



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter or

Appeal No. 08 of 2017

1. Cedar Capital (Private) Limited (CCPL)
2. Mr. Umair Amanullah (Chief Executive Officer of CCPL)

..... Appellants

Versus

Commissioner, SMD, SECP

..... Respondent

Date of Hearing:

March 19, 2025

Present:

For the Appellants:

Mr. Yawar Burki, Authorized Representative

For the Respondent:

1. Mr. Sohail Qadri, Director/HOD, Adjudication-I, SECP
2. Mr. Muhammad Faisal, Assistant Director, Adjudication-I, SECP
3. Mr. Hammad Ahmed, Management Executive, Adjudication-I, SECP
4. Mr. Fazal ur Rahman, Management Executive, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 08 of 2017 filed by Cedar Capital (Private) Limited (CCPL) and Mr. Umair Amanullah, Chief Executive Officer (CEO) of CCPL (the Appellants), against order dated January 09, 2017 (the Impugned Order), passed by the Commissioner, SMD, SECP (the Respondent), under Section 15E(1) and 15E(2)(a) of the Securities and Exchange Ordinance, 1969 (the SEO).



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2. Brief facts of the case are that Pak Electron Limited (PEL), a public listed company announced a 120% right issue on August 15, 2013, at 1:33 p.m., offering 144 million ordinary shares at a price of Rs. 12.5 per share, including a premium of Rs. 2.50 per share. Prior to this announcement, PEL engaged Next Capital Limited (NCL) on July 28, 2013, to arrange underwriting for Rs. 400 million i.e. 32 million ordinary shares out of 144 million ordinary shares. On July 29, 2013, NCL requested CCPL to act as the underwriter for the proposed right issue, and on August 01, 2013, CCPL conveyed its consent to PEL for underwriting the issue. On August 06, 2013, a formal underwriting agreement was executed between PEL and CCPL and Mr. Umair Amanullah, CEO of CCPL signed the agreement. Before the public disclosure of the right issue, CCPL purchased 10,000 shares of PEL on July 30, 2013, at an average price of Rs. 19.8 per share, while its CEO purchased a total of 8,190,000 shares at an average price of Rs. 19.72 per share in multiple transactions executed between July 29, 2013 and August 15, 2013. The Respondent took cognizance of the alleged insider trading and issued a Show Cause Notice (SCN) to CCPL and Mr. Umair Amanullah, CEO of CCPL, alleging contravention of Section 15A of the SEO. In response, the Appellants submitted their reply vide letter dated March 02, 2016. In their written response the Appellants clarified that the purchase of 10,000 shares by CCPL was erroneous trade and was rectified on the same date i.e. July 30, 2013.
3. Hearing in the matter was conducted on March 17, 2016, the Respondent reviewed the Trade Rectification Report dated July 30, 2013, and concluded that plea of Appellant no. 1 i.e. CCPL is tenable. However, on account of acceptance of the plea, total purchase of Appellant no. 2 i.e. Mr. Umair Amanullah, CEO of CCPL increased by 10,000 shares and the Respondent through Impugned Order imposed a penalty of Rs. 5,000,000/- on Appellant no. 2 and directed him to surrender Rs. 22.999 million, to the Securities and Exchange Commission of Pakistan (the Commission), equivalent to the gain yielded by him on 8.200 million shares which were purchased in violation of Section 15A of the SEO.
4. The Appellants preferred the instant appeal on the grounds, *inter alia*, that the Impugned Order had been passed without properly evaluating the facts and circumstances of the case, relying on an incorrect interpretation and misapplication of



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the law. The Appellants argued that the Impugned Order was in violation of Section 24-A of the General Clauses Act, 1897 (GCA), as the Respondent failed to exercise its powers reasonably, fairly and the reasoning provided merely attempted to justify a pre-determined conclusion. The Appellants further asserted that the Respondent's interpretation of inside information under Section 15B of the SEO was inconsistent with its own findings, as the right issue, in itself, did not necessarily have an impact on share prices. The Appellants further submitted that historical data from other right issues, including those of PEL in 2014 and 2016, demonstrated that share prices could increase, decrease, or remain unchanged upon such announcements. The Appellants also contended that no confidential financial information was shared with them, which would have been necessary for the information to qualify as price-sensitive. The Appellants further argued that the purchase of shares by the Appellants had been based on market expectations of strong financial results rather than inside information and that the Respondent had improperly relied on the benefit of hindsight to establish an insider trading violation. The Appellants emphasized that the Impugned Order had failed to acknowledge that the CEO held the shares for approximately five months before selling them, contradicting the premise of insider trading, which typically involves short-term speculative gains. The Appellants also asserted that underwriters were not legally restricted from trading in the shares of companies they underwrote, and no statutory provision prohibited such transactions. The Appellants further challenged the penalty imposed, arguing that the Respondent had inconsistently calculated the gain amount and had wrongfully directed the surrender of Rs. 22.999 million despite determining the alleged gain to be Rs. 20.999 million in Para 12 of the Impugned Order.

5. In response to the submissions of the Appellants, the Respondent submitted, *inter alia*, that the Impugned Order had been passed on merit after considering all relevant facts and legal provisions. The Respondent further contended that the right issue announced by PEL and underwritten by CCPL constituted 'inside information' under Section 15B of the SEO, as it had remained non-public until August 15, 2013, and had a significant impact on PEL's share price, evidenced by a 5% increase on the day of disclosure i.e August 15, 2013 and a 29.08% during the period from August 15, 2013 to August 28, 2013 (before the price becoming ex-right on August 29, 2013). The Respondent



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submitted that the Appellants had misconstrued the definition of 'inside information' under Section 15B and failed to acknowledge that the right issue was priced significantly below market value, which made it material and price-sensitive. The Respondent further argued that Appellants, having been privy to the 'inside information' since July 29, 2013, were 'insiders' under Section 15C(1)(g) of the SEO. The Respondent refuted the Appellants reliance on right issues announced by PEL in 2014 and 2016, deeming them irrelevant to the present case. The Respondent also refuted the Appellants argument that past right issue announcements by listed companies resulted in varied price movements, with the Respondent maintaining that each case must be analyzed independently under Section 15B of the SEO. The Respondent submitted that insider trading was established at the time of purchase based on non-public material information and stated that the Appellants reliance on holding of the shares after public announcement is misconceived. The Respondent also refuted the Appellants argument that right issue is not inside information as it may or may not affect the price of shares. The Respondent relied on **2011 CLD 1479** wherein it was held that "*requirement of making gain or avoiding loss was not an ingredient of insider trading*". The Respondent further relied on **[2005]60SCL156(SAT) Dsq Holdings Limited Vs. SEBI** wherein it was held that "*information regarding issue of shares is price sensitive information*".

6. The Appellate Bench (the Bench) heard the arguments advanced by both parties and examined the record. The Bench is of the view that the right issue announced by PEL constituted price-sensitive information under Section 15B of the SEO, as it had remained non-public until August 15, 2013. The contention of the Appellants that a right issue, in itself, does not necessarily affect share prices is misconceived, as price sensitivity must be assessed in the light of prevailing market conditions. The record demonstrates that the Appellants were privy to the non-public information concerning the right issue since July 29, 2013, and the CEO proceeded to acquire substantial shares i.e. 8.200 million shares of PEL during the period in which the information remained undisclosed i.e. from July 29, 2013 till August 15, 2013. The fact that the CEO held the shares for an extended period before selling them does not absolve him of the liability, as insider trading materializes at the moment an insider takes any action on the basis of inside information, irrespective of whether a gain is ultimately realized. Therefore, the



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Appellants argument that the right issue did not qualify as inside information is untenable, and his purchase of shares while in possession of such information clearly constituted insider trading. The Bench finds that the Appellants were legally obligated to abstain from purchasing shares after becoming an insider. The contravention of Section 15A of the SEO was triggered the moment the Appellants acted upon the undisclosed inside information, and the existence or absence of any resultant gain is immaterial to the establishment of liability. Furthermore, the Bench clarifies that the correct amount to be surrendered to the Commission is Rs. 20.999 million. The reference to Rs. 22.999 million in the Impugned Order is acknowledged as a clerical error, which does not impact the validity or integrity of the findings therein.

7. In view of the foregoing, the instant appeal is **dismissed** being devoid of merit, with no further order as to costs.

(Abdul Rehman Warraich)
Commissioner

(Zeeshan Rehman Khattak)
Commissioner

Announced on:

30 APR 2025