BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 107 of 2011

Date of decision: 19.10.2011

1) Hindustan Dorr Oliver Limited

2) Shri Prabhakar Ram
Chairman

3) Shri E. Sudhir Reddy,
Vice Chairman

4) Shri E. Sunil Reddy,
Managing Director

5) Shri S. C. Sekaran
Executive Director

6) Shri R. Balarami Reddy,
Non-Executive Director

7) Shri K. H. K. Prasad,
Independent Director

8) Shri T. N. Chaturvedi,
Independent Director

9) Shri S. K. Tamotia
Independent Director

10) Ms. Pragya Sahal,
Compliance Officer
Dorr Oliver House,
Chakala, Andheri (East),
Mumbai – 400 099. ……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. J. J. Bhatt, Senior Advocate with Mr. Neerav Merchant, Mr. Bharat Merchant, Advocates for Appellants.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Ajay Khaire, Advocate for the Respondent.

CORAM : Justice N. K. Sodhi, Presiding Officer
P. K. Malhotra, Member
S. S. N. Moorthy, Member

Per : P. K. Malhotra, Member

The short question that arises for our consideration in this appeal is whether the appellants have violated Clauses 1.2, 3.2(1) and 3.2(3)(d) of the Model Code of Conduct for prevention of insider trading for listed companies under Regulation 12(1) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (for short the Regulations).

2. The appellants before us are a public limited company, its Chairman, Vice-Chairman, Managing Director, Directors and Compliance Officer. The company is listed on the National Stock Exchange and on the Bombay Stock Exchange. The company is into the business of contracting and executing engineering contracts. It receives orders for project execution in various fields and is said to have a dominant presence in the Pulp and Paper, Chemicals, Food and Pharmaceuticals, Breweries and Distilleries, Refineries and Petrochemical Sectors, Oil and Gas, Phosphatic Fertilizers, Industrial and Water Management Solution and manufacturing contracts like setting up of plants for the clients. The appellant company also offers service on lumpsum turn key basis to its clients.

3. The Securities and Exchange Board of India (for short the Board) carried out investigations into the affairs of the company during the period from February 2, 2009 to March 25, 2009 and noted that the company had informed the stock exchanges on February 25, 2009 about its having been awarded an order for Uranium Ore Processing Plant from Uranium Corporation of India Limited worth ₹ 441 crores for their Greenfield Ore Mining and Processing facility in Andhra Pradesh. The company had also bagged another order worth ₹ 24 crores from HPCL – Mittal Energy Limited for detailed engineering, shop and site fabrication, transportation and supply of Process Pressure Vessels and has informed the stock exchanges about the same on March 2, 2009. However, on both the occasions it is alleged that the company had failed to close the trading window, as required under Clauses 1.2, 3.2(1) and 3.2.(3)(d) of the model code of conduct, for prevention of insider trading for listed companies mandated under Regulation 12(1) of the Regulations. The Board issued separate but identical show cause notices dated January 24, 2011 to the company, its Chairman, Vice Chairman, Managing Director,

Executive Director, four Independent Directors and Compliance Officer asking them to show cause as to why enquiry should not be held against them in terms of Rule 4 of the Securities and Exchange Board of India (Procedure for Holding Enquiry and Imposing Penalties by Adjudicating Officer) Regulations, 1995 and why penalty should not be imposed for the aforesaid violations. The noticees submitted their replies and denied the allegations levelled against them. It was submitted that the projects in question were undertaken by the company in the course of its normal business activity of setting up projects for third party which is the primary business of the company. The company, being an engineering contractor, sets up projects for other parties in the ordinary course of its business. The company is not involved in the expansion or execution of a new project for itself as contemplated by Clause 3.2(3)(d) of the model code of conduct and, therefore, it was not obliged to close the trading window. However, bagging of the project itself being price sensitive information within the meaning of the regulations, intimation was given to the stock exchanges as per rules. The explanation furnished by the company was not accepted by the adjudicating officer. According to him, bagging of a new contract for any major expansion plan or execution of new project for third party is also price sensitive information and the company should have closed the trading window when it bagged an order for ₹ 441 crores and till the information was published. He analyzed the price and volume of trade in the scrip of the company and concluded that there was a volume jump of more than 10 times and a jump of more than 25 per cent in price after the company informed the stock exchanges about the receipt of ₹ 441 crores order. Therefore, according to the adjudicating officer, the trading window should have been closed as required under the code of conduct for prevention of insider trading in equity shares and other listed securities of the company. The same not having been done, the appellants have not complied with clauses 1.2, 3.2.(1) and 3.2.(3)(d) of the model code of conduct under Regulation 12(1) of the regulations. By the impugned order dated April 29, 2011, the adjudicating officer imposed a penalty of ₹ 2,50,000/- on all the appellants under Section 15HB of the Act. It is against this order that the appellants are in appeal before us.

4. We have heard learned counsel for the parties who have taken us through the records. The award of two contracts, one from Uranium Corporation of India worth ₹ 441 crores and another from HPCL-Mittal Energy Limited worth ₹ 24 crores is not in dispute. It is also not disputed by the parties that the information about the award of these contracts was price sensitive within the meaning of the Regulations. It is for this reason that the company had intimated the stock exchanges about the award of these contracts which information was disseminated by the stock exchanges for the information of the investors. The appellants have been found guilty of not closing the trading window during the period when this price sensitive information was not within the public domain.

5. Regulation 3 of the Regulations prohibits an insider from dealing in securities of a listed company on any stock exchange either on his own behalf or on behalf of any other person when in possession of any unpublished price sensitive information. Regulation 2(ha) of the Regulations defines price sensitive information as under:-

> "2(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:"

Similar embargo is placed on the company under Regulation 3A of the Regulations also. Regulation 12 of the Regulations places an obligation on all listed companies and organizations associated with the securities market to frame the code of internal procedures and conduct as near to the Model Code specified in Schedule I of the Regulations, without diluting it in any manner, and mandates them to ensure compliance of the same. Part A of Schedule I of the Regulations prescribes the model code of conduct for prevention of insider trading for listed companies and

provides that the employees/directors shall maintain confidentiality of all price sensitive information and they shall not pass on such information to any person directly or indirectly by way of making recommendation for the purchase or sale of the securities. Para 3 thereof deals with prevention or misuse of price sensitive information and the relevant portion thereof reads as under:-

> "3.0 Prevention of misuse of "Price Sensitive Information"
>
> 3.1 All directors/officers and designated employees of the company shall be subject to trading restrictions as enumerated below.
>
> 3.2 Trading window
>
> 3.2.1 The company shall specify a trading period, to be called "trading window", for trading in the company's securities. The trading window shall be closed during the time the information referred to in para 3.2-3 is unpublished.
>
> 3.2.2 When the trading window is closed, the employees/directors shall not trade in the company's securities in such period.
>
> 3.2.3 The trading window shall be, inter alia, closed at the time :-
>
> (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.
> (h) Any changes in policies, plans or operations of the company.
>
> 3.2-3A the time for commencement of closing of trading window shall be decided by the company.
>
> 3.2.-4 The trading window shall be opened 24 hours after the information referred to in para 3.2-3 is made public.
>
> 3.2-5 All directors /officers/designated employees of the company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when trading window is closed, as referred to in para 3.2-3 or during any other period as may be specified by the Company from time to time."

In compliance with the above mandate, as prescribed in the regulations, the company had framed its code of conduct for prevention of insider trading in equity shares and other listed securities of the company. Para 9 of the said code of conduct makes provision for the closure of trading window and reads as under:-

> "9. TRADING WINDOW – The Company shall specify a trading period called "Trading Window" of trading in the securities of the Company. The directors/officers/designated employees of the Company are prohibited from trading in the securities of the Company where the Trading Window is closed. The Trading Window shall be closed during the time the information referred below is unpublished.
>
> The Trading Window, shall be inter alia closed at the time of:
>
> - Declaration of Financial results (quarterly, half yearly and annually)
> - Declaration of dividend (interim or final)
> - Issue of securities by way of Public / Rights / Bonus etc.
> - Any major expansion plans or execution of new products
> - Amalgamation, mergers, takeovers and buyback
> - Disposal of the whole or substantially the whole of the Company's Undertaking
> - Any changes in policies, plans or operations of the Company.
>
> When the trading window is closed, the Directors / Officers / Designated Employees shall not trade in the Company's securities in such period."

Learned senior counsel for the appellant, referring to the above provisions, has submitted that there is no dispute that the information with regard to the award of two contracts is price sensitive. Therefore, this information was furnished to the stock exchanges. He further stated that every price sensitive information does not mandate closing of trading window and it is only the information which is mentioned in clause (a) to (g) of clause 3.2.3 read with para 9 of the code of conduct referred to above that mandates closure of trading window. In respect of any other price sensitive information, trading window is not required to be closed. For the purpose of closing the trading window in the case in hand the information must fall within para 3.2(3)(d) of the model code of conduct as adopted by the company which provides for closing of the trading window during the time the information relating to "any major expansion plan or execution of new projects" is unpublished. According to learned senior counsel, the information with regard to these projects cannot be said to be unpublished as award of contract is already in the public domain due to long tendering process involved right from the time of inviting of tenders to the award of contract. He also submitted that the new projects referred to in the said clause are projects undertaken by the company concerned for carrying out its own expansion or setting up of new project for itself and cannot include the project

undertaken by the company in the course of its normal business, or setting up of projects for third party which is its primary business. By setting up the projects for its customers in the ordinary course of business, the company would not achieve any expansion or will not be setting up a new project for itself. Therefore, when a construction company is awarded a project by a third party for execution, it will not fall within the said clause.

6. Learned counsel for the Board submitted that the trading window is required to be closed during the time when all price sensitive information falling under regulation 2(ha) of the Regulations is in possession of the company and it remains unpublished. The intention of the Regulations, of which the model code of conduct is a part, is to prevent trading by a person while in possession of unpublished price sensitive information. It, therefore, cannot be said that the provisions of the model code of conduct regarding closing of the trading window operate in a different sphere as compared to the Regulations.

7. Having considered the facts of the case, submissions made by learned counsel for the parties and the relevant provision, we find merit in the submissions made by learned senior counsel for the appellant. The company in question is an engineering company which undertakes construction projects on behalf of other companies. The award of two contracts through tendering process is not in dispute. The information relating to award of contract is price sensitive and the same was furnished to the stock exchanges is also not in dispute. The model code of conduct for prevention of insider trading for listed companies mandates closing of trading window only when an insider is in possession of any of the information mentioned in clause (a) to (g) of clause 3.2.3 of the model code of conduct. Sub-clause (d) thereof provides for closure of trading window at the time of, "any major expansion plans or execution of new projects" . This sub-clause has to be read in the context of the meaning assigned to other sub-clauses of the said clause which talk of declaration of financial results, declaration of dividend, issue of securities, amalgamation and mergers etc. All these activities relate to "the company". Therefore, any major expansion plans or execution of new projects also necessarily has to be in relation to "the company". When a construction company is awarded a contract by a third party

for expansion plan or execution of new projects, such expansion or execution of project is in the normal course of its business activity and cannot be brought within the purview of sub-clause (d) of clause 3.2.3 of the model code of conduct. The definition of 'price sensitive information' as given in regulation 2(ha) of the Regulations is much wider. However, for the purpose of closing the trading window, the model code of conduct, prescribed in the regulations, has listed only seven specific contingencies relating to "the company" only. It does not require closing of the trading window in respect of other price sensitive information. The company, while framing its code of conduct has listed all the seven contingencies and these contingencies relate to the company. Therefore, we are of the considered view that the company has not violated the model code of conduct when it did not close the trading window on bagging two contracts in question and till the information with regard to award of these contracts was made public. We answer the issue formulated in para 1 above in the negative.

In the result, the appeal is allowed, the impugned order set aside with no order as to costs.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
P. K. Malhotra
Member

Sd/-
S. S. N. Moorthy
Member

19.10.2011
Prepared & Compared by
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