

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 19.04.2023

Date of Decision : 20.12.2023

**Misc. Application No. 104 of 2021
And
Appeal No. 81 of 2021**

1. Future Corporate Resources Pvt. Ltd.
Knowledge House, Shyam Nagar,
Jogeshwari Vikhroli Link Road,
Jogeshwari (East), Mumbai - 400060.

2. Kishore Biyani
406, Jeevan Vihar Building, Manav
Mandir Road, Malabar Hill,
Mumbai – 400006.

3. Anil Biyani
2701-2702, Beau Monde, Tower C,
Old Standard Mill Compound,
Appa Saheb Marathe Marg,
Prabhadevi, Mumbai - 400 025.

..... Appellants

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. Somasekhar Sundaresan, Advocate with Ms. Shruti Rajan, Mr.
Vivek Shah, Advocates i/b Trilegal for the Appellants.

Mr. Shiraz Rustomje, Senior Advocate with Mr. Manish Chhangani,
Ms. Samreen Fatima, Mr. Sumit Yadav, Advocates i/b The Law
Point for the Respondent.

**With
Appeal No. 85 of 2021**

Virendra Samani
B-1701, Ahuja Tower, Eksar Road,
Borivali (West), Mumbai – 400092. 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. Somasekhar Sundaresan, Advocate with Ms. Shruti Rajan, Mr.
Vivek Shah, Advocates i/b Trilegal for the Appellant.

Mr. Shiraz Rustomje, Senior Advocate with Mr. Manish Chhangani,
Ms. Samreen Fatima, Mr. Sumit Yadav, Advocates i/b The Law
Point for the Respondent.

**With
Appeal No. 86 of 2021**

1. Rajesh Pathak
B-203, Anand Paradise, Indralok Phase – 6,
Bhayander East, Thane – 401 105.
2. Rajkumar Pande

Flat No. 966, 2nd Floor, Adarsh Nagar,
Prabha Devi Road, Worli,
Mumbai – 400 030.

3. Future Corporate Resources Employees
Welfare Trust
Vishwastha Bhavan, 1st Floor,
218, Pratapgang Peth,
Satara – 415 001.

..... Appellants

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. Somasekhar Sundaresan, Advocate with Ms. Shruti Rajan, Mr.
Vivek Shah, Advocates i/b Trilegal for the Appellants.

Mr. Shiraz Rustomje, Senior Advocate with Mr. Manish Chhangani,
Ms. Samreen Fatima, Mr. Sumit Yadav, Advocates i/b The Law
Point for the Respondent.

**With
Appeal No. 216 of 2021**

Arpit Maheshwari
2nd Floor, Umang Tower, Ram Nagar,
Off. Link Road, Behind Inorbit Mall,
Malad (West), Mumbai – 400 064.

..... 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. Kunal Katariya, Advocate with Mr. Sahebrao Wamanrao Buktare, Advocate and Mr. Ravi Vijay Ramaiya, CA i/b Shah & Ramaiya, Chartered Accountants for the Appellant.

Mr. Suraj Chaudhary, Advocate with Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav, Advocates i/b The Law Point for Respondent.

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

Per : Justice Tarun Agarwala, Presiding Officer

1. All these appeals are against a common order dated February 3, 2021 passed by the Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') restraining the appellants from accessing the securities market for a specified period. Further, the WTM has directed the appellants to disgorge the unlawful gains and has also imposed penalties of different amounts.

2. Future Corporate Resources Pvt. Ltd., noticee nos. 1 is a part of the promoter and promoter group of Future Retail Ltd. (hereinafter

referred to as “FRL / the company”) which is engaged in the business of retail trading or various branded products, including grocery, fruits and vegetables, general merchandise, staples, fashion and accessories products. Kishore Biyani, noticee nos. 2 is the chairman and managing director of FRL.

3. One of the retail store formats operated by FRL was the “HomeTown” format which was a store for furniture, decor and home improvement (“HomeTown Business”). Bluerock e-Services Pvt. Ltd. (hereinafter referred to as ‘BSPL’) which was promoted by another listed company i.e. Future Enterprises Limited (“FEL”), operated an online home store, selling furniture, wood products and other home solutions-oriented decor products through a website i.e. www.fabfurnish.com (such business, hereinafter referred to as the “FabFurnish Business”).

4. The facts leading to the filing of the present appeals is, that SEBI conducted an investigation in the scrip of FRL to ascertain whether certain entities had traded in the aforesaid scrip during the period March 10, 2017 to April 20, 2017 on the basis of Unpublished Price Sensitive Information (hereinafter referred to as ‘UPSI’) in contravention to the provisions of the Securities and Exchange Board

of India Act, 1992 (hereinafter referred to as 'SEBI Act') and Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as 'PIT Regulations'). Investigation revealed that preliminary discussion for the proposed scheme of arrangement was carried out on March 10, 2017 and finally the company made an announcement on April 20, 2017 regarding a scheme of arrangement between the company and BSPL and Praxis Home Retail Pvt. Ltd. This scheme of arrangement resulted in the de-merger of certain business of the company and that the said announcement had a positive impact on the price of the scrip of the company.

5. The investigation further revealed that during the UPSI period the appellants being insiders had traded in the scrip in question which was violative of the PIT Regulations.

6. Accordingly, three show cause notices dated January 21, 2020 were issued to the appellants to show cause as to why suitable directions including debarment and disgorgement should not be issued under Section 11 and 11B of the SEBI Act for violation of Section 12A(d) and (e) of the SEBI Act and Regulation 4(1) of the PIT Regulations. The show cause notice also directed why

appropriate direction for imposition of penalty should not be issued under Section 11B(2) read with Section 15G of the SEBI Act.

7. The show cause notice alleged that the UPSI period was from March 10, 2017 when the first discussion about the merger took place and April 20, 2017 when a corporate announcement was made by the company before the stock exchange. The show cause notice further alleged that noticee nos. 1 had traded during the UPSI period by buying 36,25,000 shares on March 29, 2017 and March 30, 2017 and that noticee nos. 4 had bought 8,00,500 shares on March 28, 2017, March 29, 2017, March 30, 2017, April 3, 2017 and April 5, 2017. The show cause notice further alleged that noticee nos. 8 had bought 500 shares on March 10, 2017 and sold 200 shares on March 15, 2017 and April 13, 2017.

8. The appellants denied the allegations made in the show cause notice and contended that they did not trade during the UPSI period and that the information about the transaction was “generally available” and did not constitute UPSI. It was contended that the information about the merger had been widely reported across numerous media platforms much before the dates on which the trades were undertaken. The company had specifically clarified to the stock

exchanges on March 7, 2017 that its board had authorized to consider various options in relation to the HomeTown business and that the announcement on April 17, 2017 was only a follow up announcement in respect of information about the transaction which was already in the public domain. It was also urged that the HomeTown business and the FabFurnish business constituted a significantly small and miniscule portion of FRL's over all business and, thus, did not have any significant impact to the price movement of the shares. Noticee nos. 8 in his reply contended that he was involved in the project relating to the scheme of arrangement but had no access to any financial information at the point of time when he had traded and, therefore, he had no inside information nor had traded during the UPSI period.

9. The WTM after considering the material evidence on record held that all the appellants were insiders and were privy to the information relating to merger / de-merger of certain businesses of the company. The WTM further found that the appellants had traded during the UPSI period which was violative of Regulation 4(1) of the PIT Regulations. The WTM rejected the contention of the appellants that the information relating to merger was in the public domain and, therefore, was not a UPSI. The WTM came to the conclusion that

the articles and interviews that was published did not give the particulars about the de-merger of the HomeTown business and the information was not specific in nature and, therefore, since the articles and interviews did not contain concrete information as specified that in the public announcement, therefore, it cannot be held that the information was in the public domain and, therefore, not a UPSI. The WTM accordingly, issued direction debarring the appellants for specified period under Section 11 and 11B of the SEBI Act. Further, the WTM directed the appellants to disgorge the unlawful gains and also imposed penalties.

10. We have heard Mr. Somasekhar Sundaresan, the learned counsel with Ms. Shruti Rajan, Mr. Vivek Shah, Mr. Kunal Katariya, Mr. Sahebrao Wamanrao Buktare, the learned counsel with Mr. Ravi Vijay Ramaiya, CA for the appellants and Mr. Shiraz Rustomjee, the learned senior counsel with Mr. Suraj Chaudhary, Mr. Manish Chhangani, Ms. Samreen Fatima, Mr. Sumit Yadav, the learned counsel for the respondent.

11. Before we proceed, it would be appropriate to refer to the provision of 'generally available information' and 'UPSI' as provided under the PIT Regulations. Regulation 2(e) and 2(1)(n) of

the PIT Regulations defines ‘generally available information’ and ‘UPSI’ as under :-

“2(e). "generally available information" means information that is accessible to the public on a non-discriminatory basis;

NOTE : It is intended to define what constitutes generally available information so that it is easier to crystallize and appreciate what unpublished price sensitive information is. Information published on the website of a stock exchange, would ordinarily be considered generally available.”

" 2(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;*
- (vi) material events in accordance with the listing agreement.”*

12. A perusal of the aforesaid definition would show that for an information to be termed as UPSI, it must,

- (i) be relating to the company or its securities either directly or indirectly;
- (ii) not be generally available; and
- (iii) likely to materially affect the price of the securities.

In terms of Regulation 2(1)(n)(iv) of the PIT Regulations, information relating to mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions, is *per se* treated as UPSI.

13. From the aforesaid, it is clear that information relating to merger / de-merger is not “generally available” and, therefore, it has to be treated as a UPSI.

14. A lot of stress was made by the appellants that the information relating to the merger / de-merger was already in the public domain prior to March 10, 2017 and, therefore, the transactions done was not on the basis of UPSI in as much as the

information relating to merger / de-merger was already in the public domain.

15. In this regard, we find that the appellants had provided ample evidence to show that information relating to the transaction was generally available and had been widely reported across numerous media platforms including the television, print and digital media much before the date the appellants had traded in the scrip of the company.

16. In this regard, we find the following evidence was filed, namely,

- (i) The television interview given by noticee nos. 2 on April 7, 2016 to CNBC TV18 in which it was announced that "Future Group will merge the online furnishing and home decor portal 'FabFurnish' with its HomeTown Retail format". In this interview, noticee nos. 2 also stated that they plan to "create a single entity to work on the home side of business."
- (ii) The television interview given by noticee Nos. 2 on May 5, 2016 to ET NOW titled "The Future of

Fabfurnish”. In this program, it was categorically stated that noticee nos. 2 had given “very important news update which is that he will look at listing the furniture retail business in future.” Noticee nos. 2 in the interview with ET NOW stated that "there is an opportunity to unlock value in this business", and specifically confirmed, upon queries raised by the reporter regarding a possible arrangement between HomeTown and FabFurnish, that **"if there would be an opportunity, we can look at HomeTown demerging with merging with FabFurnish and maybe looking at a listing opportunity also."**

17. Publication of information regarding the transaction was not just restricted to television channels, but was in fact reported in multiple print and digital publications, including Economic Times, The Hindu BusinessLine, DNA India, Money Control, Live Mint, VCCircle, Inc42, Indiaretailing Bureau, etc. The relevant extracts from such reports are as under :-

- (a) Article by the Live Mint dated May 5, 2016 titled “Kishore Biyani plans to **merge** HomeTown with FabFurnish”, where it was stated that “HomeTown may be spun off from Future Retail to create a new firm by combining it with FabFurnish.com. Kishore Biyani, group chief executive officer of retail conglomerate Future Group, may hive off the home retail business HomeTown from its flagship Future Retail Ltd. and create a new home furnishing company by combining it with FabFurnish.com, which it acquired last month.”
- (b) Article by The Economic Times dated May 5, 2016 titled "Kishore Biyani's Future Group may **merge** HomeTown with FabFurnish" where it was stated that “Future Group is considering spinning off furniture retail unit HomeTown to merge it with online retailer FabFurnish and create a separate listed entity with a target revenue of Rs. 1,000/- crore by the end of the next financial year”.
- (c) Article by Inc42 dated May 5, 2016 titled "Future Group Announces Relaunch of FabFurnish; Plans To **Merge**

With HomeTown”, where it was stated that, “it plans to spin off its furniture retail unit HomeTown to create a new home furnishing company combining it with FabFurnish.com”. The article further quoted noticee nos. 2 stating that "while it is still not a board's decision, but we could look at listing it as a separate entity. Our aim is to create some value in this business. With FabFurnish, we will be creating the largest home furnishing and Decor business in the country.”

- (d) Article by DNA India dated May 5, 2016 titled "Kishore Biyani designs HomeTown, FabFurnish **merger**", where it was stated that "Biyani is looking to unlock value of the group's home furnishings business which is being operated under the banner HomeTown. The plan is to demerge Hometown from Future Retail, merge it with FabFurnish, and list the new entity separately." The article further quoted noticee nos. 2 stating that "we are looking at opportunities to create value out of our business. Today if you look at Future Retail, nobody values our home business. It virtually has zero value.

People value Big Bazaar as a business. And if we can get some value out of this business our shareholders will be happy. So we are going to look upon whether we can unlock value in this business It is part of the entire business viz. Big Bazaar, Central, etc. Now we are looking at making it independent. There are currently 42 independent (HomeTown) stores and another 7-8 new stores will be added in this fiscal. So HomeTown along with FabFurnish will become a Rs. 1,000/- crore business by fiscal-end."

- (e) Article by Indiaretailing Bureau dated May 5, 2016 titled "Kishore Biyani's Future Group to merge HomeTown and FabFurnish", where it was stated that "Future Group's group CEO. Kishore Biyani is considering [FabFurnish 's] merger with HomeTown..... Biyani plans to demerge Hometown from Future Retail, merge it with FabFurnish, and list the new entity separately."

- (f) Article by The Hindu BusinessLine dated May 9, 2016 titled "Future Group to hive off furniture business as a

listed entity", where it was stated that "Future Group is considering hiving off its furniture business under HomeTown as a listed entity after merging it with its newly acquired online retailer - FabFurnish. Currently, HomeTown as a format exists under its listed flagship company – “Future Retail”. The article further quoted noticee nos. 2 stating that “it has been 10 years since we started HomeTown and now we are seeking shareholder value in this business after **merging** it with FabFurnish. There is a thought of de-merging the furniture business after the **merger** of HomeTown and FabFurnish since we are targeting a Rs. 1,000/- crore turnover from the home business this fiscal."

- (g) Article by India Retailing dated August 10, 2016 titled "How Kishore Biyani is transforming Future Retail into a ‘connected commerce’ co", where it was stated that, "In April this year, Biyani acquired the home furnishings e-marketplace FabFurnish and plans are afoot to relaunch the marketplace along with offerings from Future Group's own furniture retail chain HomeTown."

- (h) Article by Economic Times dated February 21, 2017, where it was stated that "Future Group acquired FabFurnish and said it will spin it off with furniture retail format Hometown to create a separate listed entity with target revenue of Rs. 1,000/- crore."
- (i) Article by Economic Times dated 28 February 2017 titled "Biyani sees 110 future in specialty retail formats", where it was stated that "the Future Group is exiting speciality retail formats as part of a larger strategy to focus on its core fashion and food businesses. It plans to sell home furnishings business HomeTown, shut sportswear arm Planet Sports and **merge** stores of electronics chain Ezone within supermarket BigBazaar."
- (j) Article by VCCircle dated February 28, 2017 titled "Future Group to exit speciality retail business", where it was stated that "Kishore Biyani-led Future Group is planning to exit its specialty retail businesses with a view to scale up its apparel and food segments" and "The

Economic Times reported citing Biyani that the Group plans to sell its HomeTown brand (home furnishings business)".

- (k) Article by Money Control dated February 28, 2017 where it was stated that "the Future Group has been exiting specialty retail formats as part of a larger strategy to focus on its core fashion and food businesses. It plans to sell home furnishings business HomeTown."

18. We find that the WTM has drawn an erroneous conclusion that the term "generally available information" must only mean information which has been disseminated on the platform of the stock exchange. While information published on the stock exchange website would constitute generally available information, it would not follow that only information that is published on the stock exchange website would be considered generally available information. Even a plain reading of the definition of "generally available information" would show that any information accessible to the public on a non-discriminatory basis would be generally available information. While the note to the definition gives the example or

information published on the website of a stock exchange would ordinarily being considered generally available, it does not follow that only information provided in a particular format on the stock exchange website would be generally available information.

19. We find that the news coverage: (a) emanated pursuant to interviews and statements given by FRL or by its chairman and managing director i.e. noticee nos. 2; and (b) was fairly specific, in that they had references to the HomeTown Business, including specific references to demerging the FabFurnish and HomeTown business into a new listed company. The television interview given by noticee no. 2 on April 7, 2016 to CNBC TV18, clearly announced that “Future Group will merge the online furnishing and home decor portal 'FabFurnish' with its HomeTown Retail format". In this interview, noticee no. 2 also stated that they plan to “create a single entity to work on the home side of business”. Further, noticee no. 2 gave another television interview on May 5, 2016 to ET NOW titled the "Future of FabFurnish". In this interview, noticee No. 2 categorically stated that a "very important news update which is that he will look at listing the furniture retail business in future.” Further, he stated that “there is an opportunity to unlock value in this business”, and specifically confirmed, upon queries raised by the

reporter regarding a possible arrangement between HomeTown and FabFurnish, that "if there it would be an opportunity, we can look at HomeTown demerging and merging with FabFurnish and may be looking at a listing opportunity also."

20. We find that the WTM has failed to appreciate that the significance, dominance and outreach of the media in financial sector reporting impacts investor sentiment and behavior and impacts the securities market. We find that the publication of information regarding the transaction was also reported in multiple print and digital publications, including Economic Times. The Hindu Business Line, DNA India, Money Control, Live Mint, VCCircle, Inc42, India retailing Bureau etc. and various research reports where the imminence and nature of the transaction were highlighted in depth have been entirely ignored by the WTM.

21. The finding that the interviews and news reports does not amount to concrete information being disclosed on a non-discriminatory basis and, therefore, cannot be accepted that the information about the transaction was available in the public domain as the said information was very fluid, nebulous and bereft of specific details cannot be accepted. A perusal of these news reports

would indicate that the company was going ahead with the merger of its HomeTown business. Such information which was not generally available but was made available in the instant case and, therefore, in our opinion, the trades carried out were not on the basis of the UPSI as the information was generally available in the public domain.

22. Thus, the contention of the respondent that the term “generally available information” means only the information which has been disseminated on the platform of the stock exchange is taking a very narrow and restrictive view. Whereas information published on the stock exchange would constitute generally available information, it would also follow that any information accessible to the public on non-discriminatory basis would also be generally available information.

23. Thus, publication of information regarding the transaction which was reported in multiple print and digital publication including Economic Times, The Hindu Business, Business Lines, The Money Control, etc. wherein the nature of transactions was highlighted in depth clearly leads to an irresistible conclusion that information of the transaction was generally available.

24. Much reliance has been placed by the WTM on the clarification given by the company on March 7, 2017 contending that the company had denied the discussion relating to merger / de-merger. It may be stated here that the Economic Times on February 28, 2017 had issued a news article relating to the restructuring of the home town business. The stock exchange asked for a clarification and in response thereto the company informed the stock exchange “board has given an in- principle authority for considering various options with regard to HomeTown format, however, there is no final understanding which has been arrived at till date” In our opinion, the clarification given by the company clearly stated that no final decision has taken place as yet. But it does not deny that no discussion regarding merger had taken place. The company did not deny the de-merger discussion but only contended that no final decision had taken placed as yet. This clarification, in our opinion, further elaborates that the information relating to de-merger was in the public domain.

25. In addition to the aforesaid, we find that even though noticee nos. 8 had admitted trading during UPSI period, he cannot be penalized as we are satisfied that he did not trade on the basis of having inside information. The said noticee though involved in the

merger process which started on March 14, 2017, when the company created a team to work on the scheme of arrangement, had no information regarding the financials. He had no access to the UPSI. The finding in the impugned order is that the noticee nos. 8 had access to UPSI as he was marked on emails when issues relating to the alleged UPSI was being discussed. In this regard, we find that the appellant was marked on the emails for the first time on March 24, 2017 and, therefore, the said noticee had no access to the alleged UPSI at the time of trade which was made on March 10, 2017. Thus, as per the admitted record, the said noticee did not have any access to UPSI on March 10, 2017 when he purchased the shares of the company.

26. We also find that two authorities of SEBI, namely, the WTM as well as the AO has accepted that if the transaction are in the public domain through newspaper reports / interviews then trading on the basis of such information cannot be treated as UPSI. The WTM in the case of 63 Moons decided on January 31, 2018 held that news reports in Economic Times prior to the issuance of the show cause notice indicates that nothing remained unpublished and, therefore, the trading of the shares after the publication cannot be considered as

trading while in possession of the alleged UPSI. Similar finding was given by the AO in Bharti Airtel decided on October 22, 2020.

27. In view of the aforesaid, we are satisfied that the information relating to de-merger was already in the public domain and, therefore, trading done by the appellants in the shares after the publication of the interviews and news reports cannot be considered as trading while in possession of UPSI. Thus, the charge in the show cause notice fails and the findings given by the WTM cannot be sustained. The impugned order is quashed. All the appeals are allowed with no order as to costs.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

20.12.2023
PTM