



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 31 of 2012

Mr. Mohammad Yousuf

.....Appellant

Versus

Securities Market Division,
Securities and Exchange Commission of Pakistan

.....Respondent

Date of Hearing

16/09/15

Present:

For the Appellant:

Mr. Shahid Mahmood Tabassum, Advocate High Court

For the Respondent:

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

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

ORDER

1. This order is in appeal No. 31 of 2012 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 31/05/12 (Impugned Order) passed by the Respondent.

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2. The brief facts of the case are that while reviewing the trading data of B.R.R Guardian Modaraba (BRRGM) and First Dawood Investment Bank Limited (FDIBL) during the period from 01/07/08 to 31/01/11 (Review Period) it was noted that trading by Mr. Mohammad Aamir (MAA), in certain illiquid scrips through his different trading accounts, correlated with the trading of BRRGM and FDIBL. It was observed that in majority of the instances MAA bought the scrip prior to the purchase of BRRGM and FDIBL and subsequently sold all or major portion of the same to BRRGM and FDIBL and the rest in the market at higher price around the same time BRRGM and FDIBL started buying the shares (Correlated Trading), which resulted in considerable gain to MAA. The details of the instances of the above mentioned trading of MAA is as under:

Sr. No.	Scrip Code	Date	Broker	Bought Quantity (Shares)	Sold Quantity (Shares)	Matched volume with BRRGM or FDIBL		Profit (Rs.)	% of Matched Bought Qty to Bought Qty	% of Matched Sold Qty to Sold Qty
						Bought Qty	Sold Qty			
1	ABOT	20090617	Multiline Securities (Pvt.) Ltd.	14,800	14,800	-	14,800	35,066	-	100.00%
		20100324	Multiline Securities (Pvt.) Ltd.	28,000	28,000	-	28,000	84,695	-	100.00%
		20100325	Multiline Securities (Pvt.) Ltd.	29,400	29,400	15,000	29,400	152,623	51.02%	100.00%
		20101026	Multiline Securities (Pvt.) Ltd.	29,400	29,400	15,000	29,400	152,623	51.02%	100.00%
		20101028	Multiline Securities (Pvt.) Ltd.	29,400	29,400	15,000	29,400	152,623	51.02%	100.00%
2	BATA	20101111	Multiline Securities (Pvt.) Ltd.	6,500	6,500	-	6,500	165,624	-	100.00%
		20101112	Multiline Securities (Pvt.) Ltd.	6,500	6,500	-	6,500	165,624	-	100.00%
3	BOC	20110104	Multiline Securities (Pvt.) Ltd.	27,162	27,162	-	27,162	126,437	-	100.00%
4	COLG	20090325	Multiline Securities (Pvt.) Ltd.	9,400	9,400	-	9,400	282,376	-	100.00%
5	DAWH	20090407	Multiline Securities (Pvt.) Ltd.	27,100	27,100	-	19,100	52,373	-	70.48%
		20090413	Multiline Securities (Pvt.) Ltd.	26,000	26,000	-	25,700	67,869	-	98.85%
		20090422	Multiline Securities (Pvt.) Ltd.	31,400	31,400	-	31,400	189,705	-	100.00%
		20091002	Multiline Securities (Pvt.) Ltd.	16,000	16,000	-	15,993	49,035	-	99.96%



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			Ltd.							
		20091006	Multiline Securities (Pvt.) Ltd.	25,000	25,000	-	25,000	97,925	-	100.00%
		20091014	Multiline Securities (Pvt.) Ltd.	21,469	21,469	-	20,002	60,179	-	93.17%
		20091214	Multiline Securities (Pvt.) Ltd.	4,700	4,700	-	4,699	18,640	-	99.98%
		20100108	Multiline Securities (Pvt.) Ltd.	50,000	50,000			128,818	-	87.08%
		20100318	Multiline Securities (Pvt.) Ltd.	22,000	22,000	-	22,000	59,660	-	100.00%
		20100622 - 20100624	Multiline Securities (Pvt.) Ltd.	9,550	9,550	-	9,018	67,186	-	94.43%
		20100914 - 20100915	Multiline Securities (Pvt.) Ltd.	36,000	36,000	254	36,000	211,770	0.71%	100.00%
6	DLL	20100319	Multiline Securities (Pvt.) Ltd.	16,000	16,000	-	15,684	27,242	-	98.03%
7	EFUL	20091023	Multiline Securities (Pvt.) Ltd.	12,500	12,500	-	12,500	59,713	-	100.00%
		20091030	Multiline Securities (Pvt.) Ltd.	16,375	16,375	-	16,375	79,545	-	100.00%
8	EXIDE	20100506 - 20100513	Multiline Securities (Pvt.) Ltd.	6,296	6,296	-	6,296	44,963	-	100.00%
		20110110	Multiline Securities (Pvt.) Ltd.	15,000	15,000	-	15,000	160,035	-	100.00%
9	GLL	20101019 - 20101022	Multiline Securities (Pvt.) Ltd.	75,414	75,414	-	50,414	16,329	-	66.85%
10	INDU	20090915	Multiline Securities (Pvt.) Ltd.	25,527	25,527	-	25,527	97,917	-	100.00%
		20110119	Multiline Securities (Pvt.) Ltd.	10,000	10,000	-	10,000	104,900	-	100.00%
11	KABP	20100730 - 20100823	Multiline Securities (Pvt.) Ltd.	41,689	41,688	-	41,687	111,915	-	100.00%
12	MARI	20080709	First National Equities Ltd.	28,000	28,000	-	28,000	296,100	-	100.00%
		20080714	First National Equities Ltd.	5,000	5,000	-	5,000	30,150	-	100.00%
		20080729 - 20080804	H. M. Idrees H. Adam / First National Equities Ltd.	8,400	11,300	-	8,400	10,542	-	74.34% *
		20080808	First National Equities Ltd.	13,000	13,000	-	13,000	63,930	-	100.00%
		20090519 -	Multiline Securities (Pvt.) Ltd.	17,400	19,000	-	19,000	57,917	-	100.00%

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			Ltd							
		20090526	Multiline Securities (Pvt.) Ltd.	16,100	16,100	-	16,100	41,565	-	100.00%
		20090622	Multiline Securities (Pvt.) Ltd.	22,700	22,800	100	22,800	99,457	-	100.00% *
		20090717	Multiline Securities (Pvt.) Ltd.	20,000	20,000	-	20,000	78,513	-	100.00%
		20090826	Multiline Securities (Pvt.) Ltd.	27,511	26,511	-	26,511	80,958	-	100.00% *
		20090917	Multiline Securities (Pvt.) Ltd.	25,000	25,000	-	25,000	21,355	-	100.00%
		20100309	Multiline Securities (Pvt.) Ltd.	20,000	20,000	-	19,970	16,214	-	99.85%
15	PKGS	20080821	First National Equities Ltd.	10,000	10,000	-	10,000	30,060	-	100.00%
		20090313	Multiline Securities (Pvt.) Ltd.	11,800	11,800	-	9,000	34,669	-	76.27%
		20090331	Multiline Securities (Pvt.) Ltd.	24,800	24,800	-	21,700	39,098	-	87.50%
		20090406	Multiline Securities (Pvt.) Ltd.	29,800	27,000	-	27,000	82,653	-	100.00% *
		20090413	Multiline Securities (Pvt.) Ltd.	9,900	9,900	-	9,900	18,471	-	100.00%
		20090514	Multiline Securities (Pvt.) Ltd.	36,000	36,000	-	16,300	132,626	-	45.28%
		20090610	Multiline Securities (Pvt.) Ltd.	28,000	28,000	-	21,200	118,426	-	75.71%
		20090825	Multiline Securities (Pvt.) Ltd.	22,362	22,362	-	22,362	70,924	-	100.00%
		20090918	Multiline Securities (Pvt.) Ltd.	31,200	31,200	-	30,150	55,148	-	96.63%
		20091215	Multiline Securities (Pvt.) Ltd.	45,000	45,000	-	45,000	110,428	-	100.00%
16	SEARL	20080725	First National Equities Ltd.	19,500	19,500	-	19,500	54,150	-	100.00%
		20080730	First National Equities Ltd.	10,000	10,000	-	10,000	19,020	-	100.00%
		20100402	Multiline Securities (Pvt.) Ltd.	35,000	35,000	-	35,000	42,810	-	100.00%
17	SGLL	20100405 - 20100406	Multiline Securities (Pvt.) Ltd.	22,000	22,000	-	22,000	(24,656)	-	100.00%
18	SHEL	20080715	First National Equities Ltd.	2,500	2,500	-	2,500	28,200	-	100.00%
		20080722	First National Equities Ltd.	4,000	4,000	-	4,000	45,804	-	100.00%
		20090403	Multiline Securities (Pvt.) Ltd.	25,000	25,000	-	25,000	91,686	-	100.00%
		20090512	Multiline Securities (Pvt.) Ltd.	14,000	14,000	-	14,000	54,609	-	100.00%
		20090616	Multiline Securities (Pvt.) Ltd.	10,800	12,800	-	11,700	44,705	-	91.41% *



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SECP

		20090618	Multiline Securities (Pvt.) Ltd.	12,000	12,000	-	12,000	52,200	-	100.00%
		20090626	Multiline Securities (Pvt.) Ltd.	15,000	15,000	-	14,400	33,522	-	96.00%
		20090702	Multiline Securities (Pvt.) Ltd.	18,500	18,700	-	18,500	54,002	-	98.93% *
19	SITC	20090312	Multiline Securities (Pvt.) Ltd.	7,500	7,500	-	7,500	64,510	-	100.00%
		20101021	Multiline Securities (Pvt.) Ltd.	18,000	18,000	-	17,999	128,162	-	99.99%
		20101130	Multiline Securities (Pvt.) Ltd.	39,682	39,682	25,000	39,682	317,959	63.00%	100.00%
20	THALL	20090409 - 20090410	Multiline Securities (Pvt.) Ltd.	10,000	10,000	-	-	19,500	-	0.00%
		20091007	Multiline Securities (Pvt.) Ltd.	35,000	35,000	-	35,000	31,552	-	100.00%
		20091223 - 20091224	Multiline Securities (Pvt.) Ltd.	25,000	20,000	-	20,000	(1,787)	-	100.00%
21	TRIPF	20090316	Multiline Securities (Pvt.) Ltd.	10,000	10,000	10,000	10,000	75,000	100.00%	100.00%
		20090414	Multiline Securities (Pvt.) Ltd.	32,000	32,000	-	32,000	74,926	-	100.00%
		20090415	Multiline Securities (Pvt.) Ltd.	20,000	20,000	-	20,000	95,731	-	100.00%
		20090424	Multiline Securities (Pvt.) Ltd.	23,000	24,500	-	24,500	112,866	-	100.00% *
		20090427 - 20090428	Multiline Securities (Pvt.) Ltd.	5,000	25,000	-	25,000	18,460	-	100.00% *
		20090512	Multiline Securities (Pvt.) Ltd.	11,000	11,000	10,000	-	48,270	90.91%	-
		20100415 - 20100416	Multiline Securities (Pvt.) Ltd.	40,000	40,000	-	40,000	119,431	-	100.00%
22	ZTL	20100721 - 20100730	Multiline Securities (Pvt.) Ltd.	124,005	124,005	100,000	100,000	74,110	80.64%	80.64%
		20101028	Multiline Securities (Pvt.) Ltd.	99,362	99,362	80,002	99,362	164,991	80.52%	100.00%
TOTAL				2,123,258	2,137,65	259,832	1,998,826	1,998,826	1,998,826	100.00%

* Profit calculated on the basis of average buy and sell rate

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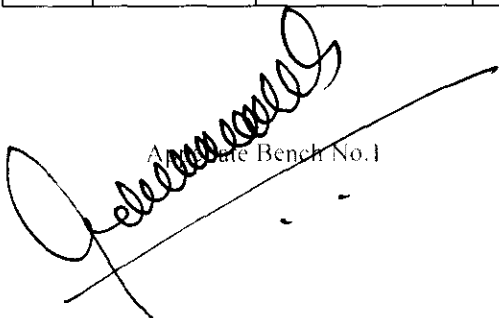
3. During the Review Period MAA traded through his accounts with the following brokers of KSE:

Sr. No.	Broker's Name	Client Code
1	H. M. Idrees H. Adam	385 and 404
2	Multiline Securities (Pvt.) Ltd	5801
3	First National equities Ltd	703

The trading patterns of MAA lead to suspicion that the trading was executed on the basis of prior information regarding trading decisions by BRRGM and FDIBL.

4. The Inquiry Team of the Respondent scrutinized different records and information including the telephonic records of B.R.R. Investments (Pvt) Ltd which is a management company of BRRGM and Multiline Securities (Pvt.) Ltd. The Inquiry Team unearthed information that during the Review Period MAA was in contact with Mr. Mohammad Yousuf (Appellant) who was working as Equity Investment Portfolio Manager at BRRGM and was also looking after investment portfolio of FDIBL during the Review Period. The said findings depicts that the Appellant and MAA knew each other and were in contact during the Review Period. Moreover, the examination of MAA and the Appellant's bank account statements by the Inquiry Team also revealed that during the Review Period, MAA through his different bank accounts transferred amount of Rs.3.614 million through various cheques to the Appellant's bank account. The details of said transactions are as follows:

Sr. No.	Date	Bank	Branch	MAA Bank Account No.	Cheque No.	Amount Transferred to Respondent (Rs.)
1.	05/07/2008	Bank Alfalah Limited	Stock Exchange Branch, Karachi	0012-01001020	1243480	195,000
2.	12/05/2009				53029846	129,000







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3.						
4.	21/05/2009				53029847	225,000
5.	12/06/2009				53029855	201,000
6.	12/06/2009				53029856	76,000
7.	24/06/2009				53029857	157,000
8.	09/07/2009				53029866	117,000
9.	05/08/2009				53029875	89,200
10.	08/08/2009	Bank Alfalah Limited	Stock Exchange Branch, Karachi	0012-01001020	1339388	150,000
11.	27/08/2009				1339396	109,800
12.	29/08/2009	MCB Bank Limited	Stock Exchange Branch, Karachi	3302-7	53029877	144,000
13.	12/09/2009	Bank Alfalah Limited	Stock Exchange Branch, Karachi	0012-01001020	1339398	93,000
14.	15/09/2009				1339399	42,000
15.	17/09/2009	MCB Bank Limited	Stock Exchange Branch, Karachi	3302-7	53029880	62,000
16.	03/10/2009				53029884	265,000
17.	28/10/2009	Bank Alfalah Limited	Stock Exchange Branch, Karachi	0012-01001020	1473898	205,000
18.	06/11/2009	Askari Bank Limited	Saima Trade Tower Branch, Karachi	020101062028	40026011	49,000
19.	23/12/2009	Bank Alfalah Limited	Stock Exchange Branch, Karachi	0012-01001020	1473913	130,600
20.	15/01/2010	Askari Bank Limited	Saima Trade Tower Branch, Karachi	020101062028	40026023	130,000
21.	06/04/2010	MCB Bank Limited	Stock Exchange Branch, Karachi	3302-7	3115806	5,000
22.	23/04/2010	Askari Bank Limited	Saima Trade Tower Branch, Karachi	020101062028	30823859	150,000
23.	07/05/2010	Bank Alfalah Limited	Stock Exchange Branch, Karachi	0012-01001020	1473924	51,000
24.	25/05/2010	Askari Bank Limited	Saima Trade Tower Branch, Karachi	020101062028	40026049	26,000
25.	14/06/2010	Bank Alfalah Limited	Stock Exchange Branch, Karachi	0012-01001020	1473932	123,000
26.	02/08/2010	Askari Bank Limited	Saima Trade Tower Branch, Karachi	020101062028	30823867	324,000
27.	20/09/2010	MCB Bank Limited	Stock Exchange Branch, Karachi	3302-7	3115823	115,000
28.	18/10/2010	Askari Bank Limited	Saima Trade Tower Branch, Karachi	020101062028	31389805	251,000
Total						3,614,600

5. The pattern of MAA trading, his acquaintance with the Appellant and aforementioned transfer of funds by MAA to the Appellant, prima facie, transpired that the trading by MAA was done on the basis of confidential and material non-public information, disclosed to MAA by the Appellant, pertaining to the investment decisions of BRRGM

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and FDIBL. It is evident from the available record that the Appellant, in his official capacity, was privy to inside information pertaining to investment decisions by BRRGM and FDIBL and thus was an insider.

6. Show cause notice (SCN) dated 20/01/12 was issued to the Appellant calling upon him as to why action should not be taken against him under section 15E(3) of the Securities and Exchange Ordinance, 1969 (Ordinance) for passing on inside information to MAA who traded in the scrips mentioned above in paragraph 4 on the basis of that inside information. The Appellant submitted his written reply vide letter dated 03/03/12 to the SCN and hearing in the matter was held on 30/06/12.
7. The Respondent dissatisfied with the response of the Appellant found the Appellant to be in contravention of section 15E(3) of the Ordinance and in exercise of the powers conferred under section 15E(3) of the Ordinance, which allows imposing fine up to Rupees 30 million, penalty of Rs.4.50 million was imposed on the Appellant for passing on inside information regarding trading decision of BRRMG/FDIBL to MAA.
8. The Appellant has preferred the instant appeal against the Impugned Order on the following grounds:
 - a) The correlation between the trading of MAA with the BRRGM and FDIBL is very insignificant and was merely a coincidence due to massive trading in the account of MAA with BRRGM and FDIBL. The Respondent only considered few segments of the trading by MAA while completely ignoring his bulk trading activity. The matching of 22 scrips with BRRG or FDIBL was an insignificant fraction of total trades in 147 scrips and not a willful act on part of the Appellant. Reliance is placed on the judgment of the Appellate Bench in Appeal No .58 of 2011, wherein, the Impugned Order was set aside to the extent of penalty as the act was not willful. The Appellant and MAA have been



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partners of a firm by the name of M/s A.Y Enterprises. Both partners have mutual business interest and have trading ties in the field of prize bonds and other commodities. The Appellant invested in prize bonds and sold in open market. MAA often bought prize bonds from banks and also from the Appellant and then sold them with profit. MAA having a good reputation in the market sold prize bonds to the Appellant on credit for a certain period. MAA repaid that amount to Appellant through his personal bank account on the instructions of the Appellant in order to clear his liability. The Appellant had to make calls to MAA through a mobile phone and sometimes on landline telephone as a reminder. The Respondent is very discriminatory in obtaining and scrutinizing the telephone record of Multiline Securities (Pvt.) Ltd and BRRI. The telephone records do not come under the definition of material and “definite information” as nobody can determine the conclusion of that telephone conversation. The information gathered from telephonic conversation, therefore, does not come under the meaning of ‘definite information’;

- b) Section 15B of the Ordinance defines “inside information” and section 15D requires listed companies to disclose such inside information which directly concerns listed securities. The purpose and intent behind prohibition of insider trading is to prevent a person from making a gain or avoiding a loss by trading in listed securities based on inside information relating to such listed securities before the issue of such securities. The inside information and securities should relate to the issuer. The Appellant cannot be termed as “insider” and information relating to investment decision by BRRG and FDIBL cannot be treated as non-public price sensitive information; and
- c) The inquiry was initiated under section 21 of the Modaraba Companies and Modaraba (Flotation & Control Ordinance), 1980 (Modaraba Ordinance) whereas the SCN was issued under section 15 of the Ordinance which is contrary to law and without proper jurisdiction. The plain reading of section 15E of the Ordinance provides that only the Registrar is entitled to issue show cause notice. The SCN is vague and defective, therefore, the same is not sustainable at law and is declared illegal, void and non-existent.



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Furthermore, the addition of Chapter III-A in the Ordinance through Finance Act 2008 is ultra vires the Constitution and no action can whatsoever can be initiated on the aforesaid provision. Reliance is placed on the Honourable Supreme Court judgment of *Mir Muhammad Idris vs. Federation of Pakistan* cited at *PLD 2011 SC 213* which states that the laws that do not fall within article 73(2) of the Constitution cannot be amended and such amendment is ultra vires the constitution. Further, Chapter III A of the Ordinance and the Impugned Order has been challenged by the Appellant in the High Court of Sindh vide civil petition No. 4077/12 and is pending adjudication.

9. The Respondent rebutted the arguments of the Appellant as follows:

- a) While reviewing the trading of MAA, his complete trading activities at KSE were analyzed. Further, the review of the MAA trading showed that Correlated Trading with BRRGM and First Dawood Investment Bank (FDIBL) only occurred in illiquid scrips, whereas, no such pattern was observed in his trading in liquid scrip which shows the offence under section 15 of the Ordinance was willful on part of the Appellant. The matched trading constitutes a minor percentage of the over trading volume of MAA, however, when the trading volume in 22 illiquid scrips is considered then matched volume constitutes major percentage of the same and resulted in significant profit to MAA, a part of which from time to time was shared with the Appellant. It was also observed that in most of the instances of Correlated Trading only one leg (buy side or sell side) of MAA trades matched with BRRGM/FDIBL, whereas, the other leg of the trades was executed in market with other market participants. The scrips in which Correlated Trading of MAA with BRRGM and FDIBL was observed are of illiquid nature, however, significant amount of profit made in each instance clearly shows that the Correlated Trading was based on information regarding trading decision at BRRGM/FDIBL and was thoroughly planned before execution and clearly shows the intention of MAA and the Appellant. In the current trading mechanism at KSE, it is not



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possible for an investor/trader to know the identity of the counter party, however, in order to overcome this issue MAA had selected scrips which were illiquid and the timing of the placement of orders by the MAA and BRRGM/FDIBL also ensured the matching of orders. Moreover, on most of the days of the instances mentioned in the Impugned Order the buying and selling of MAA and BRRGM/FDIBL constituted major portion of market volume in that scrip. All the evidence available shows that the Appellant had passed on inside information regarding trading decisions of BRRGM and FDIBL to MAA and the resultant profit was shared between the MAA and the Appellant. Furthermore, the SCN only stated that the Appellant and MAA were in contact with each other through land line and mobile phone which shows that they knew each other and had been communicating frequently. The reference of the telephonic recording in the SCN was given only to establish relationship/link between the Appellant and MAA, which the Appellant has not denied in his written reply or during the course of hearing. It is possible that the Appellant may have used other means or telephone/mobile numbers or meetings in person to communicate inside information to MAA. The Correlated Trading between MAA and BRRGM/FDIBL, however, shows that the trading as mentioned in SCN was based on inside information, provided by the Appellant, resulting in considerable gain to MAA, a part of which was transferred to the Appellant from time to time. It may also be noted that the case against the Appellant was not only established on the basis of telephone calls records but also other evidences as well. The authenticity of the evidences available on record has not been denied or challenged by the Appellant in his written reply or during the course of hearing. Further, no documentary evidence was provided which could prove that the payments to the Appellant were made in connection with the business mentioned in the Partnership Deed i.e. tax return of the Partnership, wealth tax statement of MAA or the Appellant, accounts of partnership firm, copy of statement or account opening form of the bank account in the name of partnership firm, copies of receipts, vouchers or any other documentary evidence. Therefore, the contention of the Appellant that the payments



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made by MAA to the Appellant were based on a business transaction between them holds no merit. Furthermore, the payments were not being routed through the partnership firm;

- b) The initiation of proceedings under section 15 of the Ordinance does not require filing of any complaint by any shareholders or directors of the company. Furthermore, non-filing of complaint by anyone does not prove that violation of law has not occurred and the Appellant has not committed any violation. It is the prime responsibility of the Respondent to ensure that all the market participants conduct their business in a fair and transparent manner and comply with the applicable laws. From the facts available on record it is clear that the Appellant taking advantage of his position in BRRGM and FDIBL passed on inside information to MAA in violation of section 15 of the Ordinance who traded on the basis of said information and made reasonable gain which was from time to time shared with the Appellant. Section 15(B)(a) of the Ordinance is worded to cover wide range of information that may relate to listed securities which is not in public domain and is price sensitive in nature. Therefore, any information regarding trading decision by any person is price sensitive in nature. In the instant case, the Appellant was taking investment decisions on behalf of BRRGM and FDIBL and communicated the said decisions before execution. Further, if the said information regarding investment decisions of BRRGM and FDIBL would have been available publicly same would have had an effect on the price of scrips. Section 15(D) of the Ordinance requires that a listed company shall inform the public as soon as possible of inside information which directly concerns the listed securities. However, it may be noted that decisions by any investor/trader to trade in scrip is never in knowledge of the listed company. Therefore, it is entirely incorrect to restrict the scope of these provisions to information that the issuers are bound to disclose in terms of section 15D as it would defeat the intent of the law. Further, the definition of the term 'inside information' is wide enough to cover investment decisions which have an impact on the price of listed securities; and

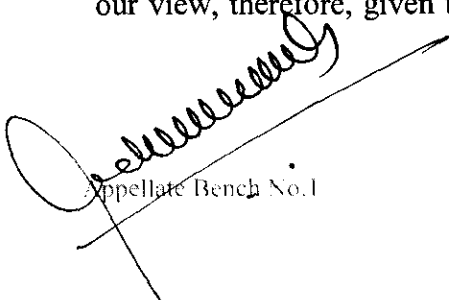


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- c) Pursuant to the Modaraba Ordinance, the Registrar of Modaraba has the powers to order enquiry into the affairs of any Modaraba, however, the powers under section 15 of the Ordinance have been delegated to Director (SMD) vide S.R.O.1076(I)/2010 dated 29/11/10 to initiate show cause proceedings. Moreover, the SCN was not only issued on the basis of the findings of the enquiry of BRRGM as MAA's activities in the market were being monitored well before initiation of enquiry of BRRGM and during the enquiry, the Appellant was identified. Further, it may be noted that in the judgment relied on by the Appellant, the Honourable Supreme Court of Pakistan while considering the concerns expressed by the Attorney General of Pakistan effect of the judgment on other amendments carried out through Finance Act has categorically held as under:

"As for the fear expressed by the learned Attorney General, suffice it to say that no other provision either of the Act of 1974 or of any other law amended by a Finance Act having been challenged by anyone before us, this judgment will be confined to the issue involved in the present case, namely, the unconstitutionality of the amendment of section 11(3)(d) of the Act of 1974 brought about by the Finance Act, 2007." The said judgment, therefore, relied on by the Representative of the Appellant did not declare section 15 of the Ordinance to be ultra vires of the Constitution. Therefore, in absence of any findings or judgment to this effect from any superior court, section 15 of the Ordinance is valid and has the force of the law.

10. We have heard the arguments and perused the record provided to us by the parties i.e. the Appellant and the Respondent.
11. The Appellant was working as Equity Investment Portfolio Manager at BRRGM and was also looking after investment portfolio of FDIBL during the Review Period. The Appellant and MAA were both partners in a firm and had mutual business interests and the telephone records also establish the relationship between the Appellant and MAA. In our view, therefore, given the close business ties between the Appellant and MAA, it is


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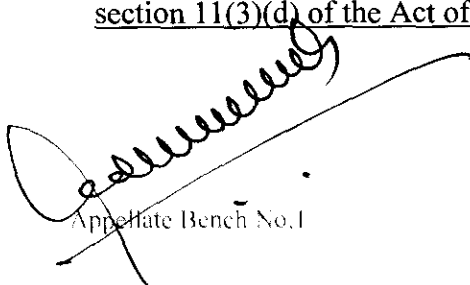
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certain that the Appellant has also passed on inside information which was not in the public domain pertaining to investment decisions of BRRGM and FDIBL to MAA during the Review Period. Moreover, it is established on the facts of the case that the MAA has made gains of Rs.7,736,423 million through trading in 22 illiquid scrips as produced in paragraph 2 above. Further, Rs.3.614 million was transferred by MAA to the Appellant through various cheques as per detail in paragraph 4 above. The Appellant's argument that the cheques were transferred by MAA in order to clear his liability for the prize bonds sold to him on credit holds no merit in the absence of any evidence to show that the payments made were in respect of a business transaction between MAA and the Appellant. Therefore, we are of the view that the Appellant has not been able to satisfactorily convince the Bench that inside information had not been passed on by the Appellant to MAA or that the act was not a willful one.

12. Further, the above-mentioned Supreme Court of Pakistan judgment of *Mir Muhammad Idris vs. Federation of Pakistan* cited at *PLD 2011 SC 213* relied on by the Appellant is not relevant to the facts of the instant case. The Honorable Supreme Court while deciding the referred constitutional petition restricted the application of the Judgment to the facts of the case. Relevant extract of the case law is as under:

“The learned Attorney-General for Pakistan, who appeared in response to the notice issued to him in terms of Order XXVIA, Rule 1, C.P.C. submitted that in such eventuality the danger was that the other legislation carried out under the Finance Act might be affected by such a declaration, therefore, restraint ought to be exercised. As for the fear expressed by the learned Attorney-General, suffice it to say that no other provision either of the Act of 1974 or of any other law amended by a Finance Act having been challenged by anyone before us, this judgment will be confined to the issue involved in the present case, namely, the unconstitutionality of the amendment of section 11(3)(d) of the Act of 1974 brought about by the Finance Act, 2007.”

Underlined for emphasis


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13. Addition of Chapter III-A in the Ordinance through Finance Act 2008 has never been adjudicated by any court of competent jurisdiction, therefore plea taken in the grounds of appeal that amendments made through Finance Acts have been declared unlawful by the Honorable Supreme Court is not applicable to the extent of the Ordinance.
14. Director (SMD) had been conferred the powers vide S.R.O. 1076(I)/2010 dated 29/11/10 to initiate show cause proceedings under section 15E of the Ordinance and penalty was rightly imposed on the Appellant. We are aware that a petition has been filed by the Appellant in the High Court of Sindh vide civil petition No 4077/12, however, the petition is still awaiting adjudication and no order has been passed restraining the Appellate Bench from conducting proceedings.
15. In view of the foregoing, we see no reason to interfere with the Impugned Order. The Impugned Order is upheld with no order as to costs.


(Zafar Abdullah)
Commissioner (SCD)


(Tahir Mahmood)
Commissioner (CLD)

Announced on:

07 OCT 2015