

**IN THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 157 of 2006

Date of Decision 17.9.2007

Coverage & Consultants Ltd.

..... *Appellant*

Versus

Securities and Exchange Board of India

..... *Respondent*

Present : Mr. Pesi Modi, Advocate with Mr. Deepak Shah, Advocate
for the appellant

Dr. Poornima Advani, Advocate with Mr. Ravindra A.
Lokhande, Advocate for the respondent

Coram:

Justice N.K. Sodhi, Presiding Officer

Arun Bhargava, Member

Utpal Bhattacharya, Member

Per: Justice N.K. Sodhi, Presiding Officer (Oral)

Has the appellant failed to furnish documents and information sought from it during the course of the investigations so as to make it liable for the imposition of monetary penalty under section 15A of the Securities and Exchange Board of India Act, 1992 (hereinafter called the Act) is the short question that arises in this appeal filed under section 15T of the Act challenging the order of the adjudication officer imposing a penalty of Rs. 50 lacs on the appellant.

2. The appellant is a company registered under the provisions of the Companies Act, 1956 and carrying on business of investing in stocks and

shares. The Securities and Exchange Board of India (for short the Board) ordered investigations into the dealings in the shares of M/s. Top Telemedia Ltd. (TTL) and M/s. Top Media Entertainment Ltd. (TMEL) and appointed an investigating officer to investigate the possible violations, inter alia, of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 and the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as the FUTP Regulations and Stock Broker Regulations respectively). During the course of the investigations, the investigating officer issued summons dated 5.12.2005 to the appellant to furnish information in relation to the trading in shares of TTL as per details mentioned in Annexure A to the summons. The information/documents were required to be supplied by 18.12.2002. Similarly, summons dated 6.12.2002 were also issued to the appellant to furnish information/documents in relation to the trading in the shares of TMEL as per the details mentioned in Annexure A to the summons. Here also the information/documents were required to be supplied by 18.12.2002. Annexure A to the two summons is identical except that they pertain to the two companies TTL and TMEL and it reads as under:

“With regard to our investigation in the trading in the scrip of M/s. Top Telemedia Ltd. (M/s. TTL), you are requested to furnish following information for the time period June 26, 2000 to November 10, 2000:

1. For the above mentioned period, details of the trades executed in the scrip of M/s. TTL be given in the following format for the above referred period:

Settlmt. No.	Gross purchase	Rate	Gross Sales	Rate	Net deliverable Quantity

- 2. In case of Net Purchases (settlement – wise), submit details of shares received from the broker i.e. distinctive numbers, date of delivery etc.
- 3. In case of Net Sales (settlement – wise), submit details of shares delivered to the broker i.e. distinctive numbers, date of delivery etc.
- 4. A copy of the “Demat Statement” of all the “Beneficiary a/c” in your name for the time period June 26, 2000 to November 10, 2000 highlighting the movement of shares (of the captioned company) received from the brokers (in case of purchases) and delivered to the brokers (in case of sales).
- 5. For the above mentioned period, furnish the following information alongwith a copy of the bank statement highlighting the amount received /paid to the trading member(s) through whom you are transacted, in the captioned scrip, for the above mentioned time period.

Name and address of the Bank/Branch	Bank A/c. Number from which payments have been made to/received from brokers.

On receipt of the aforesaid summons, the appellant addressed a letter dated 18.12.2002 to the investigating officer seeking extension of time to produce

the necessary documents. Although no formal reply was sent to this communication, the investigating officer appears to have granted the request and issued a fresh summons on 24.12.2002 calling upon the appellant to produce the requisite information/documents by appearing in person on 13.1.2003. This summons also sought information on issues mentioned in Annexure A which was identical to the Annexure to the earlier summons. It is not in dispute that one of the Directors of the appellant company appeared before the investigating officer on 13.1.2003 and produced some documents. The documents/information furnished was not complete and the representative of the appellant was required to appear again on 23.1.2003 along with the requisite documents. Two days before the date of appearance, the appellant addressed a letter dated 21.1.2003 to the investigating officer furnishing the information sought from it as per Annexure A referred to hereinabove. It may be mentioned that the appellant on its own part had furnished the required information which it thought was complete and adequate. This letter was received in the office of the investigating officer on 27.1.2003. Since the entire case of the appellant is based on this letter, it is necessary to reproduce the same at this stage. It reads as under:-

“Date:21 January 2003

BY SPEED POST

To,

Shri Sujit Prasad,
Dy. General Manager,
Securities and Exchange Board of India,
B, Wing 1st floor, Mittal Court,

224, Nariman Point,
Mumbai – 400021.

Dear Sir,

Sub: To provide Information against Personal hearing
in connection of Investigation of Coverage &
Consultants Limited Dated 23.01.2003.

This is with reference to my personal hearing fixed on
13.01.2003 by your office, as per the instructions given by
you, to attend your office with the below mentioned
documents for your kind perusal.

- 1) Purchase & Sales Details of the Shares of scrip of Top
Cassettes Limited from 26.6.2000 to 20.11.2000 and Top
Media Entertainment Ltd. from 13.11.2000 to
29.12.2000.
- 2) Ledger Account copy of Top Cassettes Ltd. & Top
Media Entertainment Limited.
- 3) Details of Payment given to Pivotal Stoxare on behalf of
Essem Associates & the Ledger Account Copy of Essem
Associates was enclosed herewith.
- 4) Ledger Copy of Bank of Madura, Global Trust Bank
- 5) Copy of Demat A/c of Top Media Entertainment Limited
& Top Cassettes Limited.
- 6) Balance Sheet of the Company year Ended on March
2001.

I think the above documents fulfil your requirements,
regarding appearing in your office I would like to inform you
that due to illness I am not able to attend your office, if you
require any more details regarding this matter please inform
me.

Thanking you,
Yours faithfully,
For Coverage & Consultants Limited

Sd/-
DIRECTOR
(B.L. Joshi)”

A perusal of the letter would show that the appellant had informed the
investigating officer that the required information had been furnished and
that due to illness the Director could not attend his office and that if any

more details were required, the Director of the appellant could be informed. Admittedly, the investigating officer did not address any further communication to the appellant nor did he inform the appellant that the information it had furnished was incomplete or lacking in material particulars or that it was false. He, however, issued another summons to the appellant on 6.2.2003 calling upon it to appear before him on 20.2.2003. The summons stated that the appellant could be accompanied by person(s) able to answer all questions relating to the investigation. The summons further directed the appellant as under:

“You are further directed to produce on that date all the documents/details upon which you intend to rely in support of your defense or which may be material for the purpose of the said investigation. You are summoned to remain present with the relevant documents at the following address:”

It is not in dispute that the appellant did not appear in response to the aforesaid summons. It claims that it did not receive the same. The Board has, however, produced before us a copy of the despatch document showing despatch of the summons through courier. It does not bear the signatures of the appellant. There is, thus, no proof that the summons were received. Since the appellant did not appear in response to the summons dated 6.2.2003, the Board initiated adjudication proceedings under Chapter VI A of the Act for imposing monetary penalty under section 15A of the Act. It is pertinent to mention here that adjudication proceedings can be initiated for failure to furnish the requisite information and not for failure to

appear in person for which prosecution could be launched under section 11C(6) of the Act. The adjudicating officer issued notices to the appellant on 29.4.2004, 16.8.2004 and again on 15.9.2004 which the appellant claims were not received by it as its office premises were lying closed. Be that as it may, the adjudicating officer again issued another notice on 29.3.2006 calling upon the appellant to show cause why adjudication proceedings be not initiated against it for not furnishing the requisite information as sought from it. This notice was admittedly received by the appellant and it claims that it was received through the Madhya Pradesh Stock Exchange (MPSE). It is also the case of the appellant since its office was lying shut it had informed the exchange that it could call the Director of the appellant if any notice was to be served and it was pursuant to this arrangement that the notice on 29.3.2006 was received. It is also not in dispute that along with the notice dated 29.3.2006 the appellant received copies of the notices dated 29.4.2004, 16.8.2004 and 15.9.2004. The appellant filed its reply on 29.4.2006 informing the adjudicating officer that its office was lying closed and that the appellant company was defunct. As a matter of precaution, it again forwarded whatever documents it could find at that time. The hearing before the adjudicating officer was fixed on 1.8.2006 for which a notice dated 19.7.2006 had been pasted by the MPSE at the office premises of the appellant company which were then lying closed. The notice is said to have been pasted on 20.7.2006. The appellant did not appear before the adjudicating officer who passed an order on 14.9.2006 holding the appellant guilty for not producing the requisite information/documents sought from it by the investigating officer during the course of the

investigations and has imposed a monetary penalty of Rs. 50 lacs on the appellant. It is against this order that the present appeal has been filed.

2. We have heard the learned counsel for the parties and are of the view that the impugned order cannot be sustained. Admittedly, summons had been issued to the appellant for furnishing the requisite information/documents as per the details contained in Annexure A to the summons which has been reproduced hereinabove. The appellant by its letter dated 21.1.2003 produced the documents and furnished the necessary information which, according to it, was sought from it and which it thought was complete in all respects. Having received this information, the investigating officer at no stage of the investigations informed the appellant that the information was inadequate/incomplete or incorrect or that he required further information/documents from the appellant. In this view of the matter, it cannot be said that the appellant had failed to furnish the documents/information sought from it by the investigating officer. The adjudicating officer for the first time in the impugned order in paragraph 5.4 thereof states that the appellant had furnished some information which required a relook and further examination of the same. He has also observed that the personal appearance of the authorised representative of the appellant to gather relevant information and to examine the veracity of the information already submitted to the investigating officer was also necessary. He noted that the demat account details submitted by the appellant were printed on its letterhead and on a plain paper rather than being the true certified copy of the demat account maintained by the depository participants. Firstly, it is not for the adjudicating officer to state

that the information required a relook and that the authorised representative of the appellant had to be examined to verify the information. This was for the investigating officer to say so and he should have informed the appellant in this regard. As already noticed in the earlier part of the order, the investigating officer did not inform the appellant in this regard after receipt of information by letter dated 21.1.2003. We also find that the observation made by the adjudicating officer is factually incorrect. The copies of the demat account which were furnished by the appellant along with its letter dated 21.1.2003 are on the letterhead of the depository participant and they are certified copies. They are not on the letter head of the appellant nor are they on plain paper. Copies of demat statements have been produced before us along with the memorandum of appeal and they are from page 47 to 51 of the paper book.

3. The adjudicating officer has also observed that the authorised representative of the appellant did not appear before the investigating officer in compliance with the summons dated 6.2.2003 and he has taken offence to this. It is true that the representative of the appellant had been directed to appear in person and he did not appear. For this non-appearance he could be prosecuted under section 11C(6) read with section 24 of the Act but no adjudication proceedings could commence under section 15A. Under section 15A of the Act, monetary penalty could be imposed only for non-furnishing of documents and information. Again, the adjudicating officer has been influenced by the fact that the appellant had been evading notices issued by him. Assuming that the appellant had evaded the notices issued by the adjudicating officer, that could not be a ground for him to

levy monetary penalty under section 15A of the Act. If the appellant failed to appear before the adjudicating officer, he could be proceeded against ex parte and an order could be passed in accordance with law. In paragraph 5.8 of the impugned order, the adjudicating officer has observed that the appellant had not complied with the summons issued to it under the Act and had failed to furnish the accurate information and to appear in person before the investigating officer. The investigating officer at no stage of the proceedings informed the appellant that the information furnished by it was inaccurate and, therefore, the adjudicating officer was not justified in recording such a finding which, to say the least, is without any basis. For all these reasons, we cannot uphold the impugned order.

4. The learned counsel for the respondent pointed out that the documents which the appellant has furnished along with the memorandum of appeal were not those which had been furnished to the investigating officer as per letter dated 21.1.2003. The learned counsel for the appellant seriously disputes this fact. If this were so, the respondent should have filed its reply to the appeal for which there is a specific provision in the rules of procedure framed under the Act. Not having filed any reply and not having disputed the correctness of the documents, it is not open to the respondent to raise such a plea for the first time at the time of hearing. We cannot allow such a plea to be raised for the first time at the time of arguments because the appellant has had no opportunity to controvert the same. This apart, the letter dated 21.1.2003 sent by the appellant is not disputed. That letter contains the details of all the documents that were being supplied to the investigating officer who never informed the appellant

that he had not received those documents or that those received were different from the ones referred to in the forwarding letter.

5. We may now refer to another contention raised on behalf of the Board regarding the summons dated 6.2.2003 issued to the appellant. As already observed, the appellant did not appear in person and, therefore, for such non-appearance it could be prosecuted under section 11C(6) of the Act. As regards the production of the requisite information, the relevant part of this summons has already been reproduced in the earlier part of the order. What the investigating officer required from the appellant was to produce all such documents on which it intended to rely in support of its defence or other material for the purpose of the investigation. The appellant, according to it, had furnished the requisite information complete in all respects to the investigating officer and it did not intend to produce any further material thereafter. Non-production of any further material by the appellant cannot be the subject matter of a charge for imposing monetary penalty under section 15A of the Act. Before concluding, we cannot resist mentioning that if at any stage of the investigations that are ordered by the Board, the investigating officer finds that a delinquent intermediary or any other market player is not cooperating with the investigations or has furnished information which is incomplete, inadequate or false then he has to inform the said entity of all the infirmities that he finds in the information furnished before he could recommend the initiation of adjudication proceedings under Chapter VIA of the Act. This is necessary to enable the delinquent to bring to the notice of the investigating officer that he has furnished the requisite information and that the same is

adequate, accurate and as per details sought from him. This will also enable the delinquent entity to supply the deficiency if any, pointed out by the investigating officer. We are constrained to observe that the investigating officer did not inform the appellant at any stage of the proceedings that the information furnished by it was either incomplete or inadequate or was in any manner inaccurate. In the absence of any such communication from the investigating officer, we cannot appreciate the adjudicating officer recording a finding in this regard.

6. In the result, the appeal is allowed and the impugned order set aside. The question posed in the earlier part of the order is answered in the negative leaving the parties to bear their own costs.

**Sd/-
Justice N.K. Sodhi
Presiding Officer**

**Sd/-
Arun Bhargava
Member**

**Sd/-
Utpal Bhattacharya
Member**

17.9.2007

//SR