai - 600 084.

...Appellant

Versus

The Adjudicating Officer,
Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051.

...Respondent

Mr. Vinay Chauhan, Advocate for the Appellant.

Dr. (Mrs.) Poornima Advani, Advocate with Mr. Ajay Khaire and Ms. Rachita Romani, Advocates for the Respondent.

CORAM : P.K. Malhotra, Member
S.S.N. Moorthy, Member

Per : P.K. Malhotra, Member

Whether the appellant is 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 (for short the Act) against the order dated August 30, 2011 passed by the adjudicating officer of the Securities and Exchange Board of India (the Board) holding the appellant guilty of violating regulations 3(i) and 4 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (the regulations) and imposing a monetary penalty of ₹ 8 lakhs on her.

2. Facts of the case, in brief, are that the Board conducted investigations into the rise in price and volume in the scrip of M/s. Rasi Electrodes Ltd. (the Company)

during the period from June 8, 2007 to July 20, 2007. The scrip of the company is listed on the Bombay Stock Exchange Ltd. It was noted that certain promoter entities had traded in the scrip during the investigation period. It was further noticed by the Board that the agenda for the board meeting to be held on June 30, 2007 was discussed internally between Mr. B Popatlal Kothari, chairman and managing director and Mr. G Mahavirchand Kochar, whole time director of the company. The agenda was finalized between June 19 to 21, 2007. The rate of dividend was finalized in the meeting held on June 30, 2007. The period of June 19 to 30, 2007 was considered as a period when the information about the financial results and dividend was unpublished price sensitive information. It was further noted by the Board that the agenda for the board meeting regarding bonus issue to be held on July 25, 2007 was discussed internally during the period July 15 to 17, 2007 and the agenda papers were circulated on July 17, 2007. The period July 15 to 17, 2007 was considered to be the period when information about the issue of bonus shares was unpublished price sensitive information. The Board analyzed the trading details of the company related entities who dealt in the scrip when the price sensitive information was unpublished and noticed the trading details as under:

S. No	Entities	19/6/2007-30/6/2007					1/7/2007-6/7/2007				
		Buy Qty	Avg. Buy Price (₹)	Sell Qty	Avg. Sell Price (₹)	Net Buy Qty	Buy Qty	Avg. Buy Price (₹)	Sell Qty	Avg. Sell Price (₹)	Net Sell Qty
1	Ranjana Kothari (R2652) and (N123145)	17505	25.54	1000	30.35	16505	10349	32.15	-	-	(10349)
2	Uttam Kumar Kothari (U470)	10060	26.02	-	-	10060	-	-	400	31.75	400
3	Chandrakala (C999) and (K2SW47)	4065	26.38	6300	25.79	(2235)	3550	31.41	1611	32.63	(1939)
4	P. Kashyap Kothari (P0144)	3700	25.25	-	-	3700	-	-	-	-	-

The details of the appellant's trading transactions were noted by the Board as under:

S. No	Buy Date	Buy Qty	Buy Value	Avg. Buy Price	Sell Date	Sell Qty	Sell Value	Avg. Sell Price
1					11/06/2007	60	1374	22.90
2	12/6/2007	1119	24768	22.12				

3					15/6/2007	300	7503	25.01
4	20/6/2007	850	22474	26.44				
5					21/6/2007	1300	33786	25.99
6	25/6/2007	1000	27250	27.25	25/6/2007	500	13550	27.10
7					26/6/2007	1100	29105	26.46
8	28/6/2007	900	22500	25.00	28/6/2007	3300	83550	25.32
9	29/6/2007	1315	35028	26.64	29/6/2007	100	2500	25.00
10								
11	02/07/2007	1550	46198	29.81				
12	03/07/2007	1400	45613	32.58				
13					04/07/2007	200	6800	34.00
14					05/07/2007	200	6378	31.89
15	6/7/2007	600	19700	32.83	06/07/2007	1211	39383	32.52
16					07/07/2007	150	4908	32.72
	13/7/2007	2000	86000	43				
	16/7/2007	150	6683	44.55	16/7/2007	2000	95000	47.5
17	17/7/2007	2000	97000	48.5	17/7/2007	4250	215450	50.69412
18					18/7/2007	5000	284500	56.90
19	19/7/2007	3600	221415	61.50	19/7/2007	9466	591830	62.52
20	20/7/2007	8000	494700	61.84	20/7/2007	1473	91031	61.80
Total		24484	1149329	46.94		30610	1506648	49.22

It was observed that the appellant is wife of Uttam Kumar Kothari who is the promoter of the company and is brother of B Popatlal Kothari, chairman and managing director and Ranjit Kumar Kothari, director of the company. Therefore, according to the Board, the appellant was deemed to be a connected person with the company and its directors who had access to unpublished price sensitive information and hence an insider. The appellant is alleged to have traded in the scrip of the company based on the unpublished price sensitive information relating to financial results, dividend and bonus issue. Hence, it was alleged that the appellant had violated regulation 3(i), (ii) and 4 of the regulations. A show cause notice dated March 11, 2011 was issued calling upon the appellant to show cause as to why an enquiry should not be held against her and penalty imposed for the alleged contravention of the regulations. The appellant denied the allegation. After considering the reply of the appellant and granting personal hearing, the adjudicating officer found the appellant guilty and, by the impugned order dated August 30, 2011, imposed penalty as stated above. Hence, this appeal.

3. We have heard the learned counsel for the parties who have taken us through the records. It was submitted by the learned counsel for the Board that the case is squarely covered by the earlier order of this Tribunal in the case of Ranjana R Kothari (Appeal no.125 of 2011, decided on August 26, 2011) where the Tribunal has upheld

the order of adjudicating officer of the Board against other three related entities holding them guilty of the charge of insider trading. The appellant is the wife of Uttam Kumar Kothari who is the brother of B Popatlal Kothari, chairman and managing director of the company and Ranjit Kumar Kothari, director of the company. She also stays at the same address as that of her husband and of the chairman and managing director of the company. As such, she is deemed to be a connected person with the company and its directors and had access to unpublished price sensitive information. Since she has traded while in possession of unpublished price sensitive information the order of the adjudicating officer needs to be upheld. On the other hand, learned counsel for the appellant argued that the case of the appellant stands on an entirely different footing and is not covered by the earlier order of the Tribunal referred to above. In support of this contention, learned counsel for the appellant submitted that Mr. Uttam Kumar Kothari, husband of appellant had relinquished the interest in the company as promoter as early as 31st March, 2005. This is evident from the note below the intimation of details of the shareholders to the stock exchanges furnished in terms of regulation 8(3) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. Since Mr. Uttam Kumar Kothari, brother of the chairman and managing director of the company and husband of the appellant, ceased to be promoter of the company in 2005, he was only a shareholder of the company and had no information about the day to day working of the company. Therefore, his wife, the appellant before us, cannot be said to be a person “deemed to be a connected person”. Regarding residential address of her husband and chairman and managing director of the company, it was submitted that the address of the appellant is different from that of the chairman and managing director of the company. They stay in different apartments constructed on the same plot which has been mistaken as same address. It was further submitted that the appellant’s trades were independent of the corporate announcements and were never induced / driven by the said corporate announcement. The appellant was trading in the ordinary course according to her own commercial wisdom prior to the corporate announcements, during the said corporate announcements and post corporate announcements. The appellant had not only

bought the shares but had also sold the shares which belies the allegation that she was acting on the basis of unpublished price sensitive information.

4. With a view to appreciate the rival contentions, it is necessary to refer to the relevant provisions of the regulations which have a bearing on the allegation against the appellant and these provisions are reproduced hereunder for facility of reference:

“2(c) “connected person” means any person who—

- (i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act; or
- (ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company.

Explanation :—For the purpose of clause (c), the words “connected person” shall mean any person who is a connected person six months prior to an act of insider trading;

(e) “insider” means any person who,

- (i) is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of company, or
- (ii) has received or has had access to such unpublished price sensitive information ;

(h) “person is deemed to be a connected person”, if such person—

- (i) is a company under the same management or group, or any subsidiary company thereof within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956), or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be;
- (ii) is an intermediary as specified in section 12 of the Act, Investment company, Trustee Company, Asset Management Company or an employee or director

thereof or an official of a stock exchange or of clearing house or corporation;

- (iii) is a merchant banker, share transfer agent, registrar to an issue, debenture trustee, broker, portfolio manager, Investment Advisor, sub-broker, Investment Company or an employee thereof, or, is member of the Board of Trustees of a mutual fund or a member of the Board of Directors of the Asset Management Company of a mutual fund or is an employee thereof who has a fiduciary relationship with the company;
 - (iv) is a Member of the Board of Directors, or an employee, of a public financial institution as defined in section 4A of the Companies Act, 1956;
 - (v) is an official or an employee of a Self-regulatory Organisation recognised or authorised by the Board of a regulatory body;
 - (vi) is a relative of any of the aforementioned persons;
 - (vii) is a banker of the company.
 - (viii) relatives of the connected person; or
 - (ix) is a concern, firm, trust, Hindu undivided family, company or association of persons wherein any of the connected persons mentioned in sub-clause (i) of clause (c), of this regulation or any of the persons mentioned in sub-clause (vi), (vii) or (viii) of this clause have more than 10 per cent of the holding or interest;
- (ha) “price sensitive information” means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

Explanation.—The following shall be deemed to be price sensitive information :—

- (i) periodical financial results of the company;
- (ii) intended declaration of dividends (both interim and final);
- (iii) issue of securities or buy-back of securities;
- (iv) any major expansion plans or execution of new projects.
- (v) amalgamation, mergers or takeovers;
- (vi) disposal of the whole or substantial part of the undertaking; and
- (vii) significant changes in policies, plans or operations of the company;

- (k) “unpublished” means information which is not published by the company or its agents and is not specific in nature.

Explanation.—Speculative reports in print or electronic media shall not be considered as published information.

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 when in possession of any unpublished price sensitive information; or
- (ii) communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities :

Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.

4. Any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading.”

5. It will be seen that regulation 3, among others, prohibits an insider, either on his own behalf or on behalf of any other person, from dealing in securities of a company listed on any stock exchange when he is in possession of any unpublished price sensitive information and any person who deals in securities in contravention of regulation 3 is said to be guilty of insider trading.

6. In the case before us, the learned counsel for the appellant has not disputed that the appellant can be treated to be a person deemed to be connected person within the meaning of regulation 2(h) of the regulations and also that the information with regard to declaration of financial results, dividend and bonus was price sensitive information. However, he vehemently argued that to prove the charge under regulation 3, it must be brought on record that the appellant traded on the basis of unpublished price sensitive information. According to the learned counsel for the appellant, there is no material whatsoever brought on record by the adjudicating officer to show that the appellant traded on the basis of price sensitive information.

7. We have given our thoughtful consideration to the provisions of the regulations and to the facts of the case and are inclined to agree with learned counsel for the appellant that his case stands on a different footing as compared to the three cases disposed of by this Tribunal in the case of Ranjana R Kothari, referred to above and that the appellant has not traded on the basis of unpublished price sensitive information. The prohibition contained in regulation 3 of the regulations apply only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise. It means that the trades executed should be motivated by the information in the possession of the insider. If an insider trades or deals in securities of a listed company, it may be presumed that he / she traded on the basis of unpublished price sensitive information in his / her possession unless contrary to the same is established. The burden of proving a situation contrary to the presumption mentioned above lies on the insider. If an insider shows that he / she did not trade on the basis of unpublished price sensitive information and that he / she traded on some other basis, he / she cannot be said to have violated the provisions of regulation 3 of the regulations. Going by the facts of the present case, we are of the view that appellant in the present case has placed sufficient material on record to show that she has not traded on the basis of unpublished price sensitive information. It is a matter of record that in April, 2005, disclosure was made by the company to the stock exchange that due to family arrangement Uttam Kumar Kothari, husband of the appellant, has relinquished his interest in the company as promoter. It is also a matter of record that the appellant used to trade regularly in the shares of the company and her trades were genuine transactions carried out by her in the normal course of business. We are also inclined to accept the argument of the learned counsel for the appellant that where an entity is privy to unpublished price sensitive information it will tend to purchase shares and not sell the shares prior to the unpublished price sensitive information becoming public if the information is positive. In this case declaration of financial results, dividend and bonus were positive information but the appellant not only bought but also sold the shares not only during the period when the price sensitive information was unpublished but also prior to and after the information

becoming public. A person who is in possession of unpublished price sensitive information which, on becoming public is likely to cause a positive impact on the price of the scrip, would only buy shares and would not sell the shares before the unpublished price sensitive information becomes public and would immediately offload the shares post the information becoming public. This is not so in the case under consideration. The trading pattern of the appellant, as shown in the chart above, does not lead to the conclusion that the appellant's trades were induced by the unpublished price sensitive information. We are not inclined to agree with the learned counsel for the respondent that appellant's case is covered by the earlier decision of this Tribunal in the case of Ranjana R Kothari, referred to above. In that case, the learned authorized representative of the appellant admitted that charge of insider trading stood established against the appellant. Further, appellants in that appeal only purchased the shares while in possession of unpublished price sensitive information and there was no trading by them prior to or after the information becoming public. In the case in hand the charge of trading on the basis of unpublished price sensitive information has not only been denied by the appellant, it has also been able to demonstrate through her trading pattern that the trading was not based on the unpublished price sensitive information. We, therefore, cannot uphold the impugned order.

In the result, the appeal is allowed and impugned order set aside with no order as to costs.

Sd/-
P.K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

31.01.2012

Prepared and compared by:
msb