2026 INSC 826

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4905 OF 2022

SECURITIES AND EXCHANGE BOARD OF INDIA ...APPELLANT(S)

VERSUS

RAJEEV VASANT SHETH & ORS. ... RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

1. The present appeal under Section 15Z of the Securities and Exchange Board of India Act, 1992[1] challenges the correctness of the final judgment and order dated 19.04.2022 passed by the Securities Appellate Tribunal, Mumbai[2] in Appeal No.536 of 2021, whereby the SAT, while allowing the said appeal, quashed and set aside the order dated 24.05.2021 passed by the Whole Time Member[3], SEBI holding the Respondents herein, guilty of insider trading under the SEBI Act.

[1] 'SEBI Act' for short.
[2] 'SAT' for short.
[3] 'WTM' for short.

2. Brief facts giving rise to the present appeal, shorn of unnecessary details, are as follows:

2.1. Tara Jewels Limited[4] is a company engaged in buying and selling of jewelry. The Respondent No.1 before us, namely, Mr. Rajeev Vasant Sheth, is the Chairman and Managing Director; Respondent No. 2, namely Ms. Aarti Sheth, and Respondent No. 3, Divya Sheth, being the daughters of Respondent No. 1, were the Promoters and Vice Presidents of TJL.

2.2. TJL was traded on the Bombay Stock Exchange and National Stock Exchange. It had entered the liquidation process by order dated 30.07.2019 passed by the National Company Law Tribunal. The Company suffered losses of Rs.166.80 Crores during the quarter ending in September 2017, whereas in the previous quarter ending in June 2017 net loss was of Rs.6.62 Crores. For the same period, net Sales of the Company fell by approximately 69%.

2.3. During the Unpublished Price Sensitive Information[5] Period i.e., 02.10.2017 to 29.11.2017, the Respondent No.1 sold of 30,93,948 shares owned by him, which was about 12.56% of the total shareholding of the company, and a further 29,75,000 shares by subsequent transactions. Respondents No.2 and 3 sold of their entire holding - 1,14,440 each. Consequently, a cumulative loss of approximately Rs.1.38 crores was avoided.

2.4. SEBI issued Impounding Order-cum-Show Cause Notice[6] on 04.09.2020 seeking explanation as to why appropriate directions be not issued against them as also the penalty imposed.

3. The above-mentioned SCN culminated in order 24.05.2021 of the WTM whereby all the three respondents were found to have committed insider trading prohibited under the SEBI Act and the Securities and Exchange Board of India

[4] 'TJL' for short.
[5] 'UPSI' for short.
[6] 'SCN' for short.

(Prohibition of Insider Trading) Regulations 2015[7]. Relevant part of the order is extracted hereunder:

> "3. Having carefully considered the materials available on record and the submissions advanced by the *Noticees* I hold that the charges relating to violation of the provisions of the SEBI Act and the PIT Regulations are found to have been established, and further considering the factors enumerated under Section 15 J of SEBI, I hold that it would be sufficient and proper that the instant proceeding be disposed with issuance of certain directions. Accordingly, I, in exercise of the powers conferred upon me under Section 19 read with Sections 11(1), 11(4), 11B(1), 11B(2) and 11(4A) further read with Section 15G, 15HB and 15J of the SEBI Act, hereby issue following directions and impose following penalty:
>
> i. *Noticee no. 1* i.e., Mr. Rajeev Vasant Sheth is restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 1 year from the date of this order.
>
> ii. *Noticees no. 2 & 3* i.e., Ms. Aarti Sheth and Ms. Divya Sheth are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 6 months from the date of this order.
>
> iii. <u>*Noticee no. 1* is directed to disgorge the amount to the extent of loss avoided by his insider trading, as given in Table 6 of the present order within 45 days from the date of receipt of this order. The amount shall be remitted by the Noticee no. 1 along with interest at the rate of 12% per annum from November 30, 2017 till the date of actual payment</u>.
>
> iv. <u>*Noticees no. 2 and 3* are directed to disgorge the amount to the extent of loss avoided by their insider trading, as given in Table 6 of the present order within 45 days from the date of receipt of this order. The amount shall be remitted by the *Noticees no. 2 and 3* along with interest at the rate of 12% per annum and for this purpose the interest shall be calculated from November 30, 2017 till the date of deposit of the said amount by these two Noticees in the respective escrow accounts, in compliance with impounding order *cum* SCN</u>: While calculating and remitting the disgorgement amount along with interest for the period, the *Noticees 2 & 3* are allowed to set-off the amount already paid/deposited by them In the escrow accounts in the name of SEBI.

[7] 'PIT Regulations 2015' for short.

In terms of the provisions of section 11(5) of SEBI Act, the amount so disgorged from the Noticees 1, 2 & 3 will be credited to Investor Education and Protection Fund (IEPF).

v. Further, I impose the following Monetary penalties on the Noticees under the provisions of Sections 15G and 15HB for their respective violations of the provisions of SEBI Act and the PIT Regulations;

Entity	Provisions of law violated	Penal Provision	Quantum of Penalty
Mr. Rajeev Vasant Sheth	Regulation 3(1) and 4(1) of PIT Regulations and Section 12A(d) & (e) of the SEBI Act	15G	INR 25 Lakh
Ms. Aarti Sheth	Regulation 4(1) of PIT Regulations and Section 12A(d) & (e) of the SEBI Act		INR 10 Lakh
Ms. Divya Sheth	Regulation 4(1) of PIT Regulations and Section 12A(d) & (e) of the SEBI Act		INR 10 Lakh
Mr. Rajeev Vasant Sheth	Clause 6 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by insiders specified in Schedule B read with regulation 9(1) of PIT Regulations	15HB	INR 5 Lakh
Ms. Aarti Sheth			INR 1 Lakh
Ms. Divya Sheth			INR 1 Lakh

”

4. Aggrieved thereby, the Respondents filed an appeal before SAT, Mumbai. It was observed that the explanation given by the respondents herein that TJL was at the risk of being downgraded to a non-performing asset is sufficient to prove his innocence regarding trading of shares while in possession of UPSI. It was held that such an explanation would be covered under the proviso to Regulation 4(1) of the PIT Regulations 2015. It was further observed with reference to the closing price of TJL’s shares on 29.11.2017 and 30.11.2017 on both NSE and BSE that there was hardly any price difference and as such it could not be observed that the sale of the shares was for the purpose of avoiding further losses. The appeal was allowed.

5. SEBI takes exception to setting aside the liability imposed upon the respondents in this appeal. We have heard learned Senior Counsel/Counsels for the parties.

6. Let us first understand the concept of Insider Trading. In essence, it is dealing in a company's securities having been informed by confidential information which is likely to affect the price of the securities in the market, once such information is made public. It qualifies as a breach of fiduciary duty by the employees of the company who are, by virtue of being such employees, privy to such insider information. The genesis of this concept is found in the United States of America, and the same is regulated by the Securities Exchange Act of 1934.

6.1. The SEBI Act, similar to the 1934 Act in the USA, does not define 'Insider Trading'. It only provides under Chapter VA titled "*Prohibition of Manipulative and Deceptive Devices, Insider Trading and Substantial Acquisition of Securities or Control*" and specifically under Section 12A thereunder that no person shall directly or indirectly engage in insider trading. The said section is reproduced hereunder:

> "**12A. Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control**.—No person shall directly or indirectly—
> (a) <u>use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act</u> or the rules or the regulations made thereunder;
> (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;
> (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;
> (d) <u>engage in insider trading</u>;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;
(f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act."

(emphasis supplied)

6.2. Section 11 of the SEBI Act provides for the functions of the Board, which includes prohibition of insider trading and Section 30 thereof, provides for the power to make regulations to the Board itself, to carry out the purposes of the Act. It is under this power that the Board brought in the PIT Regulations 2015 which we shall discuss later.:

"**11. Functions of Board**. – (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.
(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein
may provide for—
(a) regulating the business in stock exchanges and any other securities markets;
… … …
(d) promoting and regulating self-regulatory organisations;
(e) prohibiting fraudulent and unfair trade practices relating to securities markets;
(f) promoting investors' education and training of intermediaries of securities markets;
(g) prohibiting insider trading in securities; …

30. Power to make regulations.—
(1) The Board may, 5*** by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.
(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—
(a) the times and places of meetings of the Board and the procedure to be followed at such meetings under sub-section (1) of section 7 including quorum necessary for the transaction of business;
(b) the term and other conditions of service of officers and employees of the Board under sub-section (2) of section 9;

> (c) the matters relating to issue of capital, transfer of securities and other matters incidental thereto and the manner in which such matters shall be disclosed by the companies under section 11A;
> (ca) the utilisation of the amount credited under sub-section (5) of section 11;
> (cb) the fulfilment of other conditions relating to collective investment scheme under sub-section (2A) of section 11AA;
> (d) the conditions subject to which certificate of registration is to be issued, the amount of fee to be paid for certificate of registration and the manner of suspension or cancellation of certificate of registration under section 12;
> (da) the terms determined by the Board for settlement of proceedings under sub-section (2) and the procedure for conducting of settlement proceedings under sub-section (3) of section 15JB;
> (db) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations."

6.3. Having proscribed insider trading in the above terms, the Act provides for a penalty for indulging therein under Section 15G of the Act, which reads as under:

> "**15G. Penalty for insider trading**.—If any insider who,—
> (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or
> (ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
> (iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,
>
> <u>shall be liable to a penalty [which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees</u> or three times the amount of profits made out of insider trading, whichever is higher]"
>
> (emphasis supplied)

6.4. Once it is determined that a penalty is to be imposed, Section 15J provides for the factors to be considered in the imposition of the penalty. Section states:

> "**15J. [Factors to be taken into account while adjudging quantum of penalty]**.—While adjudging the quantum of penalty under [15-I or section 11 or section 11B, the Board or the adjudicating officer] shall have due regard to the following factors, namely:—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

[Explanation.—For the removal of doubts, it is clarified that the power 4*** to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]"

6.5. Section 11B of the SEBI Act provides for the power to issue directions. This becomes relevant further ahead qua disgorgement. The same is reproduced here:

"**Power to issue directions**.
11B. Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,—
(i) in the interest of investors, or orderly development of securities market; or
ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or
iii) to secure the proper management of any such intermediary or person, it may issue such directions,—
(a) to any person or class of persons referred to in section 12, or associated with the securities market; or
(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

Explanation.—For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention."

6.6. If a party is aggrieved by the imposition of a penalty, Section 15T postulates an appeal to be filed before SAT, and if still aggrieved, such a party can approach this Court under Section 15Z. It reads:

> "**15Z. Appeal to Supreme Court**.— Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order:
>
> Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."

7. Keeping in view the aforesaid scheme of the Act, we now move to the PIT Regulations 2015. Regulation 2 provides the definitions for certain aspects that are relevant here:

7.1. Sub-regulation (d) thereunder, defines a 'connected person' as follows:

> "(d) "connected person" means,-
>
> (i) any person who is or has during the six months prior to the concerned act been <u>associated with a company, directly or indirectly, in any capacity</u> including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, <u>that allows such person, directly or indirectly, access to unpublished price sensitive information</u> or is reasonably expected to allow such access.
>
> (ii) Without prejudice to the generality of the foregoing, the persons falling within the <u>following categories shall be deemed to be connected persons unless the contrary is established</u>, -
>
> (a). <u>an immediate relative of connected persons specified in clause (i)</u>; or
>
> (b). a holding company or associate company or subsidiary company; or
>
> (c). an intermediary as specified in section 12 of the Act or an employee or director thereof; or
>
> (d). an investment company, trustee company, asset management company or an employee or director thereof; or
>
> (e). an official of a stock exchange or of clearing house or corporation; or
>
> (f). a member of 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; or

(g). a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013; or

(h). an official or an employee of a self-regulatory organization recognised or authorized by the Board; or

(i). a banker of the company; or

(j). a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent. of the holding or interest;

NOTE: *It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable. This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information*."

(emphasis supplied)

7.2. Sub-regulation (g) defines 'insider':

"(g) "insider" means any person who is:

i) a connected person; or

ii) in possession of or having access to unpublished price sensitive information;

NOTE: *Since "generally available information" is defined, it is intended that anyone in possession of or having access to unpublished price sensitive information should be considered an "insider" regardless of how one came in possession of or had access to such information. Various circumstances are provided for such a person to demonstrate that he has not indulged in insider trading. Therefore, this definition is intended to bring within its reach any person who is in receipt of or has access to unpublished price sensitive information. The onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person leveling the charge after which the person who has traded when in possession of or having access to*

> *unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances*."
>
> (emphasis supplied)

7.3. Sub-regulation (n) defines 'unpublished price sensitive information':

> "(n) "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, <u>is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following</u>: –
> (i) <u>financial results</u>;
> (ii) dividends;
> (iii) <u>change in capital structure</u>;
> (iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;
> (v) changes in key managerial personnel.
> [***].
>
> ***<u>NOTE</u>****: It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information <u>if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information</u>*."
>
> (emphasis supplied)

8. Regulation 3 of the PIT Regulations, 2015 prescribes that no insider shall communicate, provide or allow access to any UPSI other than in furtherance of legitimate purposes or discharge of, inter alia, legal obligations. The relevant part thereof inasmuch as it relates to the mainstay of the present *lis,* i.e., Regulation 4, is as under:

> "(3) Notwithstanding anything contained in this regulation, an unpublished price sensitive information may be communicated, provided, allowed access to or procured, in connection with a transaction that would:–
>
> (i) entail an obligation to make an open offer under the takeover regulations where the board of directors of the [listed] company is of informed opinion that [sharing of such information] is in the best interests of the company;

> ***NOTE:*** *It is intended to acknowledge the necessity of communicating, providing, allowing access to or procuring UPSI for substantial transactions such as takeovers, mergers and acquisitions involving trading in securities and change of control to assess a potential investment. In an open offer under the takeover regulations, not only would the same price be made available to all shareholders of the company but also all information necessary to enable an informed divestment or retention decision by the public shareholders is required to be made available to all shareholders in the letter of offer under those regulations.*
>
> (ii) not attract the obligation to make an open offer under the takeover regulations but where the board of directors of the [listed] company is of informed opinion [that sharing of such information] is in the best interests of the company and the information that constitute unpublished price sensitive information is disseminated to be made generally available at least two trading days prior to the proposed transaction being effected in such form as the board of directors may determine [to be adequate and fair to cover all relevant and material facts].
>
> ***NOTE***: *It is intended to permit communicating, providing, allowing access to or procuring UPSI also in transactions that do not entail an open offer obligation under the takeover regulations 14[when authorised by the board of directors if sharing of such information] is in the best interests of the company. The board of directors, however, would cause public disclosures of such unpublished price sensitive information well before the proposed transaction to rule out any information asymmetry in the market*."

9. Regulation 4 of the PIT Regulation 2015 prohibits trading when in possession of UPSI. It incorporates a rebuttable presumption that the trades done by the person in possession of such UPSI are motivated by the information contained therein. It provides for scenarios where the person accused of having traded while in possession of such UPSI, can demonstrate their innocence. It says '*provided that the insider may prove his innocence by demonstrating circumstances including the following*'.

9.1. The transaction that is subject matter of dispute is (a) off-market; (b) *inter se* transfer between insiders; (c) while they were in possession of same UPSI; and (d) that it was not in violation of Regulation 3 with the exception of sub-regulation

(3) of Regulation 3 which we have already extracted supra and (e) both parties made a conscious and informed trade decision. It is further provided that such inter-se transfer be notified to the company in two-working days and that such companies shall further transmit such information to the stock exchange where such company is listed.

> "(i) the transaction is an off-market inter-se transfer between [insiders] who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.
>
> [Provided that such unpublished price sensitive information was not obtained under sub-regulation (3) of regulation 3 of these regulations.
>
> Provided further that such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such trades to the stock exchange on which the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information.]"

9.2. The second defence is if the transaction in question has been carried out through the block deal window mechanism between persons who were in possession of UPSI, having made an informed and conscious decision; not being in violation of Regulation 3; and not having secured the relevant information under sub-regulation (3) of Regulation 3.

> "(ii) the transaction was carried out through the block deal window mechanism between persons who were in possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;
>
> Provided that such unpublished price sensitive information was not obtained by either person under sub-regulation (3) of regulation 3 of these regulations."

9.3. The transaction was in furtherance of statutory or regulatory obligations in connection with a bona fide transaction.

> "(iii) the transaction in question was carried out pursuant to a statutory or regulatory obligation to carry out a bona fide transaction."

9.4. The transaction was in exercise of stock options, and the price thereof was predetermined as per applicable regulations.

> "(iv) the transaction in question was undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance with applicable regulations."

9.5. The fifth defence deals with non-individual investors and provides for two scenarios where innocence can be pleaded (1) where the people making the trade and the people in possession of the UPSI were different and (2) where adequate arrangements were in place to prevent the communication of the UPSI, and there is no evidence of such arrangements having been breached.

> "(v) in the case of non-individual insiders: –
>
> (a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and
>
> (b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;"

9.6. The sixth defence is trades carried out in accordance with trading plans as formulated under Regulation 5.

9.7. At the end of Regulation 4(1) there is a note that embeds a presumption of trades so made being motivated by such knowledge and information in his possession, when such a person has UPSI. The intentions and the purposes to which the proceeds of the transactions are applied are thereby made irrelevant. The text of the note is:

> "***<u>NOTE</u>***: *When a person who has traded in securities has been in <u>possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession</u>. The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has*

> *violated the regulation. He traded when in possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge. Once this is established, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.*"
>
> (emphasis supplied)

10. Turning back to the present facts, it is the case of the appellant that the respondents do not fall within any of the defences provided under Regulation 4 (1) and therefore the SAT had erred. *Per contra*, the respondents contend that the present case would be covered by the judgment of this Court in ***SEBI v. Abhijit Rajan***[8] given its similarity on facts. In that case too, the persons accused of insider trading had rerouted the funds for the purposes of the company. It is further submitted that the respondents gained nothing from the trades.

11. We are of the considered view that the law as discussed above leads us to only one conclusion. It is not in dispute that the respondents were in possession of UPSI. It is also not in dispute that the respondents had sold of large portions or the entirety of their shareholding while in possession of such UPSI. As such, in view of the note appended to Regulation 4 (1) reproduced supra, the purposes for which the proceeds are employed is an irrelevant consideration. The fact that the respondents had indulged in the trades at the relevant point in time is sufficient to conclude that they had conducted insider trading. In that view of the matter, less or no profit, is of no consequence.

12. Insofar as the argument of the appellant that none of the defences provided or those of the similar nature would cover the respondents is concerned, let us consider the same. In short, what is implied by the appellant is that even if the defences laid out in Regulation 4 (1) are read *ejusdem generis*, the respondents

[8] (2024) 11 SCC 645.

would still not be covered. Regarding this principle, it is said by a three-Judge Bench in ***P. Mohanraj v. Shah Bros. Ispat (P) Ltd.,***[9] with reference to an earlier decision in ***Vikram Singh v. Union of India,***[10] which in turn further referred to ***Siddeshwari Cotton Mills (P) Ltd. v. Union of India,***[11] that:

> "26. In *Vikram Singh* v. *Union of India* [*Vikram Singh* v. *Union of India*, (2015) 9 SCC 502 : (2015) 4 SCC (Cri) 213] , this Court was asked to construe the expression "government or any other person" contained in Section 364-A of the Penal Code, 1860 with reference to ejusdem generis. This Court, in repelling the contention, went on to hold : (SCC pp. 523-25, paras 26-30 & 32)
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> … … …
>
> *27*. In *Siddeshwari Cotton Mills (P) Ltd.* v. *Union of India* [*Siddeshwari Cotton Mills (P) Ltd.* v. *Union of India*, (1989) 2 SCC 458 : 1989 SCC (Tax) 297] M.N. Venkatachaliah, J., as his Lordship then was, examined the rationale underlying ejusdem generis as a rule of construction and observed : (SCC p. 463, para 14)
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>> '*14*. The principle underlying this approach to statutory construction is that the subsequent general words were only intended to guard against some accidental omission in the objects of the kind mentioned earlier and were not intended to extend to objects of a wholly different kind. This is a presumption and operates unless there is some contrary indication. But the preceding words or expressions of restricted meaning must be susceptible of the import that they represent a class. If no class can be found, ejusdem generis rule is not attracted and such broad construction as the subsequent words may admit will be favoured. As a learned author puts it:
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>>> '… if a class can be found, but the specific words exhaust the class, then rejection of the rule may be favoured because its adoption would make the general words unnecessary; if, however, the specific words do not exhaust the class, then adoption of the rule may be favoured because its rejection would make the specific words unnecessary.' [See: *Construction of Statutes* by E.A. Driedger, p. 95 quoted by Francis Bennion in his *Statutory Construction*, pp. 829 and 830.]'"

13. The defences provided for in the regulations are mentioned in Regulation 4 (1), preceded immediately by the word including; the rule of *ejusdem generis*

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[9] (2021) 6 SCC 258.
[10] (2015) 9 SCC 502.
[11] (1989) 2 SCC 458.

cannot be applied since it is applied to words of general nature following specific and particular words. These general words are to be interpreted as per this rule, in light of the specific words. In this case, the specific words, i.e., the *defences* follow the general word, i.e., *including*. What we can observe, though, is that the word *including* indicates the six defences provided are not meant to be exhaustive. What follows is that the other defences that may be covered would be of the same and similar nature as already provided therein.

14. In regard to ***Abhijit Rajan*** (supra), it may be observed that in that case the persons accused of insider trading had sold of the shares while in possession of UPSI apparently for the purposes of funding the Corporate Debt Restructuring Package. It was observed in the facts of that case that one of the companies involved stood to gain "*hugely*" from the cancellation of the shareholders' agreements but had still proceeded with the selling of the shares since if the restructuring had not gone through, the parent company Gammon Infrastructure Projects Limited, Gammon India Limited could have gone into bankruptcy. In other circumstances, it was held that no ordinary man of prudence would expect an increase of value and would sell shares with the intent to commit insider trading before the relevant information became public. From a perusal of the judgment, it is clear that the transactions subject matter of the dispute took place in the year 2013 and accordingly were governed by the predecessor regulations i.e., Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992[12].

15. Having gone through the above-said 1992 Regulations, Regulation 3B appears to deal with defences, in similar terms to what is provided in Regulation 4(1) in the 2015 PIT Regulations. The most obvious difference that appears plain

[12] '1992 PIT Regulations' for short.

to us, is that there is no such '*note*' as there is in the latter. In other words, there was no specific bar against the consideration of the issue of where the proceeds of such insider trading transactions are used. As such, apart from the fact that in ***Abhijit Rajan*** the shares were sold before the increase in price shares, as opposed to a fall in the prices in the present case, there was scope available for the Tribunal and the Court to consider why a particular person undertook the transactions in question. Had it been that there was a fall in the shares of the company in that case, their intent to scrounge up the money for the CDR process for the parent company could have been considered. If the same transactions were after the 2015 PIT Regulations, that could not have been considered.

16. For the reasons as aforestated, the appeal is allowed. On the aspect of the penalty and disgorgement, the order that has been issued by the WTM stands reproduced supra. The SAT, consequent to its conclusion, has set aside the same. In accordance with the discussion above, the penalty has to be imposed once again. As far as disgorgement is concerned, which in simple terms is being asked by the order to give up the profits secured by the insider having traded securities while in possession of UPSI. It is clearly established that, in view of the above discussion that the respondents had engaged in insider trading and, as such, had avoided approximately Rs.1.38 crores in losses. In view of the explanation given in Section 11B of the SEBI Act reproduced *supra*, such order of the WTM cannot be faulted. The same is restored.

17. Regarding the penalty imposed upon the respondents in view of violation of Clause 6 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by insiders specified in Schedule B read with Regulation 9 (1) of the PIT Regulations 2015, that too, in our view, is justified.

18. However, insofar as the amount of penalty imposed under section 15G is concerned, taking a cumulative view of the facts and circumstances of the present case as already discussed above, we are of the view that Rs.25 Lakhs as penalty to Respondent No.1 may be excessive. Accordingly, the same is reduced to 10 Lakhs i.e., the minimum penalty as imposed on Respondent Nos. 2 and 3.

19. Before parting with the matter, we may observe that in the impugned judgment, the SAT appears to recognize a defense to insider trading, i.e., legitimate corporate purpose as was interpreted by the SAT in ***Rakesh Agrawal v. Securities Exchange Board of India***[13], which was a decision rendered in the context of the 1992 PIT Regulations. That, however, was not a course open for the SAT to take in the impugned judgment in view of the note appended in Regulation 4(1).

20. The penalty is modified to the above extent. The same shall be paid within a period of three months, if not already paid.

Pending application(s), if any, shall stand disposed of.

………..…………………………………….J.
(SANJAY KAROL)

...............……………………………….J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
AUGUST 11, 2026

[13] 2003 SCC OnLine SAT 38.