BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 23.10.2019
Date of Decision : 14.11.2019

Misc. Application No. 381 of 2016
And
Appeal No. 223 of 2016

Electrosteel Steels Ltd.
801, Uma Shanti Apartments,
Kanke Road,
Ranchi- 834 008
Jharkhand …Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051 …Respondent

Mr. P.N. Modi, Senior Advocate with Mr. Neville Lashkari, Ms. Tushna Thapliyal and Mr. Manish Chhangani, Advocates i/b Khaitan & Co. for the Appellant.

Mr. Vikram Nankani, Senior Advocate with Mr. Anubhav Ghosh, Advocate i/b The Law Point for the Respondent.

WITH
Misc. Application No. 382 of 2016
And
Appeal No. 224 of 2016

Electrosteel Castings Ltd.
Rajgangapur, District
Sundargarh,
Orissa …Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051 …Respondent

Mr. Sagar Ghogre, Advocate with Mr. Aditya Khanna, Advocate for the Appellant.

Mr. Vikram Nankani, Senior Advocate with Mr. Anubhav Ghosh, Advocate i/b The Law Point for the Respondent.

WITH
Misc. Application No. 144 of 2016
And
Appeal No. 202 of 2016

1. Edelweiss Financial Services Limited
   Edelweiss House, Off C.S.T. Road,
   Kalina,
   Mumbai-400 098

2. Axis Capital Limited
   1st Floor, Axis House,
   C-2, Wadia International Centre,
   PB Marg, Worli,
   Mumbai- 400 025

3. SBI Capital Markets Ltd.
   202, Maker Tower 'E', Cuffe Parade,
   Mumbai- 400 005 …Appellants

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai - 400 051 …Respondent

Mr. Somasekhar Sundaresan, Advocate with Ms. Aashni Dalal and Mr. Siddhesh S. Pradhan, Advocates i/b J. Sagar Associates for Appellants.

Mr. Vikram Nankani, Senior Advocate with Mr. Anubhav Ghosh, Advocate i/b The Law Point for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M. T. Joshi, Judicial Member

Per: Dr. C.K.G. Nair

1. These three appeals are filed challenging the order of the Adjudicating Officer ("AO" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) dated March 31, 2016. By the said order a penalty of ₹ 1 crore has been imposed on M/s Electrosteel Limited ("ESL" for convenience; Appellant in Appeal No. 223 of 2016) for violation of Regulation 57(1) and Regulation 57(2)(a)(ii) of the SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009 (hereinafter referred to as "ICDR Regulations"). Further a penalty of ₹ 1 crore has been imposed jointly and severally on three Merchant Bankers (Appellants in Appeal No. 202 of 2016) for violation of Regulation 57(1), Regulation 57(2)(a)(ii) and Regulation 64(1) of the ICDR Regulations and Regulation 13 of SEBI (Merchant Bankers) Regulations, 1992 (hereinafter referred to as "Merchant Bankers Regulations"). Similarly, a penalty of ₹ 50 lakh each has been imposed on M/s Electrosteel Castings Limited ("ECL" for convenience; Appellant in Appeal No. 224 of 2016) under Section 23A(a) and 23E of the Securities Contract (Regulation) Act, 1956 ("SCRA" for convenience) for violation of Clause 36 of the Listing Agreement. Since, the impugned order is common to all these appeals, by consent of parties the appeals

are heard together and decided by this common order, taking Appeal No. 223 of 2016 as the lead matter.

2. The substantive question raised in these appeals is whether non-disclosure of the 'rejection' of Forest Clearance ("FC" for convenience) by the Ministry of Environment and Forests ("MoEF" for convenience) on an application for iron ore mining filed by ECL was material to an Initial Public Offer ("IPO" for convenience) made by ESL and for disclosure under Clause 36 of the Listing Agreement for ECL.

3. ECL is the parent company of ESL; while the former is in the business of manufacturing cast iron pipes the later is manufacturing various types of steels. Iron ore is a core raw material/ input in their manufacturing process and therefore for their overall business. For the said application made by ECL for project clearance, various clearances were required for obtaining iron ore mining blocks in the Kodalibad Reserve Forest, West Singhbhum District of Jharkhand.

Appeal No. 223 of 2016

4. Facts relevant are as follows:-

a) Following a Memorandum of Understanding ("MoU" for convenience) between ECL and

Government of Jharkhand for setting up a steel manufacturing plant, ECL promoted the appellant-company ESL in December 2006.

b) On January 20, 2007 ECL made a proposal to the Forest Department, Government of Jharkhand for diversion of forest land at Kodolibad for mining.

c) On April 17, 2008 Government of Jharkhand forwarded the said proposal to MoEF, Government of India for approval.

d) On July 21, 2008 ECL agreed to supply iron ore (and coking coal) to ESL on a cost plus twenty percent basis for 20 years from the date of commencement of commercial production.

e) On September 23/25, 2008 the Expert Appraisal Committee of MoEF recommended the project application of ECL for environmental clearance subject to obtaining Wild Life Clearance, since the project was in an Elephant Reserve.

f) On October 04, 2008 (later on November 11, 2008 clarified that the date of the said letter is November 04, 2008) FC Division of MoEF wrote to the Principal Secretary (Forest), Government of Jharkhand communicating rejection of the said proposal by the Forest

Advisory Committee ("FAC") of MoEF. Operational part of this communication is reproduced below:-

> *"After discussing the proposal in detail, the FAC rejected the proposal on account of being part of core zone of Singhbhum Elephant Reserve and critical to wildlife conservation which also desired that the State Government to submit a detailed report on the present status of other four mines located in the core of Singhbhum Elephant Reserve. However, the Government will be at liberty to request for reconsideration of the proposal as per guideline (ii)*
>
> *In view of the above, I am further directed to request you to kindly submit a detailed report on the present status of all four other mines located in the core of Singhbhum Elephant Reserve."*

g) On January 16, 2009, the MoEF wrote to ECL, conveying rejection of the proposal for environmental clearance for the project proposed by ECL, consequent to the advice of the FAC dated October 04/November 04, 2008.

h) On July 10, 2009 Jharkhand Government has requested MoEF to reconsider the matter and sought approval for the said project.

i) The matter was further taken up by ECL on July 24, 2009 and by Government of Jharkhand on September 18, 2009 etc.

j) On March 25, 2010 the appellant filed a Draft Red Herring Prospectus ("DRHP") for the IPO with SEBI.

k) Subsequent correspondence in the matter of clearance for the said mining project by MoEF to Government of Jharkhand on May 03, 2010; ECL to the Prime Minister on July 13, 2010; by Ministry of Steel, Government of India to MoEF on July 23, 2010; by Ministry of Steel, Government of India to MoEF on July 23, 2010; by office of the Prime Minister forwarding a copy of the reply to a VIP reference to MoEF "for its consideration and appropriate action most expeditiously" etc.

l) On September 11, 2010 the appellant filed the Red Herring Prospectus ("RHP") with SEBI. On September 21, 2010 IPO opened and closed on September 24, 2010.

m) On February 04, 2012 MoEF approved diversion of forest land for the said project and on February 13, 2012 an "in-principle

approval" was communicated by MoEF to Principal Secretary (Forest), Government of Jharkhant) subject to a detailed set of 29 conditions.

n) Following the complaints received by SEBI since 2011, in March/April 2013 SEBI sought details from the Appellant, the Merchant Bankers and ECL (all appellants in three appeals) to explain why rejection of Forest Clearance was not expressly disclosed in the prospectus filed by the appellant on September 11, 2010.

o) On September 20, 2013 a show cause notice was issued to the appellants stating that rejection of forest clearance ought to have been disclosed in the Prospectus as well as to the Stock Exchanges by ESL and ECL respectively.

p) Following filing of reply by the appellant(s) and personal hearing, written submissions etc. and after seeking several further clarifications at various dates from all the appellants in these appeals and after providing additional personal hearing and further written submissions etc. the impugned order was passed on March 31, 2016 imposing the stated penalties on the appellants for the stated violations.

5. Learned senior counsel Shri P.N. Modi, appearing on behalf of the appellant ESL, vehemently argued that MoEF had never rejected the Forest Clearance; rather the application was always under consideration/ reconsideration as the relevant provisions in law as well as the chronology events indicate. He further emphasised the letter dated 04.10/04.11.2008 and strongly contended that this letter was not a rejection by the MoEF but it only conveyed the advice of the FAC. Further it was contended that this so-called rejection by the FAC was only a first step in the entire process and invariably such rejection is done as a first step but there is a provision for reconsideration under guideline (ii) as indicated in the same letter. Accordingly, the ECL, Government of Jharkhand, Ministry of Steel, Government of India, Prime Minister's Office have all pursued the matter for reconsideration of the application which finally fructified in February 2012 when all approvals were received. Therefore, at no stage the MoEF rejected the proposal and therefore there was no need for making such disclosure in the IPO Prospectus. In fact, it was contended, that if such a disclosure was made it would have been factually incorrect and the appellant (as well as other appellants) would have been

hauled up by SEBI for making such factually incorrect disclosures.

6. It was also contended that the appellant was fully aware of the need for making every disclosure in a true and fair manner and accordingly highlighted various scenarios in the prospectus under the heading "risk factors". He drew particular attention to "risk factor" No. 3, 10 and 12 which explain scenarios relating to failure to obtain or renew a number of approvals/ sanctions/ licenses/ registration and permits to develop and operate the mines and consequent impact on their business. The appellant's operations having significant raw material requirements and the possibility of adverse impact on operations in case of inability to ensure the availability of raw material at competitive prices were all disclosed. More particularly as risk factor 12 it is stated "In case ECL is unable to develop its mines, we may be unable to procure raw material under the current arrangement, and may have to procure raw material from the market at a higher price which may adversely affect our business and results of operations". Under this heading it was also stated that "in respect of ECL's proposed iron ore mines at Kodolibad, Jharkhand, execution of mining lease is pending for receipt of approval from the MoEF, Government of India. Only upon receipt of such approval, Government of Jharkhand shall

execute the necessary mining lease in favour of ECL. There can be no assurance that the approval from the MoEF will be received in a timely manner and we may have to obtain iron ore supplies from other sources". Quoting the above the learned counsel emphasised that at no stage the appellant had disclosed that all necessary approvals have been received nor the appellant was sure of getting all approvals or even sure of getting raw materials in the required quantity or at competitive prices. Therefore, the learned counsel contended that sufficient disclosure was made regarding all possible scenario relating to approvals, availability of raw materials as per the agreement or from other sources and how it may affect competitive prices. Therefore, no investor was misled by the alleged insufficient disclosure and there had been no investor complaints despite the fact that more than 60% of the subscribers to the IPO were Qualified Institutional Buyers (QIB's) who are well informed investors. It was also contended that as per ICDR Provisions, in case of pending Government approvals, it should be disclosed as "risk factors" only which had been done in the instant matter.

7. It was also contended by the learned senior counsel for the appellant that the appellant-company has undergone Corporate Insolvency Resolution Process (CIRP) and on the culmination of the same following National Company Law Appellate

Tribunal ("NCLAT") approval the appellant-company has been now taken over by M/s. Vedanta Ltd. who was the successful bidder in the CIRP. Further, on 18.09.2018 the appellant applied for delisting and the same has been effected by 20.12.2018 by giving exit to all its public shareholders. Therefore, as per the approved resolution plan all penalties/ fines etc. against the appellant stand written off in full and permanently extinguished. Therefore, even if it is held that the appellant has violated the ICDR Provisions relating to disclosures in the prospectus no penalty shall be imposed on the appellant.

Appeal No. 224 of 2016

8. As already stated ECL is the parent company of ESL, and the one primarily responsible for obtaining all the approvals etc. for the proposed mining project in question. ECL is a listed company and was incorporated in 1955, engaged in the business of manufacturing ductile iron pipes and cast iron pipes for more than 50 years. It is this appellant who entered into a MoU with the Government of Jharkhand for setting up a steel manufacturing plant and thereby promoted ESL, Appellant in Appeal No. 223 of 2016.

9. Leaned counsel Shri Sagar Ghogre representing the appellant, submits that he adopts all arguments relating to the disclosures in the prospectus made by learned senior counsel Shri Modi in Appeal No. 223 of 2016. In addition, he submits that the alleged violation in respect of the appellant is non-disclosure under Clause 36 of the Listing Agreement as the said 'rejection' of forest clearance for the proposed mining project was not disclosed to the Stock Exchanges. Therefore, penalty is imposed under two Sections of the SCRA; Section 23A(a) and 23E and contended that two penalties for the same violation is not sustainable under law. Further, it was also contended that while the show cause notice alleged that the impugned information was material for profitability, the impugned order holds that it was a price sensitive information therefore, what is held in the impugned order is not what was show caused and hence it is a misdirected enquiry and, therefore, violation of the Wednesbury principles. It was also contended in this context that the proposed project was not "material" to the business of the appellant directly as it had other sources to procure the necessary iron ore etc., since it has been in operation for several decades even prior to the project under consideration. Therefore, it was neither a material information nor would affect the business or profitability of the appellant and hence not

liable to be disclosed to the Stock Exchanges under the Listing Agreement. All these factors were brought before the AO during the submissions but not being dealt in the impugned order. It was also contended that the paragraph no. 187 of the impugned order itself has considered that the information relating to the said project is not a price sensitive information at the relevant stage. Similarly, it was contended by the learned counsel that Section 23E of SCRA is applicable only to mutual funds or Collective Investment Schemes not to the appellant-company and hence the penalty imposed under that Section is unsustainable.

Appeal No. 202 of 2016

10. The charge against the three Merchant Bankers who managed the IPO of ESL is that due diligence was not exercised by them in disclosing all material information relating to the company issuing the prospectus for an IPO and therefore violated 64(1) of ICDR Regulations.

11. The learned counsel Shri Somasekhar Sundaresan, appearing for the appellants contended that whatever information was material was disclosed in the prospectus. It was vehemently argued by the learned counsel that the so-called rejection of the application for the mining lease license of ECL

was not a rejection at all, because, FAC was only an Advisory Body. He also cited the relevant extracts relating to the functions of the FAC in support of his contentions. Rejection by the FAC, therefore, is not a rejection by MoEF; the MoEF had never rejected the proposal rather through after 1 and ½ years of the IPO the project was approved by the MoEF. It was further contended that at the relevant time several clearances had been already obtained and the stage of each clearance, either obtained or pending, has been categorically stated in a tabular format at Page 110 of the prospectus. In the said table against Environmental Clearances what is recorded is that the Approving Authority is MoEF; approval received in respect of coking coal and in respect of iron ore approval received, but applicable once Forest Clearance is received. Given the fact that the so-called rejection by the FAC is amenable for reconsideration and the fact that even a rejection by the MoEF itself can be reconsidered within three months of such rejection, what is stated at page 110 of the prospectus is a full and adequate disclosure under the given circumstances that ECL and the other concerned parties such an Government of Jharkhand, Ministry of Steel, Government of India etc. were resubmitting/ recommending the project proposal for reconsideration of the MoEF. Similarly, under the “risk factors” all scenarios of

getting approvals, not getting approvals, need for procuring iron ore from other sources all have been disclosed in detail. It was also contended by the learned counsel for the appellant that AO of SEBI did a 'roving inquiry' at the back of the appellants and obtained information from the MoEF and used that information while passing the impugned order without sharing that information with the appellant and, therefore, has violated principles of natural justice. It was also submitted that when all facts relating to the process of obtaining multiple clearances from the MoEF under the relevant statues governing those process was brought out to the AO, the AO contended that SEBI is concerned with only disclosure of material facts relating to the same in DRHP/ RHP and SEBI cannot go into the question of true meaning and legal effects of the provisions of the Forest Conservation Acts and Rules. Therefore, on the one side, the impugned order is interpreting the approval process under those laws and concluding that the application for the proposed project was rejected by MoEF but simultaneously taking the position that AO cannot go into interpreting those legal provisions. Therefore, the impugned order is contradictory in nature and in arriving at conclusion regarding the materiality of the so-called rejection by the 04.10/04.11.2008 letter.

12. The learned counsel for the appellants also relied on the order of the Supreme Court of the United States in ***TSC Industries, INC., vs. Northway, INC. 1976 SCC OnLine US SC 119*** which provided guidance for determining the standard of the requirement to provide material information. Stating that disclosure of information of dubious significance may accomplish more harm than good, it was also urged that the allegation of suppression of information was raised for the first time only in the impugned order and that point was not raised either in the show cause notice or in any of the subsequent proceedings lasting for 2.5 years. There was no such suppression of information as all the relevant information was disclosed under the "risk factors". Further quoting the Dictionary meanings of ***"diligence, due diligence, material, material fact, materially affected"*** etc. the learned counsel contended that diligence of a very high order was followed by the appellants in disclosing all material facts in the Prospectus.

13. In any case, the learned senior counsel submits that the penalty of ₹ 1 crore imposed on the appellants, who are just the Merchant Bankers, at the maximum amount of penalty imposable under Section 15HB of the SEBI Act is too harsh even if it is held that there was a technical violation. It is not a

fit case for imposition of heavy penalty and far from the maximum amount of penalty, it was argued. The learned counsel relied on the judgements passed by this Tribunal in the matters of ***Kotak Mahindra Capital Company Limited & Ors. vs. SEBI (Appeal No. 63 of 2015 decided on 30.09.2016), M/s. Keynote Corporate Services Ltd. vs. SEBI (Appeal No. 84 of 2012 decided on 19.02.2014)*** and ***M/s New Delhi Television Limited vs. SEBI (Appeal No. 358 of 2015 decided on 07.08.2019)*** and reiterated the grounds for no penalty or at most a very nominal amount of penalty.

14. We have also heard the learned senior counsel Shri Vikram Nankani, who took us through the laws and the facts of the matter in detail. He also emphasised that the contention of the appellants that rejection by FAC has no meaning since it is not the Competent Authority by highlighting the January 16, 2009 letter from the MoEF whereby the mining project proposal was rejected by the MoEF which is the Competent Authority. We have also perused the papers produced before us.

15. Since materiality of the information relating to 'rejection' of Forest Clearance and/or Environmental Clearance under ICDR and under Listing Agreement and application of due

diligence by the Merchant Bankers on the former is the core question the relevant provisions of law are reproduced for convenience:-

> ***"Regulation 57 (1), 57 (2) (a) (ii) of the ICDR Regulations: Manner of disclosures in the offer document***
>
> *57 (1) The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.*
>
> *(2) Without prejudice to the generality of sub-regulation (1):*
>
> *(a) the red-herring prospectus, shelf prospectus and prospectus shall contain:*
>
> *(ii) the disclosures specified in Part A of Schedule VIII, subject to the provisions of Parts B and C thereof.*
>
> ***Due diligence.***
>
> *64 (1) The lead merchant bankers shall exercise due diligence and satisfy himself about all the aspects of the issue including the veracity and adequacy of disclosure in the offer documents.*
>
> ***Section 21 of SCRA***
>
> *Conditions for Listing*
>
> *21 Where securities are listed on the application of any person in any recognized stock exchange,*

such person shall comply with the conditions of the listing agreement with that stock exchange.

Rule 7 and 8** of **Forest (Conservation) Rules, 2003

"7. Committee to advise on proposals received by the Central Government:

(1) The Central Government shall refer every proposal, complete in all respects, received by it under sub-rule (3) of rule 6 including site inspection reports, wherever required, to the Committee for its advice thereon.

(2) The Committee shall have due regard to all or any of the following matters while tendering its advice on the proposals referred to it under sub-rule (1), namely:-

(a) Whether the forests land proposed to be used for non-forest purpose forms part of a nature reserve, national park, wildlife sanctuary, biosphere reserve or forms part of the habitat of any endangered or threatened species of flora and fauna or of an area lying severely eroded catchment;

(b) Whether the use of any forest land is for agricultural purposes or for the rehabilitation of persons displaced from their residences by reason of any river valley or hydro-electric project;

(c) Whether the State Government or the other authority has certified that it has considered all other alternatives and that no other alternatives

in the circumstances are feasible and that the required area is the minimum needed for the purpose; and

(d) Whether the State Government or the other authority undertakes to provide at its cost for the acquisition of land of an equivalent area and afforestation thereof."

"8. Action of the Central Government on the advice of the Committee

The Central Government shall, after considering the advice of the Committee tendered under Rule 7 and after such further enquiry as it be necessary, grant approval to the proposal with or without any conditions or reject the same within 60 days of its receipt."

16. ICDR 2009 is voluminous and cover in great detail the requirement for all material disclosure which are true and adequate to enable the investors to take an informed decision. Apart from providing for an abridged version it states that the Prospectus shall contain the disclosures specified in Schedule II of the Companies Act, 1956 and disclosures specified in Part A of Schedule VIII of the Regulations subject to the provisions of Parts B and C thereof. It also provides that for fast track issue of specified securities only disclosures specified in Part B of Scheduled VIII is relevant and Part C becomes relevant for a

follow-on public offer (FPO). Therefore, other than for fast track issues or for FPO's of specified securities the disclosure requirement is very onerous even covering details of the cover pages including the thickness of the paper (preferably minimum hundred gcm. quality) and state that "the front outside and inside cover pages of the offer document shall be white and no patterns or pictures shall be printed on these pages". Therefore, the letter and spirit (as well as absence of pictures) of the disclosure requirement is the need for disclosing all material events in clear terms with very little discretion for judging the degree of materiality. The emphasis is on disclosure; not otherwise, which means disclose even when the issuer doubts whether there is any materiality. In other words, it would imply that only facts/ events which the issuer is undoubtedly sure of having no relevance to the issuer or to the issue can be excluded from disclosure.

17. The required permissions for the mining project is an important component of the statutory approvals. The project itself is critical for ESL as iron ore at competitive rates and in required quantity would be available seamlessly only from this project and hence the MoU with ECL, the parent company, for assured, uninterrupted supply from the mining project for 20 years. The Board decision relating to the project and the MoU

to supply iron ore for a 20 year period to ESL were all disclosed by ECL which was making an investment of over 700 crores in ESL.

18. In this context it is worthwhile to quote paragraphs 187 and 198 of the impugned order which read as follows:-

> *"187. Thus to sum up, it is noted from all of the above that ECL had obtained Iron Ore Mine in the State of Jharkhand for the purpose of implementing ESL's project. At a time when ESL was scheduled to commence commercial production of its 2.2 MTPA Integrated Steel and Ductile Iron Spun Pipes plant in Jharkhand in October 2010, the status of the forest diversion proposal of the Iron Ore Mine of ECL was that MoEF had rejected the said proposal at the in-principle stage itself after considering the proposal. Further, though the State Government had requested for reconsideration of the proposal by MoEF as per guideline 4.14(ii), no visible event had taken place indicating a reversal by MoEF of its decision of rejection of the proposal. ECL had already at this stage invested approx. 44% of its networth and 68% of its total investments in the said project. Further, the strong concern felt by ECL at the relevant point of time that ESL's project could become economically and financially unviable in view*

of MoEF's rejection of forest diversion proposal for Iron Ore Mine of ECL, stands reflected in the various letters sent by ECL to various authorities including to the then Prime Minister of India. Thus, even if it is accepted that rejection of forest diversion proposal by MoEF at the in-principle stage in November 2008 may not be considered to be price sensitive at that stage, however, it was certainly an event which would have had a bearing on the performance/ operation of ECL at a time when ESL's Steel Plant was to commence commercial production in October 2010, as made publicly known through the RHP of ESL. Thus, from the same, I conclude that the said information was definitely price sensitive, which required ECL to make the necessary disclosure under Clause 36 of the Listing Agreement read with Section 21 of SCRA to the Stock Exchanges at the earliest."

"198. Given the significant penalties that breach of clause 36 of Listing Agreement attracted, ECL could have carefully weighed up the potential consequences of not disclosing the particular information which was affecting its major investment. It was necessary for ECL to weigh the rejection of forest diversion proposal for its iron ore mine by MoEF against the backdrop of the previous information regarding investment of Rs. 700 crore in

ESL's plant that was disclosed to the market and the iron ore agreement entered by ECL with ESL for ESL's plant. Further, the fact that ECL had made its concern regarding ESL's project becoming unviable/non-starter in absence of forest clearance by MoEF known to several authorities including to the then Prime Minister of India, in itself, indicated that the event was material for ECL, hence, price sensitive and should have been disclosed promptly. The disclosures required to be made under clause 36 of the listing agreement were mandated on listed companies to enable the shareholders and the public to be appraised of the factual position of the Company."

19. Given the above facts and circumstances, it is undoubtedly and abundantly clear that the ₹ 700 crore plus investment in the newly promoted company ESL by ECL and an MoU between them were critical events which were disclosed and therefore any event which would lead to a disruption, delay or even a temporary halt which would affect the time schedule, cost, production etc. in the said project was undoubtedly a material event for both ESL and ECL. Therefore, we find no reason to interfere with the findings in the impugned order that the rejection letter communicating either the view of the Forest

Clearance Division and/ or the decision of the MoEF regarding rejection of Environmental Clearance because of rejection of forest clearance were material information to be disclosed in the IPO Prospectus under ICDR by ESL and under Clause 36 of the Listing Agreement by ECL.

20. The contention of the appellants is that such rejection is part of the process and application for reconsideration is inbuilt under guideline 4.14 of the Forest Conservation Act, 1980. ***"Guideline & Clarification 4.14*** *under* ***Forest Conservation Act, 1980*** *refers to 'Rejection/ Reopening of Cases' and reads as follows:*

> ***"4.14 Rejection / Reopening of Cases***
>
> ***(i)*** *In cases where the State Government is requested to furnish clarifications or additional information relating to a proposal, all particulars should be made available to the Central Government within 60 days. If such particulars are not received within a maximum of 90 days, the proposal may be rejected by the Central Government for non-furnishing of essential information. Such cases could be reopened provided the following conditions are satisfied:*
>
> *(a) all the required information has been made available*

(b) delay in providing the information is satisfactorily explained, and

(c) there is no change in the proposal in terms of scope, purpose and other important aspects.

(ii) *some cases, the State Government comes up with a request for reconsideration of the proposal after it has been considered and rejected by the Ministry. Such request should be made within three months from the date of the issue of the rejection letter. The request should give a detailed justification for reconsideration as well as comments on the grounds on which the proposal was rejected by the Ministry."*

We agree with the contention to the extent that the said provision deals with rejection/ reopening of cases. Guideline 4.14(ii) explicitly states that such request should be made within three months from the date of the issue of rejection letter with full justification etc. for reconsideration. However, we note that the application for reconsideration of the January 16, 2009 rejection letter was taken up by ECL only on July 24, 2009, though in between certain correspondences between ECL and Government of Jharkhand, Government of Jharkhand and Central Government etc. are produced on record.

21. Therefore, the contention of the appellants that they were strictly following guideline 4.14(ii) under Forest Conservation Act, 1980 which stipulates a three months deadline for reconsideration application, is contrary to the facts on record. In any case, the question is not whether the application itself was finally rejected or whether reconsideration application was submitted or even whether there was provision of reconsideration etc. The question is only whether a communication rejecting Forest Clearance / Environmental Clearance for the mining project in question was a material event to be disclosed in the prospectus by ESL and under Clause 36 of the Listing Agreement by ECL given the importance of the project for ESL and ECL. The answer to these questions, in our considered view, is strongly in the affirmative. Given the core role the project would play in the future performance, profitability and even viability of the business even if it was considered only an "initial rejection" it was a material information to be disclosed irrespective of whether finally the project got clearance or not.

22. Learned counsel for the appellants over emphasised the letter dated 04.10/04.11.2008 whereby rejection of the Forest Clearance Division was conveyed and argued that it was not a final rejection because it was not issued by the MoEF after

considering the advice of the FAC. However, we are constrained to state that all the counsel for the appellants made only a feeble/passive reference to the January 16, 2009 letter which categorically rejected (even assuming that it was for the time being) Environmental Clearance for the project proposed by ECL on the basis of the rejection by FAC. For facility, letter of January 16, 2009 is extracted hereunder:-

> *"To,*
> *M/s Electrosteel Castings Limited*
> *40, Stephen House,*
> *4 BBD Bag (East),*
> *Kolkata- 700 001*
> *e-mail: rssingh@electrosteel.com*
>
> ***Subject: Dirsumburu Iron Ore Mining Project of M/s Electrosteel Castings Limited, located in Kodoliabad Reserved Forest, Tehsil Manoharpur BD, District Singhbhum (West), Jharkhand- environmental clearance regarding.***
>
> *Sir,*
>
> *This has reference to your letter No. 'Nil' dated 07.05.2007 and subsequent letters dated 09.06.2007 and 12.06.2008 on the subject mentioned above. The proposal is for opening of a new mine for production of 10 million TPA of iron ore to meet the captive requirement for the integrated steel plant. The total mine lease area of the project is 192.5ha, which is a forestland. It is noted that the proposed project is located within the core area of the Singbhum Elephant Reserve, which is critical to wildlife conservation and that the* ***Forest Advisory Committee (FAC) has rejected the proposal for diversion of forestland for the said project as communicated vide letter No. 8-35/2008-FC dated 04.10.2008.***

> ***In view of the above, Ministry of Environment and Forests has decided to reject the proposal for environmental clearance for the above mentioned project.***
>
> ***This issues with the approval of the competent authority."***
>
> *(emphasis added)…*

23. This is a categorical rejection as on that date though a provision for reconsideration under 4.14(ii) was available. Further, the learned counsel, particularly in Appeal No. 202 of 2016, argued that there should not be "an overload of information of such dubious significance because such disclosure may accomplish more harm than good" by quoting from the order of ***TSC Industries (Supra)***. However, we are of the view that ironically this is exactly what the appellants have done in not disclosing that an application filed for the mining project has been rejected by the FAC and the MoEF vide letters dated 04.10/11.2008 and January 16, 2009 and instead giving 19 full pages of material under the "Risk Factors" indicating various scenarios. Citing these risk factors in the prospectus the appellants in Appeal No. 202 of 2016 have elaborately argued and emphasised item 12 of the risk factors and pointed out the possibilities of the project not getting approved, delay in project approval, impact on competitive prices, adverse impact on

operations. However, under 12 item in the list of the risk factors, the crucial statement is highlighted as follows:-

> ***"Further, in respect of ECL's proposed iron ore mine at Kodolibad, Jharkhand, execution of mining lease is pending for receipt of approval from the Ministry of Environment and Forests, Government of India. Only upon receipt of such approval, Government of Jharkhand shall execute the necessary mining lease in favour of ECL.*** *There can be no assurance that the approval from the Ministry of Environment and Forests will be received in a timely manner and we may have to obtain iron ore supplies from other sources. Further, there can be no assurance we will be able to obtain coal supplies either in sufficient quantities or acceptable quantities, or at all. We may also have to purchase the raw materials at a higher price from the market for carrying out our operations, which may cause a delay in our commercial production, thereby having an adverse effect on our business, financial condition and results of operations."*
>
> *(emphasis added)*…

24. Further the (then) Current Status of development of Iron Ore and Coking Coal Mines of ECL as shown at Page 110 of the Prospectus is reproduced below:

Permit	Approving Authority	Coking Coal	Iron Ore
Mine Allocation	Ministry of Coal	Received	Received
Approval of Mining Plan	Ministry of Coal	Received	Received
SPCB	JSPCB	Received	NoC Received
Environmental Clearance	MoEF	Received	Received, but applicable once Forest Clearance is received
Railway Transport Clearance	Railway Board	Received	To be received alongwith Forest Clearance
Forest Clearance	MoEF	Not applicable	Forest diversion proposal already submitted
Signing of Mining Lease	State Government of Jharkhand	Received	Will be applied for after Forest Clearance is received

In the row relating to Environmental Clearance what is indicated in the above table is that the approving authority for both in respect of coking coal mining and iron ore mining is the MoEF; approval in respect of coking coal mining has been received and approval in respect of iron ore has been received, but applicable once forest clearance is received. When this statement was published as part of the prospectus the 04.10/11.2008 rejection letter of the FAC as well as the rejection letter dated January 16, 2009 of the MoEF and the subsequent efforts made by the appellants for reconsideration were all in the knowledge of the appellants. Therefore, great effort has been made to put such facts in a compact statement like “received, but applicable once forest clearance is received”; a clear case of not only partial/ inadequate disclosure but also to the effect of concealment.

25. Instead of disclosing a rejection everything else has been disclosed. This is what the order of ***TSC Industries (Supra)*** categorically cautions against. Therefore, reliance of the appellant on this order not only does not help the appellants but rather does more harm to them. The emphasis made by the learned counsel for the appellants also on various correspondences by different authorities seeking approval for the project from MoEF including the letter from the Prime Minister's Office ("PMO") to the MoEF also does not absolve the appellants from the required disclosures in the prospectus/under the Listing Agreement. The PMO letter is a reply to a VIP reference with a copy to MoEF clearly stating that "forwarded for its consideration and appropriate action most expeditiously". Appropriate action could be another rejection by the MoEF; approval cannot be assumed.

26. We do not propose to deal with the contention of the learned senior counsel for ESL that ESL has undergone a CIRP and all claims relating to penalties etc. have been permanently extinguished and so on under the approved Resolution Plan. We would just state that those issues would be addressed by the appropriate authorities under applicable laws.

27. However, in the interest of justice we tend to agree with the submissions of the appellants in Appeal No. 202 of 2016 and in 223 of 2016 that non-disclosure of the initial round rejection of the mining project proposal in the Prospectus is not in the category where maximum penalty is imposable. Here, we consider the continued efforts of these appellants (ESL and ECL) in pursuing the matter further for reconsideration etc. as well as in detailing the risk factors with possibilities of not getting the final approval etc. as disclosed in the prospectus as mitigating factors. Accordingly we would reduce the amount of penalty of ₹ 1 crore each imposed on ESL under Section 15HB of the SEBI Act to ₹ 50 lakhs. A similar penalty of ₹ 50 lakh on the three Merchant Bankers jointly is sufficient to meet the ends of justice in Appeal No. 202 of 2016. However, as far as the appeal of ECL is concerned, the penalty imposable under the provisions of 23A(a) and 23E of the SCRA is a maximum of ₹ 1 crore and ₹ 25 crore respectively. Therefore, the penalty of ₹ 50 lakh each imposed under the said provisions cannot be termed as excessive or harsh. Therefore, no interference is needed. The contention of the appellant ECL that sub-section 23E of SCRA, 1956 is not applicable to the appellant-company since it is applicable only to persons managing CIS or mutual funds is an incorrect reading of the sub-section.

28. Section 23E of the SCRA, 1956 is extracted hereunder:-

> ***"23E. Penalty for failure to comply with listing conditions or delisting conditions or grounds.-*** *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees."*

A correct reading of the above sub-section would make it abundantly clear that a company failing to comply with listing conditions or delisting conditions etc. shall be liable to a penalty not exceeding ₹ 25 crores. Such listing/delisting conditions are relevant to a company rather than persons managing CIS or mutual funds.

29. In conclusion, we pass the following order:

a) Appeal No. 202 of 2016 and 223 of 2016 are partly allowed by reducing the penalty amount from ₹ 1 crore each to ₹ 50 lakh each. The penalty of ₹ 50 lakhs imposed on the appellants in Appeal No. 202 of 2016 shall be paid jointly and severally by the appellants.

b) Appeal No. 224 of 2016 is dismissed.

c) Appellants are directed to pay the penalty amount within 30 days from the date of this order.

30. All three appeals are disposed of on above terms with no orders on costs. Consequently, Misc. Application Nos. 381, 382 and 144 of 2016 seeking resumption of proceedings have become infructuous and the same are also disposed of as such.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M. T. Joshi
Judicial Member

14.11.2019
Prepared & Compared By: PK