

**IN THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 22 of 2006

Date of Decision 12.9.2007

Ispat Industries Ltd.

..... ***Appellant***

Versus

Securities and Exchange Board of India

..... ***Respondent***

Present : Mr. P.N. Modi, Advocate with Mr. Rohan Rajadhyaksha,
Mr. Shruva Mandal, Advocates for the appellant

Mr. L.S. Shetty, Advocate with Mr. A.M. Sethna, Advocates
for the respondent

Coram:

Justice N.K. Sodhi, Presiding Officer

Arun Bhargava, Member

Utpal Bhattacharya, Member

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

Challenge in this appeal is to the order dated 1.12.2005 passed by the adjudicating officer holding the appellant guilty of violating Regulation 12(2) read with Schedule II to the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 as amended up-to-date and hereinafter called the Regulations. He has imposed a monetary penalty of Rs. 1 lac on the appellant after holding an inquiry under the provisions of

2. The appellant before us is a company incorporated under the Companies Act, 1956 and is listed, among others, on the Bombay Stock Exchange (for short BSE). It is alleged that one Shri Anil Sureka, Executive Director (Finance) of the appellant company gave an interview to the TV channel CNBC on 26.9.2003 stating that the appellant was targeting a turnover of Rs. 4000 crores during the year 2003-04 and that its capacity expansion programme along with certain cost saving initiatives would result in savings of about Rs. 1000 crores a year. He also stated in the interview that the long term contracts for sales would move up to 50% from then prevailing 10% and that the export target for the year 2003-04 had been pegged on Rs. 1300 crores. The executive director of the company further informed the viewers that the targeted capacity utilisation of the company was sought to be increased during the financial year 2003-04 and that the augmentation of the Hot Rolled Coil Plant capacity was sought to be enhanced to 3 million tonnes per annum during the year 2004-05. The viewers were also informed that the appellant company intended to set up a captive power generation plant and a dedicated port and that it proposed to enter into iron ore mining. It is not in dispute that the statement made by the executive director in the interview was “price sensitive information” within the meaning of the Regulations. After this interview was given to the TV channel, the Securities and Exchange Board of India (for short the Board) served a notice dated 22.10.2003 calling upon the appellant to show cause why it did not disclose the aforesaid price sensitive information to the

entire information which was in the interview had already been furnished to the stock exchanges since it was contained in the annual report published by the company. It was also pleaded that copies of the annual report had been furnished to the stock exchanges and also to the shareholders of the company much before the annual general meeting of the company which was held on 24.9.2003. In short, the stand taken by the appellant company was that the information was already with the stock exchanges and the public. The Board conducted an enquiry under section 11B of the Act and by its order dated 31.3.2004 passed the following order.

“In this regard, I note that in their submissions Ispat and Shri Anil Sureka, Executive Director (Finance) mentioned that they had only broadly spelt out their plans in a general manner and that the same was not made with a view to influence market sentiments. Although the said submissions may reflect the intention behind the statements made by Shri Sureka in the course of his interview with CNBC, it is a fact that the said information is a price sensitive information and the same was not disclosed to stock exchanges in terms of requirements of Regulation 12(2) of the said Regulations. It is necessary to ensure that such incidents do not occur in future.

Therefore, I, in exercise of the powers conferred on me under Section 19 read with Section 11 and 11B of the SEBI Act and Regulation 14 of the SEBI (Prohibition of Insider Trading) Regulations, 1992, hereby warn Ispat Industries Limited to be more careful in future and ensure compliance with the SEBI

3. It appears that while the proceedings under section 11B of the Act were going on, the Board decided to initiate adjudication proceedings against the appellant for imposing monetary penalty under Chapter VI A of the Act for violating Regulation 12(2) of the Regulations and Clause 36 of the Listing Agreement. The adjudicating officer served a notice dated 15.6.2004 calling upon the appellant to show cause why it did not disclose the price sensitive information to the stock exchanges and the public and this, according to him, was in violation of Regulation 12(2) of the Regulations and Clause 36 of the Listing Agreement. The appellant was further required to show cause why penalty be not imposed on it under section 15HB of the Act. A detailed reply was filed by the appellant challenging the jurisdiction of the Board to initiate adjudication proceedings. It was submitted that since proceedings under section 11B had already been conducted, it was not open to the Board to impose a monetary penalty under Chapter VI A of the Act in view of the provisions of Regulation 14(1) of the Regulations. It was also pointed out that the charge levelled against the appellant regarding violation of Regulation 12(2) of the Regulations was baseless inasmuch as the interview given by the executive director to the TV channel CNBC was in fact in compliance to the Regulations and that the Regulations required the appellant to make all such information public at the earliest. It was also pleaded that the show cause notice was based on incorrect facts since all the information that was disseminated in the interview had already been furnished to the stock

On a consideration of the material gathered by the adjudicating officer and after taking into account the reply filed by the appellant, he (adjudicating officer) came to the conclusion that Regulation 12(2) of the Regulations read with Schedule II had been violated in as much as the price sensitive information had not been furnished to the stock exchanges and to the public. Accordingly, by his order dated 1.12.2005 he imposed a penalty of Rs. 1 lac on the appellant. Hence this appeal.

4. We have heard the learned counsel for the parties and are of the view that the appeal deserves to be allowed. The learned counsel for the appellant has raised three primary contentions before us- (i) the interview given by the executive director of the appellant company on 26.9.2003 was actually in compliance with Regulation 12(2) read with Schedule II and therefore, the charge levelled against the appellant that it had violated the said Regulation is without any basis. (ii) the impugned order passed by the adjudicating officer records findings on issues which go beyond the show cause notice dated 15.6.2004 and is therefore liable to be set aside on this ground; and, (iii) that the impugned order records incorrect findings regarding non-compliance of the information to the stock exchanges and the public. The learned counsel contended that the price sensitive information which was contained in the annual report had been furnished to the stock exchanges and also to the shareholders of the company much prior to the annual general meeting of the company which was held on

furnished to the stock exchanges or even to the public prior thereto. He contends that the information contained in the annual report of the company was only about corporate debts restructuring scheme and not about the price sensitive information. As regards the jurisdiction of the Board to initiate adjudication proceedings, the learned counsel for the respondent submits that the power to impose a monetary penalty is contained in Section 15HB of the Act and that the Regulations framed by the Board did not in any way restrict that power. He points out that Section 15HB of the Act was introduced with effect from 29.10.2002 whereas the Regulations were framed in the year 1992. Since we are of the view that the Board had no power to initiate adjudication proceedings in the instant case, it is not necessary for us to deal with the other contentions raised by Mr. P.N. Modi, Advocate on behalf of the appellant though we are prima facie of the view that the interview given by the executive director of the company was in compliance with the provisions of Regulation 12(2) read with Schedule II to the Regulations. Regulation 12(1) and (2) and Regulation 14 which are relevant for our purpose may now be referred to. They read as under:-

“12. (1) All listed companies and organisations associated with securities markets including :

- (a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds;
- (b) the self-regulatory organisations recognised or authorised by the Board;
- (c) the recognised stock exchanges and clearing house or corporations;
- (d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations.

(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

(3)

(4)

14. (1) A person who violates provisions of regulation 12 shall be liable for action under section 11 or 11B and/or section 24 of the Act.

(2) A person who violates provisions of regulation 13 shall be liable for action as specified in regulation 11 or sections 11, 11B or action under Chapter VIA or section 24 of the Act.”

Since Regulation 14 (2) refers to Regulation 13 as well we may refer to the relevant portion of this Regulation as well.

“Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.

13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company [in Form A], the number of shares or voting rights held by such person, on becoming such holder, within 4 working days of :—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

(2) Any person who is a director or officer of a listed company, shall disclose to the company [in Form B], the number of shares or voting rights held by such person, within 4 working days of becoming a director or officer of the company.”

the Act and a person who violates Regulation 13 could be proceeded against either under section 11 or 11B or under Chapter VI A or under Section 24 of the Act. In other words, a person who violates Regulation 12 cannot be proceeded against under Chapter VI A and could be proceeded only under Section 11 or 11B. This follows from a plain reading of Regulation 14.

5. In the case before us, the appellant is alleged to have violated Regulation 12. It is not the case of the Board that it had violated Regulation 13. Assuming, though not holding, that the appellant violated Regulation 12 it could be proceeded against only under section 11 or 11B and/or under section 24 of the Act. Section 24 of the Act provides for launching prosecution against persons who violate the Regulations. Admittedly, the Board has not resorted to the provisions of Section 24. It is also common case of the parties that the Board had launched proceedings against the appellant under section 11B which culminated in passing of the order on 31.3.2004 whereby the appellant was given a warning to be careful in future. The relevant part of that order has been reproduced hereinabove. Having proceeded against the appellant under section 11B of the Act, the Board could not have initiated adjudication proceedings against it in view of the clear provisions of Regulation 14 of the Regulations. In this view of the matter, we have no hesitation in holding that the order passed by the adjudicating officer is without jurisdiction and that the Board was not

6. The learned counsel for the respondent however contends that in view of Section 15HB of the Act it was open to the Board to impose a monetary penalty on the appellant for violating Regulation 12 of the Regulations because there is no other provision in Chapter VI A which provides for the imposition of penalty for such a violation. We cannot accept this contention. Section 15HB of the Act is a residuary provision and provides for the imposition of penalty for violation of provisions for which no separate penalty has been provided. The appellant is alleged to have violated Regulation 12 of the Regulations and it was proceeded against under Section 11B of the Act. Adjudication proceedings cannot be initiated in view of the bar contained in Regulation 14. Moreover, initiation of adjudication proceedings under Chapter VI A is only an enabling power which the Board possesses but that has obviously been curtailed by the provisions of Regulation 14. We cannot, therefore, accept the contention put forth on behalf of the respondent.

7. As already observed, in view of our finding that the Board had no power to initiate adjudication proceedings, we are not dealing with the other contentions raised on behalf of the appellant.

8. In the result, the appeal is allowed and the impugned order dated 1.12.2005 set aside leaving the parties to bear their own costs.

9. At this stage, the learned counsel for the respondent prays that the

the stay would be that the respondent could recover the monetary penalty imposed by the adjudicating officer. Having held that the order is without jurisdiction we cannot allow the adjudicating officer to recover the same. The prayer is rejected.

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

**Sd/-
Arun Bhargava
Member**

**Sd/-
Utpal Bhattacharya
Member**

12.9.2007

//SR