



Case Law Update

Securities and Exchange Board of India (SEBI/ Appellants) vs. R.T. AGRO PRIVATE LTD AND ORS (Respondents/Promoters), Supreme Court of India, order dated 25th April, 2022

Facts of The Case

- R.T. Exports Ltd (RTEL), a listed entity, proposed to **enter into a transaction** with Neelkanth Realtors Private Ltd for purchase of 40,000 sq. ft. of residential space for a consideration of ₹ 40 crores via a MOU. This was entered pursuant to a **Special Resolution** passed by the shareholders of RT Exports Ltd in the **AGM held on 15th July 2014**.
- Since the above proposal/proposed transaction was treated as a **material Related party transaction (RPT)** in view of **clause 49** of the Listing Agreement as well as under **Section 188** of Companies Act, 2013, the **related parties**, consisting of R.T. Agro Private Ltd and the other promoters and the promoter's group (Respondents) **abstained from voting** for the special resolution in terms of Listing Agreement as well as **Sec. 188** of the Companies Act, 2013.

- SEBI received a complaint from a shareholder of RTEL holding more than 10% voting rights, viz., Harmony Holding Limited (Harmony) against RTEL vide letter dated 28th November 2016 alleging that no notice of the above-mentioned AGM of 2014 was received by it and it requisitioned convening of EGM to rescind the contract.
- Accordingly, RTEL **convened an EGM on 16th December, 2016** in which it **proposed a resolution regarding the rescinding of earlier special resolution for approval of RPT** in the nature of purchase of space from Neelkanth Realtors Private Ltd, which was passed in the AGM dated 15th July, 2014.
- It was alleged that although the interest of the directors was mentioned in the EGM notice, RTEL has **refrained from categorically stating in the EGM notice that all promoters-shareholders (respondents) would be obliged not to vote at the EGM by virtue of Sec. 188** of the Companies Act, 2013.

- The proposed resolution was not for entering into a new Related Party Transaction but for cancelling the same., Hence, the respondents (promoter and promoter group) **participated in the voting process and voted against the resolution which amounted to 66.12 % of the shareholding** of the company. Hence the resolution for rescinding the earlier special resolution got rejected, thereby continuing to operationalise the special resolution passed earlier, i.e., the RPT continued as per the terms approved earlier.
- The aforesaid complaint was later withdrawn by Harmony; however, **SEBI** took up the matter and issued a **notice to the respondents**.
- The Adjudicating Officer (AO) after conducting an enquiry in the matter was of the opinion that the **respondents, by voting against the resolution, ensured the continuation of related party transaction** with Neelkanth Realtors Private Ltd. If they would have abstained from voting, the earlier resolution passed could have been rescinded.
- Thus, AO by order dated 19th September, 2019 imposed penalty of ₹ 5 lakhs on each respondent (6 promoter/promoter group entities and Neelkanth Realtors Pvt Ltd) i.e., total of ₹ 35 lakhs for **violation of Regulation 23 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations).**
- Aggrieved by order of AO, respondents prefer an appeal before the Securities Appellate Tribunal (SAT), wherein

the **SAT** via order dated 21st January, 2022 **held that the respondents did not commit any violation** in respect of **Sec. 188** of the Companies Act, 2013 and **Regulation 23 of LODR Regulations** and that the AO committed an error in holding that the respondents had violated Regulation 23 of the LODR Regulations.

- Aggrieved by the order of the SAT, SEBI preferred an appeal before the Supreme Court of India

Contentions of the Appellant

- As per **Regulation 23(1) of SEBI LODR Regulations, a ‘material related party transaction’ is defined** as a transaction **individually or taken together** with previous transactions during a financial year, **exceeds 10% of the annual consolidated turnover** of the listed entity as per the **last audited financial statements** of the listed entity.
- The transaction that was being **voted upon at the EGM** held on December 16, 2016 was worth ₹ **40.00/- Crore** which is almost **twice of its turnover of FY 2015-16** (i.e. ₹ 23.78/- Crore) and hence, is **indeed material**. It is observed that at the EGM of RTEL held on December 16, 2016, the **entire promoter and promoter group voted on the agenda to rescind the resolution**. The **shareholding** of promoters as on that date was **66.12%**. **By voting against the resolution, they ensured the continuation** of the related party transaction with Neelkanth Realtors Private Limited. If they would have abstained from voting, the earlier resolution passed could have been rescinded.

- Further, **Regulation 23(7)** of LODR Regulations reveals that **all entities falling under the definition of related party are barred from voting on an agenda involving a related party transaction** irrespective of whether the entity is a party to the particular transaction or not.
- Thus, Appellant pleaded that **in terms of the provisions of Regulations 23 (4) and (7) of the LODR Regulations, the related parties are obligated to abstain from voting on resolutions involving related party transactions.**
- Thus, as a corollary to this obligation, **the approval for a resolution rescinding a contract involving related party transaction would naturally fall** in the ambit of **Regulation 23 (4) and (7)** of the LODR Regulations.
- The Appellant argued that **if such an allowance is resorted to, it would put related parties in a position to influence the approval and vote against the resolution on rescinding the contract to ensure the continuation of related party transaction in their favour.**

Contentions of Respondents

- The respondents submitted that, at the AGM held on 15th July 2014, when special resolution was passed for approval of the RPT, all the promoters and promoter group entities abstained from voting as required under the Listing Agreement and Section 188 of Companies Act, 2013.
- **In the requisitioned EGM, there was no proposal for approving any Related Party Transaction.** On the contrary, the requisitioned EGM was **for rescinding a resolution** that has been validly adopted by the company previously.
- **Regulation 23(4)** of LODR Regulations stipulate that material related party transactions “shall require approval of shareholders” thereby making it **explicitly clear that the bar on participation by related parties is only for approval** of a material transaction with related party.
- In the requisitioned EGM, Harmony had proposed rescinding of a related party transaction. There is **no provision either under the Companies Act, 2013 OR in LODR Regulations that require a related party to abstain from voting in case of rescission of a contract.**
- As per legal opinion sought by RTEL from a legal expert, under the provisions of the Companies Act, 2013, there is **no bar on a related party to vote in case of recession of an earlier resolution** and that the **bar applied only in case where a contract with a related party was proposed to be entered.**

Held

- The **view as taken by SAT** in the given set of facts and circumstances of the present case, **appears to be a plausible view of the matter.**
- In fact, **nothing of ill intent on the part of the respondents has been established** in the present case. The hyper-technical stance of the Appellant could have only been, and has rightly been, disapproved by SAT.
- **The Appeal fails and is therefore dismissed and all pending applications stand disposed of.**

Hon'ble Supreme Court in Civil Appeal no. 7054 of 2021 in the matter of *Balram Garg ('Appellant') vs. Securities and Exchange Board of India ('Respondent') and Civil Appeal no. 7590 of 2021 in the matter of Shivani Gupta, Sachin Gupta, Mr Amit Garg and Quick Developers Pvt Ltd ('Appellants') Vs Securities and Exchange Board of India ('Respondent')*

Facts of The case

1. "PC Jeweller Ltd." ('PCJ'/'Company') is a company listed on Bombay Stock Exchange and National Stock Exchange. Dispute emanating in this case is from the action of Respondent/Securities and Exchange Board of India ('SEBI') against the Appellants vide an impounding order dated December 17, 2019 and a show cause notice dated April 24, 2020 under Section 11B(2) read with Section 15G of SEBI Act, 1992 calling upon the Respondent and Respondents to show cause as to why penalty under Section 15G of SEBI Act, 1992 should not be imposed upon them. On May 10, 2018 after market hours, PCJ had announced that its Board of Directors, at its meeting held on May 10, 2018, had approved buyback of upto 1,21,14,285 fully paid-up equity shares of ₹ 10/- each at a price of ₹ 350/- per equity share. Further on July 13, 2018 after market hours, PCJ announced the withdrawal of their buyback offer due to non-receipt of the requisite No-Objection Certificate ('NOC') from the Company's Banker viz. State Bank of India ('SBI'). In the above-mentioned impounding order and thereafter in the final order passed by SEBI Whole Time Member dated May 11, 2021, SEBI observed that both the aforementioned announcements which related to change in the Company's

capital structure were Unpublished Price Sensitive Information ('UPSI') in terms of Regulation 2(n) of PIT Regulations, 2015. SEBI considered that the information pertaining to preliminary discussion in respect of the proposal for buyback of equity shares of the Company which came into existence on initiation of discussion on April 25, 2018 and became public on May 10, 2018, as "UPSI-I". Accordingly, period from April 25, 2018 to May 10, 2018 has been taken as period of UPSI-I. SEBI further stated that, the information pertaining to withdrawal of the proposed buyback of equity shares of the Company which came into existence when SBI refused to give NOC on July 7, 2018 and became public on July 13, 2018, is considered as "UPSI-II". Accordingly, period from July 07, 2018 to July 13, 2018 has been taken as period of UPSI-II.

2. SEBI stated that Shri. Padam Chand Gupta (P.C. Gupta) was the Chairman of PCJ during the relevant UPSI period and was a "connected person" in terms of Regulation 2(1)(d)(i) and an "insider" under Regulation 2(1)(g) of the SEBI (Prevention of Insider Trading Regulations), 2015 (for short "PIT Regulations"). SEBI further stated that Balram Garg, who is the brother of Shri. P.C. Gupta and the Managing Director ('MD') of PCJ is also a "connected person" in terms of Regulation 2(1)(d)(i) and an "insider" under Regulation 2(1)(g) of the PIT Regulations. Shri P.C. Gupta expired in January 2019. On investigation of the reply of PCJ Chief Financial Officer dated June 17, 2019 and from letter of SBI dated 7th and 12th July, 2018, addressed to MD of the

Company, SEBI observed that Balram Garg was involved in every stage of buyback proposal till its withdrawal. Investigation of the Minutes of the Board Meeting (chaired by Balram Garg) held on May 10, 2018 revealed that Board approved the constitution of a Buyback Committee comprising of Balram Garg and two other independent directors of PCJ. SEBI held that, Sachin Gupta, Smt. Shivani Gupta, Amit Garg, and Quick Developers Pvt Ltd (Company where Shri. Amit Garg was holding 50% shareholder and director during period August 8, 2015 to April 3, 2018. Prior to this period Shri Sachin Gupta and Ms Shivani Gupta were its Directors and shareholders.) traded on the basis of Unpublished Price Sensitive Information (for short “UPSI-I and UPSI II”) received by them on account of their alleged proximity to P.C. Gupta and Balram Garg between the period from 01.04.2018 to 31.07.2018. SEBI alleged the above proximity on the basis of the fact that Sachin Gupta and Shivani Gupta are the son and daughter-in-law of Balram Garg’s deceased brother late P.C. Gupta who was also the Chairman of PCJ during the period of UPSI-I and UPSI II. Amit Garg is the son of Amar Garg, who was also the brother of Balram Garg. It was also alleged that all the appellants shared the same residence. The Appellants claimed that they were estranged from the family and did not have connection with Balram Garg. However SEBI alleged that purported Family Settlement between the three brothers cum promoters of PCJ in 2011 and the purported Family Arrangement between Late Shri P.C. Gupta and his son in 2015, may at best, be regarded

as internal division of their business/property interests but such settlements/arrangements do not *ipso facto* imply severing of all natural and social relationships amongst the parties to these settlement/arrangements who are otherwise close relatives. SEBI further alleged that even though there was a family arrangement in 2011 by virtue of which Amar Chand Garg’s share in the Company was to be reduced and Balram Garg and Padam Chand Gupta were to hold substantial stake in PCJ, but that does not necessarily imply or even remotely indicate that all the relation of Mr Amit Garg and Mr Balram Garg is absolutely ‘estranged’ and that they are in no talking terms at all. Similarly, the purported separation of Sachin Gupta and Shivani Gupta from the family of Late Shri Padam Chand Gupta also does not imply that Mr Balram Garg has an ‘estranged’ relationship with Sachin and Shivani Gupta. SEBI said that the fact that family arrangement/settlement did not result into complete estrangement amongst Late Shri Padam Chand Gupta is also demonstrated by the fact that annual reports of FY 2015-16 to 2017-18 shows that Mr Sachin Gupta continued to have business transactions with PCJ. SEBI observed that PCJ paid rent worth ₹ 4 Lakhs for the FY 2015-16, ₹ 77 Lakhs for the FY 2016-17 and ₹ 78 Lakhs for the FY 2017-18 to Mr Sachin Gupta. Further from Annual Report of FY 2016-17, it also appears that Mr Sachin Gupta has paid rent worth ₹ 66 Lakhs to PCJ. SEBI further observed that Annual Report of PCJ for the FY 2018-19 shows that Mr Sachin Gupta was the nominee of the demat account of Late P C Gupta and after the death of Shri P C

Gupta, the holdings of the deceased in PCJ are being held by Mr Sachin Gupta as the nominee. SEBI further stated that it is not implied that a nominee is the successor, but being a nominee is a position of trust and responsibility. If the relations between the father and son were so ‘estranged’ since 2015, why would the Late Shri P C Gupta choose Mr Sachin Gupta as his nominee. He always had the option to make Shri. Nitin Gupta (other son) or Smt. Krishna Devi (wife) to be the nominee.

3. On the basis of above observations, the Whole Time Member, SEBI [‘WTM’] passed final order dated May 11, 2021, imposing a penalty of ₹ 20 lakhs on the Appellants along with restraining them from accessing the securities market and buying, selling or dealing in securities, either directly or indirectly, in any manner for a period of 1 year from the date of the order and also restrained the appellants from dealing with the scrip of PCJ for a period of 2 years.
4. Aggrieved by the order of the WTM, the Appellants filed appeals before the Securities Appellate Tribunal (‘SAT’). SAT, vide its common judgement and order dated October 21, 2021, dismissed the appeals preferred by the Appellants and held that though there was a family arrangement, there was no estrangement as can be seen from the facts highlighted by the WTM. Further SAT held that there is no direct evidence as to who had disseminated this insider information (the above-mentioned UPSI) to the appellants. Late Shri P C Gupta was the father of the appellant Shri. Sachin Gupta and father-in-law of the appellant Ms. Shivani

Gupta and uncle of appellant Shri. Amit Garg. Similarly, appellant Shri. Balram Garg is the uncle of appellant Shri. Sachin Gupta and appellant Shri. Amit Garg. All of them were residing in the same address. Appellant Shri. Sachin Gupta had financial transactions with the company of which appellant Shri. Balram Garg was Managing Director. Considering all of the above facts, on preponderance of probability, SAT held that it can very well be concluded that Late Shri P C Gupta as well as appellant Shri. Balram disseminated both UPSI to the appellants.

Aggrieved by the above order of the SAT, the appellants filed the present appeals (C.A. No.7054/2021 by Balram Garg and C.A. No.7590/2021 by Mrs. Shivani Gupta, Sachin Gupta, Amit Garg and Quick Developers Pvt. Ltd.) under section 15Z of the Securities and Exchange Board of India Act, 1992. Since P.C. Gupta expired in January 2019, after the notices were issued, the case was dropped as against him.

Charges levied

Insider Trading under Section 15G of SEBI Act, 1992.

Arguments by Appellants and Appellant in both appeals:

1. **As the relation between family members are estranged, Appellants are not insiders:** Shri. Dhruv Mehta, Learned Senior Counsel for the Appellant Shri. Balram Garg submitted that the WTM has held that the Appellants viz. Mrs Shivani Gupta, Mr Sachin Gupta and Mr Amit

Garg were not connected persons or immediate relatives qua the Appellant Shri. Balram Garg and that this finding of WTM has become final. It was further submitted that the Appellant Mr Balram Garg was found to have violated only Regulation 3 of PIT Regulations and unlike Regulation 4(2) there is no provisions to raise presumption under Regulation 3 of PIT Regulations. Learned Senior Counsel further contented that to prove the violation of Regulation 3 of PIT Regulations, the burden of proof was on SEBI to establish any “communication” of UPSI by placing on record cogent evidence viz. call details, emails, witnesses etc. It was further submitted that the Respondent (SEBI) in this case has failed to place any such evidence on record. Moreover, it was submitted that the presumption against “*immediate relative*” is provided in the Regulations to ensure that relatives who are financially or otherwise under the complete control of a connected person are not used for insider trading. However, in this case, no such possibility existed in relation to the appellant Shri. Balram Garg and the other Appellants in C.A. No.7590 of 2021, namely, Mrs. Shivani Gupta, Sachin Gupta and Amit Garg. The learned Senior Counsel further contented that the reliance of the respondent on the transactions between appellant Sachin Gupta and PCJ is against the principles of natural justice as these allegations were not part of the show cause notices. It was also submitted that the name of the Appellant Balram Garg has been used interchangeably with that of Late P.C. Gupta and there is no material on

record for the WTM and the SAT to arrive at the finding that both Late P.C. Gupta and the Appellant Balram Garg communicated the UPSI to the above-mentioned Appellants in C.A. No.7590 of 2021.

2. Shri. V. Giri, learned Senior Counsel for the other Appellants in C.A. No.7590 of 2021, namely, Mrs. Shivani Gupta, Sachin Gupta, Amit Garg and Quick Developers Pvt. Ltd., has contended that the entire case of insider trading is set up against these Appellants only on the basis of the close relationship between the parties. However, he submitted that the Appellants have placed sufficient material on record to demonstrate that there was a complete breakdown of ties between the parties, both at personal and professional level and that the said estrangement was much prior to the UPSI having coming into existence. The learned Senior Counsel further contented that even assuming that the Appellants have not been able to demonstrate a complete breakdown of ties between the parties, it was not open for the SAT to turn the Statute on its head by reversing the burden of proof on the appellants by conveniently ignoring the fact that the onus was actually on SEBI to prove that the Appellants were in possession or having access to UPSI. It was also contended that the charges against the Appellants in C.A. No.7590 of 2021 have been sustained solely on the basis of circumstantial evidence viz. trading patterns and timing of trades by the appellants. Moreover, it was not open to the WTM and SAT to hold Appellants guilty of the offence of insider trading in the absence of any other concrete

evidence as SEBI failed to produce such evidence. The learned Senior Counsel also emphasized on the fact that the charges against the Appellants that they were “*connected persons*” within the meaning of Regulation 2(1)(d) of the PIT Regulations was expressly rejected by the WTM and that the burden of proving that the Appellants are “*insiders*” by invoking Regulation 2(1)(g)(ii) of PIT Regulations was completely upon the SEBI and that they failed to discharge this burden.

Arguments by SEBI

1. **As the relation between family members are estranged Appellants are not insiders:** Mr Arvind Datar Learned Senior Counsel for the Respondent (SEBI) has submitted that on April 25, 2018, PCJ initiated discussions regarding buyback of fully paid up equity shares. On May 10, 2018, pursuant to the discussion and approval by the Board, the Company, after market hours, informed the stock exchange of their offer of buyback of 1,21,14,285 fully paid up equity shares of ₹ 10/each at a price of ₹ 350/- per equity share. It was further submitted that on July 7, 2018, the lead Banker of PCJ, State Bank of India (“SBI”), refused to give No Objection Certificate (“NOC”) for the buyback of equity shares. Hence, on July 13, 2018, the Board approved the withdrawal of the buyback offer and the same was informed to the Exchanges after market hours.

Shri. Arvind Datar further contended that during the period April 2, 2018 to July 31, 2018, trades were executed by Appellants in C.A. No. 7590 of 2021 while in possession of UPSI and that

they made unlawful gains and avoided losses. He further submitted that trades were executed from the trading account of Mrs. Shivani Gupta from April 2, 2018 and continued till April 24, 2018 prior to the start of UPSI – I period. No trades were undertaken in May and June 2018 and then sell trades were undertaken from July 6, 2018 till July 13, 2018 i.e. during UPSI – II period. He further highlighted that Mrs. Shivani Gupta had 100% concentration in the scrip of PCJ and these trades were executed by Mrs. Shivani Gupta, Sachin Gupta and Amit Garg. The learned Senior Counsel further contended that the Appellant No. 4 (in C.A. No.7590 of 2021) i.e. Quick Developers Pvt. Ltd, took short position on July 13, 2018 i.e. just before information pertaining to withdrawal was communicated to the Exchanges. It is submitted that such short positions were taken in anticipation of a price fall. Appellant Amit Garg and his wife are 100% shareholders of Quick Developers Pvt. Ltd., hence they, through the trades executed from the account of Quick Developers Pvt. Ltd., avoided losses and also made profit.

In the context of the family settlement, learned Senior Counsel has contended that such a settlement, at best, was an internal division and does not imply that all ties between the family members were severed or that relationship of appellant Balram Garg with appellants in C.A. No. 7590 of 2021 was estranged. It was further argued that the appellants did not cease to have association with each other, which is established by the following facts:

- a. Sachin Gupta continued to have business transactions with PCJ. PCJ even paid rent to Sachin Gupta to the tune of ₹ 4 lakhs for Financial Year 2015-16, ₹ 77 lakhs for the Financial Year 2016-17 and ₹ 78 lakhs for the financial Year 2017-18.
- b. Sachin Gupta was the nominee of the Demat Account of late P.C. Gupta and after his death, the holdings of P.C. Gupta in the company were held by Sachin Gupta. Hence, it cannot be said that the father and son relationship was estranged.
- c. Appellant Balram Garg and the Appellants No. 1,2, and 3 in C.A. No. 7590 of 2021 i.e. Mrs. Shivani Gupta, Sachin Gupta and Amit Garg share the same residential address. Shri. Datar concluded his submissions by stating that the close relationship of the appellants in C.A. No.7590 of 2021 with the appellant Balram Garg, especially in view of the trading pattern makes it abundantly clear that the appellants Mrs. Shivani Gupta, Sachin Gupta and Amit Garg were in possession of UPSI - I & II, who could not have got it from anywhere else except Balram Garg, who by virtue of being the MD of the company, possessed the crucial UPSI.

Decision by Hon'ble Supreme Court

1. Hon'ble Supreme Court held that submission of the Respondent that appellant Balram Garg contravened Regulation 3(1) of PIT Regulations

and Section 12A(c) of the SEBI Act, by communicating the UPSI to the appellants in C.A. no. 7590 of 2021, being an "Insider" and "connected persons" within meaning of PIT Regulations is not worthy of acceptance.

2. Hon'ble Supreme Court also referred to an important finding arrived by the Whole Time Member that other appellants, namely, Mrs. Shivani Gupta, Sachin Amit Garg and Quick Developers Pvt Ltd were not 'connected persons' to the appellant Balram Garg. Further Hon'ble Supreme Court leveraged all of the above points to narrow down to two questions:

Firstly, Whether the WTM and SAT rightly rejected claim of estrangement of the appellants, namely, Mrs. Shivani Gupta, Sachin Gupta and Amit Garg?

And secondly Whether the Appellants be rightly held to be 'Insiders' in terms of Regulation 2(1)(g)(ii) of the PIT Regulations, only and entirely on the basis of circumstantial evidence?

3. In response to first question Hon'ble Supreme Court held that appellants in C.A. No.7590 of 2021, namely, Mrs. Shivani Gupta, Sachin Gupta and Amit Garg, claimed before the WTM and SAT that they were estranged from the family and did not have the required connection with the appellant Balram Garg, who was the MD of the PCJ at the relevant time period. However, we are of the opinion that the WTM and SAT wrongly rejected this claim of the Appellants in C.A. No. 7590 of 2021 without appreciating the facts and evidence as was produced before them. In 2011 only, Shri. Amar Chand

Garg exited the company by entering into family arrangement dated July 1, 2011 and whereby their shareholding in the company was reduced to a meagre 0.70%. In September, 2011, Amar Chand Garg also resigned as the Vice Chairman of the company and disassociated himself from the company. His son, i.e., Amit Garg (one of the Appellants in C.A. No. 7590 of 2021 was never associated with the Company. The other appellants Shri. Sachin Gupta and Mrs. Shivani Gupta resigned from their respective positions in the Company in 2015 on account of certain disputes arisen with P. C. Gupta. At no point of time, they were directors in the Company. Thereafter vide another family settlement agreement, Shri. Sachin Gupta and Mrs. Shivani Gupta were permitted to use a property for residential purposes only. The Hon'ble Supreme Court further noted that the said plot of land is a large tract of land and separate buildings were constructed thereon. P.C. Gupta and Sachin Gupta, along with their families, resided in separate floors of the same building, whereas Amit Garg and Balram Garg resided in separate buildings. The WTM and SAT ought to have appreciated the relevant facts for ascertaining the true nature of relationship between the parties. The WTM and SAT erred in not appreciating the aforementioned facts which adequately establish that there was a breakdown of ties between both the parties, both at personal and professional level, and that the said estrangement happened much prior to the two UPSI.

4. Additionally, given the fact that the entire case against the appellants for the offence of insider trading was based on the nature of close relationship between the parties, once it has been rightly held by the WTM that the appellants are neither “*connected persons*” within the meaning of Regulation 2(1)(d) nor “*immediate relatives*” within the meaning of Regulation 2(1)(f) of PIT Regulation, the question of *ipso facto* relying on the nature of relationship between the parties to come to the conclusion that they were “in possession of or having access to UPSI” while trading with the shares of the company is legally unsustainable. Moreover, we find merit in the submission of the counsel for the appellants in C.A. No. 7590 of 2021 wherein it was stated that, “even assuming that the said family arrangements did not result in complete estrangement of social relations between the parties, the SAT could not, by virtue of this very fact, discharge SEBI of the onus of proof placed on them to prove that the Appellants were in possession of UPSI”.
5. In our opinion, the approach adopted by the SAT turns the SEBI Act on its head as it places the burden of proving that there was a complete breakdown of ties between the parties on the Appellants in C.A. No. 7590 of 2021 while conveniently ignoring the fact that the onus was actually on SEBI to prove that the appellants were in possession of or having access to UPSI.
6. While responding to second question, Hon'ble Supreme Court held that SAT erred in holding the Appellants in C.A. No. 7590 of 2021 to be “insiders” in

terms of Regulation 2(1)(g)(ii) of PIT Regulations on the basis of their trading pattern and their timing of trading (circumstantial evidence). We are of the opinion that there is no correlation between the UPSI and the sale of shares undertaken by the Appellants in CA no. 7590 of 2021. The said decisions of selling the shares and the timings thereof were purely a personal and commercial decision undertaken by them and nothing more can be read into those decisions. If the appellants did possess the UPSIs, we are unable to understand that why would the appellant Mrs. Shivani Gupta sell only 15,00,000 shares during this period as opposed to the 74,35,071 shares that were sold at an earlier point of time (Pre-UPSI-I Period) and still continue to hold 12,84,111 shares of the company that could have also been sold along with the 15,00,000 shares that were sold during the UPSI-II period. Hon'ble Supreme Court further held that in the absence of any material available on record to show frequent communication between the parties, there could not have been a presumption of communication of UPSI by the appellant Balram Garg. The trading pattern of the appellants in C.A. No. 7590 of 2021 cannot be the circumstantial evidence to prove the communication of UPSI by the appellant Balram Garg to the other appellants in C.A. No. 7590 of 2021. It would also be pertinent to note here that Regulation 3 of the PIT Regulations, which deals with communication of UPSI, does not create a deeming fiction in law. Hence, it is only through producing cogent materials (letters, emails, witnesses etc.) that the said

communication of UPSI could be proved and not by deeming the communication to have happened owing to the alleged proximity between the parties.

7. In light of the above principles of law laid down by this Court, it was imperative on the Respondent/SEBI to place on record relevant material to prove that the appellants in C.A. No. 7590 of 2021, namely, Mrs. Shivani Gupta, Sachin Gupta, Amit Garg and Quick Developers Pvt. Ltd. were "*immediate relatives*" who were "*dependent financially*" on appellant Balram Garg or "*consult*" Balram Garg in "*taking decisions relating to trading in securities*". However, SEBI failed to do so as has been already recorded by the WTM in its order dated May 11, 2021. The said appellants in C.A. No. 7590 of 2021 were not "*immediate relatives*" and were completely financially independent of the appellant Balram Garg and had nothing to do with the said Balram Garg in any decision making process relating to securities or even otherwise. In the context of appellant no. 4 (in C.A. No. 7590 of 2021), namely Quick Developers Pvt. Ltd., the record clearly reveals that it is neither a "*holding company*" or an "*associate company*" or a "*subsidiary company*" of PCJ nor the appellant Balram Garg has ever been the Director of Quick Developers Pvt. Ltd. Therefore, Quick Developers Pvt. Ltd. cannot be held to be a "*connected person*" vis a vis the appellant Balram Garg.
8. The entire case of the SEBI/SAT was premised on two important propositions, that firstly, there existed a close relationship between the appellants herein; and secondly, that based on

the circumstantial evidence (trading pattern and timing of trading, it could be reasonably concluded that the appellants were “insiders” in terms of PIT Regulations. With all the points mentioned above, it can be concluded that no correlation between the UPSI and the sale of shares undertaken by the appellants. Therefore SAT order suffers from non-application of mind & verbosity of WTM order. Therefore it is set aside & appeal is allowed.

Cases referred

SEBI: *SEBI vs. Kishore Ajmera [2016, 6 SCC 368], Dushyant N Dalal vs. SEBI [2017, 9 SCC 660], Utsav Pathak vs. SEBI [order dated July 12, 2020 in Appeal no. 430 of 2019], US District Court's order in United States of America vs Raj Rajaratnam and Danielle Chiesi [09 Cr 1184 RJH]*

In the matter of M/s Alpesh Gems - Partnership firm (Appellant) vs. Surat Municipal Corporation (Respondent) in the order passed by the Gujrat High Court dated 18 April, 2022

Facts of the Case

- M/s Alpesh Gems - is a partnership firm (appellant/applicant) filed a writ application at Gujrat High Court. The firm is engaged in the business of diamonds. The subject matter of dispute is an immovable property (the property). The property was earlier owned by Kohinoor Diamonds Private Limited - Corporate Debtor (CD).
- The Corporate Insolvency Resolution Process (CIRP) was initiated for the CD by the National Company Law Tribunal (NCLT), Ahmedabad Bench.
- The CIRP process was unsuccessful and the CD went into liquidation vide order dated 13 November, 2018.
- In the process of liquidation, a public advertisement was issued for E-auction of the subject property at a base price of ₹ 2,33,31,000/-.
- The applicant participated in the E-auction proceedings and was declared as a successful bidder and paid the entire sale consideration of ₹ 2,35,31,000/- to the Liquidator. The applicant was put in possession of the subject property. A formal deed of the sale transaction was yet to be executed by the Official Liquidator in favour of the applicant.
- Surat Municipal Corporation (SMC) had to recover an amount of ₹ 19,87,171/- from the CD towards arrears of property tax. According to the SMC, they had the first right or precedence to recover amount towards arrears of property tax from the immovable assets of the CD.
- The Liquidator vide his letter dated 18 September 2020 informed the SMC about the initiation of the liquidation process of the CD. SMC raised an objection with regards to the proceedings undertaken by the Liquidator by putting the subject property to E-auction.
- The appellant filed a writ application on the apprehension that since the SMC declined to recognize the writ applicant as the lawful owner of the subject property and thought fit not to issue the property tax bills in the name of the appellant.

- The applicant clarified with the SMC that it was liable to pay property tax only for the period after the auction proceedings and not for the liability which CD incurred in the past i.e. before the liquidation proceedings.

Question for Consideration

Whether the SMC can claim any first charge or precedence over the subject property for the purpose of recovering the arrears towards the liability of property tax incurred by the CD by virtue of Section 141 of the Gujarat Provincial Municipal Corporations Act, 1949 (GPMC Act)?

Held

- The Hon'ble High Court highlighted that it was not a matter of dispute that what was sought to be recovered by SMC from the erstwhile CD was statutory dues towards the property tax. As observed by the Supreme Court in the case of *AI Champday Industries Ltd vs. Official Liquidator and another*, if the property tax was merely a statutory due without creating any encumbrance on the property, then it is not obligatory on the part of the auction purchasers to make an investigation as regards the title etc. It would mean that auction purchasers need not find out all the liabilities of the company in liquidation in their entirety. The Supreme Court, ultimately, held that a provision of law must expressly provide for an enforcement of a charge against the property in the hands of the transferee for value without notice to the charge and not merely create a charge.
- The Hon'ble High Court also referred few provisions of the Insolvency and Bankruptcy Code, 2016 (IBC). Section 14 of the IBC which provides for Moratorium, Section 38 of the IBC, provides for consolidation of claim, Section 238 of the IBC the overriding provisions. **The only option left with the SMC was to put forward its claim with the Liquidator as one of the creditors who was to recover a particular amount towards property tax from CD.**
- The Court declared that the SMC cannot claim any first charge or precedence over the subject property .The auction proceedings attained finality **The applicant as on date was the lawful owner of the subject property. SMC could recover the property tax from the applicant from the date of purchase of the subject property in the E-auction proceedings. If the entries as regards the sale in the revenue record of rights had not been mutated, the revenue authority would proceed to do so in favour of the applicant.**
- Further, the Hon'ble High Court reserved the liberty in favour of the SMC to recover the requisite amount towards the property tax by taking up the issue with the Official Liquidator i.e. the respondent No.2 in accordance with the provisions of the IBC. **The Official Liquidator was directed to execute the sale deed in favour of his client and execute it in accordance with the Law.** The writ application was disposed of.

