



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 28 of 2015

Gauhar Engineering Limited

...Appellant

Versus

Director/HOD (MS & SID), SECP

...Respondent

Date of hearing:

16/09/15

Present:

For Appellant:

Mr. Zafar Iqbal, Company Secretary

For Respondent:

- i. Mr. Amir Saleem, Joint Director (SSED-SMD)
- ii. Ms. Tayyaba Nasir, Deputy Director (SSED-SMD)

ORDER

1. This order shall dispose of Appeal No. 28 of 2015 filed by the Appellant under Section 33 of the Securities and Exchange Commission of Pakistan Act 1997 against the order dated 02/03/15 (the Impugned Order) passed by the Respondent.
2. Brief facts of the case are that the Appellant is a Public Limited Company, listed on Karachi Stock Exchange (the KSE). The Appellant informed the KSE regarding the change of its status from "Defaulter's Segment" to "Normal Counter" vide letter dated 28/10/14 and disclosed future plans for better management of Appellant affairs. The Respondent asked the Appellant to

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provide a copy of the above stated letter, which was provided via email dated 31/12/14. The Respondent also called the copy of above stated letter from the KSE, which was provided on 23/01/15. On perusal of the letters, discrepancies were observed in the contents of the para 4 (a) of the letter provided to the KSE and the letter provided to the Respondent by the Appellant. It was noted that the Appellant in its letter to KSE provided information regarding negotiation with Chinese companies for a joint venture, however it was not mentioned in the letter provided to the Respondent. Furthermore, the letter provided to the Respondent contained the information regarding the Appellant decision to make equity investments in top tier publically listed companies however, letter written to the KSE had no such disclosure. Therefore, the Appellant was once again asked by the Respondent to provide the copy of the letter written to the KSE, however the Appellant provided the same copy, as forwarded earlier via email dated 31/12/14.

3. In view of the above a Show Cause Notice (the SCN) under section 22 of the Securities and Exchange Ordinance 1969 (the Ordinance) was issued to the Appellant for contravention of section 18 of the Ordinance. The Appellant failed to submit written reply of the SCN, however Appellant Company Secretary appeared and made verbal submissions. The Respondent being dissatisfied with the submissions, imposed a penalty of Rs.500, 000 on the Appellant.
4. The Appellant has preferred the instant appeal against the Impugned Order on the following grounds:
 - a) The Impugned Order dated 02/03/15 is against law and facts of the case and the Respondent has decided the case in vacuum ignoring settled principles of law upon the issue in hand.
 - b) The alleged conduct/act of the Appellant upon which the SCN was issued was a result of confusion/lack of communication between the Company Secretary and the CEO of the Appellant.
 - c) The letter sent to Respondent is not the one which has been circulated by KSE in open market therefore, neither it bears any effect to the interest of the shareholders, nor the shareholders were misled on the basis of the letter sent to the Respondent.



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- d) That the Appellant was condemned un-heard which is a sheer violation of his fundamental rights, guaranteed to him by the Constitution of Pakistan.
5. The Respondent denied the facts of appeal and requested to dismiss the appeal. The Respondent rebutted the grounds of the appeal in the following manner:
- a) The Impugned Order was passed by considering the 'Interest of the investors at large'. A listed company is always required to make an announcement, after taking reasonable steps to ensure that any information it disseminates to the market is not misleading, false or deceptive and no price sensitive information is omitted.
 - b) The Company Secretary should be fully aware of his duties and such lack of communication with the CEO as cited is no justification for the misconduct.
 - c) The Appellant itself has admitted that two different version of letters were sent to the KSE and the Respondent, despite the fact that the Respondent twice sought the copy of same letter which was sent to the KSE. The act of Appellant tantamount to misstatement.
 - d) The Appellant was provided reasonable time to present its case through written reply of the SCN and during personal hearing before the Respondent, however the Company Secretary appeared on behalf of the Appellant and made verbal submissions.
6. We have heard the parties at length and perused the relevant record with the assistance of the parties i.e. Appellant and Respondent.
7. In the light of above stated facts it has been established that the Appellant has provided two different sets of information to the Respondent and the KSE which exhibits material misstatement. Non-disclosure of material information or dissemination of untrue information is a great threat to the integrity of securities market, therefore such act of Appellant cannot be tolerated. It was the prime duty of the Appellant to apprise the stakeholders (Shareholders or

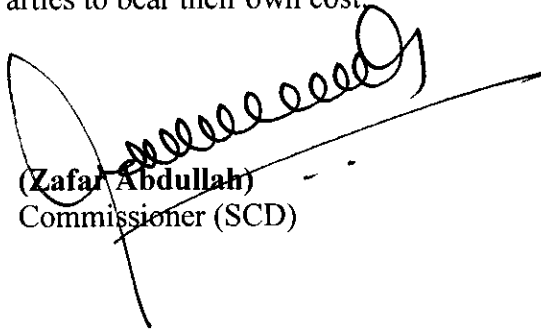


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Investors) about any material price sensitive information, however it failed to discharge its duty as required by law.

8. In view of the aforesaid there being no reason to interfere with the Impugned Order dated 02/03/15 passed by the Respondent, therefore appeal is dismissed.

9. Parties to bear their own cost.


(Zafar Abdullah)
Commissioner (SCD)


(Tahir Mahmood)
Commissioner (CLD)

Announced on: **15 OCT 2015**