



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. I

In the matter of  
Appeal No. 52 of 2013

Muhammad Ziaullah Khan Chishti ..... Appellant

Versus

Director (MSRD)  
Securities and Exchange Commission of Pakistan ..... Respondent

### ORDER

Date of hearing 09/01/15

Present:

For the Appellant:

Mr. Amel Khan Kasi, Advocate

Mr. S. M. Talib Raza, Company Secretary

For the Respondent:

Mr. Tayyaba Nisar, Deputy Director, SMD

Mr. Aoun Zaidi, Assistant Director



## Securities and Exchange Commission of Pakistan

3. On perusal of the trading data of KSE from 21/03/13 to 25/03/13 ( the "Period"), it was revealed that the Appellant sold 38,000,000 shares of TRG through a negotiated deal at the average rate of Rs. 4.37 to Arif Habib Corporation Limited ("AHCL"). The Company Secretary, however, did not intimate the KSE regarding the sale of these shares. It was further observed that the Appellant sold 6,408,000 shares of TRG on 25/03/13 during the closed period.
4. Show-cause notice dated 30/04/13 (the "SCN") was issued to the Appellant under section 22 of the Securities and Exchange Ordinance (the "SEO") for violation of clause 16(vi), clause 35 (vii) and clause 35(xxii) of the Listing Regulation for KSE (the "Listing Regulations"). The reply to the SCN was submitted and hearing in the matter was held. The Respondent, dissatisfied with the response of the Appellants, passed the Impugned Order and imposed a penalty of Rs. 400,000/- on the Appellant.
5. Being aggrieved of the Impugned Order, the Appellant preferred the instant appeal against the Impugned Order on the following among other grounds:
  - a. The Respondent has decided the matter wrongly and therefore the Impugned Order is a nullity in the eye of law for it being passed in excess of the jurisdiction conferred on it under the special law.
  - b. The penalty imposed upon the Appellants is unjust, excessive, harsh and unfair and is liable to be set aside.
  - c. The Respondent ought to have considered the undeniable factual position in this case to the effect that:
    - i. The sale of 38,000,000(Thirty Eight Million) shares by the Appellant to AHCL in off-market was part of a financing



## Securities and Exchange Commission of Pakistan

transaction and a negotiated deal under a REPO Agreement executed on 20/3/13 between the Appellant and AHCL.

- ii. The transaction did not constitute dealing or trading on part of the Appellant in the shares of TRG as contemplated by the scope of clause 35 (xxiii) of the Listing Regulations.
- iii. In terms of the REPO agreement, the risk and reward in the shares sold to AHCL remained with the Appellant. In fact, REPO is a secured loan and a Repo Agreement is a commitment by the Seller to buy a security back from the purchaser at a specified price at a designated future date. As such, the transaction between the Appellant and AHCL was not an outright sale and the Appellant throughout remained the beneficial owner.
- iv. The average price of Rs. 4.37 at which the shares were sold reflects the agreed price between AHCL and the Appellant to include a margin for the REPO transaction. The price itself indicates that it was not a trading transaction as the price was substantially lower than the prevailing market price and included the security margin for the REPO transaction.
- v. The actual transfer of shares by AHCL into the account of AHCL was done by AHCL to give effect to the REPO transaction, and therefore, no trading was involved within the closed period.
- vi. The transaction with AHCL did not involve a sale and transfer of beneficial ownership interest in the shares of TRG and constituted merely a REPO financing transaction and not a trade transaction. As such, there is no violation of any provision of Listing Regulations.



## Securities and Exchange Commission of Pakistan

- d. The transaction cannot be treated as a sale transaction and as such the order is based on misunderstanding of law.
  - e. The Impugned Order is in manifest violation of Article 18 of the Constitution and the same constitute unreasonable and illegal regulation of the financing transaction.
  - f. The entire exercise of hearing and passing of Impugned Order is also in violation of section 24-A of the General Clauses Act 1897 as the reasons rendered in the Impugned Order does not reflect judicious application of mind.
  - g. The Impugned Order is the implementation of a draconian system of law and interpretation of statutes.
  - h. The Impugned Order is illegal and arbitrary and has been passed in disregard/wrong interpretation of applicable law as well as the matter of facts
6. During the hearing, the Appellant reiterated its argument and submitted the copy of the REPO Agreement and prayed that the Impugned Order may be set aside in favor of the Appellant. During the course of hearing the Bench requested the Appellant to provide an NOC from AHCL as to closure of REPO agreement, which was provided vide letter dated 23/1/2015.
7. The Departmental Representative argued that:
- a. Contentions of the Appellant are untenable. The Appellant bought 33,000,000 shares from 19/3/13 to 21/3/13 through off market and same were reported to KSE whereas from 22/3/13 and 25/3/13 the Appellant sold 38,000,000 shares to AHCL through off market but same were not intimated to KSE. The selling of the TRG shares by the Appellant were properly recorded in the off market as trading transactions and same were



## Securities and Exchange Commission of Pakistan

notified to the KSE. Trades reported and recorded in the Stock Exchange are considered legal transactions which require compliance with the prevalent rules and regulations. Therefore, it was the duty of the Appellant to notify these transactions to the KSE as per Clause 16 (vi) of the Listing Regulations.

- b. The Appellant's contention that the transactions were REPO transactions, therefore, no trading was involved within closed period is also not true. The Listing Regulations clearly provide that "*No director, CEO or executive shall, directly or indirectly, deal in the shares of the listed company in any manner during the closed period*" (Emphasis added). In the instance case the Appellant sold the shares to AHCL in the closed period. It was the duty of the Appellant to avoid trading in the scrip in any manner during the closed period as required in the Clause 35 (xxiii) of the Listing Regulations.
  - c. The act of the Appellant was willful and the penalty under section 22 of the SEO was rightly imposed on the Appellant by fulfilling all the requirements of the law and prayed that the Impugned Order may be upheld.
8. We have heard the parties and the perused the record. It is evident from perusal of the record that the Respondent has passed a detailed and well-reasoned order. The issue involved is that of interpretation and application of the clause 35 (xxiii) of the Listing Regulations, which provides as under:

*"Where any director, CEO or executive of a listed company or their spouses sell, buy or transact, whether directly or indirectly, in shares of the listed company of which he is a director, CEO or*



## Securities and Exchange Commission of Pakistan

*executive, as the case may be, he shall immediately notify in writing to the Company Secretary of such transaction. Such director, CEO or executive, as the case may be, shall also deliver a written record of the price, number of shares, form of share certificates, i.e., whether physical or electronic within the Central Depository System, and nature of transaction to the Company Secretary within four days of effecting the transaction. The notice of the director, CEO or executive, as the case may be, shall be presented by the Company Secretary at the meeting of the board of directors immediately subsequent to such transaction. In the event of default by a director, CEO or executive to give a written notice or deliver a written record, the Company Secretary shall place the matter before the board of directors in its immediate next meeting: Provided that each listed company shall determine a closed period prior to the announcement of interim/ final results and any business decision, which may materially affect the market price of its shares. No director, CEO or executive shall, directly or indirectly, deal in the shares of the listed company in any manner during the closed period.*

*The closed period shall start from the day when any document/statement, which forms the basis of price sensitive information, is sent to the board of directors and terminate after the information is made public.*

*Every listed company shall advise its directors about the closed period at the time of circulating agenda and working papers for the board meetings, along with sending intimation of the same to the stock exchanges. (Emphasis added)*



## Securities and Exchange Commission of Pakistan

9. The word “deal” used in the proviso to clause 35 (xxiii) of the Listing Regulation is wide enough to cover all transactions regarding particular scrip irrespective of their objective or structure. Further the word “deal” is qualified with the phrase “in any manner”, which gives the word a wide import. It is settled law that that technical terms used in laws are to be taken in their commercial sense. Further as per doctrine of noscitur a sociis a word or phrase is given meaning by its context or setting and in seeking meaning, words and clauses will not be divorced from those which precede and those which follow. Therefore the word deal will be interpreted in its widest possible commercial meaning.
10. The Appellant has argued that the transaction in question does not constitute dealing or trading on part of the Appellant as contemplated by the scope of clause 35 (xxiii) of the Listing Regulations as it was a REPO transaction and substantiated its argument by submitting a REPO agreement dated 20/3/13 with AHCL. This Bench finds no merits in the argument of the Appellant since off market transactions reported and recorded in the Stock Exchange are considered legal transactions and trades. The off-market transactions are considered at par with any trades on the automated terminal of the exchange and have to comply with all the applicable requirements of law. Even if for sake of argument the Appellants contention is considered to hold substance, even than the clause 35 (xxiii) of the Listing Regulations prohibits any dealing in securities of a listed company during the closed period.
11. Furthermore, the perusal of the REPO agreement raises many questions as to its real purpose. The agreement is executed on a non-judicial stamp paper issued on 16/1/13 without any mention of the purpose for which it is issued by the vendor. The agreement is executed on 20/3/13 almost two month after the issue of the non-judicial stamp paper. The date of closure of this transaction



## Securities and Exchange Commission of Pakistan

was 25/9/13; however, as per the confirmation / NOC issued by Arif Habib Corporation letter dated 19/1/15, the transaction was finalized on 30/6/14. These issues cast a shadow on the REPO transaction and the real motive behind the transaction.

12. Further, the Appellant being the CEO of the TRG, the highest executive officer sold 6,408,000 shares of TRG on 25/3/13 during the closed period in violation of the Listing Regulations. It was the duty of the Appellant to avoid trading in the scrip in any manner during the closed period as required in the clause 35 (xxiii) of the Listing Regulations.
13. We are also in agreement with clause (vi) of paragraph 8 of the Impugned Order. The act itself, the result and the surrounding circumstances make it abundantly clear that the default on part of the Appellant was willful.
14. The Respondent has contravened clause 35 (xxiii) of the Listing Regulations and has also failed to notify his trading to KSE in violation of clause 16 (vi) of the Listing Regulations. Therefore, this bench finds no reason to interfere with the Impugned Order and this appeal is dismissed with no order as to costs.

**Fida Hussain Samoo**  
Commissioner (Insurance)

**Tahir Mahmood**  
Commissioner (CLD)

Announced on: **16 MAR 2015**