

**BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI**

**Appeal No. 217 of 2011**

**Date of decision: 22.06.2012**

Mr. Anil Harish  
305-309, Neelkanth,  
98, Marine Drive,  
Mumbai – 400 02.

... 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. Haresh Jagtiani, Senior Advocate with Mr. Zal Andhyarujina, Mr. Vinay Chauhan, Mr. Sharan Jagtiani, Mr. Suprabh Jain and Mr. Anant Upadhyay, Advocates for the Appellant.

Mr. Mihir Mody, Advocate with Mr. Mobin Shaikh, Advocate for the Respondent.

Coram : P. K. Malhotra, Member & Officiating Presiding Officer  
S.S.N. Moorthy, Member

Per : P. K. Malhotra

This order will dispose of two Appeals no. 217 and 218 of 2011 which arise out of two orders dated October 31, 2011 passed by the adjudicating officer of the Securities and Exchange Board of India (for short the Board) holding the appellants guilty of violating Regulation 3 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (insider trading regulations) and imposing a penalty of Rs.20 lacs on the appellant in Appeal no. 217 of 2011 and Rs.3.40 lacs on the appellant in Appeal no. 218 of 2011. Counsel for the parties agree

that since the two orders arise out of the common set of facts, they can be disposed of by a common order.

2. The allegation against the appellants is that they have traded in the shares of M/s. Valecha Engineering Ltd. (the company) while in possession of unpublished price sensitive information. Shri Anil Harish, appellant in Appeal no. 217 of 2011 was the chairman of the company at the relevant time and the appellant in Appeal no. 218 of 2011 Mrs. Ratna Harish is the mother of Mr. Anil Harish. It was alleged that Mr. Anil Harish being privy to the unpublished price sensitive information had traded in the scrip of the company and also disseminated the same to the other person before the information was made public by the company and has thereby violated the provisions of the insider trading regulations.

3. The facts of the case, in brief, are that the Board had conducted investigations into the alleged irregularities in the affairs, trading and dealings in the shares of the company based on certain inputs received from the National Stock Exchange of India Ltd. (NSE) regarding price movement in the shares of the company during the period January 1, 2009 to December 31, 2009. The shares of the company were listed on the NSE and the Bombay Stock Exchange Ltd. (BSE). The investigation prima facie revealed that there was delay by the company in disseminating price sensitive information to the stock exchanges regarding its bagging of certain orders and the promoters and the company/related entities had benefitted by purchasing shares of the company prior to dissemination of price sensitive information to public. A show cause notice dated May 18, 2011 was issued to Mr. Anil Harish alleging that he had traded in the shares of the company on August 21, 2009 and August 25, 2009, that is, just prior to the price sensitive corporate announcement made by the company on August 28, 2009 towards its getting projects worth Rs.172 crores. It was further alleged that from the documents submitted by the company it is revealed that the Government of Arunachal Pradesh, vide its letter dated August 22, 2009, instructed the company to proceed with the work awarded to the company vide its earlier letter dated July 31,

2009. It was also observed by the Board that in the meeting held on July 31, 2009, chaired by the appellant, the board of directors had discussed this matter and therefore the appellant was privy to the information regarding award of contracts which the Board had considered to be price sensitive information. It is alleged that the appellant had traded in the scrip of the company on August 21, 2009 buying 9600 shares on BSE and 10400 shares on NSE and also on August 25, 2009 buying 9960 shares on BSE and 10040 shares on NSE. It was further observed that Mrs. Ratna Harish, Appellant in Appeal no. 218 of 2011, had also traded in the scrip of the company on August 25, 2009 i.e. just prior to the announcement in respect of getting the projects worth Rs.172 crores. The appellant filed a detailed reply dated July 4, 2011 denying the allegations. The appellants were also granted personal hearing when they filed a number of documents in support of their case. After considering the material available on record, the adjudicating officer passed the impugned orders holding the appellants guilty of violating Regulation 3 of the insider trading regulations and imposing penalties as stated above. Hence this appeal.

4. We have heard Mr. Haresh Jagtiani, Senior Advocate for the appellant in Appeal no. 217 of 2011, Mr. Zal Andhyarujina, Advocate for the appellant in Appeal no. 218 of 2011 and Mr. Mihir Mody, Advocate for the respondent Board, at length, who have also taken us through the relevant records. Having heard the counsel for the parties and after perusing the record, we are of the considered view that the appeals must succeed. Regulation 3 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 prohibits dealing, communicating or counseling on matters relating to insider trading and reads as under:

“Prohibition on dealing, communicating or counseling on matters relating to insider trading.

3. No insider shall-
  - (i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or
  - (ii) communicate 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.”

To bring home the charge of insider trading, one of the essential requirements is that the information must be the ‘price sensitive information’. Regulation 2(ha) of the Regulations defines price sensitive information as under:

“2(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”

In the show-cause notice issued to the appellant, it is alleged that getting projects worth Rs.172 crores, information with regard to which was disseminated to the stock exchanges, was price sensitive information. The said information was sent to the stock exchanges on August 25, 2009 and reads as under:

“Sub:- Valecha Engineering Limited bagged projects worth Rs.172.00 Crores.

Dear Sir,

This is to inform you that Valecha Engineering Limited has bagged Projects worth Rs.172 Crores:

**VALECHA ENGINEERING LIMITED BAGS PROJECTS WORTH RS.172.00 Crores.**

Valecha Engineering Limited a Leading Infrastructure Development Company has recently bagged new projects worth Rs.172.00 crores approximately which includes Two Road Projects at Arunachal Pradesh worth Rs.79.00 crores,

Construction of Waste Tank Farm for Bhabha Atomic Research Centre, Trombay, Mumbai worth Rs.15.00 crores, Bridge work at Thane Mumbai worth Rs.46.00 crores and Bridge work at Indore worth Rs.32.00 crores.

VEL has an organization structure in place with professional management and latest state-of-art machinery with a constant up gradation as a corporate philosophy. The company is well positioned for rapid growth with the infrastructure being given the necessary attention in the economy since the recent past.

Thanking you,

Yours faithfully,

For VALECHA ENGINEERING LIITED  
Sd/-  
KAVITA VALECHA SHARMA  
COMPANY SECRETARY”

The above information was disseminated on the website of the NSE on August 25, 2009 and on the website of BSE on August 27, 2009. It is the case of the appellants that the company is in the business of undertaking infrastructure projects. Since it is the business of the company to carry out these projects, the orders bagged by it are in the nature of stock in trade in the business and it is not an unusual occurrence. However, the company has laid down a policy in accordance with the general condition under regulation 36(7) of the Listing Agreement between the company and the stock exchanges that when the company reaches a level of orders of 100 crores, it informs the stock exchanges. This has been the practice of the company for a number of years and is not an exceptional occurrence. The company has followed a constant practice of informing the stock exchange as and when orders of about Rs.100 crores are received. Such intimations were furnished in the past also to BSE on 18/4/2007, 12/11/2007, 26/3/2008, 22/7/2008 and 11/11/2008. Intimation given to the stock exchanges on August 25, 2009 was one such intimation and was not a price sensitive information as alleged by the Board. It was further submitted that the AGM of the company was held on August 20, 2009 and at that time the shareholders were informed that the company had orders of about 1000 crores on hand which would normally be implemented in about 1 ½ to 2 years. We are surprised to note that the adjudicating officer while holding the appellant guilty has not dealt with this aspect of the matter at

all. On the contrary, he has proceeded on the assumption that the information disseminated to the stock exchange on August 25, 2009 was a price sensitive information. Whether information is price sensitive and on what date it became price sensitive will depend on the facts and circumstances of each case. In case of Gujarat NRE Mineral Resources Ltd. vs. SEBI (Appeal no. 207 of 2010 decided on 18.11.2011) where this Tribunal was dealing with the case of an investment company whose business was only to make investments in the securities of other companies, it was held that earning income by buying and selling securities held in investment is the normal activity of the investment company and every decision to buy it or to sell its investments would have no effect on the price of the securities of the company. By way of an illustration the Tribunal has also observed that if a manufacturing company were to sell its product or buy raw material, it would be a part of its normal business activity and would not be price sensitive. On the same analogy, when a company which is in the business of infrastructure projects, bags an order in the normal course of its business, although it may be required to give intimation to the stock exchanges under Regulation 36(7) of the Listing agreement, the information need not necessarily be price sensitive. It will depend on the facts and circumstances of each case. In the case in hand, by its letter dated 25<sup>th</sup> August, 2009, the company has given intimation to the stock exchange regarding bagging of new project worth Rs.172 crores. It needs to be noted that this intimation is not in respect of one project but in respect of five different projects out of which two road projects are from Arunachal Pradesh worth Rs.79 crores only.

5. We find that the intimation given to the stock exchange on August 25, 2010 was not in respect of one project but was in respect of five different projects out of which two road projects are from Arunachal Pradesh worth Rs.79 crores only. The other contracts were relating to construction of waste tank farm for Bhabha Atomic Research Centre, Trombay worth Rs.15 crores, bridge work at Thane worth Rs.46 crores and bridge work at Indore worth Rs.32 crores. When a company having

contracts worth Rs.1000 crores pending with it for execution bags a few new projects through the tendering process such information need not necessarily be price sensitive. It needs to be appreciated that the projects relating to Arunachal Pradesh were awarded after a long drawn up tendering process keeping in view the transparency norms to be followed by the government departments/public sector undertakings and the persons participating in the tendering process knew about the developments which took place at each and every stage of the tendering process. Opening of tenders is done in the presence of bidders where the bidders came to know the lowest bidder who is likely to get the award. Usually, there is a long time gap between the date when the lowest bidder is declared and the contract is actually awarded to the lowest bidder. During all this period, the information with regard to the lowest bidder and processing of the award of contract in his favour is known to all the participants. Under such circumstances, award of the contract to an infrastructure company cannot be said to be a price sensitive information. The adjudicating officer has not dealt at all with the issue whether award of the contract was a price sensitive information. In fact, he has proceeded on the assumption that the announcement made by the company on August 25, 2009 is a price sensitive information. In para 21 of the impugned order he has recorded that “there is no dispute over the issue that the aforesaid announcement of the company was indeed a price sensitive information”. This is incorrect in view of the fact that the appellant has throughout taken a stand that information with regard to award of contract by Arunachal Pradesh Government was not a price sensitive information.

6. In view of our finding above, the order passed by the adjudicating officer cannot be sustained. We may point out some other discrepancies in the order for which the order seems to be vitiated. In para 17 of the impugned order in the case of Mr. Anil Harish, it has been observed by the adjudicating officer that major chunk of purchases were made by the appellant just prior to corporate announcement made by the company regarding “its bagging of the said project worth Rs.172 crores from the

Government of Arunachal Pradesh on August 28, 2009". Again in para 21 of the order, it is recorded by him that "the price movement in the shares of the company as has been detailed in the table at paragraph 20 above, do indicate that during the last week of August, 2009, its price had moved almost in tandem with the BSE sensex and the corporate disclosure made by the company on August 28, 2009 regarding its getting orders worth Rs.172 crore from the Government of Arunachal Pradesh, had no significant impact on the price of the scrip". We are constrained to observe that the adjudicating officer has not properly examined the information given by the appellant to the stock exchange which clearly shows that the orders from the Arunachal Pradesh Government were in respect of two road projects worth only Rs.79 crore and not worth Rs.172 crores. The impugned order proceeds on the assumption that the company had bagged orders worth Rs.172 crores from the Government of Arunachal Pradesh whereas it had received orders only to the extent of Rs.79 crore from the Government of Arunachal Pradesh. We also noticed that the adjudicating officer has traversed beyond the charge in the show cause notice. In para 4 of the show-cause notice dated May 18, 2011, reference is made only to the transaction entered into by the appellant on August 21, 2009 and August 25, 2009. However, in the impugned order the appellant has been held guilty even in respect of transactions made by him on August 28, 2009. The transactions of August 28, 2009 were not the subject matter of the show-cause notice. In any case, since the disclosures were made to the stock exchanges on August 25, 2009 which were disseminated to the public by NSE on August 25, 2009 itself and by BSE on August 27, 2009, the adjudicating officer has erred in taking note of the transactions of August 28, 2009 also. In short, the order cannot be sustained for the reasons that there is no finding recorded by the adjudicating officer that the information with regard to bagging of award from the Government of Arunachal Pradesh was a price sensitive information; the contracts relating to Arunachal Pradesh government were only to the tune of Rs.79 crore and not Rs.172 crores and the tradings of the appellants on August 28, 2009 have also been taken into account which were after the date of publication of the information and were also not a subject matter



of the show-cause notice. Since we are holding that in the facts and circumstances of the case, the bagging of contracts by the company from the Arunachal Pradesh Government was not price sensitive information, the charge against appellant in Appeal no. 218 of 2011 also fails.

In view of the foregoing discussions, we set aside the impugned order and allow the appeals with no order as to costs.

Sd/-  
P. K. Malhotra  
Member &  
Presiding Officer (*Offg.*)

Sd/-  
S.S.N. Moorthy  
Member

22.06.2012  
Prepared and compared by-ddg