



# Securities and Exchange Commission of Pakistan

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

In the matter of

**Appeal No. 56 of 2009**

Riaz Ahmad & Company

....

Appellant

Versus

Director (Securities Market Division) Securities  
and Exchange Commission of Pakistan

....

Respondent

Dates of hearing

24/08/15

### **Present:**

**Appellant (through video conferencing):**

Mr. Abdul Bari Rashid, Imtiaz Siddiqui & Associates

**For the Respondent:**

(i) Mr. Abid Hussain, Executive Director (SMD)

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

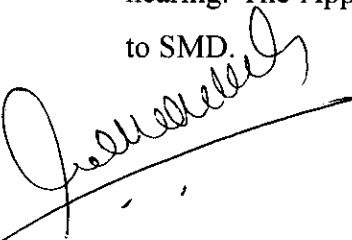
### **ORDER**

1. This order shall dispose of appeal No. 56 of 2009 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 10/09/09 (Impugned Order) issued by the Respondent.



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2. Crescent Standard Business Management (Pvt.) Limited (CSBML) presently known as Corporate Business Management (Pvt.) Limited sold 20 million shares of Crescent Standard Investment Bank Limited (CSIBL) to Javed Omar Vohra & Co. Limited (JOV) on 01/02/06 @ Rs.12.00 per share and sold another 4.50 million shares to JOV on 03/02/06 @ Rs.11.98 per share. CSBML sold securities of CSIBL while it was an associated company of CSIBL through a common director and in possession of material non-public information related to CSIBL. After the sale of shares to JOV, the price of CSIBL share materially dropped as the abovementioned information regarding CSIBL's affairs became public. CSBML by acting on material non-public information, illegally caused JOV to deal in securities of CSIBL, thereby, itself avoided a loss and inflicted loss on JOV and its shareholders. This act of CSBML fell within the ambit of insider trading defined and prescribed by Chapter III-A of the Securities and Exchange Ordinance, 1969 (SEO).
3. Show cause notice (SCN) dated 05/04/06 under section 15(B) of the SEO was issued to the Board of Directors of CSBML (BoD), which comprised of two directors namely, Mr. Mahmood Ahmed and Mr. Siyyid Tahir Nawazish (directors). The Directors submitted their written reply and were required to appear before the Executive Director, Securities Market Division (SMD) on 29/05/06 and 15/06/06 but no one appeared on behalf of the Respondent. Consequently, the Executive Director (SMD) passed an order dated 22/06/06 and ordered CSBML to pay a sum of Rs.182.435 million through its director and chief executive, Mr. Mahmood Ahmed to JOV being the amount of loss suffered by JOV. CSBML filed an appeal before the Appellate Bench against order dated 22/06/06 and stated that SCN was issued to the BoD which had already resigned and CSBML was not provided an opportunity of hearing. The Appellate Bench vide its order dated 07/03/08 remanded the case back to SMD.

  
Appellate Bench No. I



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4. In compliance of the order of the Bench dated 07/03/08, SCN was issued to CSBML and the directors and hearing in the matter was held on 02/12/08. On the date of hearing, however, only one of the two directors Mr. Siyyid Tahir Nawazish appeared and no one appeared on behalf of CSBML and Mr. Mahmood Ahmed. It transpired that CSBML had filed documents for voluntary winding up and Riaz Ahmed & Company, Chartered Accountants (Appellant) had been appointed as its liquidator, therefore, SCN was again served on CSBML through the Appellant and Mahmood Ahmed on 31/12/08 and hearing in the matter was held. The Respondent, not satisfied with the response, passed the Impugned Order and directed CSBML, through the Appellant, to compensate a sum of Rs.174,575,000 in aggregate as per the following working to JOV:

|  |   |                    |
|--|---|--------------------|
| $(12.00 - 4.83) \times 20.00$ million shares | = | Rs.143.400 million |
| $(11.98 - 4.83) \times 4.50$ million shares  | = | Rs.31.175 million  |
| Total  | = | Rs.174.575 million |

5. The Appellant preferred to file the instant appeal against the Impugned Order. Hearings on the matter were held on 01/01/15 and 16/01/15, however, the Appellant failed to appear before the Bench on the said dates and the said appeal was dismissed for non-appearance and non-prosecution. The Appellant appealed against the decision in the Islamabad High Court and the matter was remanded to the Appellate Bench to be decided on merits vide order dated 18/06/15. The Appellant has preferred the appeal on the following grounds:

- i) It is an admitted fact that the role of the Appellant was to liquidate CSBML and nothing beyond. The Appellant has lawfully completed his role and submitted the requisite documents with concerned Registrar of Companies and the liquidation of CSBML has been completed. The Impugned Order is against the admitted facts of the case and, therefore, is not sustainable in law;

and



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- ii) The initiation of the proceedings and the deliberations of the Respondent as well as the findings of the Impugned Order are utterly without jurisdiction. It is apparent that the Respondent does not have any delegated authority to investigate and determine inter alia the status of the liquidated company and the alleged violations committed by it. A reference to SRO 1061(I)/2005 dated 18/10/05 shows that the Respondent officer has been invested with limited powers; the same does not include the one under deliberation therein. Thus the entire proceedings along with conclusions drawn by the Respondent are utterly without jurisdiction.

6. The Respondent rebutted the grounds of appeal as follows:

- (i) With regard to the liquidations proceedings having been completed, it is submitted that a company is not dissolved till the Registrar of Companies, after scrutiny of the documents registers the same and only after expiry of three months pursuant to section 370(6) of the Companies Ordinance, 1984 (Ordinance) from the date of registration the Company stands dissolved. However, in the instant case, the Registrar has not yet registered the documents submitted by the Appellant and same were under scrutiny as of the date of issue of the Impugned Order. It is clear that CSBML still exists and action against it can be taken under the relevant laws. The Appellant being the liquidator of CSBML is acting as the management of CSBML in terms of section 402 of the Ordinance and, therefore, SCN was rightly served on the Appellant; and
- (ii) The Appellant has the required powers to take action under section 15(B) of SEO vide S.R.O No 1046(I)/2007 dated 24/10/07 and the Appellant is misleading the Bench by stating that the Impugned Order was passed without jurisdiction.

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

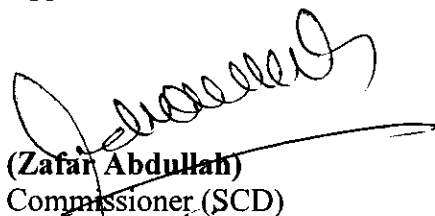
8. The Appellant has submitted that they have performed functions as liquidator by filing documents with the Registrar of Companies. In view thereof, they cannot be made liable for the actions of CSBML. As per records available, the Order dated



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25/11/09 addressed to the Appellant by the Registrar clearly states that, “...the returns/documents filed for voluntary winding up of CBML cannot be accepted in terms of section 468(2) of the Ordinance (Companies Ordinance, 1984) and regulation 11(2) of the Regulations (Companies (Registration Offices) Regulations, 2003).” Therefore, we concur with the Respondent that the winding up of the Company was not complete in terms of section 370(6) of the Ordinance at the time passing of the Impugned Order, in view of which CSBML had not ceased to be a company. Furthermore, the Appellant was acting as the management of CSBML in terms of section 402 of the Ordinance which provides that, “A company being wound up shall continue to be a company for all purposes till its final dissolution in accordance with the provisions of this Ordinance...Provided that, from the date of commencement of the winding up of a company, the official liquidator or the liquidator shall be deemed to have taken the place of the directors, chief executive and managing agents of the company,...”

9. We have reviewed S.R.O 1061 (I)/2005 as mentioned by Appellant. In accordance with this SRO only executive directors were authorized to pass an order under section 15(B) of the SEO. However, it is pertinent to mention that the Impugned Order was passed on 10/09/09. At this time the relevant power was delegated to the Respondent vide S.R.O 1045(I)2007 published in the Gazette of Pakistan on 24/10/07. Therefore, the Respondent acted within his jurisdiction.
10. In view of the foregoing, we see no reason to interfere with the Impugned Order. The Appeal is dismissed with no order as to cost.

  
(Zafar Abdullah)  
Commissioner (SCD)

  
(Tahir Mahmood)  
Commissioner (CLD)

Announced on: 08 SEP 2015