



# Securities and Exchange Commission of Pakistan

## **BEFORE APPELLATE BENCH NO. I**

In the matter of

**Appeal No. 18 of 2015**

Muhammad Ali Ansari, Chief Financial Officer

Hascol Petroleum Limited

... Appellant

Versus

Director/HOD (Market Surveillance & Special Initiative Department)

Securities and Exchange Commission of Pakistan

...Respondent

Date of Hearing

16/09/15

### **Present:**

#### **Appellant:**

(i) Mr. Muhammad Ali Ansari, Chief Financial Officer, Hascol Petroleum Limited

#### **For the Appellant:**

(i) Mr. Arshad M. Tayebaly (Senior Partner) Mohsin Tayebaly & Co.

(ii) Mr. Mikael Rahim (Senior Associate) Mohsin Tayebaly & Co.

(iii) Ms. Sehar Rana (Associate) Mohsin Tayebaly & Co.

#### **For the Respondent:**

(i) Mr. Amir Saleem, Joint Director (SMD)

(ii) Ms. Tayyaba Nisar, Deputy Director (SMD)

### **ORDER**

Appellate Bench No. I

Appeal No. 18 of 2015

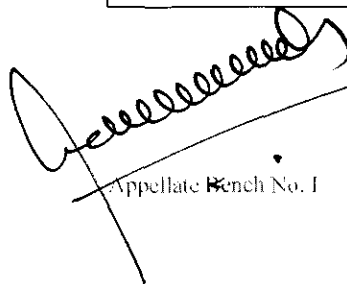
Page 1 of 12



## Securities and Exchange Commission of Pakistan

1. This order is in appeal No. 18 of 2015 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by Muhammad Ali Ansari, Chief Financial Officer (Appellant) Hascol Petroleum Limited (Hascol) against the order dated 10/02/15 (Impugned Order) passed by the Respondent.
2. Brief facts of the case are that on perusal of Karachi Automated Trading System (KATS) data of Karachi Stock Exchange Limited (KSE), it was observed that the Appellant traded extensively in the shares of Pakistan Refinery Limited (PRL) in the Ready Market during the time period from 20/01/14 to 07/07/14 through H. M. Idrees H. Adam (SMC-Private) Limited (HM) and IGI Finex Securities Limited (IGI). It was further revealed that the Appellant started accumulation of the shares of PRL from 20/01/14 and ended up with a net buy position of 733,000 shares on 21/05/14. The Appellant during the period from 28/05/14 to 07/07/14 started selling its holding and ended up selling all of its holding by 07/07/14 generating an accumulated profit of Rs.63,576,190. Details of trading by the Appellant is as follows:

Order Month	Bought Quantity	Sold Quantity	Net Quantity	Bought Amount (A)	Sold Amount (B)
Jan 2014	395,500	13,500	382,000	32,000,030	1,105,805
Feb 2014	500,000	182,000	318,000	38,782,380	150,583,240
April 2014		16,000	16,000	-	2,152,085
May 2014	49,000	49,000	-	7,870,150	7,200,020
June 2014	-	338,000	-	-	56,298,500
July 2014	-	346,000	-	-	60,414,000
				78,652,560	142,228,750
Profit (B-A)				63,576,190	

  
Appellate Bench No. I

Appeal No. 18 of 2015

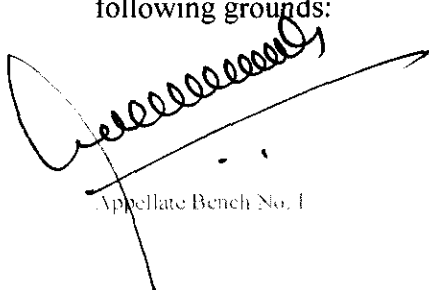


Page 2 of 12



## Securities and Exchange Commission of Pakistan

3. The Respondent observed that PRL made an announcement on 16/07/14 that Hascol has purchased 3,987,000 ordinary shares (11.40% of the total ordinary shares) of PRL. Information in this regard was sought from Hascol, HM and IGI which was provided accordingly. It was observed from the information provided by HM and IGI that Mr. Abdul Samad was authorized to jointly operate the account of the Appellant as per the Standard Account Opening Form (SAOF), whereas, the Appellant was also listed as the contact person in the SAOF of Hascol. The aforementioned facts transpired that, *prima facie*, the Appellant indulged in insider trading as he was present in the management committee meeting of Hascol during which the decision to purchase the shares of PRL was taken. Further, due to the nature of the employment and position of the Appellant, he had been privy to the information relating to purchase of huge block of shares and must have been involved in due diligence of the transaction. Such information is, classified as 'inside information' within the scope and meaning of section 15B(1)(a) of the Securities and Exchange Ordinance, 1969.
4. Show Cause Notice dated 03/10/14 (SCN) was issued to the Appellant to explain his position and as to why penalty as provided under section 15E of the Ordinance may not be imposed on him.
5. The Respondent received reply from the Appellant on 23/10/14. The Respondent dissatisfied with the reply of the Appellant and in exercise of the powers under section 15E(1) of the Ordinance, imposed a penalty of Rs.5,000,000 for contravention of the provisions of section 15A(1) of the Ordinance. Further, the Appellant was directed to surrender the gain amounting to Rs.63,576,190 to the Commission in terms of section 15E(2)(a) of the Ordinance.
6. The Appellant has preferred the instant appeal against the Impugned Order on the following grounds:



Appellate Bench No. 1



Appeal No. 18 of 2015

Page 3 of 12



## Securities and Exchange Commission of Pakistan

- a) The Respondent has not considered the fact that the Appellant was involved in trading of PRL prior to decision of Hascol to purchase the shares of PRL. The Appellant was not bound to disclose the information of trading because the investment of Appellant did not reach the 10% threshold prescribed under section 4 of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers). The Respondent has ignored all other factors due to which price of PRL shares had increased. The management committee meeting of Hascol was held on 28/01/14 in which the attendees merely deliberated on the reasons for potential investment by Hascol in the shares of PRL (among other companies) and decided to recommend the same to the board of directors (BoD) as a strategic investment. It is pertinent to highlight that no decision as to the amount of investment or quantities of shares was made in the said meeting on which the Appellant could possibly rely on for the purposes of making a gain by carrying out insider trading. The Respondent, therefore, is mistaken in believing that a decision to invest in the shares of PRL was taken in the said meeting as the recommendation was yet to be approved by the BoD and the actual decision was not made until 15/05/14. It would be pertinent to highlight the fact that the Appellant had started purchasing the shares of PRL from even before the management committee meeting as he is an active trader and has been investing in shares regularly since August 2013. The Appellant purchased the shares of PRL between 20/01/14 to 21/05/14. It would also be pertinent to mention that the Appellant started selling the shares before any investment being made by Hascol. Therefore, as per the Respondent's assumption, if the price of the shares of PRL was to rise after the investment, and if the Appellant was in fact indulging in insider trading, he would have waited for the price to increase and would have not started selling the shares before that. Moreover, the Appellant continued to buy

Appellate Bench No. 1

Appeal No. 18 of 2015

Page 4 of 12



## Securities and Exchange Commission of Pakistan

shares even after the initial investment by Hascol. If the Appellant had been acting on the alleged inside information he would have purchased all the shares prior to the investment at a lower price and sold all of them after Hascol had completed its investment to make a bigger profit. However, that was not the case as the Appellant sold all the shares of PRL by 07/07/14 i.e. prior to Hascol making its complete investment. All these facts, which were discussed during the hearing, appear to have been ignored or brushed aside in the Impugned Order which states that a 'decision' was made by the management committee. Furthermore, the Respondent has alleged that the Appellant was aware of the purchases being made by Hascol in the shares of PRL prior to the decision of the board of directors. However, it was pointed out during the hearing that these were in the nature of general trading to determine the liquidity of the shares of PRL and no decision had been taken to carry out a strategic investment. As such trading of such nature would not impact the share price of PRL and, therefore, would not constitute information to be disclosed. It is reiterated that the Appellant was purchasing shares of PRL prior to any decision of the management committee and had even disclosed such fact to the management committee. Furthermore, the Appellant was buying and selling shares of PRL prior to and after the trading by Hascol, confirming that all the gains made were not as a result of Hascol's purchase after 20/05/14. The Respondent did not consider the same while passing the Impugned Order which was clearly pre-determined.

- b) The Respondent has erred in ruling that "provisions of section 15(C) defines insider and each sub-section is independent and not inter-related." Section 15 of the Ordinance is to be looked at in its entirety. It is pertinent to note that in order to fall within the ambit of section 15, the "insider" as well as the "inside information" should relate directly to the issuer. In the circumstances of the present case, the issuer is PRL whereas the Appellant is an employee and CFO of

Appellate Bench No. 1

Appeal No. 18 of 2015

Page 5 of 12



## Securities and Exchange Commission of Pakistan

Hascol. Therefore, section 15C(1)(g) of the Ordinance does not apply in the present circumstances as the employment of the Appellant is not with respect to PRL (the issuer) but another company. If section 15C(g) was intended to refer to any person who is employed with any company and not the relevant issuer of the listed security, the outcome would be completely absurd. In effect, such a decision would mean that the reasoning of the Respondent could be extended to a situation where an individual could be held for insider trading because he traded on the basis of a discussion with another individual who had decided to make a significant investment in the listed securities of a company. In other words, the decision of the Respondent leads to the conclusion that if two persons, unconnected with PRL discuss or are aware of their mutual intention to acquire shares of PRL, the same would be inside information. Interpretation of law cannot result in absurdity, nor should it lead to circumstances which cannot be monitored or proven by a regulatory authority. Such an interpretation would also defeat the definition of inside information under section 15B of the Ordinance read with the obligation to disclose the same under 15D of the Ordinance which is the obligation of the relevant listed company. The trading activities of the Appellant would, therefore, only be caught by the said section if he had traded in the shares of Hascol. The Appellant, being an employee only of Hascol and the alleged inside information being discussed in the meetings of the same, cannot by any stretch of imagination fall within the ambit of section 15 of the Ordinance. The interpretation of the said section, as adopted by the Respondent, has the effect of unfairly and unreasonably restraining individuals such as the Appellant from indulging in trading of shares which amounts to a derogation of their rights under the Constitution of Pakistan.

- c) The penalty imposed upon Appellant is unjust, excessive, unfair and liable to be set aside. The Respondent has ignored the trading pattern of the Appellant. The

Appellate Bench No. 1

Appeal No. 18 of 2015

Page 6 of 12



## Securities and Exchange Commission of Pakistan

Impugned Order, therefore, is contrary to law and facts and conclusion therein being unwarranted. The calculation of the gains under the Impugned Order is blatantly incorrect.

### 7. The Respondent has rebutted the arguments as follows:

- a) The decision to purchase the shares of PRL was made in the management committee meeting held on 28/01/14, in which the Appellant, being the member of the committee, was also present. It is pertinent to mention that this was a senior level committee as Mr. Mumtaz Hassan Khan, Chairman and Director at Hascol and Mr. Saleem Butt, Chief Operating Officer and Director at Hascol are part of the five member management committee. The management committee deliberated the prospects of the investment in detail and decided to recommend to the BoD for the strategic investment in the scrip of PRL. It is true that the decision to buy the shares of PRL was approved by the board of directors (BoD) in the board meeting held on 15/05/14; however, Hascol started purchasing the shares of PRL on 13/03/14 and had accumulated 727,000 shares of PRL before the commencement of the board meeting held on 15/05/14. The Appellant during the hearing of the SCN informed that both the above directors possessed general power of attorney for making investments on behalf of Hascol, therefore, the management committee was certain that the investment would be approved by the BoD, due to which Hascol started purchasing the shares of PRL before the approval of board of directors. It is pertinent to mention that Hascol had purchased 26% shares of the total purchase it made till September 2014 during the period from recommendation of the management committee dated 28/01/14 until the approval of the same by the board dated 15/05/14. Moreover, with respect to the previous trading history of the Appellant, the trading record in the



## Securities and Exchange Commission of Pakistan

scrip of PRL shows that the Appellant only purchased and sold 10,000 shares during the whole year of 2013, however, the Appellant purchased and sold 944,500 share of PRL during the period from 20/01/14 till 07/07/14 realizing a hefty profit of Rs.63.576 million over just a period of 7 months, which is not at all consistent or depict any uniformity in the investment plan of the Appellant. Further, referring to the trading pattern of the Appellant from 20/01/14 till 07/07/14, he sold the fewer segment of the shares purchased till 03/04/14. However, the major segment of the shares i.e., 77.31% were sold by the Appellant from 28/05/14 till 07/07/14, which represents the time period when Hascol was aggressively buying in the scrip and then subsequently, the share price was increasing. The Appellant was part of management committee that discussed the decision to invest in the share of PRL by Hascol in detail. The minutes of the meeting indicate that a thorough deliberation was concluded regarding the pros and cons of investment in this sector and PRL was selected due to positive indicators. On the basis of such strong recommendation by the management committee, which included CEO and COO, other than the Appellant, the BoD during the meeting dated 15/05/15 initially decided to invest in the shares of PRL to the extent of Rs.350 million which was further extended to the tune of Rs.650 million during the BoD meeting held in June 2015.

- b) 'Inside information' was generated in Hascol and not PRL. The decision to acquire huge block of shares of PRL was decided by the management committee of Hascol which PRL was not aware of. It is a market mechanism that whenever any huge buying comes into the market, the price of that share increases based on demand and supply function. The Appellant being a member of management committee is an insider for the transaction. The Appellant conducted trading in the shares of PRL after the management committee meeting. It is, therefore, evident that the Appellant is an 'Insider' based on 'Inside Information' available





## Securities and Exchange Commission of Pakistan

with the Appellant, due to his privileged position in Hascol. The Appellant was also aware that the price of shares of PRL will increase due to buying by Hascol. Provisions of section 15C(1)(g) of the Ordinance defines insider as a person who possess the inside information as part of his employment or when discharging his usual duties in an official capacity, or in any other way relating to work performed under contract of employment or otherwise. The Appellant, being a member of the management committee of Hascol, which decided the acquisition of shares of PRL is an insider for the transaction. The chronology of events indicate that the Appellant acted on the basis of information available to him, which was not publically available and utilized 26% of his trading in a single scrip i.e. PRL in which he had a very nominal historical trading pattern. The trading summary of the Appellant before the commencement of trading by Hascol dated 14/03/13 in PRL is as follows:

January 20, 2014 – February 20, 2014					
NAME	BOT QTY	AVG BUY	SOLD QTY	AVG SELL	Profit/(Loss)
Muhammad Ali Ansari	895,000	79.04	195,500	82.68	711,368

The aforementioned table clearly indicates that the Appellant sold a fewer quantity of the shares before the commencement of the trading by Hascol. Further, the table shows the profit realized by the Appellant before the

Appellate Bench No. 1

Appeal No. 18 of 2015

Page 9 of 12



## Securities and Exchange Commission of Pakistan

commencement of trading by Hascol is a nominal figure and the share price of PRL took the effect of aggressive purchase by Hascol.

c) The Appellant accumulated significant quantity of shares and made significant gain in the said trading on the basis of inside information. The Impugned Order has been passed on sound grounds and in accordance with the law. Keeping in view the facts and circumstances a fine was imposed under the law.

8. We have heard the arguments and perused the record provided to us by the parties i.e. the Appellant and the Respondent.

9. At the outset we would like to reiterate that being the securities regulator it is the paramount duty of the Commission to protect the interest of honest and bona fide investors and their investments by ensuring that the market is transparent and equitable for all types of investors across the board. For that matter evils of insider trading, front running and other unfair trade practices should be dealt with objectively and through firm enforcement of the law and rules/regulations thereof.

10. The Appellant has argued that the Respondent has not considered the fact that the Appellant was involved in trading of PRL prior to decision of Hascol to purchase the shares of PRL and had started purchasing the shares of PRL from even before the management committee meeting and has been investing in shares regularly since August 2013. Further, the Appellant subsequent to the hearing has also provided us the details of investment of Hascol in the shares of PRL from January 2014 to June 2015 which showed a continuous upward trend. The Appellant has further argued that had he been acting on the alleged inside information he would have purchased all the shares prior to the investment at a lower price and sold all of them after Hascol had completed its investment to

Appellate Bench No. 1

Appeal No. 18 of 2015

Page 10 of 12



## Securities and Exchange Commission of Pakistan

make a bigger profit. The Respondent has rebutted the arguments by stating that decision to purchase the shares of PRL was made in the management committee meeting held on 28/01/14, in which the Appellant, being the member of the committee, was also present. Hascol had started purchasing the shares of PRL on 13/03/14 and accumulated 727,000 shares of PRL before the board meeting held on 15/05/14 in which the management committee decision to invest in PRL was ratified.

11. We are of the view that the Appellant being a member of the management committee of Hascol was fully aware of the investment plan of Hascol. The trading pattern of Appellant in the shares of Hascol in 2013 and 2014 is as follows:

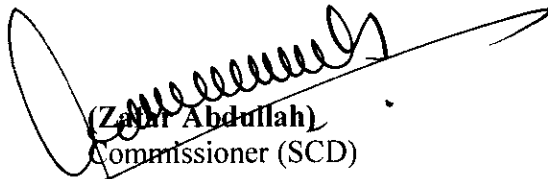
Order Month	Bought Quantity	Sold Quantity
Jan - May 2013	10,000	10,000
Jan 2014	395,500	13,500
Feb 2014	500,000	182,000
April 2014		16,000
May 2014	49,000	49,000
June 2014	-	338,000
July 2014	-	346,000
Jan – July 2014	944,500	944,500



## Securities and Exchange Commission of Pakistan

12. The above exhibit shows that the Appellant was an insider in terms of section 15C(1)(g) of the Ordinance being a member of the management committee of Hascol and had purchased and sold 944,500 shares of PRL and made a profit of Rs.63.576 million over a period of just 7 months. Further, the trading record of the Appellant in the scrip of PRL shows that during the year 2013, the Appellant had only purchased and sold 10,000 shares of PRL. The Appellant, therefore, has not been able to establish that being an insider he was not acting on inside information which was not in the public domain and subsequently made gains as a result during the said period. The decision to invest in the shares of PRL was a well thought out plan by the Appellant, therefore the penalty and recovery of gains were rightly ordered.

13. In view of the foregoing, we see no reason to interfere with the Impugned Order. The appeal is dismissed with no order as to costs.

  
(Zahid Abdullah)  
Commissioner (SCD)

  
(Tahir Mahmood)  
Commissioner (CLD)

Announced on: 24 NOV 2015