BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of order reserved: 07/07/2016
Date of decision: 26/07/2016

Appeal No.192 of 2014

J.C. Mansukhani
Aadhya Building, 2nd Floor, Plot no.43,
Juhu, 10th Road, Laxmikant Pyarelal Chowk,
Juhu, Mumbai – 400 049. … Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051. … Respondent

AND
Appeal No.185 of 2014

1. Man Industries (India) Limited
   MAN House, 101, S.V. Road,
   Vile Parle (West)
   Mumbai – 400 056.

2. Rameshchandra Mansukhani
   Aadhya Building, Plot no.43,
   Juhu, 10th Road, Laxmikant Pyarelal Chowk,
   Juhu, Mumbai – 400 049.

3. R. C. Jindal
   30-A, Mansarovar Apartments,
   Sector -61, Noida – 201 301.

4. Sujal Sharma
   B-8, Asha Building,
   Dixit Road, Vile Parle (East),
   Mumbai – 400 057. … Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051. … Respondent

Mr. Sharan Jagtiani a/w Mr. Amit Dey, Advocates i/b Mindspright Legal for the Appellant in Appeal No.192 of 2014.

Mr. Chirag Balsara a/w Mr. Satyam Israni, Mr. Vinit Mehta and Ms. K. Sovte, Advocates i/b SD Israni Law Chambers for Appellant in Appeal No.185 of 2014

Mr. Kumar Desai a/w Mr. Manish Acharya, Advocates i/b Vigil Juris for the Respondent.

CORAM : Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
Dr. C.K.G. Nair, Member

Per : Dr. C.K.G. Nair

1. Appellants in these two Appeals are aggrieved by a common order passed by the Adjudicating Officer ("AO" for short) of Securities and Exchange Board of India ("SEBI" for short) on 28th March, 2014. Hence, both theses Appeals are heard and disposed of by this common decision. The impugned order, based on an investigation conducted by SEBI into the dealings in the shares of Man Industries (India Limited) ("Company" for convenience) for the period 15/4/2009 to 14/5/2009 imposed a penalty of Rs.25 lac jointly and severally on the Appellants (in both Appeal Nos. 185 and 192 of 2014) under Section 15-HB of Securities and Exchange Board of India Act, 1992 ("SEBI Act" for short) for violation of certain provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations).

2. Man Industries Ltd. (Appellant No.1 in Appeal No.185 of 2014) is a manufacturer of Aluminum Extruded products and Saw Pipes in India. It is a leading manufacturer and exporter of Carbon Steel Line Pipes and listed on the Bombay Stock Exchange ("BSE" for short) and National Stock Exchange ("NSE" for short). This Company was promoted by members belonging to the Mansukhani family namely, Shri J.L. Mansukhani, Shri R.C. Mansukhani

and Shri J.C. Mnasukhani. The Company and some of the Directors and officials are Appellants in Appeal No.185 of 2014 while Shri J.C. Mansukhani who was the Vice Chairman and Managing Director of the Company during the relevant time preferred a separate Appeal (No.192 of 2014).

3. SEBI conducted an investigation into the dealings of shares of Man Industries for the period from April 15, 2009 to May 14, 2009. It was revealed that the Company and its Board of Directors delayed disseminating price sensitive information relating to bagging/obtaining two substantive orders received by the Company from two Iranian Companies.

4. Accordingly, AO was appointed by SEBI who issued a show-cause notice to the Appellants, dated September 4, 2013. Based on personal hearing and documents submitted by the Appellants, the impugned order was passed by the AO on 28th March, 2014.

5. The impugned order relies on the chronology relating to two orders bagged by the Company as follows:-

Sr.No.	Contract with:-	Value of Contract	Date of Contract	Date of information to the exchange	Delay in days
1	Niroo Gustar	90 million euros	March 01, 2009	April 29, 2009	59 days
2	GRC	112 million euros	April 22, 2009	April 29, 2009	7 days

The issue of disclosure has emanated from two orders bagged by the Company from Niroo Gustar Institute ("Niroo Gustar" for short) and Green Refinement Company ("GRC" for short) – two Iranian Companies. The contract with Niroo Gustar was signed on March 1, 2009 and with GRC was signed on April 22, 2009. Details of the contract signed with these companies

are on record. It is also on record that disclosure relating to bagging of both these contracts was made on April 29, 2009 thereby leading to a delay of 59 days and 7 days respectively from the date of signing the contracts as per interpretation of the provisions of "PIT" Regulations of immediate and continuous disclosure of price sensitive information.

6. The findings of the AO based on the orders bagged by the Company are as follows: -

i. These orders constituted more than 50% of the annual order book of the Company for the relevant year and as such they were not just normal business activity of a manufacturing company.

ii. The information relating to such huge orders was price sensitive meaning "any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company".

iii. Information becomes price sensitive irrespective of whether actual price witnessed subsequent to the disclosure of the information exhibits such sensitiveness or not.

iv. Prices actually moved higher by 4.74% at closing of the trading day compared to its opening price on April 29, 2009, the day of disclosure. This also proves that the information was price sensitive.

v. The information should have been disclosed on the day of signing the contract i.e. March 1, 2009 and April 22,

2009. Since they were disclosed only on 29th April, 2009 there was a delay of 59 days in respect of the first order and 7 days in respect of the second order.

7. The relevant provisions of the PIT Regulations are reproduced below:-

"PIT Regulations.

Regulation 12(1) All listed companies and organizations 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 organizations recognized or authorized by the Board;

(c) the recognized stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies.

shall frame a code of internal procedure and conduct as near thereto the Model Code specified in Schedule I of these regulations without diluting it in any manner and ensure compliance of the same.

(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) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).

Part A of Schedule I to regulation 12(1) of PIT Regulations:

Clause 1.2 The compliance officer shall be responsible for setting forth policies and procedures and monitoring adherence to the rules for the preservation of "Price Sensitive Information, pre-clearing of all the designated employees and their dependants trades (directly or through respective department heads as decoded by the organization(firm),

monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Schedule II of regulation 12(1) of PIT Regulations:

Clause 2.1 Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis."

8. Two questions fall for consideration in these two Appeals; they are:-

(a) Whether on the facts and in the circumstances of the present case, the AO of SEBI was justified in holding that the contracts for supply of goods entered into by the Company with foreign enterprises on 1/3/2009 and 22/4/2009 were price sensitive information and disclosing the said price sensitive information belatedly on 29/4/2009 was in violation of the PIT Regulations?

(b) Assuming that the said contracts dated 1/3/2009 and 22/4/2009 constituted price sensitive information, whether, on the facts of present case, the AO of SEBI was justified in imposing a penalty of Rs.25 lac against the Company as also on the Directors of the Company?

9. The learned Counsel for the Appellants argued extensively as to when the information relating to bagging of two orders became price sensitive and needed to be disclosed to the Stock Exchanges. On the day of signing the contract there was no certainty regarding the orders as it was only a preliminary agreement. It is contended on behalf of the Appellants that the information relating to signing of the contracts did not make the information price sensitive. The date of commencement of the contract, as per the provisions contained in Clause 7 of the contract, distinguishing between the

date of effectiveness and date of commencement, is the relevant date. Conditions under Clause 7 of the Contract, inter alia, include receipt of 25% of advance payment by the supplier. Accordingly, it is argued that given the international restrictions on trading with Iran prevailing at the relevant time, it was only on receipt of the advance payment that the contract could be taken as final and which becomes relevant to be disclosed. This advance was received on 28th April, 2009 and disclosure was made on 29th April, 2009. Therefore, the information became price sensitive only when the order was finally confirmed with advance payment and the disclosure was made immediately after that.

10. It was further argued by the Counsel for the Appellants that the contract signed on 1st March, 2009 was not a final contract as several modifications to that contract were made and as is evident on record. These amendments to the contract including changes in the quantities and hence the total value of the contract which are important considerations. There is no dispute on these facts.

11. Though nothing is on record, this Tribunal specifically asked the Counsel for the Appellants whether there is any evidence to show that as on the date of contract (March 1, 2009) whether any amendments to the contract signed on that date were being proposed. Counsel for the Appellants replied in the negative stating that soon after signing the contract amendments were thought of and entered into.

12. It was further argued that all big contracts are not necessarily price sensitive as is evidenced by several judgments cited to which we shall come to at a later stage. There is no allegation that the non-disclosed information

was misused by the Appellants in any manner. Therefore, the PIT Regulations are not the appropriate law to be invoked; it could have been at best violative of Section 36 of the Listing Agreement. There was no delay in informing the second order (Contract dated 22nd April, 2009) as this Contract was fructified only on 28th April, 2009 and disclosure was made on 29th April, 2009. The show-cause notice does not distinguish between these two contracts. Specific conditions were incorporated into the contracts because of the restrictive international conditions of trading with Iran which needs to be factored in while examining contracts with entities in Iran over and above other standard contracts. It was further argued by Counsel for the Appellants that in the case of the second contract, a consensus/confirmation from a third party (PEDEC) was required and this was obtained only on 28th April 2009. On the basis of the above arguments, learned Counsel for the Appellants concluded that mere bagging of big sized contracts itself does not make them price sensitive; they become price sensitive only from the date when they become effective; there is a need for the distinguishing between the contract date and effective date of commencement; the contract itself has given provisions (Clause 7) specifying the conditions under which they become effective and, therefore, when the information becomes price sensitive. These factors are to be considered while deciding whether there is any delay or not in disclosure. Given the circumstances of the case Counsel for the Appellants argued that there was no delay in disclosing the information relating to both the contracts. Counsel for the Appellants also took a contra-position and argued further that disclosure of pre-mature information can be interpreted as violating the relevant provisions of ICDR Regulations and hence liable for

penal action and hence an entity disclosing information has to be careful about the timing of disclosing the information.

13. The learned Counsel for the Respondent emphasized the contentions in the impugned order. Quoting relevant provisions of the PIT Regulations, he emphasized that disclosures should be made on an immediate and continuous basis. Orders worth Rs.1340 crore out of total order book of Rs.2000 crore in the relevant year are not like normal small value orders. There is no reference to any proposed amendments to the Contract on the date of signing the contracts. He further emphasized the point that Clause 7 of the contract relied by the Appellants to distinguish between the effective and commencement date actually reads as follows:

> "This contract shall become effective and binding upon signing of the contract by the parties."

And the first contract was signed on 1st March 2009 and the second on 22nd April, 2009 and therefore the delay of 59 and 7 days respectively in disclosing them. Conditions relating to opening of letter of credit, receipt of advance payment, termination, etc. are part of any standard contract. Sub-clause 7.2 of the contract further provides for additional grace period of 120 days in the event the commencement date has not happened within the agreed schedule and asserted that disclosure cannot wait for such indefinite period if such conditions in a contact are to be taken as condition precedent for commencement of contract and such commencement date is to be taken as the effective date. Similarly, it was argued that, all contracts are amenable to certain amendments which are provided for in the contracts themselves and as such disclosure cannot wait till all such amendments are made. That is why disclosures under PIT Regulations are to be made immediately and on

continuous basis. Which means that all major events relating to the contract such as its initial signing and subsequent major amendments had to be disclosed immediately and continuously. On the specific issue of a third party involvement in the second contract, Counsel for the Respondent stated that it should have been part of the contract itself, which is, however, not found in the said contract.

14. We find no merit in the arguments advanced by the Counsel for the Appellants. Their contention that the orders bagged by the Company became price sensitive only on the date of receiving the advance cannot be sustained in view of the fact that the orders constituted about 65% of the annual order book of the Company; share prices did increase by 4.74% on the date of announcement i.e. 29th April, 2009; the Company itself felt that the information is important enough to be disclosed and hence it was aware of the fact that this information was price sensitive and liable to be disclosed; the contracts became "binding and effective" on the date of signing the contracts as stated in the contract itself (Clause 7) irrespective of the other conditions specified under the same clause. There was no evidence about any proposed amendment to the contracts on the date of signing the contracts; third party agreement (of PEDEC) as a condition for fulfilling the second contract (signed on 22nd April 2009) was not stated in the contract itself. Constraints on trading with Iran, if any, should also have been factored in either in the contracts or otherwise before signing the contracts. In view of these reasons, the contracts became binding and effective on the date of signing of the contract i.e. 1st April 2009 and 22nd April 2009 and had to be disclosed without any delay. As and when major changes to the contracts, if any, were effected the same also had to be disclosed. Conditions given under Clause 7 of the contract relating

to advance payment, commencement of the contract, conditions of cancellation, etc. are part of any standard contract and cannot be taken as ground for delay in disclosure of entering into contract as on the date of signing the contracts. Since the information was liable to be disclosed under PIT Regulations, the argument that they were at best liable to be disclosed under Section 36 of the Listing Agreement only does not stand merit. Accordingly argument set out by the A.O. in the impugned order that the information was price sensitive and liable to be disclosed on the date of signing the contracts cannot be faulted. The contra-position taken by the Appellants that premature disclosure may invite penal action has no merit since it is the responsibility of any entity to prove that they made the right disclosures at the right time and if anything genuinely going wrong subsequently can be proved with evidence to that effect. It is difficult to fine tune the merit of disclosures in a disclosure based regulatory regime and as such the ideal course of action is to disclose every material information on an immediate and continuous basis. Changes in contract specifications and conditions which are material also need to be disclosed in that spirit of a disclosure based regulatory regime.

15. It was further argued by Counsel for the Appellant in Appeal No.192 of 2014 that the Vice Chairman and Managing Director of the Company preferred a separate Appeal because he was not involved and responsible for setting up of the Code of Conduct or disclosing information and therefore, cannot be held liable for the same. Similarly, Counsel for the Appellants in respect of Appeal No.185 of 2014 stated that Appellant Nos.2&3 in this Appeal also did not have any role in disclosing information and as such are not liable to be punished.

16. Counsel for the Appellants also cited a few judgments in their contentions. Mr. Jagtiani, learned Counsel appearing on behalf of the appellant in Appeal No. 192 of 2014 fairly stated that in the past (though it was for a violation subsequent to the alleged violation in the present case) the Company has been found guilty of violating the PIT Regulations for not disclosing the contract entered into by the Company. However, it is submitted by the Counsel for the Appellants that the said decision of this Tribunal, namely Man Industries (India) Limited v/s SEBI (Appeal No. 208 of 2011 decided on 30.03.2012) is distinguishable on facts because, in that case the company had conceded that entering into a contract therein for sale of goods manufactured by the company was a price sensitive information under the PIT Regulations. Since the aforesaid decision was based on the consensus made by the company and the said consensus being contrary to various decisions of this Tribunal, the said decision cannot be applied against the Appellants herein.

17. In the context of the present case, Counsel for the Appellants relied on the decisions of this Tribunal in the case of Gujarat NRE Mineral Resources Ltd. v/s SEBI (Appeal No. 207 of 2010 decided on 18.11.2011) and Mr. Anil Harish v/s SEBI (Appeal No. 217 of 2011 decided on 22.06.2012) and submitted that earning profits by manufacture and sale of goods being the normal activity of the company, mere entering into contracts for sale of goods could not be said to be a price sensitive information so as to disclose the same immediately on entering into such contracts. It is submitted that apart from the fact that the contracts were subjected to further negotiation which resulted in reduction of the quantum of sale and also amendment of the contract disclosures were made immediately on deposit of initial amount of

US $ 1.5 million and therefore, in the facts of present case, no penalty ought to have been imposed against the Appellants.

18. We see no merit in the above contentions. As rightly contended by learned Counsel for SEBI, in the present case, the contracts in question (even after amendment) were for Rs.1340 crores, whereas, the total contracts for which the Company had orders for the entire year were to the extent of Rs.2,000 crores. Since the value of two contracts in question constituted nearly 65% of the total order book of the Company during the year, it is abundantly clear that entering into such contracts constituted a price sensitive information which ought to have been disclosed under Scheduled II of regulation 12(1) of the PIT Regulations. Apart from the above, in the past, the Company had conceded before SEBI that bagging orders worth about Rs.1200 crore in that year was a price sensitive information. In the present case, the contracts bagged were to the tune of Rs.1340 crore. Therefore, in the present case, it is not open to the Appellants to change their stand and argue to the contrary. Moreover, in the earlier case, the Company had argued that the communication received by the Company from a party to award contract was only an intention to award contract and therefore such a communication could not be said to be a concluded contract warranting disclosure under the PIT Regulations. While rejecting the said contention of the Company this Tribunal observed that in the absence of any further negotiation or discussion or correspondence affecting the basis of the communication referred to therein, the said communication constituted a concluded contract. In the present case, the contracts are concluded contracts and the clauses in each contract specifically provide that the respective contract shall be effective and binding from the date of entering into the contract. Thus, it is evident that as

in the earlier case, the Appellants were aware that entering into contracts was a price sensitive information, however, the Appellants have failed to disclose the same immediately.

19. Strong reliance was placed by the Counsel for the Appellant on the decision of this Tribunal in case of Gujarat NRE Mineral Resources Ltd. That decision is distinguishable on facts. In that case, the appellant therein, an investment company, decided to acquire coal mining leases in Australia by selling a part of its investments in order to arrange requisite funds. The Appellant therein made corporate announcement regarding the acquisition of coal mines. However, there was no corporate announcement regarding its decision to dispose of its investment. Question raised therein was, whether the information regarding the decision to dispose of its investment was price sensitive. In that context it was held that earning income by an investment company by buying and selling securities held by it as investments being the normal activity of an investment company, every decision by it to buy or sell its investments would have no effect, much less material, on the price of its own securities. It was further held that if a manufacturing company were to sell its products or buy raw materials, it would be a part of its normal business activity which would not be price sensitive and not required to be disclosed. That decision cannot be applied to the facts of present case, where the two contracts entered into by the company constituted nearly 65% of the total orders received by the company in that year. In other words, every contract for supply of goods manufactured by a company may not be a price sensitive information, however, in the facts of present case, the contracts to supply 65% of the yearly contracts received by the company, constituted price sensitive information which ought to have been disclosed.

20. Strong reliance was also placed by the learned Counsel for the Appellant on the decision of this Tribunal in case of Mr. Anil Harish v/s SEBI (Appeal No. 217 of 2011 decided on 22.06.2012). In that case, it was found that the Appellant therein had followed a consistent practice of informing the stock exchange as and when orders of about Rs.100 crore are received and the information which not disclosed were less than Rs.100 crore. In the present case, there is no such practice followed by the Appellants. Moreover, in relation to a similar contract entered into by the Company it is admitted that information of such contract constituted price sensitive information. Therefore, in the facts of present case, it is not open to the Appellants to rely on the decision of this Tribunal in case of Mr. Anil Harish (supra) and contend that entering into the contracts in question did not constitute price sensitive information.

21. Relying on decisions of this Tribunal in case of M/s Alka India Ltd. v/s SEBI (Appeal No. 44 of 2010 decided on 06.05.2010) and BPL Ltd. v/s SEBI (Appeal No. 14 of 2001 decided on 21.05.2001) it is submitted that in the absence of any specific finding regarding the involvement of any Directors/Compliance Officer, the AO was not justified in imposing penalty on all of them.

22. We see no merit in the above contention. It is relevant to note that the penalty is imposed on the Company and the other Appellants after noticing that in the past too, SEBI has found that the Company had committed similar default for which the Company has been penalized. Since the violation is found to be repeated, the decision of the AO to penalize the Company and other Appellants cannot be faulted. Moreover, since the penalty is imposed

jointly and severally, it is open for the Company to discharge the entire penalty.

23. Given that the AO has considered the mitigating factors under Section 15-J of SEBI Act and thereafter imposed a penalty of Rs.25 lac under Section 15-HB of SEBI Act (maximum penalty provided for under this Section is Rs.One crore), we do not find any merit in the contentions raised on behalf of the Appellants.

24. Accordingly, both the appeals are dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
Dr. C.K.G. Nair
Member

26/07/2016
Prepared & compared by-ddg