BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 208 of 2011

Date of decision: 30.3.2012

MAN Industries (India) Limited
MAN House, 102, SV Road,
Vile Parle (West),
Mumbai- 400 056 ……Appellant

Versus

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

Mr. J.J. Bhatt, Senior Advocate with Mr. Dr. S.D. Israni and Mr. Satyan S. Israni, Ms. Isha Gada, Advocates for the Appellant.
Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody and Mr. Mobin Shaikh, Advocates for the Respondent.

CORAM : P.K. Malhotra, Member
S.S.N. Moorthy, Member

Per : S.S.N. Moorthy, Member

This appeal is filed against an adjudication order passed by the adjudicating officer of the Securities and Exchange Board of India (for short the Board) imposing a penalty of ₹ 33,00,000/-. The adjudicating officer found the appellant guilty of violation of Regulation 12(1) read with Clause 3.2 of Part A of Schedule I of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (PIT Regulations). He also found the appellant guilty of violation of Regulation 12 (2) read with Clause 2.0 of Schedule II of the PIT Regulations. The former related to failure to close the trading window during the period when unpublished price sensitive information was available. The latter related to delay in making disclosure of price sensitive information. The adjudicating officer imposed a penalty of ₹ 11,00,000/- for the first violation and a sum of ₹ 22,00,000/- for the second violation, thus imposing a total penalty of ₹ 33,00,000/-.

2. The appellant is a listed company engaged in the manufacture and exports of steel pipes. The shares of the appellant are listed on the Bombay Stock Exchange and National Stock Exchange Limited. The appellant lodged a complaint with the Board against irregularities committed by Shri J.C. Mansukhani, vice chairman and managing director of the company. The complaint related to insider trading and violation of the relevant code of conduct. On receipt of the complaint the Board sought periodical information and clarifications from the appellant. On a verification of the procurement of orders by the appellant, the period during which price sensitive information relating to huge orders was available and the period during which disclosure was made regarding the orders to the stock exchange, the adjudicating officer considered that there were violations with respect to the code of conduct prescribed for insider trading and disclosures of price sensitive information to the stock exchange. A show cause notice was issued by the adjudicating officer on May 11, 2011. The show cause notice alleged two violations against the appellant. The adjudicating officer found that the appellant had failed to close the trading window during the period when unpublished price sensitive information was available. He held the view that the appellant bagged substantial orders of contracts during the period August 6, 2010 to September 7, 2010 and during the above period the trading window should have been closed. The second allegation related to failure to furnish timely disclosures of bagging of orders worth about ₹ 1200 crores from domestic and international market. According to the adjudicating officer the appellant received the orders on August 30, 2010 whereas the information was made public only on September 7, 2010 i.e. after a delay of seven days. The adjudicating officer found the appellant prima facie guilty of the above two charges and called for the appellant's explanation thereto. The appellant submitted detailed replies on June 2, 2011 and June 27, 2011 denying the allegations.

3. We have heard the learned senior counsel for the parties who took us through the records of the case. The learned senior counsel appearing for the appellant argued that there was no violation of Regulation 12(1) read with Clause 3.2 of Part A of Schedule I of the PIT Regulations. There was no need to close the trading window as

the appellant was engaged in procuring orders in the normal course of business. It is observed that the appellant's nature of business consists of substantial orders from domestic and international markets and procuring such orders is an ongoing process. According to him, procuring orders in the normal course of business in a manufacturing company does not fall under any of the clauses mentioned in item no. 3.2.3 of the model code of conduct for prevention of insider trading. A reference is made by him to the show cause notice where allegation refers to procurement of substantial orders which relates to major expansion plan or execution of new projects. However, according to him, in the adjudication order the charge has been modified as relating to 'changes in plans or operations of the company.' It is submitted that bagging of orders for the business operations of the appellant cannot be brought under 'changes in plans or operations of the company.' The senior counsel for the appellant made a specific reference to the order of this Tribunal in Appeal no. 107 of 2011 dated 19.10.2011 in the case of Hindustan Dorr Oliver Limited & Ors. vs Securities and Exchange Board of India. According to him the facts of the case are similar to the ones in the impugned case and the decision therein will squarely apply.

4. The learned senior counsel for the Board defended the order of the adjudicating officer.

5. On a consideration of the facts of the case and the decision arrived at by this Tribunal in the case of Hindustan Dorr Oliver Limited & Ors mentioned supra, we are of the view that the adjudicating officer has gone wrong in holding the appellant guilty of violating the provisions of Regulation 12(1) read with Clause 3.2 of Part A of Schedule I of PIT Regulations. The Regulation under consideration provides for closure of the trading window in certain given circumstances. They are mainly the following:

> "(a) Declaration of financial results (quarterly, half-yearly and annually)
> (b) Declaration of dividends (interim and final).
> (c) Issue of Securities by way of public/rights/ bonus etc.
> (d) Any major expansion plans or execution of new projects.
> (e) Amalgamation, mergers, takeovers and buy-back.
> (f) Disposal of whole or substantially whole of the undertaking.

(g) Any changes in policies, plans or operations of the company."

In the appellant's case the adjudicating officer has considered the bagging of orders for normal manufacturing activity to be crucial for closure of the trading window. There is no dispute regarding the fact that the appellant is regularly in receipt of orders of contract from various parties and this is an ongoing process throughout the year. This does not fall under major expansion plans or execution of new projects in the case of the appellant as held in Hindustan Dorr Oliver Limited & Ors vs Securities and Exchange Board of India. It goes without saying that this cannot be brought under changes in policies and plans or operations of the company. So, the facts of the case do not throw up a situation where the trading window has to be closed. In view of this, the appellant cannot be held guilty of violating Regulation 12(1) read with Clause 3.2 of Part A of Schedule I of the PIT Regulations. Hence the penalty imposed on this ground amounting ₹ 11, 00,000/- is deleted.

6. The second allegation relates to delay in disclosing to the stock exchange price sensitive information concerning orders procured by the company on August 30, 2010. According to the show cause notice the company made public price sensitive information relating to bagging of orders only on September 7, 2010 i.e. after a delay of seven days and this is in direct violation of Regulation 12(2) read with Clause 2.0 of Schedule II of PIT Regulations.

7. It is strongly argued by the learned senior counsel for the appellant that there was no confirmation of the order on August 30, 2010 as alleged in the show cause notice, since the confirmation of order crystallized only on September 7, 2010 on which date relevant disclosure was made to the stock exchange. The impugned order relates to a contract with the Republic of Iraq, Ministry of Oil, State Company for Oil Projects (SCOP). According to the appellant the final award of order took place only on September 7, 2010 and the documents relied upon by the Board point to only an intention to award the order which was followed up with several correspondence and procedural formalities. Intention to award an order, according to the appellant's learned senior counsel, does not amount to award of order and so the appellant cannot be found

guilty of non-disclosure. It is pointed out that in the show cause notice the adjudicating officer has referred to a delay of seven days whereas in the impugned order the delay has been enlarged to twenty two days. With a reference to the reply to the show cause notice it is observed that there were several negotiations with SCOP after August 15, 2010 and the final award crystallized only on September 7, 2010 on which date the appellant sent final comments on the form of contract received from SCOP and there was certainty regarding the award of order. It is also submitted that there are no specific guidelines provided for disclosure of price sensitive information and so the appellant was in the habit of disclosing price sensitive information whenever the contracts attained reasonable confirmation. According to the appellant, its nature of business is such that confirmation of order is a long drawn process and there are several formalities to be observed before the actual award. So, the appellant could decide about the finalization of an order and disclosure of the same to the stock exchange only when all the procedures and documentation were completed.

8. We have considered the rival submissions. The relevant provision is contained in Schedule II under Regulation 12(2) of Code of Corporate Disclosure Practices for Prevention of Insider Trading. It relates to prompt disclosure of price sensitive information. The provision reads as under:

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

It is incumbent upon a listed company to make the disclosure on a continuous and immediate basis so that price sensitive information is in public domain and is available to the shareholders for taking informed decisions. In the present case, the appellant has admitted that bagging of a substantial order from SCOP was a price sensitive information within the meaning of the regulations. It is to be noted that the appellant is in the process of bagging several orders in domestic and international markets and the total contract finalized as on September 7, 2010 was around ₹ 1200 crore. It is not for consideration whether the fixing of the threshold limit of ₹ 550 crore is reasonable or valid since that is not the issue in dispute. The appellant made disclosure to the stock exchange regarding bagging of substantial orders on September 7, 2010. This confirms

the fact that the appellant has undisputedly decided that the orders received till that date constitute price sensitive information. The only issue to be resolved is whether there is a delay in making the disclosure as provided for in Clause 2.0 of Schedule II of Regulation 12 (2) of PIT. For this purpose we have to refer to the correspondence between the appellant and SCOP which provided the appellant with a substantially high order. According to the adjudicating officer the appellant had crossed the threshold limit of ₹ 550 crores on August 15, 2010. Therefore, a disclosure should have taken place immediately. It is necessary to refer to the communication received from SCOP on August 15, 2010. The relevant communication reads as under:

> **"From: SCOP**
> **To: MAN INDUSTRIES TLD**
> **E-mail: enquiry@maninds.org**
> **jaffars2005@yahoo.com**
>
> **Sub: Requisition No. 2090/QR-01/2008**
>
> We would like to inform you that we intent to award you the Req. No. 2090/QR-01/2008 in total amount of (135 565 800) $ (one hundred thirty five million five hundred sixty five thousand eight hundred us dollar), to supply the line pipe of (300KM) size 42" with the accessories CIF Um Qasser.
>
> Therefore you are kindly requested to extend the validity for your commercial offer up to 30th Sept, 2010, to enable us to proceed our procedures to complete the contract.
>
> **…Best Regards…"**

The thrust of the arguments of the appellant's learned senior counsel is that the above communication conveys only an intention to award the order and it does not constitute the award of order per se. So, according to him, there is no need to disclose the intention to award a contract. On the other hand, the learned senior counsel for the Board argued that the tone and tenor of the communication convey the decision to award the order subject to extension of the date for commercial offer up to September 30, 2010. On a perusal of the communication from SCOP referred to above we are also of the view that the award of order has almost reached finalization in the above communication. It cannot be interpreted as a letter conveying a mere intention. It is in the nature of a communication which conveys the final decision on the issue subject to compliance of certain formalities. There is no evidence regarding any further negotiation or discussion

or correspondence affecting the basics of the order. SCOP merely wanted an extension of the date of validity of the commercial offer so as to proceed with the final documentation of the contract. The submission of the learned senior counsel for the Board has to be given due consideration while appreciating the spirit and scope of the communication received from SCOP. We are of the view, that the order with SCOP cannot be regarded as remaining at a stage of negotiation or discussion as on August 15, 2010. On the other hand, the facts of the case show that the order has almost crystallized and the communication is in the nature of a confirmation of the order. As already observed, the receipt of order in the present case has been accepted by the appellant as a price sensitive information. Since, the appellant received the communication regarding the bagging of the order subject to compliance with certain formalities the appellant was duty bound to make the disclosure as on August 15, 2010. The appellant has failed to do so. The disclosure was made only on September 7, 2010. In the facts of the case, there is a clear violation of Clause 2.0 of Schedule II of Regulation 12(2) of PIT Regulations.

9. The appellant's learned senior counsel made a strong plea that the penalty of ₹ 22, 00,000/- imposed on the appellant is highly excessive. On a consideration of the facts of the case and the gravity of violation we are also of the view that the penalty imposed is excessive. There cannot be a strait jacket formula for imposition of penalty. Quantum of penalty has to be assessed having regard to the facts of each case. Admittedly, there is a delay in making disclosure as laid down in the Regulations relating to Prohibition of Insider Trading. However, the delay occurred only because of certain interpretations given to the communication received from an international business house. The appellant considered September 7, 2010, the date on which final comments on the form of contract was sent to SCOP, as the day of confirmation of the order. However, the previous communication received on August 15, 2010 conveys reasonable crystallization of the order, which is price sensitive and the appellant should have based the disclosure on this communication. Considering these facts we find that there is scope for reducing the quantum of penalty. Having regard to the facts of the case, we are of the view, that a penalty of ₹ 5, 00,000/- would meet the ends of justice.

So the penalty imposed under Section 15HB of the Securities and Exchange Board of India Act, 1992 for violation of Regulation 12(2) read with Clause 2.0 of Schedule II of PIT Regulations is reduced from ₹ 22,00,000/- to ₹ 5,00,000/-.

In the result, penalty of ₹ 11,00,000/- for violation of Regulation 12(1) read with Clause 3.2 of Part A of Schedule I is deleted and penalty for violation of Regulation 12(2) read with Clause 2.0 of Schedule II of the PIT Regulations is reduced to ₹ 5,00,000/-.

Appeal is partly allowed. No order as to costs.

Sd/-
P.K.Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

30.3.2012
Prepared & Compared By: Pk