IN THE SECURITIES APPELLATE TRIBUNAL AT MUMBAI

DATED THIS THE 2ND DAY OF MAY 2025

CORAM : Justice P. S. Dinesh Kumar, Presiding Officer
Ms. Meera Swarup, Technical Member
Dr. Dheeraj Bhatnagar, Technical Member

Appeal No. 257 of 2023

Between

Mr. Lashit Sanghvi
425, 25th Floor, Samudra Mahal,
Dr. A. B. Road, Worli,
Mumbai – 400018.

…. Appellant

By Ms. Shruti Rajan, Advocate with Mr. Vivek Shah, Ms. Drishti Kapadia, Advocates i/b Trilegal for the Appellant.

And

Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.

…. Respondent

By Mr. Pradeep Sancheti, Senior Advocate with Ms. Nidhi Singh, Ms. Komal Shah, Mr. Prateek Pai, Mr. Nishin Shrikhande, Mr. Harish Ballani, Advocates i/b Vidhii Partners for the Respondent.

And
Appeal No. 258 of 2023

Ms. Neha Lashit Sanghvi
425, 25th Floor, Samudra Mahal,
Dr. A. B. Road, Worli,
Mumbai – 400018.

…. Appellant

By Ms. Shruti Rajan, Advocate with Mr. Vivek Shah, Ms. Drishti Kapadia, Advocates i/b Trilegal for the Appellant.

And

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SEBI Bhavan, Plot No. C-4A, G Block,
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…. Respondent

By Mr. Pradeep Sancheti, Senior Advocate with Ms. Nidhi Singh, Ms. Komal Shah, Mr. Prateek Pai, Mr. Nishin Shrikhande, Mr. Harish Ballani, Advocates i/b Vidhii Partners for the Respondent.

THESE APPEALS ARE FILED UNDER SECTION 15T OF SEBI ACT, 1992 TO SET ASIDE ORDER DATED FEBRUARY 28, 2023 (EX-A) PASSED BY WTM, SEBI.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON MARCH 19, 2025, COMING ON FOR PRONOUCEMENT OF ORDER THIS 2ND DAY OF MAY 2025, THE TRIBUNAL MADE THE FOLLOWING :

O R D E R

[Per: Dr. Dheeraj Bhatnagar, Technical Member]

The appellants have filed these appeals challenging the common order dated February 28, 2023, passed by the WTM[1] of SEBI[2] by which the appellants are held as 'insiders' and an order of debarment and directions for disgorgement has been issued against them.

2. The brief facts governing the issue are as follows:

(i) The appellants are husband and wife and are engaged in investment activities. They knew (Late) Mr. Rakesh Jhunjhunwala, the ace investor since 1990s. In addition, Mr. Jhunjhunwala has stated to have made investment in broking firm of appellant no. 1, namely Alchemy Captial Management.

(ii) Aptech,[3] a listed company promoted by Mr. Rakesh Jhunjhunwala made a corporate announcement titled *"Aptech forays into pre-school segment"* on September 7, 2016. Aptech was engaged in vocational education,

[1] Whole Time Member
[2] Securities and Exchange Board of India
[3] Aptech Ltd. / the company

and vide a NDA[4] dated March 14, 2016 with Montana, it planned to venture into pre-school segment. The said announcement materially impacted the price of the Company's securities on the Exchange, as evidenced by a 9.99% increase in the stock price from INR 159.15/159.50 (closing on September 7, 2016) to INR 175/175.45 (closing on September 8, 2016).

(iii) This information was not classified as UPSI by the company. The AO[5] of SEBI held the company in violation of Regulation 9(1) read with Schedule B of the PIT Regulations[6], for failure to close the trading window during the existence of UPSI[7]. The company vide Appeal No. 467 of 2021 challenged the order of the AO.

(iv) This Tribunal, vide order dated January 4, 2023, dismissed the Company's appeal and upheld the finding that the information forming the subject matter of the press release constituted '*UPSI'* under Regulation 2(1)(n) of the PIT Regulations. It was further held that the said UPSI came into existence on March 14, 2016

[4] Non-disclosure Agreement
[5] Adjudicating Officer
[6] SEBI (Prohibition of Insider Trading) Regulations, 2015
[7] Unpublished Price Sensitive Information

upon execution of an NDA[8] between Aptech and Montana, and remained unpublished until the press release on September 7, 2016. Thus, the UPSI period was determined to be from March 14, 2016 to September 7, 2016.

(v) During the investigation period, (Late) Mr. Rakesh Jhunjhunwala served as the Non-Executive Chairman and Promoter of the Company. Allegedly, appellant No. 1 was known to him and was observed to have made a phone call of one minute duration to Mr. Jhunjhunwala during the UPSI period on August 16, 2016. Subsequently, Appellants Nos. 1 and 2 each purchased 50,000 shares of Aptech on August 19, 2016, and 75000 shares on September 7, 2016.

(vi) Based on aforesaid, in the show cause notice dated October 1, 2020 it was alleged that the Appellants were in possession of/having access to UPSI, through the telephone call made by the appellant no. 1 to the Chairman (Non-Executive) and Promoter of the Company just three days before they made first trade in

[8] Non-Disclosure Agreement

Aptech, and were, therefore, held as 'insiders' in terms of Regulation 2(1)(g)(ii) of the PIT Regulations. The learned AO also noted that family members of Mr. Jhunjhunwala also transacted in shares of Aptech during the same period. They alongwith Mr. Jhunjhunwala opted for SEBI's Settlement scheme.

(vii) The Ld. Advocate in the impugned order noted that the SCN has asserted the exchange of a phone call for the purpose of establishing the presence of a connection and possible communication channel between the two persons and no specific insinuation has been made based on the said call, as the SCN does not allege that the UPSI was communicated through that particular exchange of call. Therefore, the learned WTM also held that the appellant No. 1 was undisputedly having frequent communication with the Chairman (Non-Executive) and Promoter of the Company.

(viii) Based on the above finding, the appellants were held as *insiders* under Regulation 2(1)(g)(i) of the PIT Regulations and impugned order with direction of

disgorgement were issued along with order for debarment.

3. We have heard Ms. Shruti Rajan, learned advocate with Mr. Vivek Shah and Ms. Drishti Kapadia, learned advocates for the appellants and Mr. Pradeep Sancheti, learned senior advocate with Ms. Nidhi Singh, Ms. Komal Shah, Mr. Prateek Pai, Mr. Nishin Shrikhande and Mr. Harish Ballani, learned advocates for the respondent.

4. Ms. Shruti Rajan, learned advocate for the appellants made detailed submissions as under :

4.1 It was submitted that Mr. Lashit Sanghvi (Appellant No. 1) with over two decades of experience in Indian listed equities, has been publicly recognized for his successful investment track record. His wife, Ms. Neha Sanghvi, the Appellant No. 2, was listed as the 12th largest shareholder of Aptech in the company's Annual Report for FY 2014–2015 which demonstrates their prior interest / investment in the company. Together, the appellants have demonstrated significant market activity with trading volumes of approximately INR 366.73 crores (in FY 2023–24) and INR 400.10 crores (in FY 2024–25), reinforcing their position as active market participants.

The impugned trades (purchase) dated August 19, 2016, and September 7, 2016, were undertaken in accordance with the appellants' established fundamental investment strategy, which is consistent with their approach across all other transactions.

4.2 Ms. Shruti Rajan submitted that the respondent failed to inquire into the appellants' historical trading pattern in Aptech or otherwise, thereby denying the appellants an opportunity to present relevant context and breaching principles of natural justice. There is no evidence of any irregularity in quantity, timing, or pricing of the impugned trades. Contrary to the Respondent's claim, the appellants had previously invested in Aptech shares to the tune of approximately INR 8.96 crores during 2008–2009, which were gradually liquidated between December 11, 2012, and December 28, 2015.

4.3 It was submitted that the impugned shares purchased by appellants were held for over seven years, which clearly indicates a long-term investment consistent with the appellants' strategy, which undermines any inference of trading based on UPSI. The learned advocate for the appellants submitted that the appellants' investment in Aptech was based on technical break-out signals and several

positive developments in early 2016, including the appointment of a new CEO and favorable sectoral comparisons.

4.4 Refuting the respondent's claim that Aptech is limited to the "vocational training" space and not part of the broader "education" sector, it was submitted that the Press Release dated September 7, 2016, describes Aptech as a pioneer in the "education and training business" for over thirty years. Further, Aptech's Letter of Offer (2005), available on the respondent's own website, categorically states the company's principal business is "Training and education." Furthermore, Aptech's annual report for FY 2014–2015 further confirms that its core business is in education sector. In view of this, she submitted that respondent's narrow classification of Aptech's operations ignores legislative, regulatory and factual records and leads to an incorrect assessment of the appellants' investment rationale.

4.5 Ms. Rajan strongly questioned the finding in the SCN holding the appellants to be 'insiders' under Regulation 2(1)(g)(ii) of the SEBI (PIT) Regulations, based on alleged access to UPSI through (Late) Mr. Rakesh Jhunjhunwala. However, the order holds the appellants as "connected persons" which implies reliance on **Regulation 2(1)(g)(i)** requiring a distinct and separate legal standard. It was alleged that the respondent has effectively modified the basis of the original SCN

without due notice or opportunity of rebuttal. This deprived the appellants of their right to a fair hearing. She submitted that there is a trifold legal impact of such a unilateral reconstruction :-

(i) Change in the evidentiary burden under Regulation 4(2) of the PIT Regulations;

(ii) Judicial overreach by the WTM, violating principles of natural justice; and

(iii) Prejudices the appellants' defense, as shifting regulatory basis leads to uncertainty regarding the onus of proof.

4.6 Learned advocate drew our attention to the respondent's reply furnished during the course of this appeal stating that the appellants were '*insiders'* under Regulations 2(1)(g)(i) and 2(1)(g)(ii) both and submitted that this is legally untenable, as the two sub-regulations impose divergent standards and burdens of proof. There is a legal distinction between "connected persons" and "possession insiders" under the PIT Regulations. To support this claim, she relied on judgment of this Tribunal in ***SRSR Holdings Pvt. Ltd. & Ors. v. SEBI***[9], in which the following was held :

> *"57. After careful consideration of the PIT Regulations and the clarifications from the two learned senior*

[9] Appeal 463 of 2017 decided on August 11, 2017

counsels, it is evident from the definition of "Insider" that two categories of insiders have been created by the aforementioned definition. A person will fall into the first category as an insider if he fulfills both the ingredients of the first category cumulatively."

"58. For the first category, if a person is a connected person, that itself satisfies half the component of the first category of insiders. However, it is pertinent to note that in order to fall under the first category, the term "connected person" must be read with the second ingredient viz., "reasonably expected to have access to unpublished price sensitive information". Therefore, not only does a person need to be a connected person to be an insider, but there must also be some reliable and convincing material to show such a connected person is reasonably expected to have "access" to the UPSI. The Scheme of PIT Regulations of 1992 makes it evident that these dual requirements need to be satisfied before a person can be called an "insider" under the PIT Regulations of 1992. The conjunctive "And" is, therefore, significant and cannot be ignored."

"59. As far as the second category of "insider" is concerned (Regulation 2€(ii)), it clearly refers to a person who "has received or has had access to such unpublished price sensitive information". Thus, to fall under the second category of insiders, one must either have actually received the UPSI or actually had access to such UPSI in any manner without being a connected person. In these appeals, we are not concerned with this category of persons as SEBI has not invoked the second category. There is also no finding to that effect in the Impugned Order."

4.7 Ld. Advocate submitted that respondent's argument that procedural irregularity is a mere "technicality", is untenable. In this regard, she relied on the decision of this Tribunal in ***Urban***

Infrastructure Trustees Ltd. v. SEBI[10], in which the following was held:-

> *"43. In view of the aforesaid, we are of the view that the directions issued by the WTM as contained in paragraph nos. 37.3 and 37.4 of the impugned order was without jurisdiction and beyond the show cause notice. Such directions could not be issued since the show cause notice did not spell out such allegations."*

4.8 With regard to alleged long standing association with (Late) Mr. Jhunjhunwala, which was held to be the reason for deeming access to UPSI, she submitted that it is not in dispute that the appellants have known Mr. Jhunjhunwala since 1990's and had co-promoted a company as well. However, this association alone cannot be the basis to presume communication of UPSI in relation to Aptech. It was submitted that the impugned trades were modest in size compared to a significantly high trading in other scrips (above 350 Cr in FY 2023-24) and consistent with the Appellants' other market activity.

4.9 Learned advocate submitted that the allegation hinges on a single phone call made by the appellant No. 1, that was 72 hours prior to the 1st trade made out of hundreds of calls exchanged over decades. This is inadequate to infer communication of UPSI. No trade occurred on

[10] Appeal 93 of 2023 decided on November 22, 2023

the day of the call, nor was there any material corporate event. The respondent has failed to demonstrate, why the appellants would trade after Mr. Jhunjhunwala and how the appellants' trades were influenced by others.

4.10 Further, it is alleged that respondent failed to discharge burden under Regulation 4(2) of the PIT Regulations, having produced no cogent evidence (letters, emails, witnesses, etc.) of UPSI being actually communicated. In the absence of any material indicating frequent or specific communication, the presumption of UPSI cannot be drawn. Trading pattern alone is not sufficient. To support her claim, she relied on **Balram Garg v. SEBI**[11].

4.11 Furthermore, the appellants are neither related to the other noticees (family/employees of Mr. Jhunjhunwala) nor are connected to Aptech Ltd., and hence it is alleged that the appellants were unjustly grouped with insiders. Ms. Shruti Rajan submitted that respondent's reliance on **Ameen Khwaja v. SEBI**[12] and **Allegro Capital Pvt. Ltd. v. SEBI**[13] is misplaced, as in that case appellants were held liable under Regulation 2(1)(g)(i) as "connected persons" unlike in the present case, which alleges possession under Regulation 2(1)(g)(ii).

[11] 2022 SCC Online SC 472
[12] 2022 SCC OnLine SAT 1076
[13] Appeal 542 of 2021 decided on January 20, 2025 by SAT.

Notably, the SAT in ***Allegro Capital*** itself draws this distinction. The learned advocate for the appellants submitted that, WTM of SEBI disregarded a similar charge based on one phone call without supporting evidence in another case of **Lux Industries Ltd.** (order dated November 6, 2023). Further, Insider trading allegations against immediate relatives were dropped by AO[14], due to lack of concrete proof of UPSI communication despite suspicious patterns in **United Spirits Ltd.** (order dated August 25, 2023).

4.12 Ms. Rajan submitted that the respondent relied on conduct of other noticees, who have already settled with the respondent, despite the impugned order specifically limiting findings to the appellants alone. This re-litigation is contrary to the SEBI Settlement Regulations.

Based on aforementioned submissions, learned advocate prayed that impugned order may be quashed.

5. In response, Mr. Pradeep Sancheti, learned senior advocate for the respondent submitted as under :-

[14] Adjudication Officer of SEBI

5.1 The appellants' trades coincided with those of (Late) Mr. Rakesh Jhunjhunwala and his family members (trading date - August 9, 2016), and Ms. Rekha Jhunjhunwala and Mr. Rajeshkumar Jhunjhunwala (trading period : September 6, 2016 – September 7, 2016). Notably, these large trades by the appellants took place just hours before the disclosure of UPSI on September 7, 2016, after which the stock price steeply rose approximately by 9.99%.

5.2 Trade logs show that the appellants did not trade in Aptech shares before the UPSI period (December 1, 2015 to March 13, 2016) or meaningfully after it (post September 7, 2016), except for a single insignificant trade of 50 shares on September 19, 2016. This sudden and isolated surge in activity during the UPSI period supports the presumption of *insider trading.*

5.3 The appellants did not produce prior trading history in respect of Aptech in their pleadings. He objected to the appellant’s attempted reliance on demat statements and public documents (e.g., Annual Report FY 2014–15) during oral arguments on the ground of being procedurally improper and in violation of principles of natural justice.

5.4 Mr. Sancheti submitted that Regulation 4(1) of the PIT Regulations creates a rebuttable presumption that trades during the

UPSI period are motivated by possession of UPSI. The appellants bear the burden of rebutting this presumption by clearly establishing the circumstances under which the trades were executed.

5.5 Refuting the appellant's contention that their trades in Aptech were consistent with investment strategy, it was submitted that all the events cited by appellant in support, namely, breakout signals, CEO appointment (July 1, 2016), launch of Aptech Computer (May 25, 2016), and a tie-up with Geojit BNP Paribas (July 2016) had occurred months earlier and do not explain rationale for bulk purchases on the eve of the UPSI disclosure.

5.6 Learned senior Advocate for the respondent submitted that despite appellant's claim to be bullish on education sector and Aptech's prospects, the appellants did not trade in the scrip till after the public announcement was made on September 7, 2016, indicating that their motivation was tied to pre-disclosure UPSI rather than market fundamentals.

Learned senior advocate for the respondent questioned the claim of the appellants that they had a genuine interest in the education sector, by pointing out that Aptech had made only Rs. 4.25 crores investment

and Aptech’s pre-school foray, the subject of the UPSI, was not in the public domain prior to September 7, 2016.

5.7 Mr. Sancheti contended that the appellants' explanations are insufficient to rebut the statutory presumption under Regulation 4(1) of the PIT Regulations, which deems that the trades made during the ‘UPSI period’ are motivated by possession of UPSI, unless proven otherwise. The appellants' comparison of Aptech with other such companies is misplaced, as Aptech was publicly known to be operating in the vocational skills space and not in formal education, prior to the disclosure of the UPSI on September 7, 2016.

5.8 Relying on dictionary meanings of the word ‘vocation’, ‘vocational’ and ‘education’, he relied on UNESCO’s International Standard Classification of Education that defines the two expressions ‘vocational education’ and ‘education’ differently. Further, in the Company’s own admission it operated in the vocational skills space and sought entry into the education sector only in 2015–16, which confirms that the two sectors are distinct business verticals, both conceptually and commercially.

5.9 With regard to charging the appellant as ‘insiders’ under Regulation 2(1)(g)(ii) of the PIT Regulations, he submitted that any

person in possession of or having access to UPSI qualifies as an 'insider'. Given that UPSI existed during the relevant period, and considering the appellant no. 1's long-standing association and communication with (Late) Mr. Rakesh Jhunjhunwala, appellant No.1 was privy to such UPSI and hence squarely falls within the definition of 'insider' irrespective of how the information was acquired.

5.10 Mr. Sancheti further submitted that every word used by the legislature must be given distinct meaning. Under Regulation 2(1)(g)(ii) of the PIT Regulations, '*access'* must be distinguished from '*possession'*; the former implies the ability or opportunity to obtain UPSI, while the latter denotes actual control. *Access* may be inferred from circumstantial evidence such as the nature of relationship, communication frequency, and proximity to insiders. To support this contention, he relied on dictionary meanings of 'access' as per *Black's Law Dictionarv* under :-

> *"(i) "A right, opportunity, or ability to enter, approach, pass and from, or communicate with.*

5.11 Mr. Sancheti submitted that undisputedly, being the recipient of the email dated July 19. 2016 (containing the Board report which mentions that the agreement with Montana is being finalized), Mr.

Rakesh Jhunjhunwala was in possession of the UPSI. The phone call made by the aforementioned appellant No. 1 to his long-time associate Mr. Jhunjhunwala is sufficient to show that the Noticee no. 6 was having frequent communication with him and hence had access to such UPSI.

5.12 Learned senior advocate submitted that the charge of *insider trading* need not rest solely on direct evidence. It may also be established through compelling inferences drawn from undisputed facts on record. In this regard, he relied on the judgment of this Tribunal in ***Ameen Khwaja v. SEBI***[15], wherein, this Tribunal has considered the decision in the case of **Balram Garg (Supra)** and ***Chintalapati Srinivas Raju & Ors. v. SEBI***[16]. Further, with regard to the evidentiary nature of circumstantial evidence in the nature of trading behavior in *insider trading matters*, he relied on the decision of this Tribunal in ***Kunal Ashok Kashyap & Anr. v. SEBI***[17].

5.13 Mr. Sancheti submitted that the appellants' claim of inconsistency between the SCN and the impugned order is unfounded, as the core allegation remains consistent that the appellants, by virtue of their close and admitted long-standing association with (Late) Mr.

[15] Appeal No. 584 of 2019, decided on 15.06.2022
[16] AIR 2018 SC 2441
[17] Appeal No. 542 of 2021, Decided on 20.01.2025

Rakesh Jhunjhunwala, (a ‘connected person’ and recipient of UPSI), were in possession of or had access to UPSI under Regulation 2(1)(g)(ii) of the PIT Regulations. This is supported by a series of undisputed facts, including the timing of their trades shortly after a phone call with Mr. Jhunjhunwala, bulk purchases just before UPSI disclosure, similar trading patterns with co-noticees, and the absence of prior trading in the scrip—altogether forming a coherent and substantiated basis for the insider trading charge.

6. We have considered the submissions of the counter parties and the material made available us. In order to decide the appeal, the following questions are framed:-

A. Whether appellants are ‘insiders’ under the PIT Regulations? And if so, whether they are insiders being “connected person” under Regulation 2(1)(g)(i) or being “in possession / having access to UPSI” under Regulation 2(1)(g)(ii)?

B. Whether the trading behaviour of the appellants can be construed to hold that trading by the appellants was guided by the UPSI?

6.1 We will address these questions as under :-

Reg. : A. Whether appellants are 'insiders' under the PIT Regulations? And if so, whether they are insiders being "connected person" under Regulation 2(1)(g)(i) or by "being in possession having access to UPSI" under Regulation 2(1)(g)(ii)?

We note that in the show cause notice dated October 1, 2020, the appellants were held as *insiders* as per regulations 2(1)(g)(ii) of the PIT Regulations, 2015, on the basis of the finding that the appellant no. 1 made a phone call to Mr. Jhunjhunwala on August 16, 2016 at 12:27:33 hrs for around one minute. Since, Mr. Jhunjhunwala, being the chairman of Aptech, was expected to be in possession of the information relating to the Aptech-Montana deal, (UPSI in the matter), it was held that Mr. Jhunjhunwala communicated the UPSI to Mr. Sanghvi through the phone call.

6.2 Subsequently, in the impugned order, the learned WTM however, took a different view by holding that in the show cause notice, reference to the particular phone call made on August 16, 2016 was made to establish a '*connection'* between Mr. Jhunjhunwala and the appellant no. 1 and no specific insinuation was made that the communication of UPSI was made through that particular call only. The learned WTM was of the view that the referring to the said phone was only to further compound the allegation that the appellant was

having frequent communication with a person who has been observed to be in possession of UPSI. In view of this, in the impugned order it is held that frequent communication by the appellant no. 1 with his long-time associate Mr. Jhunjhunwala shows that the appellant had access to the UPSI while he traded in the scrips of Aptech. The learned WTM has also held that keeping in view the Note below regulation 2(1)(g), the onus to prove possession of the UPSI by a particular person was on SEBI, which can be rebutted by the said person. However, in the present matter, the appellant could not prove that he did not have access to the said UPSI.

6.3 In our considered view, classification of appellant as *insiders* under Regulation 2(1)(g)(ii) in the show cause notice is not a 'technical' error, as held by the learned WTM in impugned order, while treating the appellant as *insiders* within the meaning of Regulation 2(1)(g)(i). In clear words, the allegation in the show cause notice is with regard to one particular call, and it cannot be held to assume that the appellant and Mr. Jhunjhunwala had frequent communication on the basis of just this one particular call made in six months. Moreover, since the burden of proof in Regulation 2(1)(g)(i) scenario is on the appellant, (while in Regulation 2(1)(g)(ii) is on the respondent) such a material difference cannot be called as mere

technical. In holding so, we rely upon the decision in the case of ***SRSR Holdings Pvt. Ltd. (supra)*** cited by the appellant.

6.4 On careful consideration of the facts of the case, we find that the only basis for treating the appellants as insider as per the show cause notice was one solitary phone call of one minute duration on August 16, 2016, which was, notably, initiated by the appellant and not by Mr. Jhunjhunwala. In the impugned order, the learned WTM has relied upon this solitary phone to established that both the appellant no. 1 and Mr. Jhunjhunwala were in frequent communication. It is evident that the phone call dated August 16, 2016 was the only call found out in investigation by the SEBI during the entire UPSI period from March 14, 2016 to September 7, 2016. If during the immediate six months period there was only one brief phone call, it cannot be held that the two persons were in frequent communication with each other.

Moreover, notably the phone call was initiated by the appellant no. 1, who obviously would not have knowledge about the UPSI prior to initiating this phone call. If the phone call was initiated by Mr. Jhunjhunwala, there could still be a possibility that he might have made the phone call to share the UPSI. However, since the phone call was initiated by the appellant, which lasted only for one minute any allegation of sharing of UPSI would imply as if Mr. Jhunjhunwala was

awaiting appellant No. 1 to call him one day, while he was ready to share the said UPSI in that brief one minute call. Mr. Jhunjhunwala was an ace investor, who may be having investment related professional association with several persons as appellant. Keeping in view the above, we do not find any merit in the evidentiary value of one brief phone call, that was made by the appellant on August 16, 2010 to Chairman, Aptech in the matter.

6.5 We have also held that on the basis of observation that one brief phone call was made during the UPSI period, it cannot be held that the two persons were in *frequent communication* with each other in order to hold them as 'connected persons'. Mr. Jhunjhunwala in his statement mentioned that he knew the appellant no. 1 since 1990s and had made investment in the brokerage firm of the appellant (Alchemy share broking). Similarly, the appellant No. 1 also in his statement stated that he knew Mr. Jhunjhunwala since 1995. However, this is only reporting a matter of fact about the period the two persons knew each other, and in no way, implies that they were in *frequent communication*.

6.6 Thirdly, the finding that the appellant was a close associate of Mr. Jhunjhunwala also doesn't get proved by the facts of the case. Mr. Jhunjhunwala's investment basket spread across various companies,

but this does not imply that Mr. Jhunjhunwala could be considered to be a close associate of promoters of all such companies, in which he made investment. Moreover, in the case of Alchemy Broking, being a co-promoter Mr. Jhunjhunwala may be considered as a close associate of appellant for determining whether he is a 'connected person' or not. But, so far as Aptech is considered, in which appellant has no stakes or position of a director, he cannot be held as a close associate of Mr. Jhunjhunwala (promoter–shareholders and chairman) with regard to Aptech and hence, in this capacity cannot be held as 'connected person'.

In view of this, we find no ground for holding appellant no. 1 as 'connected person' qua Aptech under Regulations 2(1)(g)(i). We have already held that *preponderance of probabilities*, do not suggest that appellant made trading while he was in possession of or had access to UPSI and hence he cannot be held as an insider under Regulation 2(1)(d)(ii). In view of this, we decide this question in ***negative***.

Reg. : B. Whether the trading behaviour of the appellants can be construed to hold that trading by the appellants was guided by the UPSI?

7. We note that the appellant's trades in appeals were made in the same time period as the period in which Mr. Jhunjhunwala and his family members made trading in Aptech. Mr. Jhunjhunwala and family members preferred to avail the benefit of settlement scheme of respondent.

7.1 In our view, facts in appellants' case are different from Mr. Jhunjhunwala and his family member's. Evidently, those noticees were promoters/ immediate relatives of promoters of Aptech and were held to be in possession of the UPSI, which was actually not treated by the company as UPSI. Therefore, since the foundational facts in the matter are different, any similarity in trading behaviour alone cannot be the basis for holding that the trading by appellants was also guided by UPSI.

7.2 Secondly, despite having purchased the Aptech scrips during the UPSI period, appellants continued to hold on to the same for a long period of 8 years. The ostensible purpose of PIT regulations is to ensure that uninformed investors do not suffer loss, and insiders with the advantage of knowledge of UPSI, don't make unlawful gains by virtue of *insiders trading* due to information asymmetry. The differential in information asymmetry creates unlawful gains / loss, when such UPSI becomes public knowledge. In the case of Aptech

shares too, there was steep hike in shares price by 9.99% when the said UPSI became public on September 7, 2016.

However, the appellants did not exploit the advantage of having alleged access to UPSI and continued to hold on to it for a long period of 8 years. This substantiates the appellant's explanation that their trading was made in accordance with their long-term investment strategy about this stock, considering certain positive developments. Moreover, if the company is venturing into education sector, which even in respondent's view is a new area, (as the company has been in 'vocational training'), a long-term investment at early stage could perhaps be a prudent investment strategy.

7.3 Appellants are right in contending that under the Regulations 2(1)(g)(ii), the onus is on SEBI to prove that appellant had access to UPSI. This is a foundational fact, in terms of *Balram Garg decision (SC),* which needs to be proved in order to hold the charges of insider trading. We find no evidence in this regard and *preponderance of probabilities* also do not indicate that appellants had access to UPSI. On the contrary, the appellant cannot be called upon to prove that their trading was not guided by UPSI. However, appellants attempted to provide reasons for their trading behavior, *inter-alia*, their perception of positive outlook about Aptech, which respondent attempted to rebut

before us. However, in our considered view, since appellants were held as 'insider' under Regulations 2(1)(g)(ii) in the SCN, they were under no onus to prove that the trading was not guided by UPSI as onus was on the SEBI and not on them. In view of this, the question B is decided in ***negative***.

7.5 In view of the above, we do not find merit in the findings of the respondent that appellants are in violation of PIT Regulations, 2015 with regard to trading in Aptech shares.

8. In view of the above, the following :-

ORDER

i. The appeal is ***allowed***. Order dated February 28, 2023 passed by the WTM is set aside.

ii. No costs.

Justice P. S. Dinesh Kumar
Presiding Officer

Ms. Meera Swarup
Technical Member

Dr. Dheeraj Bhatnagar
Technical Member

02.05.2025 MRS PRAMILA Digitally signed by MRS PRAMILA Date: 2025.05.02 14:52:26 +05'30'
PTM