

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 22.03.2022

Date of Decision: 25.03.2022

Appeal No. 695 of 2021

Awaneesh Srivastava
R/o 301, Khushali CHS Plot No. 19,
Sector 16, Koparkhairane,
Navi Mumbai- 400 709
Maharashtra

...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. Prashant Phophale, Advocate with Ms. Reena Lange,
Advocate i/b PMH Law and Mr. Awaneesh Srivastava with
Mr. Suresh Bhutani, Appellants.

Mr. Abhiraj Arora, Advocate with Mr. Harshvardhan Nankani,
Ms. Anshu Mehta and Mr. Shourya Tanay, Advocates i/b ELP
for the Respondent (SEBI).

CORAM: Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per: Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order of the
Adjudicating Officer (“AO” for convenience) of the Securities

and Exchange Board of India (“SEBI” for convenience) dated September 01, 2021 whereby a penalty of Rs. 1 lakh has been imposed under Section 15HB of the SEBI Act, 1992 for violation of the Model Code of Conduct under the SEBI (Prohibition of Insider Trading) Regulations, 2015 (“PIT Regulations” for convenience).

2. The facts leading to the filing of the present appeal is, that the appellant is a Compliance Officer in M/s Essar Shipping Limited. This Company issued Foreign Currency Convertible Bonds (“FCCBs” for convenience) on August 24, 2010. IDH International Drilling Holdco Limited (“IDH” for convenience) (formerly known as Essar Shipping & Logistics Limited, Cyprus) subscribed to these FCCBs amounting to USD 280 million. These FCCBs were issued in “A” Series and in “B” Series. “A” Series was to expire on August 24, 2015 and “B” Series was to expire on August 24, 2017. “A” Series was also extended from 2015 to August 24, 2017. These FCCBs were convertible into equity shares of Rs. 10/- each at a conversion rate of Rs. 91.70 per equity share at a fixed exchange rate of Rs. 46.94 on the expiry of the period.

3. On July 31, 2017 the Board of Directors of M/s Essar Shipping Limited resolved to allot 122,852,787 fully paid up equity shares to IDH and accordingly intimated IDH on August 09, 2017 requesting them to exercise the option of converting the FCCBs into equity shares before the maturity date of August 24, 2017. IDH gave consent on August 21, 2017 and the Company M/s Essar Shipping Limited disseminated this information to BSE Limited (BSE) and National Stock Exchange of India Limited (NSE) on August 24, 2017 regarding the conversion of FCCBs into equity shares.

4. SEBI carried out an investigation to ascertain any possible violation of PIT Regulations during the period July 31, 2017 to August 24, 2017 and, based on the investigation, a show cause notice was issued to the appellant alleging that the trading window was not closed during the period July 31, 2017 to August 24, 2017 which was the unpublished price sensitive information (“UPSI” for convenience) period. It was alleged that the appellant failed to administer the Code of Conduct as prescribed under Regulation 9(1) and 9(3) read with Clause 4 of Schedule B-Minimum Standard of Code of Conduct to Regulate, Monitor and Report Trading by Insiders under the PIT Regulations, 2015. The show cause notice alleged that the

appellant not only failed to administer the code of conduct but also failed to close the trading window when designated persons or class of designated persons were reasonably expected to have possession of UPSI.

5. The appellant contested and submitted that there was no failure on the part of the appellant to administer the code of conduct nor any provision of code of conduct was violated and that all actions and acts taken by the appellant while discharging his professional duties were done in good faith and in the interest of the investors.

6. The AO after considering the material evidence on record came to the conclusion that the UPSI period was from July 31, 2017 to August 24, 2017. The AO further observed that the decision of the Board of Directors on July 31, 2017 resolving to allot shares to IDH was an unpublished price sensitive information (“UPSI”) which came into existence on that date and the same information was disseminated on the stock exchange platform on August 24, 2017. During this period from July 31, 2017 to August 24, 2017, the Compliance Officer was required to close the trading window under Clause 4 of the Code of Conduct prescribed under Schedule B. The AO

contended that the object of framing a Model Code of Conduct under the PIT Regulations, 2015 was to prevent insider trading and to prevent misuse of the UPSI. The conversion of FCCBs into equity shares constituted UPSI and as it was a material event under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations” for convenience). Since the appellant did not close the trading window he had violated Clause 4 of the Code of Conduct and accordingly a penalty of Rs. 1 lakh was imposed under Section 15HB of the SEBI Act.

7. We have heard Shri Prashant Phophale, the learned counsel for the appellant and Shri Abhiraj Arora, the learned counsel for the respondent.

8. Before we proceed further, it would be essential to extract a few provisions, namely, Clause 4 of the Code of Conduct prescribed under Schedule B- Minimum Standard of Code of Conduct to Regulate, Monitor and Report Trading by Insiders under the PIT Regulations, 2015.

***Clause 4 of the Code of Conduct prescribed
under Schedule B***

“4. Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates.”

Regulation 2(1)(n) of the PIT Regulations, 2015 defines

‘unpublished price sensitive information’ as under:-

“(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, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

- (i) financial results;*
- (ii) dividends;*
- (iii) change in capital structure;*

- (iv) *mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;*
- (v) *changes in key managerial personnel;*
and
- (vi) *material events in accordance with the listing agreement*

NOTE: *It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information 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.”*

Under Clause 4 of the Code of Conduct the Compliance Officer is required to close the trading window where designated persons or class of designated persons are reasonably expected to have possession of unpublished price sensitive information. Regulation 2(1)(n) defines unpublished price sensitive information as any information which is not generally available which upon becoming generally available is likely to materially affect the price of the securities.

9. In the instant case, the FCCBs were issued in 2010 which were convertible into equity shares of Rs. 10/- each at a convertible rate of Rs. 91.70 on August 24, 2017. This information was available in the public domain in the Annual Report of the Company for the year 2012-2013, 2013-2014, 2014-2015, 2015-2016 and 2016-2017. Thus, the fact that the FCCBs were to be converted into equity shares at the pre-determined price on the due date of August 24, 2017 at a fixed exchange rate was disseminated in the public domain from the financial year 2012-2013 onwards. Accordingly, the Resolution of the Board of Directors on July 31, 2013 only reiterated the conversion of the FCCBs into equity shares which in our opinion was not a UPSI as the information was already in the public domain.

10. Pursuant to the Resolution of July 31, 2017 the Company initiated the process of conversion of the FCCBs into equity shares and the actual conversion was disseminated to the stock exchanges on August 24, 2017.

11. We are further of the opinion, that the disclosure of the status of the FCCBs in the Annual Reports from 2012-2013 to

2016-2017 is a publically available information and is not an UPSI.

12. In view of the aforesaid, the appellant being the Compliance Officer was not required to close the trading window from July 31, 2017 as the Resolution of the Board was not a price sensitive information. We accordingly find that the appellant did not violate any provision of the Model Code of Conduct. Accordingly, no penalty could be levied.

13. Consequently, the impugned order cannot be sustained and is quashed. The appeal is allowed with no order as to costs.

14. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member