

Lokpal of India
Plot No.6, Vasant Kunj Institutional Area – Phase-II
New Delhi – 110070

Complaint Nos. : **186/2024 (arising out of Dy. No.1882024) and
188/2024 (arising out of Dy. No. 2082024)**

Date : **20.09.2024**

Coram : **Shri Justice A.M. Khanwilkar
Chairperson**

**Shri Justice L. Narayana Swamy
Judicial Member**

**Shri Sushil Chandra
Member**

**Shri Justice Ritu Raj Awasthi
Judicial Member**

ORDER

1. We have perused the two complaints. We find that, although, the same are filed by two different individuals there is similarity in the subject matter and the issues arising for consideration. Hence, we deem it apposite to take up both cases for consideration analogously.

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2. We have carefully examined this complaint against the XXXXXX of the Securities and Exchange Board of India (SEBI), the accompaniments thereto including the additional material submitted after filing of the complaint.
3. We have also carefully examined the decision of the Hon'ble Supreme Court of India in Writ Petition (C) No. 162 of 2023 and connected cases dated 03.01.2024, circulated

by the Registry in terms of the direction given by the Full Bench of the Lokpal in this Complaint, vide order dated 13.09.2024.

4. **Prima facie**, it is noticed that the complaint under consideration is ostensibly founded on a report (recent report) published on 10.08.2024 by Hindenburg Research, an “activist short seller”. Intriguingly, it is seen that the Complainant drafted the complaint on 13.07.2024 (as is evident from the date noted at the end of the communication registered as the complaint), but may have improvised it on the basis of the recent report (published later) by the Hindenburg Research dated 10.08.2024, which he downloaded from the internet on 13.08.2024 at around 7 am; and on the same day (13.08.2024), forwarded his complaint online to the Lokpal on its official email.
5. Be that as it may, the Complainant claims to have come across the recent report of Hindenburg Research after its publication on 10.08.2024. From the chronology noted above, we have reason to believe that the complainant without verifying the contents of the stated report and collating credible material, has rushed in his complaint on the same day online. Further, the Complainant has merely reproduced the factual narrative in the stated report. He has not attempted to verify the authenticity of the claim therein; and more so, how it is different from the earlier report of this very author (Hindenburg Research) published on 24.01.2023, which had been duly considered and critically commented upon by the Supreme Court in its decision dated 03.01.2024. In absence thereof, we may end up in entertaining the same subject matter already considered and negated by the highest court of the land - even though the said decision has attained finality consequent to the dismissal of the review petition by the Supreme Court on 15.07.2024.
6. We are conscious of the summing up by the Complainant in the following words:
 - “The sum total of all these facts is that-
 1. Hindenburg report has made certain extremely serious personal allegations against XXXXXX, including their suspicious proximity to the XXXXX, their personal investment in obscure and suspicious Offshore XXXXXX shell companies, being involved in questionable financial engagements through a Singapore and an India based Consultancy firms, XXXXXX questionable use of XXXX personal email for the financial matters related with XXXXXX, XXXXXX undue favour to XXXXXX companies including XXXXXX where XXXXXX is a Senior Advisor etc.



2. It has alleged that all this has been the reason for SEBI'S so-far reluctant and helpless response/investigation in the XXXXXX matters, and their claims of having reached the dead end, for, for the simple reason that SEBI under XXXXXX never really wanted to bring forth the truth, as XXXXXX is personally interested in the matter.
3. All the other players, including XXXXXX, XXXXXX, the XXXXXX, SEBI and XXXXXX have vociferously denied these allegations and have called it vested and mischievous in nature, being undertaken for nefarious and improper reasons.
4. At the same time, the Hindenburg Research original report against the XXXXXX and its response to the response of the XXXXXX, has many unanswered questions and cannot be brushed aside without a thorough investigation and enquiry.

In View of these facts, this is a matter that seems to necessarily need a thorough and in-depth enquiry by the Lokpal directly or through any specialized high level Enquiry Committee (including CBI) as directed by it and the applicant prays accordingly.”

7. Indeed, it is possible to infer from the asseveration in the complaint that the Complainant is wanting to urge about the conflict of interest of the XXXXXX of SEBI, in the matter of inquiries conducted by SEBI. However, in the backdrop of the finding of the Supreme Court that out of 24 (twenty-four) investigations carried out by SEBI, 22 (twenty-two) are concluded and that there has been no inaction on its (SEBI's) part, *prima facie*, ought to enure in favour of the entire administration of SEBI including its XXXXXX. Concededly, the Supreme Court has noted in para 36 as follows:

“*****

SEBI's status report and the details of the twenty-four investigations does not indicate inaction by SEBI. In fact, to the contrary, the course of conduct by SEBI inspires confidence that SEBI is conducting a comprehensive investigation.”

Even the challenge to the amendments to the FPI Regulations and the LODR Regulations by the SEBI, has been negated by the Supreme Court with a positive finding that such amendment was properly brought in and resulted in tightening of the concerned Regulations.

8. Not only that, but the Supreme Court has also noted with concern about the conduct and credibility of Hindenburg Research and directed the Investigation agencies of the Union Government to probe into their activities of taking short positions which had resulted in causing huge losses to the Indian investors; and to take suitable action in that regard against all concerned.

9. Additionally, it is in public domain (as it was reported in the national daily newspaper on 13.08.2024) - that after publication of the recent report of Hindenburg Research dated 10.08.2024 and dismissal of review petition by Supreme Court, an application has been filed before the Supreme Court for appropriate directions. If so, we may have to await the decision of the Supreme Court on the stated application and also the outcome of the investigation by SEBI in relation to two (remaining) cases out of 24 inquiries initiated by it, in terms of Section 15 of the Act of 2013.

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10. The second complaint is filed by a sitting Member of Parliament (Lok Sabha). The communication filed in the office of Lokpal is dated 11.09.2024. It is common knowledge that the entire copy of this communication was contemporaneously placed in public domain (in media) despite the mandate of Rule 4 of the Lokpal (Complaint) Rules, 2020 – guaranteeing protection of identity not only to the complainant but also to the public servant complained against till the conclusion of the inquiry or investigation.
11. Be that as it may, the stated communication reads thus:

“Subject: Complaint against XXXXXX, XXXXXX, SEBI for improper conduct and entering into *quid pro quo* arrangements, which threaten India's national interests.

1. XXXXXX was appointed as a XXXXXX of the Securities and Exchange Commission of India (SEBI) from XXXXXX to XXXXXXX and subsequently as the XXXXXX of SEBI in XXXXXX. However, based on the revelations coming to light, almost on a daily basis, it appears that XXXXXX is a serial offender who has engaged in actions that constitute impropriety on part of a public servant and has also entered into *quid pro quo* arrangements, which potentially threaten India's national interests.

2. On 10 August 2024, a US-based firm - Hindenburg Research made serious allegations and charges against XXXXXX, including the allegation that - SEBI's unwillingness to take meaningful action against suspect offshore shareholders in the XXXXXX Group stemmed from XXXXXX complicity in using the exact same funds used by XXXXXX, brother of XXXXXX.¹ A copy of the report published by Hindenburg Research on XXXXXX on 10 August 2024 is enclosed along with my complaint as **Enclosure 1**.

3. Information from multiple sources, including corporate records, the consortium of Organized Crime and Corruption Reporting Project (OCCRP) and additional information made available by Hindenburg Research, show that the investments by XXXXXX and XXXXXX in 2015, are clearly linked to the fund which had significant investments by XXXXXX.² A news report dated 12 August



2024 highlighting the foreign portfolio held by XXXXXX and XXXXXX and the conflicts of interest arising on account of the same is enclosed with my complaint as **Enclosure 2**.

4. Further scrutiny of the web of funds and investments also revealed that the parent fund (XXXXXX Fund) of the sub-fund (XXXXXX Fund) where XXXXXX invested, was administered by XXXXXX Company (Mauritius) - the declared beneficial owner of XXXXXX Fund and XXXXXX Fund that were part of the 13 overseas entities under SEBI's investigation.

5. The period under investigation (at least since 2016-17) of the two funds in question - XXXXXX Fund and XXXXXX Fund - overlaps with the period (2015-2018) of investment in XXXXXX Fund 1 by XXXXXX and XXXXXX. SEBI started the investigation in October 2020 and at the time, XXXXXX was a XXXXXXXXXX.

6. In response to the allegations in the report of Hindenburg Research, SEBI, led by XXXXXX, made an official statement that- *"relevant disclosures required in terms of holdings of securities and their transfers have been made by the XXXXXX from time to time. XXXXXX has also recused XXXXXX in matters involving potential conflicts of interest."*³ A copy of the official statement dated 10 August 2024 made by SEBI in response to the Hindenburg Research's report obtained from the website of SEBI is enclosed along with my complaint as **Enclosure 3**. While the Finance Ministry has not confirmed this claim, adding substance to these charges, the Former Finance Secretary of India and Member of the Board of SEBI has stated in a press interview that *"these (disclosures) didn't come to the notice of him as the Secretary of the department or as the member of the Board"*.

7. It appears that XXXXXX neither made necessary disclosures, nor has XXXXXX recused XXXXXX in the XXXXXX matter, despite clear evidence of conflict of interest on XXXXXX part. Further, it has been admitted by XXXXXX that XXXXXX did participate in the XXXXXX connected with XXXXXX and XXXXXX of the XXXXXX Group. Rather than drawing a blank as stated to the Hon'ble Supreme Court by SEBI, the fund manager (XXXXXX) of the very same fund that XXXXXX was to investigate, provided full investment and ownership details, confirming that it actually has data from October 2013.

8. In continuing its charges against SEBI's Chairperson - XXXXXX, the same research firm published documents that categorically showed that XXXXXX during XXXXXX tenure at SEBI, earned nearly INR 2.95 Crore through XXXXXX Ltd - an Indian consulting firm in which XXXXXX had 99% ownership stake. The charges also stated that XXXXXX had 100% ownership in XXXXXX Ltd - a Singapore consulting firm, before transferring the ownership to XXXXXX.

9. In their response, XXXXXX and XXXXXX claimed that the two consulting firms had become *"immediately dormant on her appointment with SEBI"*.⁴ However, the Indian firm's statutory documents filed with the Registrar of Companies show that is not the case. XXXXXX Ltd. was not only active between 2019 and 2024, but also generated INR 3.63 Crore in revenue from its operations. A copy

of the statement published by XXXXXX and XXXXXX dated 11 August 2024 responding to the allegations against them is enclosed with my complaint as **Enclosure 4.**

10. Further, of the income INR 2.95 Crore of total income received through XXXXXX Ltd, INR 2.59 Crore (ie nearly 88% of its income) has come from one entity alone- the XXXXXX Group. Pertinently, between 2019 - 2021, XXXXXX XXXXXX received INR 4.78 Crore from XXXXXX Group (in addition to income of INR 2.95 Crore received by XXXXXX), at a time when XXXXXX was adjudicating cases against the same group as XXXXXX of SEBI. This stands as a direct violation of SEBI's code of conflict of interest for a board member. ⁵ Statement dated 10 September 2024 containing revelations in relation to XXXXXX and XXXXXX with regard to XXXXXX Ltd and XXXXXX Group is enclosed along with my complaint as **Enclosure 5.**

11. The Report by Hindenburg Research also highlights the conflict of interest between XXXXXX and XXXXXX Inc. As XXXXXX of SEBI, XXXXXX has promoted XXXXXX (XXXXXX) as a promising asset class without disclosing that XXXXXX XXXXXX XXXXXX has been now an adviser to XXXXXX Inc, which has sponsored two of the four listed XXXXXX in India. Furthermore, the approval of XXXXXX XXXXXX is immediately followed by appointment of XXXXXX in the XXXXXX group, highlighting a clear *quid pro quo*.

12. On 2 September 2024, another set of documentary evidence revealed that SEBI XXXXXX also held an office of profit at XXXXXX Bank and thus received an income of INR 16.80 Crore, through a combination of salary, proceeds of ESOPs, and tax benefits, between 2017 and 2024 i.e. after XXXXXX became a XXXXXXX of SEBI in 2017.

13. Following which, XXXXXX Bank, which is not directly but implicitly accused, denied these charges and claimed any earnings to be retirement benefits.⁶ The income received through XXXXXX Bank, as per the documents ⁷, is an astonishingly 5.09 times the income XXXXXX received from SEBI during the same period. Even if these were retirement benefits, as XXXXXX bank claims, they were significant and way more than the last drawn salary of an individual. A disclosure dated 2 September 2024 filed by XXXXXX Bank in this regard with the Bombay Stock Exchange and available on their website is enclosed with my complaint as **Enclosure 6.**

14. Additionally, raising further questions on SEBI's integrity and credibility, on 4 September 2024, a communication came to light that 500 officials of SEBI had written a letter on 6 August 2024 complaining of a 'toxic & harsh work environment of fear' under XXXXXX leadership. The officials accusing SEBI's leadership of fostering a toxic work environment wrote that 'shouting, scolding and public humiliation have become a norm in meetings' ⁸. To which SEBI had an infantile response blaming 'outsiders' for instigating SEBI officers. If 500 SEBI officers can be incited by 'outsiders' so easily as claimed by SEBI management, then it raises the question of whether SEBI is capable of regulating India's trillion-dollar securities market. A Press release dated 2 September 2024 showing the salary accrued from XXXXXX Bank and SEBI is enclosed with my



complaint as **Enclosure 7**. A news report dated 4 September 2024 reporting about the communication addressed by 500 SEBI officials complaining about the toxic working environment and environment of fear created by XXXXXX leadership is enclosed with my complaint as **Enclosure 8**.

15. On 5 September 2024, another documented evidence revealed that XXXXXX, during her tenure at XXXXXX Bank between 2011 and 2013, was also employed at XXXXXX Capital, a private equity fund where XXXXXX (XXXXXX) is a member of the leadership team⁹. A news report dated 4 September 2024 regarding the engagement of XXXXXX with XXXXXX Capital is enclosed with my complaint as **Enclosure 9**.

16. On 9 September 2024, it was further revealed that XXXXXX received rental income of about INR 2.17 Crore (FY 2019-24) from XXXXXX Ltd, which is a subsidiary of XXXXXX XXXXXX and XXXXXX Pvt Ltd. XXXXXX XXXXXX Ltd is an associate company, which has been under SEBI's investigation during 2023 for various cases including that of insider trading.¹⁰ A news report dated 9 September 2024 containing the details of the allegations regarding receipt of rental income by XXXXXX from an affiliate of XXXXXX Ltd is enclosed with my complaint as **Enclosure 10**.

17. SEBI is a member of the International Organization of Securities Commissions. As a member it has to follow the following principles: "*The Regulator should seek to ensure that conflicts of interest and misalignment of incentives are avoided, eliminated, disclosed or otherwise managed.*"¹¹¹². While XXXXXX, XXXXXX of SEBI, sold his 50 shares of SBI upon becoming the XXXXXX, XXXXXX decidedly held office of profits through multiple sources. The objectives and principles of securities regulations of the International Organisation of Securities Commissions is enclosed with my complaint as **Enclosure 11**.

18. Under Section 21 of the Prevention of Corruption Act, 1988, the following people apart from XXXXXX are implicitly accountable - XXXXXX, XXXXXX, XXXXXX - Chairman XXXXXX Group, XXXXXX - XXXXXX, XXXXXX (XXXXXX and XXXXXX of SEBI), Management of XXXXXX Limited role in this matter has to be reviewed. Further, under Section 21 of the Act, management of XXXXXX Bank shall also be affected. The silent and absent board members of SEBI should also be held to account. Further, known and unknown persons as the allegations against XXXXXX keep getting exposed.

19. The Indian stock market now has roughly 10 crore citizens who are direct and/or indirect investors. Moreover, foreign investors have also expressed deep concern with the credibility and integrity of India's stock markets and its regulator. Hence, this is a serious matter of national interest and thereby ought to be immediately investigated for violations under the Prevention of Corruption Act, 1988."

12. **Prima facie**, even this (second) complaint against the XXXXXX of SEBI, is primarily founded on the recent report published by Hindenburg Research on 10.08.2024. Despite the dexterity in drafting of the above-mentioned letter, it falls short of persuading us to take a firm view that there exists a prima facie case as per Section 20



of the Act of 2013 to proceed in the matter including to direct a preliminary inquiry or investigation, for the same reasons and logic spelt out (in the first complaint) hitherto.

13. The Complainant herein must also explain, which allegation of impropriety would constitute an offence of corruption within the meaning of the Prevention of Corruption Act, 1988, provision wise. Further, how the Lokpal can entertain the allegation of *quid pro quo* or for that matter failure of meaningful action by SEBI and its complicity, *in the teeth* of the dictum of the Hon'ble Supreme Court of India in relation to the fair and comprehensive investigations conducted by SEBI in all the twenty-two cases completed by it so far. Notably, the Supreme Court not only declined to interfere with the outcome of the already concluded twenty-two investigations conducted by SEBI but also allowed it to continue with the investigations in the remaining two pending cases unconditionally. Moreover, the Complainant must clarify as to how the act of private investments made by the named public servant that too before taking over the office as XXXXXX of SEBI and/or as XXXXXX, would attract the offence of corruption under the Prevention of Corruption Act, 1988. Furthermore, how the activities prior to the period specified in Section 53 of the Act of 2013 be reckoned and inquired/investigated into by the Lokpal.
14. The aforementioned, are some of the foundational facts and must be spelt out explicitly by the complainant, before a *prima facie* view is formed by the Lokpal to direct an inquiry/investigation under Section 20 of the Act of 2013.

COMMON DIRECTIONS IN BOTH COMPLAINTS

15. In view of the *prima facie* observations noted hitherto (in the two cases), the Complainants in the respective cases are directed to file an affidavit explicating the foundational or jurisdictional facts, *inter alia*, to:
- (i) Articulate the allegations against concerned person which may constitute an "**offence of corruption**" within the meaning of the Prevention of Corruption Act, 1988, '**provision wise**'.
 - (ii) State whether the dictum, including obiter of the Supreme Court in the stated decision about the credibility of the earlier report (dated 24.01.2023) of Hindenburg Research and also directing investigation agencies of the Union Government - to probe whether the loss suffered



- by Indian investors was due to its (Hindenburg Research) conduct or any other entity in taking short positions involving infraction of the law and if so to take action in that regard, would or would not come in the way of the Lokpal to examine the recent report (dated 10.08.2024) of the same author (Hindenburg Research) on related matters.
- (iii) State as to why the finding and opinion recorded by the Supreme Court in its decision dated 03.01.2024 regarding fair and comprehensive investigation by SEBI and refusal to interfere with the outcome thereof; and, in the matter of just and proper amendments effected in FPI Regulations, which enures in favour of the entire Administration of SEBI including the XXXXXX would not come in the way of the Lokpal to examine the allegations in the recent report of Hindenburg Research.
- (iv) The fulcrum of the allegations against the XXXXXX of SEBI (about *quid pro quo*) rests on the outcome of the inquiries conducted by SEBI or so to say compatible to as in the earlier report of Hindenburg Research and/or takes the colour therefrom, which has been duly examined and critically commented upon by the Supreme Court. If not, why and how it is different and mutually exclusive cause of action, in the perception of the Complainant.
- (v) State whether the case of the Complainant(s) is that, that the recent report of Hindenburg Research is limited to the two pending (out of twenty-four) inquiries before SEBI, mentioned by the Supreme Court in its decision dated 03.01.2024. If so, whether it will be open to the Lokpal to entertain the allegations in that regard considering Section 15 of the Act of 2013.
- (vi) The details regarding the efforts made by the respective Complainant to verify the authenticity and credibility of the claims in the recent report of Hindenburg Research published on 10.08.2024.
- (vii) State as to how the personal investments made or income earned by the named public servant and more so, prior to entering the office as a XXXXXXXXXX or as XXXXXXXXXX of SEBI, constitute an offence of



corruption within the meaning of the Prevention of Corruption Act, 1988.

- (viii) State as to how non-disclosure or non-declaration of such investments and income would constitute an offence of corruption within the meaning of the Prevention of Corruption Act, 1988, provision wise. For, certain acts of commission or omission, may at best tantamount to an impropriety, but need not necessarily be reckoned as an illegality or for that matter an offence of corruption, ascribable to Prevention of Corruption Act, 1988.
- (ix) Also state whether such investments or income comes within the period specified in Section 53 of the Act of 2013, to enable the Lokpal to exercise jurisdiction envisaged in the Act of 2013.
- (x) State whether the subject matter of the concerned complaint is in issue before the Supreme Court by way of an application, as per the news published in the national newspapers after publication of the recent report of Hindenburg Research. If yes, will Section 15 of the Act of 2013 come in the way of the Lokpal to inquire into the same subject matter.

16. We make it clear that the observations made hitherto in the concerned complaint and/or in the totality, may not be construed as an expression of opinion by the Lokpal one way or the other. This direction is only a procedural order, issued for testing the question of tenability of the concerned complaint and to record a prima facie view as required under Section 20 of the Act of 2013, in the peculiar fact situation.

17. The Registry is directed to forward copy of this order to the concerned Complainant forthwith by speed post and additionally on the known email address, if any. The Complainant in the respective complaint to file the affidavit as directed above, within three weeks from the receipt of this order.

18. List these cases on **17.10.2024 at 2.30 pm**, for further consideration.

19. Ordinarily, placing order of Lokpal in public domain at this stage, is not permissible in terms of Section 20(9) of the Act of 2013 read with Rule 4 of the Lokpal Complaint Rules, 2020. However, as the complete copy of the letter addressed to the Lokpal, in the second Complaint, as reproduced in para 11 above, has already been placed in



public domain through print/digital media the underlying reason for not publishing such order of Lokpal has dissipated. Nonetheless, we deem it appropriate to direct the Registry to upload this order online for the benefit of all concerned, as an exception, particularly to obviate the possibility of speculation and misinformation including politicization of the matter, but after redacting the names of all individuals and entities - wherever it appears in this order.

**Sd/-
(Justice A.M. Khanwilkar)
Chairperson**

**Sd/-
(Justice L Narayana Swamy)
Judicial Member**

**Sd/-
(Sushil Chandra)
Member**

**Sd/-
(Justice Ritu Raj Awasthi)
Judicial Member**


(Court Master)