



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 68 of 2017

1. Rizwan Ali
2. Muhammad Hammad
3. Muhammad Haroon Khan
4. Muhammad Pervaiz
5. Zubair Uddin
6. Muhammad Ali Jameel (CEO, TPL Properties (Pvt) Limited)

Appellants

Versus

The Commissioner (SMD), SECP, Islamabad.

Respondent

Date of hearing:

14/09/17

Present:

For Appellants:

- i. Mr. Vaseeq Khalid, Advocate.
- ii. Mr. Danish Qazi, Group General Counsel.

For Respondent:

- i. Mr. Muhammad Farooq Bhatti, Additional Director (SMD)
- ii. Hafiz M. Wajid Wahidi- Deputy Director (SMD)
- iii. Mr. Asif Khan, Deputy Director (SMD)
- iv. Mr. Muhammad Hamza Ansar, ME (SSED)

ORDER

1. This Order shall dispose of Appeal No.68 of 2017, registered on 25/07/17 (the Appeal), under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the



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Act) against the Order dated 12/06/17 (the Impugned Order) passed by the Respondent under Section 40A of the Act whereby, a penalty of Rs. 1,500,000/- had been imposed on Mr. Muhammad Ali Jameel (Appellant VI) for violation of Regulation 11 of Book Building Regulations, 2015 (the Regulations) and Rs. 25,000 each on Mr. Rizwan Ali, Mr. Muhammad Hammad, Mr. Muhammad Haroon and Mr. Zubair Uddin (the Appellant I to V) for violation of Regulation 10 of the Regulations.

2. Brief facts of the case are that the TPL Properties Limited (the Company) issued and circulated prospectus with the approval of the Securities and Exchange commission of Pakistan (the Commission) for raising capital through book building Process (the Process), under the Regulations. The Company offered 55.750 million shares of face value Rs. 10/- each at floor price of Rs. 12.50 per share including premium of Rs. 2.5 per share. The Commission in order to check compliance with the requirements of the Regulations conducted an investigation, under Securities Act, 2015 (the Securities Act). The Investigation *inter alia* revealed that:-
 - a) The Appellants I to V (who are employees of TPL Group Companies) in violation of Regulation 10 (iv) of the Regulations, placed consolidated bids (the Bids) for 100,000 shares each on 23/06/16.
 - b) The Bids were beneficially owned by the Appellant VI, who is chief executive officer of the Company and in terms of Regulation 2(z) of the Regulations, was a "Related Employee" of the Company and he in violation of Regulation 11 of the Regulations participated in the Process through Appellants I to V.
3. The aforesaid violations of the Regulations *prima facie* attracted penal provisions of section 40A of the Act, therefore, a Show Cause Notice dated 24/04/17 (the SCN) was served on the Appellants. The Appellants replied to the SCN vide their letters dated May 15, 2017 and denied the allegations. Hearing in the matter was held on May 26, 2017. The Appellants were represented by Mr. Mikael Azmat Rahim (the Counsel). The Counsel relied upon the submissions made by the Appellants through their written reply. The Respondent after



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considering the facts and submissions made by the Appellant, passed the Impugned Order.

4. The Appellants have challenged the Impugned Order *inter alia* on the grounds that the evidence taken into consideration for passing the Impugned Order is circumstantial in nature and no clear proof is available. The Appellants further stated that the investigation, collection of evidence and the Impugned Order are manifest of violation of Article 18 of the Constitution. Whereas, the Respondent has rebutted the grounds and Appeal and prayed to dismiss the Appeal.
5. The Appellate Bench (the Bench) has heard the parties (Appellants and Respondent) and perused the record. As a matter of fact, the issue adjudicated by the Respondent is entirely based upon circumstantial evidence, which consists of two primary factors; (1) weak financial condition of Appellant No. I to V; and (2) the statement of the cashier of Habib Metropolitan Bank Limited (the Cashier). On the basis of these factors, the Respondent had , concluded that the Appellant No.VI had provided funds to the Appellant No.I to V to execute the Bids on his behalf and in this regard the statement of the Cashier, account statements of Appellants and deposit slips had been relied upon. The relevant part of the Cashier statement has been reproduced below for reference:

*“on June 23, 2016, **Zubair**, an executive of TPL Group came to my counter and presented two cheques Bearing No 91207540 and 91207541 of amounting to Rs. 3.0 Million and Rs. 3.25 Million respectively issued by Muhammad Ali Jameel from his account # 20311-714-156192 maintained in the aforementioned branch. He advised me to debit the said cheques from the account and then subsequently credit the debit amount worth Rs 6.25 Million (1.25 Million each) in the accounts of five individual namely Rizwan Ali, Hammad, Haroon, Pervaiz and Zubair”*

6. As per statement of the Cashier, on 23 June, 2016 the account of Appellant No. VI was debited with two amounts Rs. 3 million and Rs. 3.25 million (total 6.25 million),



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thereafter, the said amount i.e. 6.25 million was evenly credited (Rs. 1.25 million) into the accounts of Appellant I to V on the same day. Although the total debited amount from the account of Appellant VI and total credited amounts in the accounts of Appellant I to V are same, however, this cannot be treated as adverse presumption against the Appellants because it was a separate cash withdrawal transaction from Appellant VI account and Separate cash deposit transactions into the accounts of Appellant I to V, which cannot establish a link or track between cash withdrawal transactions and cash deposit transactions. We would have no doubt or hesitation to accept the hypothesis of the Respondent against the Appellant if it was the case of balance transfer from Appellant VI account to the accounts of Appellant I to V. Furthermore, on the same day, that is, 23 June, 2016, Rs. 5000/- each was also deposited into the accounts of Appellant I to V, however, there was no cash withdrawal of Rs. 25000/- from the accounts of Appellant VI, therefore, this fact also weakens the stance of Respondent that Appellant I to V executed Bids with the funds provided by the Appellant VI. Therefore, the Respondent had failed to demonstrate its allegations against the Appellants.

7. The Respondent had relied upon the statement of the Cashier, however, the perusal of the record has revealed that the statement of the Cashier had not been shared with the Appellants during the investigation or SCN proceedings. Furthermore, the Appellants had also never been given opportunity to cross-examine the Cashier with respect to his statement, therefore, it cannot be treated as a conclusive or admissible piece of evidence. Cross-examination is not a mere right of defense, rather it is a legal engine for the discovery of truth, however, Appellants were deprived of their constitutional right protected under the Article 10 A, which guarantees right to fair trial. The circumstantial evidence should be of a conclusive nature and tendency and it should exclude every possible hypothesis except the one to be proved, and there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the violators. In this case the Appellants in their separate statements had



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denied the allegations against them, however, the Respondent had failed to bring on record any material evidence to discard their statements.

8. In view of the above, we believe that there was no direct or indirect evidence against the Appellants and they had been penalized on the basis of circumstantial evidence. The Respondent had failed to connect the chain of circumstantial evidence to establish the alleged violations of Regulation 10 and 11 of the Regulations. The issuance of the SCN was without any just cause and reason, therefore, we hereby, set aside the Impugned Order and allow this appeal, with no order as to cost.

(Fida Hussain Samoo)

Commissioner (Insurance)

(Tahir Mahmood)

Commissioner (CCD-CLD)

Announced on: **08 NOV 2017**