BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 05.12.2017

Date of Decision : 21.12.2017

Appeal No. 327 of 2014

Rajiv R. Sanghvi
Neelam,
Plot #5, 1st Lane,
Hindu Colony, Dadar (E),
Mumbai – 400 014. ….. 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. P.N. Modi, Senior Advocate with Mr. Neville Lashkari and Mr. Deepak Dhane, Advocates i/b Joby Mathew & Associates for the Appellant.

Mr. Kevic Setalvad, Senior Advocate with Mr. Mihir Mody and Mr. Nirav Parmar, Advocates i/b. K. Ashar & Co. for the Respondent.

WITH

Appeal No. 329 of 2014

Nilesh Kapadia
Kapadia Baug,
S.V. Road, Opp. Vijay Sales,
Borivali (W),
Mumbai – 400 092. ….. 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. Zal Andhyarujina, Advocate with Mr. Deepak Dhane and Ms. Harshada Nagare, Advocates i/b Joby Mathew & Associates for the Appellant.

Mr. Kevic Setalvad, Senior Advocate with Mr. Mihir Mody and Mr. Nirav Parmar, Advocates i/b. K. Ashar & Co. for the Respondent.

WITH

Appeal No. 337 of 2014

Chandrakant P. Mehta
Pal Residency, Plot No. 358,
Bhandarkar Road, ….. Appellant
Above HDFC Bank, Matunga,
Mumbai – 400 019.

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. Naushad Engineer, Advocate i/b Ajay Khandhar & Co. for the Appellant.

Mr. Kevic Setalvad, Senior Advocate with Mr. Mihir Mody and Mr. Nirav Parmar, Advocates i/b. K. Ashar & Co. for the Respondent.

WITH

Appeal No. 338 of 2014

Dipti Paras Mehta
Pal Residency, Plot No. 358,
Bhandarkar Road,
Above HDFC Bank, Matunga,
Mumbai – 400 019. ….. 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. Naushad Engineer, Advocate i/b Ajay Khandhar & Co. for the Appellant.

Mr. Kevic Setalvad, Senior Advocate with Mr. Mihir Mody and Mr. Nirav Parmar, Advocates i/b. K. Ashar & Co. for the Respondent.

CORAM : Justice J.P. Devadhar, Presiding Officer
Dr. C.K.G. Nair, Member

Per : Dr. C.K.G. Nair

1. These four appeals have been filed challenging the order passed by the Whole Time Member ('WTM' for short) of Securities and Exchange Board of India ('SEBI' for short) on July 24, 2014. By the said order appellants in these appeals have been prohibited from buying, selling or otherwise dealing in securities for a period of 10 years from the date of the interim order dated June 17, 2010. Further, appellants, excluding appellant in Appeal No. 329 of 2014, have been directed to disgorge the amounts of illegal profits made by them along with interest as indicated in the order. Appellant in Appeal No. 329 of 2014 has been also debarred from associating himself with any intermediary / entity listed with SEBI for a period of 10 years. Since the impugned order is common and the basic facts and issues arising in these appeals are admitted to be common all appeals are heard together by taking Appeal No. 327 of 2014 as the lead matter and disposed of by this common decision.

2. Basic facts relevant to the matter are the following:-

(a) Appellants in Appeal No. 327 of 2014, 337 of 2014 and 338 of 2014 are traders in the securities market while appellant in Appeal No. 329 of 2014 was employed as a Dealer by HDFC Asset Management Company ('HDFC AMC' for short). SEBI, based on a preliminary investigation covering the period from 01.04.2007 to 31.07.2007 found that Nilesh Kapadia (appellant in Appeal No. 329 of 2014) used to tip Rajiv Sanghvi (appellant in Appeal No. 327 of 2014) before placing of the orders of the HDFC AMC and Rajiv Sanghvi traded using those tips ahead of the HDFC orders and the trading accounts of Chandrakant Mehta and Dipti Mehta (appellants

in Appeal Nos. 337 and 338 respectively were also used for trading based on the tips received by Rajiv Sanghvi from Nilesh Kapadia. Accordingly, these four persons were prima-facie found to be in violation of regulations 3 and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short) and various directions were passed by SEBI under sections 11(1), 11(4)(b) and 11B of Securities and Exchange Board of India Act, 1992 ('SEBI Act' for short) read with regulation 11 of PFUTP Regulations.

(b) Subsequently, on completion of the investigation, SEBI issued Show Cause Notices ('SCN' for short) dated February 11, 2011 to Nilesh Kapadia and Rajiv Sanghvi and a common SCN dated March 4, 2011 to Chandrakant Mehta and Dipti Mehta under sections 11, 11(4) and 11B of the SEBI Act. The SCNs had also stated that all allegations, averments and evidences referred to and relied upon in the interim order shall also be read and treated as part of the SCNs. Based on their replies to the SCNs, statements made during the personal hearing and other records available, the impugned order was passed on July 24, 2014.

3. Shri. P.N. Modi, Learned Senior Counsel appearing on behalf of the appellant made his submission in Appeal No. 327 of 2014 before us in great detail on various dates. Though initially he argued that non-intermediary 'front running' is not an offence under PFUTP Regulations as Regulation 4(2)(q) makes only "an intermediary buying or selling securities in advance

of a substantial client order or whereby a futures or option position is taken about an impending transaction in the same or related futures or options contract" is considered a fraudulent and an unfair trade practice in securities. Since the appellant (as well as appellants in other appeals) are not intermediaries trading on the basis of tips received by them is not 'front running' and hence not violative of PFUTP Regulations. Traders using various tips in a common market practice and the appellant did not 'front-run'. Various orders of this Appellate Tribunal, particularly, that in the matter of Dipak Patel vs Securities and Exchange Board of India (Appeal No. 216 of 2011 decided on 09.11.2012) were relied on by the appellant to substantiate the position in law.

4. However, when hearing on the matter was resumed on November 29, 2017, Learned Senior Counsel for the appellant placed reliance on the order of the Hon'ble Supreme Court in various Civil Appeals including that of Securities and Exchange Board of India vs Kanaiyalal Baldevbhai Patel (Civil Appeal No. 2595 of 2013) with Securities and Exchange Board of India vs Dipak Patel (Civil Appeal No. 2596 of 2013) etc. decided on September 20, 2017. He would now like to change his submissions, since the said order the Apex Court has held that non-intermediary 'front running' is also a violation of PFUTP Regulations subject to certain conditions laid down in the said order itself. According to him no conditions specified in the said order by the Apex Court has been satisfied in the present appeal. Moreover, he argued that neither the SCN nor the impugned order dealt with these conditions and as such the impugned order should be set aside or remanded to SEBI.

5. The Learned Senior Counsel Shri P.N. Modi also walked us through the relevant parts of the SCN as well as the impugned order and submitted that various conditions as specified in the order of the Hon'ble Supreme Court in the matter of Dipak Patel etc. (supra) are not satisfied in this matter. Quoting relevant paras of the said order of the Apex Court, the Learned Senior Counsel for the appellant argued that confidentiality on sharing the information by the tipper, the HDFC AMC employee Nilesh Kapadia has to be proved; which is not done in this case. Further, whether the appellant (tippee) induced the tipper to part with such confidential information has to be established; which is also not done in the impugned order. Furthermore, the appellant did not 'front run' the HDFC AMC orders in most of the instances both because the trading was done in several tranches and just because in one tranche on some days appellant's order was placed before the first order of the HDFC AMC does not prove that the appellant was 'front running' the HDFC AMC orders. On the contrary, on 7 occasions of appellant's trading in ICRA Ltd. on April 13, 2007 the appellant traded subsequent to the trading by the HDFC AMC. The telephone call timing recorded from the HDFC AMC system and the Exchange trading system are not matching on several occasions. As such, at best it can be stated that the appellant's trading are parallel to that of the trading by HDFC AMC. It is definitely not 'front running'. Even if it is finally held that in some trades the appellant had 'front-run', for purposes of disgorgement those 'front-run' trades have to be separated and the unlawful gains therein need to be recalculated / reconsidered. Further, it was argued that when the first order of the HDFC AMC was placed on the trading terminal the information that HDFC AMC is entering the market has become public and any trade done by anybody thereafter cannot be termed as 'front running' on the basis of private tips. Accordingly, none of the ingredients of the Supreme Court

order (supra) has been established in the impugned order to hold the appellants liable for any violation of the PFUTP Regulations. It is also pertinent to note that all the orders placed by the appellant did not match with the orders placed by the HDFC AMC. It ranges from 100% to Nil. As such, the disgorgement has to be recalculated on this ground also.

6. Learned Counsel Shri. Naushad Engineer appearing on behalf of the appellant in Appeal No. 337 of 2014 and Appeal No. 338 of 2014 adopted the arguments of the Learned Senior Counsel in Appeal No. 327 of 2014. However, Shri Engineer further emphasized that the appellants in these two appeals never got any tip from the HDFC AMC employee nor traded on the basis of any tips. Since they were sharing the same office with Rajiv Sanghvi (appellant in Appeal No. 327 of 2014) and they knew that Rajiv Sanghvi is an informed trader, appellants used to trade by looking at the trading of Sanghvi. Interestingly, however, the Learned Counsel further added that the appellants in these two appeals did not know Sanghvi and they had no relationship whatsoever except that they were sharing the same office. Learned Counsel also emphasized that the appellants did not trade in advance to be called 'front running' as required under the Regulations 4(2)(q) of PFUTP Regulations and also that nobody was impacted adversely as bulk order placed by the HDFC AMC was known to others, when their first order was placed on the trading screen.

7. Learned Counsel Shri. Zal Andhyarujina, appearing for appellant in Appeal No. 329 of 2014 submitted that the Supreme Court order clarifying the legal provision that 'front running' is applicable to non-intermediaries as well was issued only on September 20, 2017, whereas, the events in the impugned order took place in the year 2007 when this legal position was not

clear and the position that non-intermediary ‘front running’ is not a PFUTP violations was upheld by this Appellate Tribunal also in 2012-13. So the legal position was not clear and the appellant did not benefit monetarily. Based on the SEBI interim order the appellant was removed from the job by HDFC AMC and he is without any job and he has already suffered a ban on trading and ban on job for more than 7 years and therefore leniency may be shown to the appellant.

8. It was also argued that trade must be in advance to the actual trade placed by HDFC AMC to prove that others traded on the basis of tips. Once HDFC AMC trades were placed on the terminal they became public information. Para 43 of the Supreme Court order (supra) lays down the conditions for the tippee, not for the tipper. As such, the tipper is not liable as there is no obligation of confidentiality cast upon him and many of the trades by the appellants in other appeals were placed before the telephone calls between the appellant herein and appellants in the related appeals.

9. Shri Kevic Setalvad, Learned Senior Counsel for the respondent stated that a reading of the impugned order in totality and the SCN would indicate that conditions laid down in the order of the Hon’ble Supreme Court in the matter of Dipak Patel etc. (supra) are fully met. The admitted fact that the appellant in Appeal No. 327 of 2014 did receive tips from the HDFC AMC Dealer in most of the days before the trading orders were placed by the HDFC AMC, the pattern of trade of the appellant, the magnitude of trade by the appellant and the explicit statements by the HDFC AMC Dealer and the appellant in Appeal No. 327 of 2014 that they knew each other from college days onwards and that tips have been provided in the past as well and they used to talk even during late hours (well beyond

the sample of the telecons transcript produced on record) and the admission that other two appellants (in Appeal No. 337 of 2014 and 338 of 2014) were trading following the trading by the appellant in Appeal No. 327 of 2014 all indicate that all these three appellants were trading in a large number of scrips on several trading days during the investigation period based on the tips provided by HDFC AMC Dealer. The mismatch between call timing and trade timing sometimes is because of the inbuilt difference between time set in the system in the HDFC AMC office and the Exchange trading system.

10. We have perused the SCN, the impugned order, submissions made by the Learned Counsel appearing on behalf of the appellants and the respondent as well as the detailed trade-logs etc. placed before us.

11. We do not find any merit in the arguments made by the Learned Counsel for the appellants. Since, the entire argument hinges heavily on the order dated September 20, 2017 of the Apex Court in Civil Appeals No. 2595 of 2013, 2596 of 2013 etc. cited above, we reproduce the relevant paragraphs of both the concurring orders but recorded independently by the Learned Justices:-

> *"N.V. Ramana J.*
>
> *41. Now we come back to the regulations 3 and 4 (1) which bars persons from dealing in securities in a fraudulent manner or indulging in unfair trade practice. Fairness in financial markets is often expressed in terms of level playing field. A playing field may be uneven because of varied reasons such as inequalities in information etc. Possession of different information, which is a pervasive feature of markets, may not always be objectionable.*

Indeed, investors who invest resources in acquiring superior information are entitled to exploit this advantage, thereby making markets more efficient. The unequal possession of information is fraudulent only when the information has been acquired in bad faith and thereby inducing an inequitable result for others.

42. The law of confidentiality has a bearing on this case instant. "Confidential information acquired or compiled by a corporation in the course and conduct of its business is a species of property to which the corporation has the exclusive right and benefit, and which a court of equity will protect through the injunctive process or other appropriate remedy." The information of possible trades that the company is going to undertake is the confidential information of the company concerned, which it has absolute liberty to deal with. Therefore, a person conveying confidential information to another person (tippee) breaches his duty prescribed by law and if the recipient of such information knows of the breach and trades, and there is an inducement to bring about an inequitable result, then the recipient tippee may be said to have committed the fraud.

43. Accordingly, non-intermediary front running may be brought under the prohibition prescribed under regulations 3 and 4 (1), for being fraudulent or unfair trade practice, provided that the ingredients under those heads are satisfied as discussed above. From the above analysis, it is clear that in order to establish charges against tippee, under regulations 3 (a), (b), (c) and (d) and 4 (1) of FUTP 2003, one needs to prove that a person who had provided the tip was under a duty to keep the non-public information under confidence, further such breach of duty was known to the tippee and he still trades thereby defrauding the

person, whose orders were front-runned, by inducing him to deal at the price he did.

44. Taking into consideration the facts and circumstances of the case before us and the law laid down herein above and SEBI v. Kishore R. Ajmera (Supra) can only lead to one conclusion that concerned parties to the transaction were involved in an apparent fraudulent practice violating market integrity. The parting of information with regard to an imminent bulk purchase and the subsequent transaction thereto are so intrinsically connected that no other conclusion but one of joint liability of both the initiator of the fraudulent practice and the other party who had knowingly aided in the same is possible. Consequently, Civil Appeal Nos. 2595, 2596 and 2666 of 2013 are allowed. At the same time, for the same reason, Civil Appeal Nos. 5829 of 2014 and 11195-11196 of 2014 are dismissed.

RANJAN GOGOI, J.

3. The gravamen of the allegations which can be culled out from the facts in Civil Appeal No.2595 of 2013 is that one Dipak Patel (respondent in Civil Appeal No.2596 of 2013), who was holding a position of trust and confidence in one M/s Passport India Investment (Mauritius) Limited (hereinafter referred to as "M/s Passport India"), was privy to privileged/confidential information that M/s Passport India would be making substantial investments in particular scrips through the stock exchanges. Dipak Patel is alleged to have parted the said information to his cousins Kanaiyalal Baldevbhai Patel [respondent in Civil Appeal No.2595 of 2013] and Anandkumar Baldevbhai Patel [respondent in Civil Appeal No.2594 of 2013 (disposed of on 5th April, 2017)]

who on various dates placed orders for purchase of scrips a few minutes before the bulk orders in respect of the same scrips were placed on behalf of M/s Passport India by Dipak Patel. The bulk order/orders, because of the sheer volume, naturally had the effect of pushing up the prices of the particular scrips and no sooner the prices had increased, Kanaiyalal Baldevhai Patel and Anandkumar Baldevbhai Patel had traded the said scrips thereby earning substantial profits. The large volume of the shares traded in the above manner; the several number of days on which such trading took place; and the close proximity of time between the sale and purchase of the shares i.e. before and after the bulk purchases, were alleged by the appellant - Securities and Exchange Board of India ("SEBI" for short) to be amounting to fraudulent or unfair trade practice warranting imposition of penalty and visiting the offending individuals with other penal consequences.

4. The adjudicating authority held the respondents liable. The Securities Appellate Tribunal ("Appellate Tribunal" for short) before whom appeals were filed by the aggrieved persons (respondents herein) interfered with the orders passed by the adjudicating authority primarily on the ground that on a reading of Regulation 2(c),(3) and Regulation(4) of the 2003 Regulations it does not transpire that the acts attributable amount to fraudulent or unfair trade practice warranting the findings recorded by the Adjudicating authority and the imposition of penalty in question on that basis.

5. If Regulation 2(c) of the 2003 was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by

any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities.

6. The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce".

7. The dictionary meaning of the word "induced" may now be taken note of.

> *BLACK'S LAW DICTIONARY, EIGHTH EDITION, defines 'inducement' as "the act or process of enticing or persuading another person to take a certain course of action."*
>
> *Merriam-Webster Dictionary defines 'inducement' as "a motive or consideration that leads one to action or to additional or more effective actions."*

8. A person can be said to have induced another person to act in a particular way or not to act in a particular way if on the basis of facts and statements made by the first person the second person commits an act or omits to perform any particular act. The test to determine whether the second person had been induced to act in the manner he did or not to act in the manner that he proposed, is whether but for the representation of the facts made by the first person, the latter would not have acted in the manner he did. This is also how the word inducement is understood in criminal law. The difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required.

9. While Regulation 3(a) of the 2003 Regulations prohibits a person to buy, sell or otherwise deal in securities in a fraudulent manner, Regulation 4 declares that no person shall indulge in a fraudulent or an unfair trade practice in securities. Sub-regulation (2) of Regulation 4 enumerates different situations in which dealing in securities can be deemed to be a fraudulent or an unfair trade practice. Regulation 4 being without prejudice to the provisions of Regulation 3 of the 2003 Regulations would operate on its own without being circumscribed in any manner by what is contained in Regulation 3.

10. Adverting to the facts of the present case, if the information with regard to acquisition of shares by M/s Passport India was parted with by Dipak Patel to Kanaiyalal Baldevbhai Patel and Anandkumar Baldevbhai Patel and the latter had transacted in huge volume of shares of the particular company/scrip mentioned by Dipak Patel a little while before the bulk order was placed by M/s. Passport India and the said persons had sold the same a short-while later at an increased price, such increase being a natural consequence of a huge investment made in the particular scrip by M/s Passport India, surely, it can be held that by the conduct of Dipak Patel, Kanaiyalal Baldevbhai Patel and Anandkumar Baldevbhai Patel were induced to deal in securities. A natural and logical inference that would follow is that the aforesaid two latter persons would not have entered into the transactions in question, had it not been for the information parted with by Dipak Patel. The track record of earlier trading of the concerned two persons does not indicate trading in such huge volumes in their normal course of business. Such an inference would be a permissible mode of arriving at a conclusion with regard to the liability, as held by this Court in Securities and Exchange Board of India Vs. Kishore R. Ajmera1 referred to by my learned brother Ramana, J. The volume; the nature of the trading and the timing of the transactions in question can leave no manner of doubt that Kanaiyalal Baldevbhai Patel and Anandkumar Baldevbhai Patel had acted in connivance with Dipak Patel to encash the benefit of the information parted with by Dipak Patel to them and, therefore, they are parties to the 'fraud' committed by Dipak Patel having aided and abetted the same.

14. To attract the rigor of Regulations 3 and 4 of the 2003 Regulations, mens rea is not an indispensable requirement and the correct test is one of preponderance of probabilities. Merely because the operation of the aforesaid two provisions of the 2003 Regulations invite penal consequences on the defaulters, proof beyond reasonable doubt as held by this Court in Securities and Exchange Board of India Vs. Kishore R. Ajmera(supra) is not an indispensable requirement. The inferential conclusion from the proved and admitted facts, so long the same are reasonable and can be legitimately arrived at on a consideration of the totality of the materials, would be permissible and legally justified. Having regard to the facts of the present cases i.e. the volume of shares sold and purchased; the proximity of time between the transactions of sale and purchase and the repeated nature of transactions on different dates, in my considered view, would irresistibly lead to an inference that the conduct of the respondents in Appeal Nos.2595 of 2013, 2596 of 2013 and 2666 of 2013 and appellants in Appeal Nos.5829 of 2014 and 11195-11196 of 2014 were in breach of the code of business integrity in the securities market. The consequences for such breach including penal consequences under the provisions of Section 15HA of the SEBI Act must visit the concerned defaulters for which reason the orders passed by the Appellate Tribunal impugned in Civil Appeal Nos.2595 of 2013, 2596 of 2013 and 2666 of 2013 are set aside and the findings recorded and the penalty imposed by the Adjudicating Officer are restored."

It is not in dispute that appellants indulged in large quantities of trading in various scrips from 13.04.2007 to 31.07.2007, the quantities in many instances were more than 50% of the total volume of trade of HDFC

AMC. The matching of trade between the appellants and HDFC AMC in several instances was 100% or near 100% though it is also noted that in a few cases matching was negligible. It is also on record that the prices of ICRA moved from Rs. 580 in the morning at 09:56:10 on April 13, 2007 at NSE which went upto to Rs. 675 by 11:14:38 on the same day. Similarly in the case of other scrips also prices moved substantially. Undoubtedly, such a huge increase in the price happened because of the multiple orders placed by the appellants mostly before the orders of the HDFC AMC. Given the facts of the case-high volumes, multiple trading days, large number of trades, very proximate trade timing coupled with the admitted fact of receiving tips from the HDFC AMC Dealer which is also evidenced by the call records available in the impugned order-we have no doubt in concluding that the three appellants were 'front-running' the HDFC AMC orders. The additional arguments advanced by the Counsel for appellants in Appeal No. 337 of 2014 and 338 of 2014 that they did not receive any tips from the HDFC AMC employee has no merit since their own admission is that they traded "looking at the trading by Rajiv Sanghvi" (appellant in Appeal No. 327 of 2014). Since it is an admitted fact that Sanghvi traded based on tips trading looking at such trades is also based on such tips only. Given the magnitude of this trade it led to substantial increase in the prices of the scrips thereby affecting the securities market both in terms of its volatility and integrity. The argument that once the HDFC AMC order is placed on the trading system it becomes public information is a fallacious argument since on-line trading system is anonymous. Accordingly, Appeal Nos. 327, 337 and 338 of 2014 has no merit.

12. The argument that there was no confidentiality obligation on the part of HDFC AMC employee (tippee) (appellant in Appeal No. 329 of 2014) is

completely devoid of truth as it is clearly stated in the SCN issued to appellant in Appeal No. 329 of 2014, dated February 11, 2011. Para 17 of the SCN reads “the noticee has violated the provisions of section 12A of SEBI Act read with Regulations 3 and 4(1) of SEBI (PFUTP) Regulations, 2003 further read with Circular no MFD/CirNo. 4/216/2001 dated May 08, 2001 and Regulations 25(16) read with para 8 & 9 of fifth schedule (Code of Conduct) of SEBI (Mutual Funds) Regulations 1996. The said Circular states that “no employee shall pass on information to anybody inducing him to buy/sell securities which are being bought / sold by the mutual fund of which the AMC is the investment manager”. Further, the same Circular at para 2.2.4.6 states that “Any transaction of front running by any employee directly or indirectly is strictly prohibited. For this purpose, ‘front running’ means any transaction of purchase/sale of a security carried by any employee whether for self or for any other person, knowing fully well that the AMC also intends to purchase/sell the same security for its mutual fund operations. For the purpose of ascertaining that the employee had no prior knowledge of the Mutual Fund’s intended transactions, the Compliance Officer may take a declaration in this regard from the employee. Such declaration may be included in the application form itself.” The very fact that as laid down in these guidelines, the employee had to give an undertaking to that effect and the fact that the employee was removed from the job of HDFC AMC subsequent to the SEBI interim order clearly establish that the appellant in Appeal No. 329 of 2014 was aware of the confidential nature of his task while working as a Dealer of HDFC AMC. As such Appeal No. 329 of 2014 also fails.

13. In the light of the above, we hold that the conditions laid down by the order dated September 20, 2017 of the Hon’ble Supreme Court in the matter

of Dipak Patel etc. (supra) is fully applicable in all four appeals before us. Therefore, we do not find any reason to interfere with the impugned order of the WTM of SEBI dated July 24, 2014.

14. Accordingly, all four appeals are dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

21.12.2017
Prepared and compared by:msb