

Securities Appellate Tribunal

Sebi vs Ispat Industries Limited And One ... on 31 March, 2004

Author: T Nagarajan

Bench: T Nagarajan

ORDER T.M. Nagarajan, J.

1. Background 1.1 Ispat Industries Limited (hereinafter referred to as "Ispat") is a company incorporated under the Companies Act, 1956 and listed on The Stock Exchange, Mumbai (hereinafter referred to as "BSE"), the National Stock Exchange, Ahmedabad Stock Exchange, Delhi Stock Exchange and Calcutta Stock Exchange.

1.2 It was observed that Shri Anil Sureka, Executive Director (Finance) of Ispat, in an interview given to CNBC on 26.9.2003 and which was reported on www.moneycontrol.com on the same day had stated that :

1.2.1 Ispat was targeting a turnover of Rs. 4000 Crores during the year 2003-04 1.2.2 The capacity expansion programme of Ispat along with cost saving initiatives would result in savings of about Rs.1000 Crores a year.

1.2.3 The contribution of long term contracts to sales would move up to 50% from the current 10%.

1.2.4 The export target for the current fiscal had been pegged at Rs.1300 Crores.

1.3 The above averment had the potential of influencing the price of the scrip of Ispat materially and that the said information was not furnished to the stock exchanges on which the said scrip was listed, as required under the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "the said Regulations")

2. Show Cause Notice and reply 2.1 SEBI therefore, issued a notice to Ispat on 29.9.2003 communicating the above observations and findings and advising them to submit their explanation as to why the said information was not disclosed to the stock exchanges and public as required under Clause 36 of the Listing Agreement entered into by Ispat with the stock exchanges and Regulations 12(2) read with Schedule II of the said Regulations 2.2 Ispat submitted their reply vide letter dated 8.10.2003. In the said reply, they stated that:

2.2.1 Shri Anil Surekha, Executive Director, Finance had in his interview to CNBC on 26.9.2003, broadly spelt out the growth potential of the company keeping in mind the improved conditions prevailing in steel market. The improved income of the company during the current financial year was expected to come from planned additions to their steel making capacities. The proposed addition to the capacity had already been spelt out in the annual report of Ispat for the financial year ended 31.3.2003. Capacity addition has also been indicated in the publication of the audited financial results of the company for the year ended 31.3. 2003 appearing in various newspapers. Further, the capacity addition has also been indicated in newspaper publications containing provisional unaudited financial results for the quarter ended 30.6.2003.

2.2.2 The company has undertaken various initiatives aimed at improving productivity, efficiency and ultimately cost savings. These initiatives have already been spelt out in the annual report of the company for the financial year ended 31.3.2003. In the course of the interview, Shri Surekha had broadly indicated the likely impact of such cost saving initiatives on the working of the company.

2.2.3 In line with best international practices, the company has proposed to enter into long term contracts with potentially large customers. This would entail benefit in the form of an assured long term client base at competitive prices.

2.2.4 The FOB value of exports achieved by them during the previous financial year ended 31.3.2003 was Rs.799 crores. Their exports during the current financial year were expected to be around Rs.1300 crores. During the course of the interview, Shri Surekha had explained the export thrust in general terms.

2.2.5 The aforesaid information conveyed by Shri Surekha at the time of the interview was general in nature and not made with a view to influence the market sentiments.

2.3 As the reply of Ispat was found to be unsatisfactory, a show cause notice was issued to Ispat on 22.10.2003 alleging that they had failed to disclose price sensitive information pertaining to quantitative projections of turnover, cost saving and export target resulting out of planned capacity expansion to stock exchanges and public as required under Clause 36 of the Listing Agreement and Regulation 12(2) read with Schedule II of the said Regulations. They were therefore called upon to show cause why action under Regulation 14(1) of the said regulations should not be taken against them pending investigation and further proceedings.

2.4 Ispat submitted their reply to the said show cause notice vide their letter dated 6.11.2003. In the said reply they submitted that :

2.4.1 The proposed additions to their steel making capacities has been duly notified to the stock exchanges as part of details relating to quarterly financial results of the company. In this regard, they also enclosed copies of audited / unaudited financial results for the period/s ended 31.3.2003, 30.6.2003 and 30.9.2003. They also submitted that the said results have been duly published in accordance with listing requirements.

2.4.2 The planned capacity expansion has been duly set out in the annual report of the company and in this regard they have invited reference to the statement contained in the Director's report on accounts of the company for the year ended 31.3.2003.

2.4.3 The various cost saving initiatives coupled with the proposed capacity expansion programme which would result in a substantial cost benefits have been duly set out in the annual report of the company. The details of such cost saving initiatives were also spelt out during the Annual General meeting of the company held on 24.9.2003.

2.4.4 The expected turnover for the current financial year reflects an increase of 26% over the previous financial year and this projected increase is in line with the capacity enhancement achieved during the current financial year.

2.4.5 The targeted exports for the current financial year were in line with capacity enhancement effected during the current financial year.

3. Hearing and Reply: An opportunity of personal hearing was granted to Ispat on 26.2.2004. Shri Anil Sureka, Executive Director appeared on behalf of Ispat and reiterated the submissions made by them in the reply to the show cause notice.

4. Consideration of issues: I have considered the facts of the matter, the replies and submissions made by Ispat and Shri Anil Sureka and other material on record. The following issues arise for consideration:

4.1 Whether the information relating to projections of turnover, cost savings, export target and capacity expansion constituted price sensitive information and whether Ispat failed to disclose the same as per the said regulations 4.1.1 Clause (ha) of Regulation 2 of the said Regulations defines price sensitive information as under :

(ha) "price sensitive information" means 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.

Explanation - The following shall be deemed to be price sensitive information :-

- (i) periodical financial results of the company;
- (ii) intended declaration of dividends (both interim and final);
- (iii) issue of securities or buy-back of securities.
- (iv) Any major expansion plans or execution of new projects;
- (v) Amalgamation, mergers or takeovers;
- (vi) Disposal of the whole or substantial part of the undertaking; and
- (vii) Significant changes in policies, plans or operations of the company.

4.1.2 I note that Shri Anil Sureka in the course of his interview to CNBC on 26.9.2003 mentioned the following:

(i) To a question regarding funding for the Rs.890 crore expansion planned by the company, Shri Sureka said that the balance sheet had been restructured and the company had gone through the

corporate debt restructuring scheme approved by all lenders and that the balance sheet would now be much stronger.

(ii) Ispat had drawn up a four pronged strategy that included a mining foray, a captive power plant, a dedicated port and a phased increase of 1.6 million tonne to achieve long term growth. The plan should help in a Rs.1,100 crore cost saving.

(iii) The company is slowly moving to long term contracts as compared to the present focus on sale in the spot market. He said that they are selling on a spot basis with about 10% in the long term; but slowly they are changing policy and have taken the decision to move to short term.

(iv) On the export front, the company was looking at new territories such as North Africa, South-East Asia and Korea among others and that the export target for the current fiscal (year) has been pegged at Rs.1,300 crores.

(v) Ispat is planning to get onto Iron -ore mining also.

4.1.3 From the above, I find that the information provided by Shri Sureka in the course of the interview included changes in policy, major expansion plans and new projects. I therefore, hold that the said information divulged by Shri Sureka is falling under Clause vii of Regulation 2(ha) cited above. This has all the potential to materially affect the price of the shares of Ispat. Consequently, I find that the said information was price sensitive in nature.

4.1.4 Ispat, in their reply and submissions before me contended that they had already made disclosures of the aforesaid information. In this regard, I considered the enclosures sent along with their reply dated 6.11.2003. I note that in the notes to the financial statements both audited and un-audited for the year ended 31.3.2003, 30.6.2003 and 30.9.2003, there were disclosures regarding the corporate debt restructuring scheme only. I note that there were no disclosures regarding the proposed plan to enter into mining, to set up a dedicated Port and a Captive Power Plant as divulged by Shri Sureka in his said interview. Further, there was no disclosure regarding the change in policy to move into long term contracts from sale in the spot market. I further note that there was no disclosure regarding development of North Africa, South East Asia and Korea as export markets. Ispat failed to submit any material to prove that they have made disclosures regarding the above information to stock exchanges. The said information till the time of the interview was unpublished.

4.1.5 In view of the above, I find that Ispat have failed to make adequate disclosures as per the said Regulations and the listing agreement in respect of price sensitive information.

4.2 Whether Ispat was legally required to disclose the information mentioned in Para 4.1 above to stock exchanges and whether failure to do so would constitute a violation under the said regulations.

4.2.1 Regulation 12 of the said Regulations lays down a code of internal procedures and conduct for listed companies. Sub regulation (2) of the Regulation 12 provides that entities mentioned in sub

regulation (1) which includes listed companies shall abide by the Code of Corporate Disclosure Practices specified in Schedule II of SEBI (Prohibition of Insider Trading) Regulations, 1992.

4.2.2 I note that Clause 2 of the Code of Corporate Disclosure Practices provides for prompt disclosure of price sensitive information. The said clause provides as under:

"2.0 Prompt disclosure of price sensitive information 2.1 Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.

2.2 Listed companies may also consider ways of supplementing information released to stock exchanges by improving Investor access to their public announcements.

4.2.3 I also note that clause 36 of the listing agreement between Ispat and BSE provides that Ispat would immediately inform the stock exchange of all events which have a bearing on the performance / operations of the company as well as price sensitive information.

4.2.4 In Para 4.1.4 supra, I have found that Ispat have failed to make adequate disclosures regarding price sensitive information. Therefore, I find that Ispat have violated Regulation 12(2) read with Schedule II of the Insider Trading Regulations.

5. Order 5.1 The requirement of prompt disclosure of price sensitive information by corporates was introduced as a preventive measure to curb insider trading. For this reason, a violation of the provisions relating to disclosure as above should be viewed seriously. This made the corporate entity liable for action under Section 11 and 11B and /or Section 24 of the SEBI Act. 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.

5.2 Therefore, I, in exercise of the powers conferred on me under Section 19 read with Sections 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 Act, the Rules and Regulations framed there under and more specifically with the Code of Corporate disclosure mentioned in Schedule II to the Insider Trading Regulations.