



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 38 of 2013

Sui Northern Gas Pipelines Limited

.... Appellant

Versus

Mr. Imran Inayat Butt, Director/HOD (MSRD), Securities and Exchange
Commission of Pakistan.

.... Respondent

Dates of hearing:

06/04/15 and 11/11/15

Present:

For Appellant:

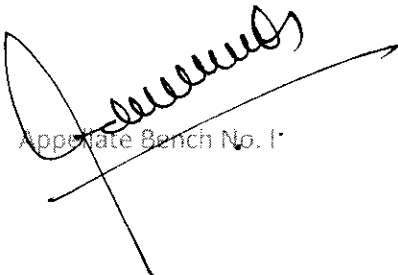
Mr. Rashid Sadiq

For Respondent:

- i. Mr. Amir Saleem, Joint Director (SMD)
- ii. Ms. Najia Ubaid, Deputy Director (SMD)

ORDER

1. This order shall dispose of Appeal No. 38 of 2013 filed under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 10/05/13 (the Impugned Order) passed by the Respondent, wherein a penalty of Rs.1,000,000 was imposed on the Sui Northern Gas Pipelines Limited (the Appellant) for the contravention of the provisions of Securities and Exchange Ordinance 1969 (the Ordinance) and the provisions of Listing Regulations made thereunder.


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2. The brief facts of the case are that on 13/02/13 the Board of Directors (the BOD) of the Appellant considered the financial results for the year ended 30/06/12 and subsequently on same day financial results were conveyed to the Karachi Stock Exchange Limited (the KSE) vide a letter, wherein the Appellant has communicated the auditors observation with regard to note 16.1.2 and 24.3 as follows:

“The auditors have no qualification in their report; however they have drawn the members attention to Notes No. 16.1.2 and 24.3 to the financial statements, details of which will be communicated while submitting the annual report to the exchange.”

3. Thereafter, on 19/02/13 the Appellant informed the KSE that the Appellant petitions have been dismissed by the Honorable Lahore High Court (the Court) filed against the revised Unaccounted-for Gas benchmark (UFG benchmark) determined by Oil and Gas Regulatory Authority (OGRA). The Appellant further informed that the financial statements for the year 2010-2011 and 2011-2012 were prepared, presented and approved on the basis of a stay granted by the Court against the determination of the OGRA and same were accordingly reported to the KSE. The Appellant further intimated that the dismissal of the petition by the Court may have an impact in reduction of retained earnings as of 30/06/12 by approximately Rs.8.361 million.
4. The Respondent alleged that the Appellant has failed to disseminate the price sensitive information that is “the announced financial statements for the year ended 30/06/12 were prepared, presented and approved by the BOD of the Appellant on the basis of stay granted by the Court.” Moreover Appellant has also not declared the possible adverse financial impact on the financial health of the Appellant, if the financial statements had been prepared in accordance with the decision of the OGRA. Therefore non-disclosure of material information, regarding preparation and presentation of financial statements on the basis of a stay granted by the Court and 109 minutes delayed dissemination of the information regarding the dismissal of the

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petitions by the Appellant to KSE on 19/02/13 was violation of Listing Regulations of the KSE (the Regulations). In view of the aforementioned circumstances, a Show Cause Notice (the SCN) was issued to the Appellant under Section 22 of the Ordinance stating that the Appellant has prima facie contravened the provisions of the Regulation 16(1) and clause 35(xx) of the Regulations and the requirements of Correspondence Manual of KSE (the Manual).

5. The Appellant responded to the SCN and stated that the financial impact of any adverse order of the Court was duly disclosed in note 16.1.2 and 24.3 of its audited financial statements for the year ended June 30, 2012. Similarly, adequate disclosure on this account were also made in all previous annual, half yearly and quarterly financial statements published after 17/01/11 i.e. the date when first stay order was granted by the Court and same was disseminated to the stock exchange after the board meeting by giving its note reference. Furthermore, the Appellant financial results for the year 2011-12 were in accordance with the Karachi Stock Exchange Notice No. KSE/N-2422 dated 14/04/06 (the Notice). It is worth mentioning here that the KSE and the Securities and Exchange Commission of Pakistan (the Commission) never objected or highlighted any violation or deficiency in this regard. Furthermore the Regulations do not provide specific time limit for disseminating the information relating to business and other affairs of a listed company.
6. The Respondent being dissatisfied with the defense taken by the appellant, passed the Impugned Order and imposed a penalty of Rs. 1,000,000/- (Rupees one million only) for the contravention of the provisions of the Ordinance and by failing to comply with the provisions of the Regulations made thereunder.
7. The Appellant has challenged the Impugned Order before the Appellate Bench (the Bench) on the following grounds:



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- i. The Impugned Order is contrary to the law and facts put forward in SCN reply and at the time of hearing. Further the contents of the SCN reply may be read as an integral part of appeal.
- ii. The imposition of penalty under Section 22 is subject to the determination of the fact that the default was made "willfully", however, the Respondent has failed establish willful default as envisaged in Section 22 of the Ordinance.
- iii. The Appellant has made complete disclosure in the annual reports and auditor reports of the financial year 2011-2012 as well as in the previous years. Further, the information was disseminated with reasonable haste consistent with fair business activity after the start of office hours on 19/02/13 therefore it cannot be concluded that there was deliberate delay by the Appellant.
- iv. The Respondent had failed to appreciate the true import of the word "immediately" as occurring in Clause 35(xx) of the Regulations. The word "immediately" is a generic term and it is an aspirational requirement, rather than one that can be read strictly. It may be argued that immediately has a meaning more akin to as soon as practicable or reasonable haste consistent with fair business activity. Further the Judicial authority in analogous situations confirms that the word "immediately" should not be read as meaning "instantaneously" but rather meaning "promptly and without delay.
- v. The lapse of time between the receipt of the information its dissemination to the KSE under the Regulation 16(1) and Clause 35(xx) in the form of a market announcement is natural. Therefore, passing of time does not mean that there has been a delay in compliance of the aforesaid provisions.
- vi. Section 22 (1) (c) of the Ordinance under which the SCN was issued, was amended through the Finance Act 2006 to include the penal provision for contravention of rules and regulations made under the Ordinance. Further,



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the amount of penalty and per day fine was enhanced through the Finance Act 2007. The issue of amending the Federal Statutes other than money bills through that Finance Act has been declared unlawful by the Honorable Supreme Court of Pakistan in Sindh High Court Bar Association vs. Federation of Pakistan, therefore the Impugned Order issued under Section 22(1)(C) is liable to be withdrawn on this account alone.

- vii. The law does not expect a Company to instantaneously and mechanically transmit information to the Stock Exchanges in order to comply with the “immediate” dissemination requirement contained in Regulation 16(1) and Clause 35(xx) of the Regulations. The alleged delay of 109 minutes was caused due to internal processes of the Company to make sure that there is decision making at an appropriate level before an announcement is made. In this regard, a delay of 109 minutes after the start of the trading day cannot be considered violation of the provision.
- viii. The Appellant is a well-reputed law abiding corporate citizen and has been filing all its statutory returns with the Commission regularly as well as complying with the mandatory requirements of the Regulations.
- ix. There was no abnormal or unusual trading in the scrip of the Appellant as alleged and no harm was caused or undue benefit was received by any person or stakeholder during the period. In the instant case, the Commission is clearly in conflict with the preamble of the Ordinance which provides for protection of investors and healthy growth of corporate enterprises rather the investors are being discouraged by imposition of fines on matter of technical nature.
- x. The imposition of fine on the basis of delay of technical nature and without substantial finding into the guilt of the Appellant is arbitrary and against the principle laid down by the honorable Supreme Court in PLD 2011 SC 778.



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- xi. The Respondent has failed to bring the case within ambit of Section 22 of the Ordinance and failed to determine that there was any alleged “delay” in dissemination of the price sensitive information and the same was done knowingly and “willfully”.

8. The Respondent argued that:

- i. The Impugned Order was passed by taking into account ‘Interest of the investors at large’. As per law a listed company is required to make an announcement, by taking all reasonable steps to ensure that disseminated information is not misleading, false or deceptive and no price sensitive information is omitted from market. In the instant case the Appellant failed to communicate while making announcement dated 13/02/13 proper disclosure regarding the financial impact of an adverse decision by the Court and disclosure about the fact that the financial statements were prepared on the basis of a stay granted by the Court against the determination of OGRA.
- ii. The Appellant had prepared financial statements against the decision of the OGRA, however, said information was not willfully disseminated while announcing financial results on 13/02/13. In comparison, disclosure in the same period made by Sui Southern Gas Limited had clearly stated that the statements were prepared on the basis of a stay granted by the Court and the adverse financial impact on the financial health of the company.
- iii to v. The disclosure of material price sensitive information by a listed company, not only affects the company but the investors at large, therefore suggesting that a delay of 109 minutes was due to fair business activity after the start of office hours is unacceptable.



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- vi. Section 22 (c) clearly states that where any person contravenes or otherwise fails to comply with the provisions of the Ordinance, they will be liable to penalty.
- vii. The listed company is required to follow all prescribed rules and regulations and non-compliance with any provision of the Law is liable with a fine or penalty.
- viii. The Respondent has taken lenient view and instead of imposition of maximum penalty under Section 22 imposed fine of Rs.1,000,000 only.
- ix. The Appellant was aware that the information available was price sensitive and that financials statements were prepared on the basis of the stay of the Court, however, it willfully chose to not disclose.

9. We have heard the parties at length and perused the relevant record with the assistance of the parties. During the perusal of the record it has been observed by the Bench that the Respondent instead of mentioning the Clause 35(xx) of the Regulations has mistakenly mentioned Clause 35(xxiii) in the SCN and the Impugned Order. It seems typographical errors because only number of provision was incorrect, however the text of Clause 35(xx) was rightly incorporated in SCN. The Appellant has also mentioned Clause 35(xxiii) in memorandum of appeal, which is incorrect. Through this order we state that Clause 35(xxiii) mentioned in the SCN, the Impugned Order and the memorandum of appeal shall be read as Clause 35(xx) of the Regulations.

10. The following are important aspects which need consideration of this bench:

- a. Whether or not the Appellant was required to disseminate the details of the note no.16.1.2 and 24.3 on 13.02.13
- b. Whether or not delay of 109 minutes in disseminating the price sensitive information to the KSE on 19.02.13 was violation of Regulation 16(1) and Clause 35(xx) of the Listing Regulations of KSE.



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- c. Whether or not the amendments made through the Finance Acts in the Ordinance are intact and applicable.

11. As per record the Appellant has disseminated the financial results for the year ended 30/06/12 on 13/02/13 in accordance with the KSE notice no. KSE/N-2422 dated 14/04/06 (the KSE notice), wherein the Appellant has communicated the observation of the auditors with regard to note 16.1.2 and 24.3 in the following manner:

“The auditors have no qualification in their report; however they have drawn the members attention to Notes No. 16.1.2 and 24.3 to the financial statements, details of which will be communicated while submitting the annual report to the exchange.”

The KSE notice shall be construed as per the requirement contained in the Regulation 16(1) of the Listing Regulation of KSE, which requires that *“Every listed company and issuer of a listed security shall advise and keep advised to the Exchange all decisions of its Board of Directors relating to cash dividend, bonus issue, right issue or any other entitlement/corporate action and any other price sensitive information in the manner notified by the Exchange from time to time.” (Emphasis added)*

The aforementioned KSE notice was the manner notified by the exchange, for dissemination of information. The KSE notice states that *“It is not required to intimate the details of qualifications/observations of the auditor, while conveying the financial results to the Exchange, the only intimation in this behalf is required to be conveyed by stating that the auditors have certain qualifications /observations, details of which will be communicated while submitting the annual/second quarterly accounts to the Exchange.”*

In view of the above it may be noted that the Appellant has communicated the financial results in accordance with manner described through the KSE notice and as

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required under the Regulation 16(1) of the Listing Regulation of KSE. Furthermore it is important to note that the Appellant has followed the same pattern for disseminating the financial results to the KSE and the Commission in previous years and it was never objected by the KSE or the Commission.

In the light of above facts and provisions we are of the view that the Respondent has failed to rebut this argument while passing the Impugned Order as well as during the hearing before the Bench. Therefore in view of the above stated factual and legal position no violation or non-compliance of Regulation 16(1) of the Listing Regulations of KSE could be attributed to the Appellant.

12. As per the contents of the Impugned Order, memorandum of appeal and arguments of the parties during the hearing before the Bench, it has been observed that the Appellant has admitted receipt the information regarding dismissal of the petitions filed against the revised UFG benchmark determined by the OGRA on 18/02/13 afternoon, however the Appellant disseminated the said information on 19/02/13 to the KSE. The Appellant has failed to explain any plausible reason for non-dissemination of said information on 18/02/13, the time when it was received. The Appellant was required to disseminate the said information by virtue of the word "immediately" used in clause 35(xx) of the Regulations. However, the Appellant failed to perform its responsibilities as required by law. Further argument of the Appellant that Regulation 16(1) and Clause 35(xx) of the Regulations were required to be read together by the Respondent to proceed against the Appellant, cannot be acceded, as both the provisions are independent and have own mechanism and ambit to proceed. The Respondent has rightly proceeded against the Appellant, because it failed to disseminate the price sensitive information to the KSE as required by law.



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13. The ground regarding insertion through finance act needs to be clarified. The principle referred to by the Appellants in C.P. No. 58 of 2010 is confined to the facts and nature of any such case being challenged before the Honorable Supreme Court. The Honorable Supreme Court while deciding the referred constitutional petition restricted the application of the Judgment to the facts of the case. Reliance is placed on the case law cited as PLD 2011 Supreme Court 213. 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 XXVIIA, 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

14. The provisions of the Ordinance, incorporated or amended through Finance Acts have 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 cannot be acceded to the extent of the Ordinance.

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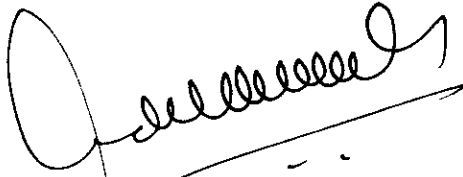
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15. In the light of above stated facts, formulated questions and their analysis by the Bench, it could be concluded that the Appellant has not disseminated the material/price sensitive information immediately as required by Clause 35(xx) and Form 25 of the Correspondence Manual, therefore violation on the part of Appellant is established beyond any doubt. In view of the aforementioned facts, there being no reason to interfere with the Impugned Order dated 10/05/13, the appeal is dismissed.

16. Parties to bear their own cost.



(Zafar Abdullah)
Commissioner (SCD)



(Tahir Mahmood)
Commissioner (CLD)

Announced on: 03/12/2015