BEFORE LARGER APPELLATE BENCH

In the matter of

Appeal No. 21 of 2017

1. Mr. Nasir Ali Shah Bukhari
2. Mr. Arif Ali Shah Bukhari
3. Syed Masood Hussain Shah

...Appellants

Versus

The Commissioner (SMD), SECP

...Respondent

Dates of hearing: 27/4/17, 14/3/19 and 5/11/19

Present:

For Appellants:

i) Saim Hashmi, ASC
ii) Faisal Iqbal Khan, Advocate
iii) Faiza Khan, Senior Associate
iv) Mahmood Ali

For Respondent:

i) Adil Anwar, Director Adjudication (SMD)
ii) Muhammad Farooq, Additional Director (SMD)
iii) Hafiz M. Wajid Wahidi- Deputy Director (SMD)
iv) Mehwish Naveed, Management Executive (SMD)

ORDER

1. This Order shall dispose of Appeal No. 21 of 2017 filed under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the Appeal) against the Order dated January 12, 2017 (the Impugned Order) passed by the Commissioner, SMD, (the Respondent) against Nasir Ali Shah Bukhari (Appellant No.1), Arif Ali Shah Bukhari (Appellant No.2) and Syed Masood Hussain Shah (Appellant no.3), under Section 15E of the Securities and Exchange Ordinance, 1969 (the Ordinance).

2. The Appeal was initially heard by a two member Appellate Bench on April 27, 2017. The Bench consisted of Mr. Zafar Abdullah, Commissioner and Mr. Fida Hussain Samoo, Commissioner. The decision of the Appeal was reserved however, due to retirement of Mr. Fida Hussain Samoo, Commissioner, the Bench was dissolved without pronouncement of decision. Thereafter, on March 14, 2019 the Appeal was heard by a new bench, consisting of Mr. Shaukat Hussain, Commissioner and Mr. Aamir Ali Khan, Commissioner. Both commissioners were divided in their opinion with regard to the decision of this Appeal, therefore, on September 23, 2019, the Registrar Appellate Bench referred the matter under Rule 16, sub-rule 6 to the Chairman Securities and Exchange Commission of Pakistan (The Chairman) for constitution of a larger bench in order to decide the instant Appeal. The Chairman constituted a larger bench consisting of the two Commissioners who had already heard the matter and Mr. Farrukh H. Sabzwari, Commissioner. The Appeal was fixed for hearing on October 11, 2019, however, it was adjourned on the Appellants request. Thereafter, the Appeal was re-fixed and heard by the Larger Appellate Bench on November 5, 2019.

FACTS OF THE CASE

3. As per the facts of the Impugned Order, KASB Bank Limited (KASB) was a public limited banking company and KASB Corporation (KC) is its major shareholder with 83.62% shareholding. The Federal Government, on the application of State Bank of Pakistan (SBP) and in exercise of powers conferred under section 47 of the Banking Companies Ordinance 1962, placed KASB under moratorium for a period of six (6) months with effect from November 14, 2014 and directed the SBP to consider reconstruction or amalgamation of the KASB within six months. On April 27, 2015 the SBP shared a draft Scheme of Amalgamation (the Scheme), of KASB into Bank Islami Pakistan Limited (BIPL) for a token consideration of Rs.1000/-, with the presidents/chief executives officers of BIPL (Mr. Hasan Bilgrami) and KASB (Mr. Bilal Mustafa). The Respondent is of the view that prior to April 28, 2015 the Scheme was not public information and therefore, in terms of Section 15B of the Ordinance it was 'inside information'. The Securities and Exchange Commission of Pakistan (the Commission) observed substantial trading and increase in KASB shares price during April, 2015. Therefore, the Commission issued an investigation order on April 29, 2015 (the Investigation) to inquire into the dealings, business or other transactions in the shares of KASB and also suspended the trading in the shares of KASB.

4. The Investigation revealed that Appellant No.1 was the sponsor, major shareholder (40.30% shareholding), Chairman/CEO of the KC and he was directly involved in negotiations with the potential investors of the KASB i.e. Asia International Finance Limited/ Cybernaut Investment Group (Chinese Investor) and the SBP. Furthermore, Appellant No.1 was also privy to the Scheme, before it was made public on April 28, 2015. Therefore, in terms of section 15C (1) of the Ordinance, Appellant No.1 was an 'Insider' of KASB. Appellant No.1, allegedly, in violation of section 15E (3) of the Ordinance, disclosed the Scheme to his real brother Appellant No.2, who avoided a loss of Rs. 22 million on net sale of 8 million shares of the KASB on April 28, 2015, thus, violating Section 15A of the Ordinance. The Investigation further revealed that Appellant No.2, in violation of Section 15E(3) of the Ordinance, disclosed the Scheme to his friend, Appellant No.3, who in violation of Section 15A of the Ordinance avoided a loss of Rs. 28 million on sale of 11,600,000 shares of the KASB on April 28, 2015.

5. In view of the aforesaid facts, the Respondent issued three separate Show Cause Notices dated February12, 2016 (the SCNs) to Appellants No.1, 2 and 3. They filed replies to the SCNs and thereafter, the matter was heard in three separate hearings, wherein, their representatives had denied the allegations contained in the SCNs. However, the Respondent being dissatisfied with their response, imposed penalties on the Appellants No.1, 2 and 3, in the following manner;

S.No	Appellant No.1	Appellant No.2	Appellant No.3
1.	A penalty of Rs, 5,000,000 (rupees five million only) under section 15E (3) of the Ordinance for passing on the 'inside information' to the Appellant No.2.	A Penalty of Rs. 5,000,000 (rupees five million only) under section 15E (3) of the Ordinance for passing on the 'inside information' to the Appellant No.3.	
2.		A Penalty of Rs. 1,000,000 (rupees one million only) under section I5E (1) of the Ordinance for indulging in insider trading.	A Penalty of Rs. 1.000,000 (rupees one million only)) under section 15E (1) of the Ordinance for indulging in insider trading.
3.		Direction under section 15E(2)(a) of the Ordinance,	Direction under section 15E(2)(a) of the

		to Surrender to the Commission an amount of Rs.22 million equivalent to loss avoided on sale of 8 million of the KASB in violation of section 15A of the Ordinance.	Ordinance, to Surrender to the Commission an amount of Rs. 28 million equivalent to loss avoided on sale of 11.6 million shares of the KASB in violation of section 15A of the Ordinance.

GROUNDS OF APPEAL

6. The Appellants have challenged the Impugned Order *inter alia* on the following grounds;

   i. The Appellants No. 2 and 3 trading was based on the information available to public at large and it was not inside information. The Appellants No. 2 and 3 relied on pre-market information disclosed by the Stock Exchange before the regular trading hours on April 28, 2015. Reliance on pre-market information is a very common practice amongst the investors therefore, use of pre-market information by the Appellants No. 2 and 3 cannot be construed as Inside Information.

   ii. The Appellants No. 1, 2 and 3 had no 'inside information' therefore, they cannot be held liable for either disclosing or using of the alleged Inside Information. Appellant No. 1 had no 'inside information' as the Scheme was never shared with him. Appellant No.1 received only one email from the SBP on April 27, 2015 and it was about the rejection letter sent to the Chinese Investor. Appellant No. 1 came to know about the Scheme, when it was uploaded on the BIPL's website on April 28, 2015. Furthermore, the Respondent had failed to prove the necessary ingredients of the insider trading i.e. Possession of any non-public price sensitive inside information.

   iii. The Respondent had failed to appreciate that under Section 15 of the Ordinance, it was mandatory to establish and prove that a contravention was made knowingly. As a matter of fact, in the present case, the Appellants had no knowledge of any 'inside information' with respect to KASB amalgamation with the BIPL.

   iv. Appellant No. 1 is contesting the illegal and unlawful merger of the KASB with BIPL before High Courts against the SBP. The SECP is also party to the said proceedings hence it is out of the question that the SBP would have shared the 'inside information' with the Appellant No.1 and who disclosed said 'inside information' to Appellant No. 2.

v. The mere fact that Appellants No. 1 and 2 are brothers cannot establish the grave offence of insider trading. Appellants No. 1 and 2 have separate businesses and have no common business relationships or interest, hence, there is no question of insider trading in this case.

vi. The Respondent has failed to protect the rights of the investors and passed the Impugned Order. That the Impugned Order has been passed in violation of Article 4, 5, 9, 10A and 25 of the Constitution of Pakistan and is against the principles of natural justice as mentioned under Section 24A of the General Clauses Act.

RESPONDENT'S REBUTTAL

7. The Respondent has rebutted the grounds of the Appeal in the following manner;

i. Appellant No. 2 is brother of Appellant No.1 and shareholder of KASB. In pursuance of Section 15D of the Ordinance, the BIPL made first disclosure on April 28, 2015 to the Pakistan Stock Exchange (the PSX) at 9:36 AM and the second disclosure was made at 2:32 PM. The KASB made disclosure to the PSX at 10:35 AM. The disclosures made at 9:36 a.m. and 10.35 a.m. did not contain the 'inside information' i.e. *amalgamation of the KASB into BIPL for a token consideration of Rs 1,000/-*. The 'inside information' was made public by BIPL at 2:32 PM on April 28, 2015, when the BIPL placed the Scheme on its website under intimation to the PSX. Therefore, the general public became aware of the Inside Information/Scheme, after 2:32 PM. Furthermore, admittedly, Appellant No.1 became privy to Inside Information/ Scheme on April 27, 2015, at 7.30 PM. Since KASB was kept under moratorium, Appellant No. 2 always traded in the shares of KASB after 12 PM, however, contrary to this practice, on April 28, 2015 he started trading at 9:28 a.m. (before the 'inside information' became public) and by 12:16 PM, he had sold 8 million shares of the KASB for total value Rs. 22 million. Whereas, Appellant No.3 started selling on April 28, 2015 at 12:33 PM and by 2:00 PM, he had sold his entre shareholding. It has been held in the impugned Order that preponderance of evidence, does not go in favor of Appellants No. 2 and 3 because it is admitted fact that both are friends.

ii. Appellant No.1 had been the central figure after imposition of moratorium by SBP. He is a major shareholder of the KC, which was the parent company of KASB. The SBP shared the 'inside information' with the KASB on April 27, 2015 between 7 to 8 PM. Appellant No.1 admitted during the Investigation that he came to know about the scheme on April 27, 2015 at 7:30 PM, through an email from the SBP. Moreover, the Appellant No.2 was

in possession of Inside Information, when he sold his shareholding on April 28, 2015, (the 'inside information' was passed on to him by the Appellant No.1, who is his real brother). Appellant No.2 passed the said 'inside information' to his friend i.e. Appellant No.3. Therefore, Appellants No. 2 and 3 were in possession of inside information, when they sold their shareholding in KASB and avoided loss.

iii. The primary condition to commit the violation of section 15A of the Ordinance is to transact any deal, directly or indirectly by using the Inside Information. The Appellants No.2 and 3 were in possession of the Inside Information, when they sold their shares, therefore, had contravened section 15A of the Ordinance. Appellant No.2, in response to show cause notice inter alia stated "the fact that BIPL, a no name bank was about to be amalgamated with KASB, the final draw and the overall unfairness of the situation was the ultimate deciding factor in my personal decision to exit in share trading altogether". The above statement reveals that Appellant No.2 had decided to sell his shareholding in KASB on the basis of following two factors:

- Amalgamation of the KASB into a no name bank i.e. the BIPL, and
- Overall unfairness of the situation.

The BIPL made first public announcement at 9:36 AM whereas the second public announcement was made at 2:32 PM. Appellant No.2 started placing sale orders on April 28, 2015 at 9:28 AM i.e. prior to first public announcement and had sold his shareholding in the KASB by 12:16 PM i.e. before the second public announcement. This implies that he was in possession of the 'inside information' (before it became public) at the time of sale of his shareholding in KASB.

iv. Rounds of litigations between Appellant No.1 and the SBP before High Courts does not have a nexus with the instant case.

v. Appellants No.1 and 2 have not been implicated on the basis that they are brothers, but they have been held guilty of contravening the provisions of section 15A and 15E(3) of the Ordinance on account of above mentioned established facts.

vi. The matter has been decided on merits of the case, after considering all factors, documents and arguments submitted by the Appellants.

MAJORITY VIEW OF COMMISSIONERS, MR. SHAUKAT HUSSAIN AND MR. FARRUKH H. SABZWARI

8. We have heard the parties (Appellants No.1, 2, 3 & Respondent) and perused the record with their able assistance. The matter in hand is of civil nature, therefore, the Respondent was required to establish the violation on the basis of preponderance of evidence. Therefore, we endorse the Respondent's view, in this regard, that the standard of proof under Section 15A to Section 15E is based on the principles of preponderance of evidence.

9. The preponderance of evidence is not in favor of Appellant No.1 because we have perused the relevant record, which revealed that KC was the major shareholder of KASB with 83.62% shareholding and Appellant No.1 was its sponsor, major shareholder (40.30% shareholding), Chairman/CEO of KC. It is an admitted fact that Appellant No.1 was directly involved in negotiations with the Chinese Investor and the SBP. Appellant No.1 had inside information of the Scheme on April 27, 2015 and he admitted it during the Investigation, while recording his statement under section 32 of the Act (the Statement). However, during the hearing of Appeal, Appellant No.1 had denied the admission contained in the Statement. While denying the admission he stated that in reply to question 22 of the Statement, he referred to the email dated April 27, 2015, sent to the *Cubernaut* representative by Mr. Tanzeel Malik, Deputy Director, SBP at 7:10 PM whereby the Chinese Investor proposal was rejected. We are of the view that irrespective of Appellant's No.1 denial with regard to his admission, the allegation of dissemination of inside information has been established due to following facts;

   i. KC was the major shareholder of KASB whereas Appellant No.1 was the sponsor, major shareholder, Chairman/CEO of the KC, therefore, it was not possible that KASB's management had not shared with him the inside information of the Scheme;
   ii. Furthermore, Appellant's No.1involvement with the Chinese Investors and SBP is an admitted fact of the case. On April 27, 2015 at 7:10 PM, the SBP communicated the refusal of the Chinese Investor proposal to Appellant No.1 and others through an email. Therefore, refusal of the Chinese Investor proposal was sufficient to draw the inference that the SBP was about to announce KASB's merger into BIPL.

10. In view of the above facts, we have no doubt that Appellant No.1 was an insider and had inside information of the Scheme, which was disseminated to his real brother i.e. Appellant No.2. Therefore, the Respondent had successfully established the case against the Appellant No.1.

11. We endorse Respondent's stance that the preponderance of evidence is also not in favor of Appellant No.2 because prior to April 28, 2015, he always traded KASB's shares after 12 PM, however, on April 28, 2015 he placed first selling order of KASB's Shares before opening of normal trading hours at 9:28 AM and offloaded eight million shares by 12:16 PM. It is important to note here that the real brother (Appellant No.1) of Appellant No.2 became privy to the inside information of the Scheme on April 27, 2015 at 7.30 PM. It is apparent from the facts and circumstances that Appellant No.2 while acting upon the disclosure of inside information of the Scheme by Appellant No.1 had indulged in insider trading and avoided loss. The Respondent No.3 started sale of KASB's shares at 12:33 PM and by 2:00 PM he sold his entire shareholding therefore, it is evident from record that he sold his entire shareholding much after the BOPL's first announcement but before second announcement.

12. We are of the view that the Scheme was inside information, prior to April 28, 2015, when it was made public through first announcement of BIPL at 9:36:18 AM wherein, it was clearly communicated that;

> *"This is to inform that Bank Islami Pakistan Limited (NFL) has received a Confidential Draft Scheme of Amalgamation (the 'Scheme') from State Bank of Pakistan prepared under Section 4 7 of the Banking Companies Ordinance 1962 for amalgamation of KASB Bank Limited with and into **B1PL at a token nominal value**, ……."*
>
> ***Emphasis Added***

13. We are not inclined to accept Respondent's assertion, that BIPL's first disclosure at 9:36:18 AM had no inside information because for a vigilant and prudent investor, the phrase "***at a token nominal value***" used in the first announcement was sufficient reason to believe that in result of KASB's amalgamation with BIPL, KASB's equity will be diluted significantly. We are of the view that that the second announcement of BIPL at 2:32 PM had further clarified the terms of the Scheme, however, sufficient disclosure was made through the first announcement. Therefore, we believe that the Appellant No.2 is can be held accountable as an insider only for

those sale transactions, which were placed or executed prior to BIPL's first disclosure at 9:36:18 AM. Information with regard to KASB and BIBL amalgamation was made public after 9:36:18 AM, therefore, Appellant No.2 cannot be penalized on account of sale transactions carried out after 9:36:18 AM.

14. In the light of the above discussion and findings, the Respondent had failed to establish a case against the Appellant No.3, therefore, the Impugned Order is *set aside* to the extent of Appellant No.3. However, Appellant had successfully established the case against Appellant No.1 whereby, he disclosed the inside information of the Scheme to Appellant No.2, therefore the Impugned Order is maintained to the extent of Appellant No.1.

15. In view of above discussion and analysis, we *set aside* the penalty of Rs. 500,000/- (Five million) imposed on the Appellant No.2 because Appellant No.3 placed and executed sale transaction after BIPL's first disclosure at 9:36:18 AM, therefore, we cannot validate Respondent's assumption that Appellate No.2 had disseminated inside information of Scheme to Appellant No.3. Furthermore, prior to BIPL's first disclosure at 9:36:18 AM, only 37 sale transactions of 294,500 shares were placed by Appellant No.2, therefore, under Section 15E (2)(a) he is only liable to surrender the loss avoided through the sale of 294,500/- shares. Therefore, we direct the Appellate No.2 to surrender Rs. Rs. 912,845/- to the Commission (Price of 294,500 shares through 37 sale transactions, mentioned in Table-V, of the Impugned Order). We have no doubt that the Respondent had successfully established that the Appellant No.2 indulged in insider trading, therefore, penalty of Rs. 1,000,000 (One Million) imposed under Section 15E (1) of the Ordinance was justified, hence we maintain it.

DISSENTING VIEW OF COMMISSIONER MR. AAMIR ALI KHAN

16. The Impugned Order is entirely based on the alleged facts that Appellant No.1 had 'inside information' with respect to the Scheme and he acknowledged it during the Investigation, while recording his statement under section 32 of the Act (the Statement). Furthermore, the Appellant No. 1 has disseminated the information about the Scheme to Appellant No.2 and Appellant No.2 further disclosed it to Appellant No.3.

17. The Respondent had framed five question (a, b, c, d, e) in para nine of the Impugned Order. These questions are very important to adjudicate the matter. The questions are as follows;

    a. *"Which type of standard of proof would he required to establish or to be satisfied for violation of Chapter III-A (Section 15A to section 15E) of the Ordinance?*
    b. *Was the Scheme of Amalgamation "Inside Information" in terms of section 15B of the Ordinance?*
    c. *Was the Appellant No.1 privy to Inside Information?*
    d. *Did the Appellant No.2 sell shares of KASB Bank on the basis of 'inside information' passed to him by Appellant No.1?*
    e. *Did the Appellant No.3 sell shares of KASB Bank on the basis of 'inside information' passed to him by Appellant No.2?"*

18. I endorse Respondent's view with regard to question (a) *supra* and concur with the majority view, that the standard of proof under Section 15A to Section 15E is based on the principles of preponderance of evidence. The Respondent has relied upon case law (2013 CLC 203) decided by the Honorable Supreme Court wherein it has been held that:-

> Civil. *Cases---Proof-- In the civil cases, the principle of law is to record findings in favour of the party, in whose favour the material brought on record would create preponderance of probability.*
>
> *Emphasis Added*

However, I am of the view that while applying the principle of preponderance of evidence, the Respondent had not appreciated the material facts of the case, therefore, the principle of preponderance of evidence had not been applied in the required manner. The Respondent had ignored documentary evidence favoring Appellants defense and relied upon fragmented circumstantial evidence and presumptions to pass the Impugned Order. The forthcoming discussion shall elaborate that presumptions may not override documentary evidence.

19. I have no doubt, about the Respondent's findings with regard to question "b" whereby it had been held that the Scheme was an inside information, however, this concurrence does not prove and establish respondent's findings in last three questions (c, d and e). Question "c" *Was the Appellant No.1 privy to Inside Information?* is the most critical question as it holds the key to

determine the fate of the other two questions i.e. "d and e", that connect Appellants No.2 and 3 with the alleged offence of insider trading.

20. To prove the question "*Was the Appellant No.1 privy to Inside Information*?" the Respondent had relied upon the Statement wherein, allegedly, it had been admitted by the Appellant No.1 that on April 27, 2015 he was privy to the inside information of the Scheme. For further discussion, the relevant question and its answer, are reproduced here;

> *"Question 22. When were you informed of the Scheme of Amalgamation with and in to Bank Islami by the State Bank of Pakistan?*
> *Answer: On the 27th of April at 7:30 through an email from SBP. Cybernaut representative were here from the 23-26 April during which they were not told of anything by the SBP but as soon as they left the SBP on the 27th April told the AIFL to inform Cybernaut to provide certain information on an immediate basis."*

21. I have perused the record and found an email dated April 27, 2015, sent to *Cubernaut* representative, by Tanzeel Malik, Deputy Director, SBP at 7:10 PM. Appellant No. 1 was not the main recipient rather this email was shared with him and some other as c*arbon copy* "cc". I observed that there is no other email in record, as allegedly admitted by Appellant No.1 while answering question 22 of the Statement that he had received the information of the Scheme on April 27, 2015 at 7:30 PM.

22. I am not inclined to accept the alleged admission of Appellant No.1, in a mechanical manner, therefore, to satisfy the judicious conscious, I will critically examine the Statement. It is important to note that the Statement contained 23 questions, however, only two questions (Questions 22 and 23) were about the disclosure of the Scheme. In my view the said two questions and their answers do not implicate Appellant No.1 with the alleged offence of having and disseminating the inside information of the Scheme. I have considered the following facts to form aforesaid opinion;

- The context of the Statement does not support the conclusion drawn by the Respondent from the answer to question no. 22 because sixteen questions of the Statement are regarding the petitions filed by Appellant No.1 and his involvement in negotiations with 'Chinese Investor'. Whereas five questions are about introduction of Appellant No.1 and background of the case, after placement of KASB under moratorium by the

SBP. Twenty-one questions of the Statement were not relevant to the inside information of the Scheme or insider trading. Question no. 22 was with respect to knowledge of Appellant No.1 about the Scheme, however, overall answer is not specific with regard to inside information of the Scheme rather it describes the issue of 'Chinese Investor', therefore, I cannot consider it as an admission from Appellant No.1 .

- Furthermore, there is no email in record that shows that Appellant No.1 received SBP's email on April 27, 2015 at 7:30 PM, containing inside information of the Scheme. As a matter of fact and record, there is only one email, which was received by the Appellant on April 27, 2015 at 7:10 PM.[1] It seems that Appellant No.1 intended to refer this email while answering question no. 22. This presumption is of pivotal nature because question 22 was answered by the Appellant No.1 without consulting the record, hence difference in terms of time i.e. 7:30 PM or 7:10 PM does not affect the case of Appellant No.1, where the context of the answer speaks otherwise.
- In view of the settled legal principle, the Respondent may not be allowed to pick a part of a Statement, which apparently favors it and reject the other part, which clearly favors the Appellant.[2] The first sentence of Appellant No. 1 answer is "*On the 27th of April at 7:30 through an email from SBP*", this sentence apparently favors Respondent whereas rest of answer is *"Cybernaut representative were here from the 23-26 April during which they were not told of anything by the SBP but as soon as they left the SBP on the 27th April told the AIFL to inform Cybernaut to provide certain information on an immediate basis"* is in favor of Appellant No.1. In my view, the overall answer suggests that Appellant No.1 had considered question no. 22 in reference to the Chinese Investor and, therefore, does not prove that Appellant No.1 had inside information about the Scheme, and accordingly it cannot be considered as admission on part of Appellant No.1. Furthermore, in the Statement, Appellant No.1 had

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[1] Para 19 of this order; *"19. I have perused the record and found an email dated April 27, 2015, sent to Cubernaut representative, by Tanzeel Malik, Deputy Director, SBP at 7:10 PM. Appellant No. 1 was not the main recipient rather this email was shared with him and some other as carbon copy "cc". I observed that there is no other email in record, as allegedly admitted by the Appellant No.1 while answering question 22 of the Statement that he had received the information of the Scheme on April 27, 2015 at 7:30 PM."*

[2] *"**Question 22**. When were you informed of the Scheme of Amalgamation with and in to Bank Islami by the State Bank of Pakistan?*
***Answer:** On the 27th of April at 7:30 through an email from SBP. Cybernaut representative were here from the 23-26 April during which they were not told of anything by the SBP but as soon as they left the SBP on the 27th April told the AIFL to inform Cybernaut to provide certain information on an immediate basis."*

categorically stated that he had no involvement with respect to KASB prior to and after the moratorium. Therefore, by keeping both facts in juxtaposition, one can easily infer that Appellant No.1 cannot be implicated in the offence of possessing and disseminating the inside information of the Scheme to Appellant No.2.

- Furthermore, it is important to note that upon query, the Respondent's representatives stated that they have no record of the alleged email of SBP, which was allegedly received by Appellant No.1 on April 27, 2015 at 7:30 PM.
- Moreover, in reply to the Commission's letter dated December 2, 2015, the SBP vide its letter dated December 30, 2015 had specifically denied the fact that the Scheme was shared with Appellant No.1. The SBP's letter further stated that refusal of the Chinese Investor's proposal was communicated to the Chinese Investor, with a 'cc' to the CEO of KC on April 27, 2015 at 7:10 PM. Therefore, in view of the SBP's letter, the presumption drawn by the Respondent, against Appellant No.1 has lost its evidentiary value.

23. I have noticed that the Respondent had stated in para 3(a) of the Impugned Order that the investigation revealed that Appellant No. 1 was an insider of KASB because he was engaged in talks with the SBP, about the Chinese Investor. However, this assertion is neither plausible nor supports the Respondent's case against Appellant No.1. Appellant No.1's involvement in discussions between the Chinese Investor and SBP does not make him an insider of KASB.

24. I am of the view that as per the available record, the Respondent has failed to establish that Appellant No.1 had inside information of the Scheme before it was made public on April 28, 2015. Therefore, Appellant No.1 cannot be held for dissemination of the inside information of the Scheme to Appellant No.2. Furthermore, Appellant No.1 has consistently stated that his role was confined to the extent of negotiations between the Chinese Investor and SBP. It is quite clear from the record that Appellant No.1 had no role with respect to formation, implementation or execution of the Scheme.

25. In view of the above discussion and analysis, I believe that Respondent's assertions with regard to Appellant No. 2 and Appellant No.3 that they acted upon inside information of the Scheme become immaterial, upon failure to establish a case against Appellant No.1. The Respondent has not only failed to establish that Appellant No.1 disseminated the inside information to

Appellant No. 2, but has also failed to consider the fact that Appellant No.3 placed a selling order of KASB shares at 12:33 PM whereas BIPL's first public disclosure about the Scheme was at 9:36 AM and the KASB disclosure was at 10:35 respectively. I am not ready to accept the Respondent's view that first disclosure of BIPL and the KASB had no 'inside information' because the Scheme was shared with the public after the second disclosure of BIPL at 2:32 PM. I have examined the contents of the first disclosure of the BIPL, which states that; *"amalgamation of KASB with and into BIPL at a token nominal value"*. The aforementioned extract of the BIPL's first disclosure is a clear sign for vigilant investors to dislodge an investment before it turns into a bad investment. Therefore, firstly the Respondent had no reason to proceed against Appellant No. 2 and Appellant No. 3 with respect to the transaction executed after 9:36 AM because at that time inside information was made public. Secondly, after failure to establish that Appellant No.1 had disseminated the inside information to Appellant No.2, the transactions executed prior to 9:36 AM are also immune. Furthermore, Appellant No. 3 placed first selling order at 12:33 PM, whereas BIPL's first disclosure was at 9:36 PM, therefore, I cannot assume that Appellant No.3 had sold his shares while relying upon the inside information of the Scheme. In the above circumstances all proceedings and allegations of insider trading, against Appellant No.3 were *void ab initio*.

26. After careful examination of record and submissions of the parties, I am of the considered view that Appellant No.1 was not in possession of inside information about the Scheme, therefore, he cannot be termed as an insider of KASB. There is also nothing on record to prove that Appellant No.1 had disseminated the information about the Scheme to Appellant No.2. In this case, the Respondent has failed to establish two basic ingredients of insider trading i.e. possession of 'inside information' and dissemination of 'inside information' to others. The Respondent had penalized Appellant No.1 on the basis of alleged admission, however, the record does not corroborate it. The record is in favor of Appellant No.1 therefore, I am not inclined to accept the presumption of admission against Appellant No.1. The Respondent has also failed to establish "possession of inside information" by Appellant No. 2, and its "disclosure prior to announcement" to Appellant No. 3.

27. In view of the aforestated, I believe that the Impugned Order was not passed keeping in view the principle of legal reasoning, necessary to establish the alleged guilt and violations on the

part of Appellant No.1, 2 and 3. Appellants No.1, 2 and 3 have successfully made out their case in appeal, therefore, I hereby *set aside* the Impugned Order and accept this Appeal.

DECISION OF THE APPEAL

28. The Appeal is disposed of with the majority view of two to one, without any order as to cost.

(Shaukat Hussain)	**(Farrukh Hamid Sabzwari)**	**(Aamir Ali Khan)**
Commissioner (CLD-C&CD)	Commissioner (SCD,AML)	Commissioner (CLD-CSD)

Announced on: 26 DEC 2019