

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. 603 of 2022

And

Misc. Application No. 751 of 2022

And

Misc. Application No. 1646 of 2022

Between

1. Reliance Industries Limited,
Registered Office at 3rd Floor,
Maker Chambers IV, 222,
Nariman Point, Mumbai – 400 021.
2. Savithri Parekh,
Resident of 602, Karmabhoomi,
Jijamata Road, Near Sher-e-Punjab,
Chakala, MIDC, Andheri (East),
Mumbai – 400 093.
3. K. Sethuraman,
Resident of Flat No.903/904,
C Wing, Chaitanya Towers,
Appasaheb Marathe Marg,
Prabhadevi, Mumbai – 400 025.

.... Appellants

By Mr. Gaurav Joshi, Senior Advocate with Mr. Amey Nabar, Mr. Vivek Shetty, Ms. Cheryl Fernandes, Mr. Swati Jain, Ms. Mrudula Dixit, Mr. Naman Nayyar, Advocates i/b AZB & Partners for the appellants.

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 Mr. Suraj Choudhary, Mr. Mihir Mody, Mr. Yash Sutaria, Mr. Tushar Bansode, Advocates i/b K. Ashar & Co. for the Respondent.

THIS APPEAL IS FILED UNDER SECTION 15T OF SEBI ACT, 1992 TO SET ASIDE ORDER DATED JUNE 20, 2022 (EX-A) PASSED BY AO, SEBI.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS ON MARCH 3, 2025, COMING ON FOR PRONOUNCEMENT OF ORDER THIS 2ND DAY OF MAY 2025, THE TRIBUNAL MADE THE FOLLOWING :

ORDER

[Per: Dr. Dheeraj Bhatnagar, Technical Member]

This appeal is directed against order dated June 20, 2022 passed by the AO¹, SEBI² imposing a monetary penalty of Rs. 30 lakhs under Section 15I of the SEBI Act³ upon the appellants for violation of principle No. 4 of Schedule A⁴ read with Regulation 8(1) of SEBI (PIT) Regulations, 2015⁵ read with Regulation 30(11) of SEBI (LODR) Regulations, 2015⁶.

2. Brief facts of the case are as under :-

- (i) The appellant No. 1 Reliance Industries Limited (RIL) and Facebook Incorporation (Facebook) were in preliminary discussions of investments by Facebook in Jio Platforms Limited (JPL), a subsidiary of RIL.

¹Adjudicating Officer

² Securities and Exchange Board of India

³ Securities & Exchange Board of India Act, 1992

⁴ Principles of Fair Disclosure for Purposes of Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information.

⁵ Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015

⁶ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

Appellant No. 2 and Appellant No. 3 are Compliance Officers of RIL.

- (ii) On September 30, 2019, RIL and Facebook executed a confidentiality and non-disclosure agreement and on March 4, 2020 executed a non-binding term-sheet.
- (iii) During the period of negotiations and due diligence, on March 24, 2020, the Financial Times, London published a news article which stated that “Facebook was close to signing a preliminary deal for a 10 per cent share in Reliance Jio.” This news with different headings was also published on the same day by Reuter, Economic Times, Business Today and Mint. The above news contents were then published by Indian media houses on the same day and the next day. Some of these articles reported that RIL had declined to comment on the matter.

- (iv) On April 18, 2020, the Board of directors of RIL and JPL approved the execution of the transaction documents in connection with the investment by Facebook in JPL.
- (v) On April 21, 2020, the definitive transaction documents of Jio-Facebook deal were executed and on April 22, 2020, RIL informed the stock exchanges about the Jio-Facebook deal. In the period ranging from September 30, 2020 to October 2021, SEBI and RIL exchanged various communications regarding the details pertaining to the Jio-Facebook deal.
- (vi) SEBI issued show cause notice (SCN) on December 22, 2021 for alleged violations under Schedule A read with Regulation 8(1) of the PIT Regulations, read with Regulation 30(11) of the LODR Regulations. The appellants personally appeared before the respondent and filed their written submissions. After adjudication, the respondent has passed the impugned order.

3. We have heard Shri Gaurav Joshi, learned senior advocate with Shri Amey Nabar, Shri Vivek Shetty, Ms. Cheryl Fernandes, Ms. Swati Jain, Ms. Mrudula Dixit, Shri Naman Nayyar, learned advocates for the appellants and Shri Pradeep Sancheti, learned senior advocate with Shri Suraj Choudhary, Shri Mihir Mody, Shri Yash Sutaria, Shri Tushar Bansode, learned advocates for the respondent.

4. Shri Gaurav Joshi, learned senior advocate for the appellants submitted as under :-

(a) That there was no obligation on any listed entity to verify, confirm or deny such market rumours under Regulation 30(11) of the LODR Regulations, which reads as under :-

“30(11). The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange(s) :

Provided that the top 100 listed entities (with effect from October 1, 2023) and thereafter the top 250 listed entities (with effect from April 1, 2024) shall confirm, deny or clarify any reported event or information in the mainstream media which is not general in nature and which indicates that rumours of an impending

specific material event or information in terms of the provisions of this regulation are circulating amongst the investing public, as soon as reasonably possible and not later than twenty four hours from the reporting of the event or information:

Provided further that if the listed entity confirms the reported event or information, it shall also provide the current stage of such event or information.

Explanation – The top 100 and 250 listed entities shall be determined on the basis of market capitalization, as at the end of the immediately preceding financial year.”

At the relevant time Regulation 30(11) in juxtaposition with Regulation 30(10), was clearly discretionary and did not impose any mandatory obligation on the appellants to confirm or deny any reported event or information. Such an obligation to verify market rumours by the listed entities was introduced by SEBI in July 2023 by way of amendment to LODR Regulations and said regulations brought into effect from June 1, 2024 for top 100 listed entities and later for top 250 listed entities from April 1, 2024. The insertion is in the nature of a substantive amendment, which is a new obligation on specified entities. To support this submission, he relied on

***Vidarbha Industries Power Limited v. Axis Bank Limited*⁷.**

Further, where the legislature has in successive provisions used both “*may*” and “*shall*”, it clearly conveys that the former is discretionary while latter is mandatory. To support this submission, he relied on ***M/s Mahaluxmi Rice Mills & Ors v. state of U.P.& Ors*⁸ ; *Jamatraj Kewalji Govani v. The State of Maharashtra*⁹; *Labour Commissioner, Madhya Pradesh v. Burhanpur Tapti Mills and Ors*¹⁰.**

- (b) That the SEBI (PIT) Regulations seek to correct information asymmetry and to prohibit trading by persons who have asymmetrical access to UPSI. Impugned order itself says that the information became generally available on publication in numerous media outlets, which was a case of market speculation in regard to a potential transaction. Keeping aside the fact that this information was neither *concrete* nor *credible*, nothing remains to be done to ensure

⁷ Para 75 and 76 of *Vidarbha Industries Limited v. Axis Bank Limited*, (2022) 8 SCC 352, decided on July 12, 2022, by Hon’ble Supreme Court of India.

⁸Para 9 of *M/s Mahaluxmi Rice Mills & Ors v. state of U.P.& Ors* (1998) 6 SCC 590 decided on August 19, 1998 by Hon’ble Supreme Court of India.

⁹Para 10 of *Jamatraj Kewalji Govani v. The State of Maharashtra*, 1967 SCR (3) 415 decided on April 4, 1967 by Hon’ble Supreme Court of India.

¹⁰*Labour Commissioner, Madhya Pradesh v. Burhanpur Tapti Mills and Ors*, 1964 SCR (7) 484, decided on March 25, 1964 by Hon’ble Supreme Court of India.

its further dissemination with a view to prevent any information asymmetry.

- (c) That there was no obligation on the appellants to disclose in terms of Principle No. 4 of Schedule A of the PIT Regulations. Principle No. 4 applies only when there is a selective leak. In this case, there was no selective leak as the information was published widespread in the media and SEBI admitted the same. Principle No.4 cannot be read in isolation and comes into play when UPSI is *concrete* and *credible* as required in Principle No.1. In such a case, the company is under an obligation to immediately inform the stock exchanges in terms of Principle No. 4.

4. In response, Shri Pradeep Sancheti, learned senior advocate for the SEBI submitted as under :-

- (a) That the appellants have also not disputed that as on March 24 /25, 2020 the UPSI period was in operation.

- (b) The purpose of Principle 4 is to ensure that the members of public/investors have reliable and authentic information from the company itself so that there is no scope of any doubt or rumours of information. The word “selectively disclosed” in Principle 4 has to be construed in a broader sense to achieve the purpose of the Regulations and to avoid any mischief arising out of the information disclosed being incomplete, incorrect etc.
- (c) That the phrase ‘selective disclosure’ is not defined but it can be inferred from Principle 2 of Schedule A. Selective disclosure is not limited to disclosure to selective persons, but also include disclosure of selective aspects of true information, in bits and pieces which may not be complete/updated or true and correct in part/full. This is tied to the duty on listed entities to ensure that the disclosure to investors is true and

correct in all respects, as a true but incomplete disclosure can also result in misleading disclosures.

- (d) That the appellants' contention that the information was not leaked by the appellant is irrelevant as there is no allegation to this effect. In as much as Principle 4 is worded very widely and clearly includes information that gets disclosed "inadvertently or otherwise." It is therefore not necessary that the obligation to make disclosure arises only when the information is leaked by the company or somebody working with the company.
- (e) Principle 4 cannot be eclipsed by referring to Principle 1. Each Principle has its own purpose. If the disclosure requirement is only upon the information becoming credible and concrete, then Principle 4 would be rendered nugatory.

- (f) That the disclosure requirements under PIT Regulations and the disclosure requirements under the LODR Regulations are separate and independent requirements arising under the respective regulations. The stringent requirement under PIT Regulations cannot be diluted or ignored by referring to the requirements under the LODR Regulations.
- (g) That the appellant's interpretation with respect to Regulation 30 (11) of LODR Regulations was accepted by the AO, but that by itself does not exonerate the appellant of the charge of violation of PIT Regulations.
- (h) That the appellant raised a fresh contention for the first time during the arguments that the disclosure requirements under PIT Regulations must be read in conjunction with the disclosure requirements under the LODR Regulations since the obligation to disclose information is a requirement only under LODR Regulations, is devoid of any merits. PIT Regulations

as well as other Regulations contain certain disclosure requirements and it is incorrect to suggest that the requirement to make disclosures must only come through LODR Regulations. The relevant clauses must be read together and no part of the Regulations should be rendered nugatory. Merely because Regulation 30(11) contains the word “*may*” does not mean that the same should be automatically imported in other Regulations. The Appellant’s contention that Regulation 30(11) should be treated as “*may*” and not as “*shall*” would run contrary to the bare reading of the relevant Regulations and principles.

- (i) That Principle 4 of Schedule A of PIT Regulations relates to Regulations 8, which uses the phrase “that it would follow in order to adhere to each of the principles set out in Schedule A to these regulations, without diluting the provisions of these regulations in any manner.” Thus, the listed company is duty bound

to adhere to Principle 4 of Schedule A in view of the mandate in Regulation 8. These two Regulations are to be read together, hence the word “may” in Regulation 30(11) of the LODR is to be construed as “shall”, otherwise the entire mandate of Principle 4 of Schedule A of PIT Regulations will be defeated.

Moreover, even Regulation 30(11) read in juxtaposition with Regulation 30(10), suggests that while the company shall provide specific and adequate reply to queries raised by stock exchange in respect of any information or event, it may in terms of Regulation 30(11), confirm or deny any reported event or information to stock exchanges. This only provides that either in response to the Exchange or by own initiative, the information will be furnished to the Exchange. It does not contemplate a third situation, whereby no information is furnished by listed entity. Hence, read holistically in conjunction with Regulation

30(10), the term ‘may’ used in Regulation 30(11) implies ‘shall’.

(j) That the AO has also found that it is a market practice to make relevant disclosures of even non-binding term sheets etc. Any private confidentiality agreement cannot override the PIT Regulations or that the binding agreement has not been executed is not an excuse not to comply with Principle No. 4 for prompt dissemination of UPSI. In support of this submission, he relied on *Basic v. Levison*¹¹.

(k) That the appellants relied upon the Circulars issued by NSE and BSE “Disclosure of Unpublished Price Sensitive Information by Listed Companies” in support of the interpretation of the relevant regulations, which is based on a selective reading of the Circulars. The Circulars read in their entirety make it clear as to obligation of disclosure under Schedule A to PIT

¹¹ Paras 16 to 20 and 39 of *Basic v. Levison*, 1988 SCC Online US 45, decided on March 7, 1988 by U.S. Supreme Court.

Regulations. A newspaper and its readers are third parties for the purpose of BSE/NSE Circulars and if confidential UPSI gets disclosed, even inadvertently, then it needs to be mandatorily disseminated. Thus, the appellants are bound to make disclosure under the principles laid down in Schedule A to the PIT Regulations, not only under Principle No. 4 but also Principle 5. Stock exchanges have issued a general directive to the listed entities to make disclosure in the nature of appropriate and fair response to the queries on news reports and requests for verification of market rumours by regulatory authorities. The Circulars expressly mandated to make disclosure requirements but the appellants are trying to sidestep the same on the pretext that it is not referred in SCN or in the AO's order. It is settled law that omission to make reference to a particular section or reference to an incorrect provision doesn't itself invalidate the order. In support of this submission, he placed reliance on ***BSE Broker's***

***Forum v. SEBI*¹², *P.K. Palanisamy v. N.Arumugham*¹³, *SEBI v. Sunil Krishna Khaitan*¹⁴.**

- (1) That the UPSI period continued till the transaction concluded on April 21, 2020 and UPSI was made public by the company through stock exchange website on April 22, 2020. Moreover, in any case what was generally available was only the information of a possible deal happening but not the entire UPSI and hence it was important to make “prompt dissemination.” The argument of the appellant that there is nothing required to be made generally available under Principle 4 is misleading because, while the UPSI disclosed through news reports to the public is in relation to the ongoing negotiation, the actual deal finalization and its granular details too are UPSI till

¹² Para 22 of BSE Broker’s Forum v. SEBI, (2001) 3 SCC 482, decided on February 1, 2001 by Hon’ble Supreme Court of India.

¹³ Paras 27 to 29 of P.K.Palanisamy v. N.Arumugham, (2009) 9 SCC 173, decided on July 23, 2009 by Hon’ble Supreme Court of India.

¹⁴ Paras 96 to 101 of SEBI v. Sunil Krishna Khaitan, (2023) 2 SCC 643, decided on July 11, 2022 by Hon’ble Supreme Court of India.

their eventual corporate disclosure. In support of this submission, he relied on *SEC v. Mayhew*¹⁵.

- (m) Moreover, appellant's contention based on subsequent amendments to Regulation 30(11) of LODR Regulations as also to the industry standards/code framed thereunder are also not relevant in as much as neither such amendments nor such code can govern the interpretation, applicability and enforcement of the principles under Schedule A of the PIT Regulations. With these submissions, respondent prayed for dismissal of the appeal.

6. We have carefully considered the facts of the case in the light of the rival submissions.

6.1 In our considered view, it is essential to take cognizance of the following undisputed facts with regard to the implications relating to PIT Regulations:

¹⁵ SEC v. Mayhew, MANU/FESC/013/1997 : 121 F. 3d 44 (US CA) decided on July 29, 1997 by United States Court of Appeals, Second Circuit.

- (1) RIL and Facebook initiated discussion about investment in 9.9% equity shares in the Jio Telecom (an unlisted subsidiary of RIL), by Facebook in 2019 (“Deal”). The information relating to significant investment of 9.9% equity shares by the Facebook group in the Jio Telecom, even before completion of final valuation, is a materially price sensitive information within the ambit of PIT Regulations, at any stage. This was well proved by the fact that there was 15% rise in market price of RIL scrip, when the said information got disclosed in international print media even though due diligence was not completed and valuation was not agreed to by both sides.
- (2) Just like any other cross-border investment transactions, the discussion between two sides was followed by execution of NDA / confidentiality agreement and exchange of broad terms of investments by RIL, which were discussed till

February 27, 2020 and on agreement thereon, resulted in a final term sheet on March 4, 2020. Thereafter, due diligence for valuation purpose started on March 7, 2020 with JPL giving data room access to Facebook, enabling both sides to carry out respective valuations. The information at this stage got disclosed by unknown persons before the due diligence / final valuation was to be completed.

- (3) The information about the deal was classified as UPSI by RIL with entries made in Structured Digital Database (SDD) since the time the discussion started with Facebook in September 2019 and continued so even when it got disclosed on March 24, 2020.
- (4) It has not been brought on record, whether after making entry in SDD, any confidentiality agreements were signed with KMPs or any designated persons, or whether such persons sought pre-clearance for trading in RIL scrip, nor is there any allegation of anyone

having made unlawful gains in the event of disclosure in media on March 24, 2020. SEBI's case is limited to the alleged inaction by RIL in the aftermath of allegedly selective disclosure of the information on March 24, 2020.

6.2 While the appellants have defended the alleged violation of the PIT Regulations on the plea that the information was not '*credible*' or '*concrete*', their defense is mainly based on legal interpretation of Regulation 30(11) of LODR Regulations, which we find at several places in multiple grounds of appeal. As per appellants' contention, the stock exchange did not direct it to *confirm* or *deny* the information reported by international news agencies under Regulation 30(10) of the LODR Regulations. So far as *suo motu* disclosure under Regulation 30(11) is concerned, it was not required to *confirm* or *deny* the information, as Regulation 30(11) contains the terms 'may' and 'at own initiative' which provides them an option, which they decided not to avail, due to business exigencies.

6.2.1 Under the LODR Regulations, undisputedly, huge cross-border investment (valued at Rs. 43734 Cr.) in a material subsidiary of a listed company is a '*material information*'. However, w.e.f. April 1, 2019, with the omission in the definition of the term 'unpublished price sensitive information' in the Regulation 2(n) of the PIT Regulations, a *material* information under the LODR does not *ipso facto* become UPSI under the PIT regulations. Therefore, even if the information in question was material or otherwise under LODR, it does not have any bearing under the PIT regulations. We, therefore, do not find the arguments of appellant primarily based on interpretation of the LODR regulations as relevant for examining violation under PIT regulations.

6.3 Juxtaposition between PIT Regulations and LODR Regulations -

6.3.1 There is an intricate interplay between the PIT Regulations dealing with *insider trading* and the LODR

Regulations requiring continuous disclosure of event and information, that are specified or treated as *material* thereunder. However, all *material* information under LODR may not be price sensitive for the purpose of PIT regulations. Conversely, merely because *material* information is required to be disclosed to the stock exchanges, it cannot be held to be UPSI. What is ‘price sensitive’ is essentially ‘material’, but the converse is not true. Reference in this regard may be made to paragraph 31 of the Report of the High-Level Committee to review the SEBI (Prohibition of Insider Trading) Regulations, 1992 (TK Vishwanathan committee), which mentions that ‘no piece of information should mandatorily be regarded as price sensitive’.

6.3.2 This Tribunal in *Anil Harish v. SEBI*¹⁶, has held that if certain information is bound to be disclosed to a stock exchange under listing agreement, the information is not necessarily a price sensitive information. On the contrary, price-sensitivity is to be determined solely on the basis of its impact upon the price.

¹⁶ Appeal No. 217 of 2011 decided on June 22, 2012

In *Gujarat NRE Mineral Resources v. SEBI*¹⁷, it is held by this Tribunal that a transaction of divestment being carried out in the normal course of business operations of the company has no effect whatsoever, on the price of its securities and such information, even though material for the purpose of disclosure to the stock exchange, is not price-sensitive.

6.3.3 It is, therefore, evident that the scope of both regulations, while overlapping at some places, is different. While LODR regulations require continuous disclosure of material events or reports, the PIT regulations have gone a step ahead to cover even information and events that may not be over *materiality* threshold under the LODR regulations, but have material price sensitively potential. PIT Regulations are specifically intended to prohibit insider trading, with rigorous onus placed on the listed entity in the form of a comprehensive fair code of conduct based on principles laid down in Schedule-A of PIT regulations, requiring, *inter-alia*, defining UPSI and making it promptly public, maintaining structured digital data base, identifying

¹⁷ Appeal No. 207 of 2020 decided on November 18, 2011

designated persons and KMPs, who may have access to UPSI and entering confidentiality agreements with them and requiring pre-clearance of their trades in the scrip.

6.3.4 Hence the standard of disclosure is much higher in PIT regulations, which may cover an information that may not be material for the company but which may have *materiality* qua the price sensitivity. In view of the above, in our view the dispute in the matter cannot be reduced to mere non-compliance of regulation 30(11) of the LODR Regulations read with Regulation 30(10) of the LODR regulations. The germane issue here is whether the appellant may be held to be in violation of PIT regulations or not.

6.3.5 With regard to the alleged violation of Principle-4 of Schedule A of the PIT Regulations, the appellants have taken the plea that the Information with regard to investment of Facebook in JIO telecom was at no stage '*concrete and credible*' as required under Principle-1, in the absence of which violation of Principle-4 does not arise.

The appellants' contention is that the price sensitive information required to be promptly disseminated upon its selective disclosure in terms of Principle 4 has to be a '*credible*' and '*concrete*' information in terms of **Principle-1**.

6.3.6 The said principles read as under:

Principles of Fair Disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information

"1. Prompt public disclosure of unpublished price sensitive information that would impact price discovery no sooner than credible and concrete information comes into being in order to make such information generally available.

2. Uniform and universal dissemination of unpublished price sensitive unpublished price sensitive information to avoid selective disclosure.

3. Designation of a senior officer as a chief investor relations officer to deal with dissemination of information and disclosure of unpublished price sensitive information.

4. Prompt dissemination of unpublished price sensitive information that gets disclosed

selectively, inadvertently or otherwise to make such information generally available”.

In our view, the entire scheme of Schedule – A is very well integrated. **Principle 1** makes it obligatory on the part of listed entity to make prompt disclosure of UPSI, as soon as it comes into being as a *concrete and credible* information, to make it generally available (in contrast with selectively made available).

For this purpose, **Principle–2** calls for uniform and unusual dissemination of UPSI by the company to avoid selective disclosure.

Principle 3 requires it to designate a Chief Investors Relation Officer in this regard. However, despite this, if a UPSI gets disclosed selectively (whether intentionally or otherwise) the listed entity is required to promptly disseminate the UPSI, to make such information ‘generally available’ (**Principle 4**).

In this case, the responsibility on the listed company to make prompt disclosure of UPSI is in different circumstances. **Principle-1** requires it to *ipso facto* make prompt disclosure, as and when a *credible and concrete* information comes into being in order to make it 'generally available'. Thus, if the UPSI is concrete and credible, the company would have already made its disclosure to make it generally available. But before such a stage is reached, and the UPSI gets disclosed selectively, then in such a scenario, even though the company was not required to make disclosure in accordance with **Principle-1, Principle-4** makes it obligatory to make prompt disclosure to make information generally available to ensure compliance with general **Principle-2**. Thus, in our view, it was the responsibility of the RIL to have made prompt disclosure to make information generally available, when it was disclosed selectively in certain media by unknown sources, which had ostensibly reached to only selected universe of subscribers of such international print media and not to all investors / potential investors. Moreover, in such times of uncertainty, in the interest of protecting its

shareholder, it was the duty cast upon the company to make due disclosure to clear the dust.

6.3.7 Appellants' next argument that the information relating to deal, (when both parties were in-principle, in agreement to go ahead with the transactions) was not *credible* or *concrete* even on March 24, 2020, is untenable. The appellant has taken the plea that the information was not '*concrete or credible*', and hence could not have been *suo motu* disclosed in terms of **Principle-1**, as till March 24, 2020 no binding agreement was signed.

6.3.7.1 The term '*credible*' in the Webster dictionary has been defined as under:

'offering reasonable grounds for being believed or trusted' "good enough to be effective".

The term '*credible*' is defined in Blacks Law dictionary 4th Edition at page 440 as under:

"Worthy of belief; entitled to credit".

The term ‘concrete’ is defined in Oxford advance dictionary as under:

‘based on facts, not on ideas or guesses’

Oxford learner’s dictionary defines the term ‘concrete’ as under:

‘Real or definite not existing only in imagination’.

6.3.7.2 In the light of the above, whether the information in question was ‘credible’ and ‘concrete’ or not may be examined in the light of the following key events / milestones relating to the deal, reported in the impugned order :-

<i>Date</i>	<i>Events / Discussions (Phone / meetings, etc.)</i>	<i>Particulars (Details of matters discussed)</i>
<i>01/09/2019</i>	<i>Initial discussion of the intent to explore a potential transaction with Facebook Inc.</i>	<i>Initial Discussion</i>
<i>10/09/2019</i>	<i>Entries made in structured digital database “SDD”</i>	<i>Entries made in structured digital database “SDD”</i>
<i>30/09/2019</i>	<i>Execution of Confidentiality and Non-Disclosure Agreement between RIL and Facebook Inc.</i>	<i>Confidentiality and Non-Disclosure Agreement with Facebook Inc.</i>
<i>30/10/2019 to 31/10/2019</i>	<i>Visit by Facebook Inc’s Corporate Development team to RIL</i>	<i>Group and business overview</i>
<i>12/11/2019</i>	<i>Visit to Facebook Inc’s Menlo</i>	<i>Initial Management Meeting</i>

<i>to 13/11/2019</i>	<i>Park Office</i>	
<i>18/11/2019 to 10/02/2020</i>	<i>Follow-up questions on various aspects of business and financial statements</i>	<i>Follow on calls</i>
<i>26/11/2019 to 22/04/2020</i>	<i>Davis Polk assisted RIL and JPL in preparing for and then facilitating due diligence conducted by Facebook and preparation, execution of relevant transaction documentation</i>	<i>Due-diligence and execution of transaction document</i>
<i>10/12/2019</i>	<i>Draft term-sheet sent to Facebook Inc.</i>	<i>Broad terms of investment</i>
<i>13/01/2020 to 14/01/2020</i>	<i>Visit by Facebook Inc's team to RIL, Management meetings between RIL, RJIL and Facebook to discuss potential investment in JPL by Facebook, Morgan Stanley prepared materials for the management meetings.</i>	<i>Discussions regarding business overview and financial parameters</i>
<i>30/01/2020</i>	<i>Visit to Facebook Inc's Menlo Park Office</i>	<i>Discussion on Jio roadmap and Facebook roadmap in India</i>
<i>12/02/2020</i>	<i>Mark-up of term sheet received from Facebook Inc.</i>	<i>Broad terms of investment</i>
<i>12/02/2020 to 27/02/2020</i>	<i>Follow-on discussions on the term-sheet on calls with Facebook Inc's team</i>	<i>Broad terms of investment</i>
<i>27/02/2020</i>	<i>Appointment of AZB & Partners by RIL as legal counsels for the proposed investment by Facebook into JPL</i>	<i>Appointment of Legal Counsel</i>
<i>28/02/2020 to 04/03/2020</i>	<i>Meetings at Maker Chambers IV between representatives of RIL and Facebook Inc. to discuss non-binding term sheet for minority investment by Facebook Inc. in Jio Platform Ltd.</i>	<i>Term-Sheet execution on 04-03-2020</i>
<i>06/03/2020</i>	<i>Facebook started due diligence on JPL</i>	

<i>07/03/2020 to 17/04/2020</i>	<i>Conduct of due diligence including discussions and calls in relation to the due diligence, with advisors of Facebook Inc.</i> <i>Negotiation and Finalisation of transaction documents</i>	<i>Audio-Video calls</i>
<i>End of March</i>	<i>The final price and value of investment by Facebook was agreed upon between RIL /JPL and Facebook after multiple rounds of negotiation between the parties</i>	<i>Telephonic / Video calls</i>
<i>29/03/2020</i>	<i>The parties agreed that Facebook Inc. will invest Rs. 43,574 Crore in JPL for a 9.99% equity stake on a fully diluted basis</i>	
<i>18/04/2020</i>	<i>Board Meeting of RIL, JPL, RRL and RJIL – Approval for entering into transaction documents in connection with the proposed investment of 9.99% by Facebook Inc. in JPL</i>	<i>Approval for entering into the transaction documents</i>
<i>21/04/2020 (US)</i>	<i>Transaction documents executed on behalf of RIL and JPL by Mr. Mathew Oommen-Non-Executive Director, RJIL at Dallas</i>	<i>Execution of Transaction documents</i>
<i>22/04/2020</i>	<i>RIL informed to the stock exchanges about the media release titled “Facebook to invest Rs. 43574 crore in Jio Platform for a 9.99% Stake” wherein they have announced signing of binding agreements between RIL, JPL and Facebook Inc. for an investment of Rs. 43,574 crore by Facebook into JPL which will translate into a 9.99% equity stake in JPL</i>	<i>Corporate announcement</i>

6.3.7.3 In our considered view, the fact that the two major global conglomerates decided to go for cross-border investment of significant amount, which required discussion/nod at the highest level in both groups, shows that the information was highly *credible* for the company and its insiders. Eventually, the company RIL had entered into SDD and both sides had signed NDA / confidentiality agreement way back on September 30, 2019. Thus, the information cannot be treated as ‘not credible’ as on March 24, 2020. Further, we find that much before signing the final binding agreement, there was clarity on the number of shares of JPL to be acquired by Facebook. The broad terms and conditions of investment were discussed and finalized by February 27, 2020 and based on discussion, Non-binding terms sheets were executed on March 4, 2020. Thus, as on March 24, 2020, the information of investment was *concrete* as well and it made no difference if subsequently, on the basis of conventional due diligence by Facebook, the valuation of JPL may have varied, since the transaction documents such as Share

Purchase Agreement, were already got prepared and any final figures based on agreed valuation was only to be filled in. Undisputedly, in terms of the impact on price sensitivity, irrespective of finalization of consideration, the amount of expected investment was significantly high and by this stage, the two sides had agreed to go ahead with the investment. We also note that the market itself treated it as a ‘*concrete* and ‘*credible*’ information, as evident by a steep price rise of 15% in the market price of RIL scrip once it got reported in Media. In fact, the information was reported by the most reputed news agencies of the World such as Financial Times, Reuters, etc., who follow a rigorous process of credibility check before reporting potentially sensitive piece of news.

6.3.7.4 In our view, appellants’ plea that only till a binding agreement is signed, the information cannot be held as *concrete* or *credible* is devoid of merit, which if acceded to, would defeat the spirit of PIT regulations. There would be nothing left in a deal once a binding agreement is signed, as the listed entity has

to mandatorily make due disclosure. This implies non-recognition of **Principle-1** as the listed entity is required to make UPSI generally available to public, when it comes to being as a credible and concrete piece of information. If appellants' view is to be accepted, no information relating to a potentially price sensitive transaction, enumerated in Reg. 2(n) of PIT regulations may be treated as UPSI till such a transaction is actually culminated through a binding agreement. That will defeat the very purpose of the said regulations.

6.3.7.5 The appellants have taken another plea that there was no need to disclose any information, since the information was already got disclosed in Media and was already 'generally available'. However, this plea is devoid of merit, as it is the responsibility of the company to give clarity on the matter to the investors and public at large with a *credible* and *concrete* explanation. In the absence of this, such a speculative information would keep floating around, which may break the integrity of the securities market. If at this stage, the appellant

had disclosed the basic facts about the deal clarifying that no binding agreement has been signed, it would have settled the dust and stabilized speculative trends.

In our view, selective leakage of the information, howsoever accurate or otherwise or complete or in bits and pieces, does not discharge the company from its responsibility of making prompt disclosure to make it generally available, more so when such information has been classified by company as UPSI. Till the information is disclosed by the company, it remains unauthenticated. The information leaked to news agencies remains selectively available to their subscribers / readers only and cannot be held as 'generally available' to the entire universe of investors of the company, for whom the company appointed a Chief Investor Relations officer to make such UPSI 'generally available'. It takes the characteristics of a 'generally available' information only when the company authenticates it. Otherwise, it is only a speculative piece of information. This is evident by the fact though there was a price rise of 15% through speculative

reporting in Newspapers, etc. on March 24, 2017, but despite of such a steep price rise, later when the company made a formal disclosure on April 21, 2020, making the information generally available, there was a further significant spike of 10% noted in market price. Thus, keeping in view the facts of the case, in our view, in respect of a *materially* price sensitive matter in the nature of significant cross-border investment in a company such as RIL, the information may be held as ‘generally available’ only when company authenticates it and not merely on the basis of a newspaper leakage, not authenticated by the company.

6.3.7.6 Further, in our view, in terms of the **Principle-4**, if the information gets selectively disclosed, whether inadvertently or otherwise, whether or not due to anyone’s omission or commission, it definitely shows lack of due care by the company. Undisputedly, the company had *suo motu* not made prompt disclosure of information under the **Principle-1**. The least the company could have done on noticing selective leakage of the

information, was to make a timely and prompt disclosure of information to one and all.

6.3.7.7 The appellants have also argued that the company was not required to come clean with regard to ‘bits and pieces of UPSI’. However, the news which was flashed globally and was followed in Indian media on March 24, 2017, based on which the Market price was significantly increased, relates to substantial equity infusion in its material subsidiary by Facebook (which was proved to be correct in a few weeks later). By this stage, certainly, such an information had reached a stage to be treated as concrete, while it was certainly credible since signing of NDA between two sides. Hence, we find no merit in the plea that the said information would have been PSI only when valuation figures were to be available after due diligence.

7. We note that both the sides have extensively debated on LODR Regulations specifically whether Regulation 30(11) is discretionary or mandatory. The respondent’s case is that while a listed entity shall be bound to disclose the information to the

exchange when called upon to do so, it ‘may’ on its own initiative also do the same and, therefore, when read together it makes obligatory on the company to make *suo motu* disclosure, where it has not been asked by the regulator. The appellant’s plea is based on interpretation of Regulation 30(10) independent of Regulation 30(11). We are in agreement with Mr. Sancheti that correct interpretation of Regulation 30(11) can be made when read in juxtaposition with Regulation 30(10). The term ‘*may*’ used in Regulation 30(11), when read with Regulation 30(10) provides for compliance by the listed entity in the given circumstances, whether in response to any query raised by the exchange or otherwise. Here, ‘*may*’ needs to be read as an adjunct to mandatory requirement of Regulation 30(10). This requirement was applicable to all listed entities till the beneficial proviso brought in *w.e.f.* June 14, 2003, restricted its applicability to only top 100 companies.

However, having held so, we are of the view that this issue is not germane to the violation under PIT Regulation. We have

already held in the preceding paragraphs that it was incumbent on the appellant to disclose the information, which is in the nature of UPSI, in terms of Schedule A of the PIT Regulations. We, therefore, limit our observations in foregoing paragraphs to current facts, circumstances and records made available to us.

7.1 In view of the above, we find the appellants in violation of Principle 4 of Schedule A of the PIT Regulations and uphold the order of the AO. Hence, the following order :-

ORDER

- i. The appeal is dismissed.
- ii. No costs.

Justice P. S. Dinesh Kumar
Presiding Officer

Ms. Meera Swarup
Technical Member

Dr. Dheeraj Bhatnagar
Technical Member

02.05.2025
PTM