



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 09 of 2016

Intermarket Securities Limited

Appellant

Versus

The Commissioner (SMD), SECP

Respondent

Date of hearing:

25/05/16

Present:

For Appellant:

1. Mr. Salman Iqbal Bawaney, Bawaney & Partners
 2. Mr. Muhammad Rehan Alam, Manager Finance & Compliance
- Intermarket Securities Limited

For Respondent:

Mr. Muhammad Farooq Bhatti, Additional Director (SMD)

ORDER

1. This order shall dispose of appeal no.09 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 01/04/16 (the Impugned Order) passed by the Respondent.
2. Brief facts of the case are that the Appellant received a request from CUSP Pakistan Limited (CUSP) on 31/03/15 for opening of trading account and an order for purchase of 9 million shares of Byco Petroleum Pakistan Limited (Byco). The Appellant purchased 4,871,000 shares of Byco in its proprietary account and immediately after completing the said purchase, 4,871,000 shares were transferred to CUSP sub-account at almost actual cost through trades executed on Negotiated Deal Market.

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3. In view of the above circumstances, the Respondent issued a Show Cause Notice (SCN) dated 29/02/15 under section 15E of the Securities and Exchange Ordinance 1969 (the Ordinance) read with Rule 8 of the Broker and Agents Registration Rules, 2001 (Brokers Rules) to the Appellant. The Appellant responded the SCN vide letter dated 07/03/16 and hearing in the matter was held on 17/03/16. The Appellant denied the allegations of being insider having inside information or violation of Brokers Rules, however, the Respondent in exercise of powers conferred under Rule 8 of the Brokers Rules imposed a penalty of Rs.50,000 on the Appellant.
4. The Appellant being aggrieved from the Impugned Order preferred an appeal on the following grounds:
- The Appellant never purchased or sold shares of Byco during the relevant period on its own account, whereas the nominal amount of Rs.13,325 received by the Appellant was only trivial and meant to cover the overheads.
 - The Impugned Order is not sustainable as the Respondent has misconstrued the provisions of Sections 15A to 15E of the said Ordinance, has traversed his jurisdiction and has also failed to consider the spirit and objective of the law. Further, the Respondent has erred in holding that the purchase orders of CUSP received by the Appellant tantamount to inside information and the Appellant fell within the ambit of the definition of the term Insider.
 - There is no bar on a broker to purchase securities in its proprietary account on behalf of a client where trading account and CDC sub-account of the client is not in operation due to pending completion formalities. It is important to note that neither the Brokers Rules, nor the Rule Book of Pakistan Stock Exchange contains any specific prohibition in this regard. The shares of Byco were purchased for CUSP and were temporally parked in Proprietary Account of the Appellant and were later on transferred to CUSP sub-account, Hence, the imposition of penalty is unlawful, without jurisdiction and liable to be set aside.
 - The Respondent failed to take into account the submissions made by the Appellant in reply to the SCN and during hearing, although, the Respondent was required to give material and categorical findings on said submissions.



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- v. The Impugned Order is opposed to the principles of justice, equity and fairness and is therefore liable to be set aside.
5. The Respondent has denied and rebutted the grounds of appeal in the following manner:
- The Authorized Representative of the Appellant admitted during the hearing that Byco shares were purchased for the CUSP in proprietary account of the Respondent because at that time trading account of the Appellant was not operational. Further, as per record the Appellant started buying of Byco shares with effect from 31/03/15 i.e. two days before receipt of cheques and three days before receipt of the amount.
 - The Appellant arguments with regard to section 15A to 15 E of the Ordinance are irrelevant because no penalty has been imposed for the violation of section 15 A to 15 E of the Ordinance.
 - The is bar on the broker to purchase the securities on behalf of a client in its proprietary account because Chapter 7 - Proprietary Trading Regulations of Pakistan Stock Exchange defines the proprietary trading as "Proprietary Trading shall mean trading conducted by a broker, agent or an associated person on his own account for direct gain instead of commission from clients".
 - The Respondent passed the Impugned Order after examination of record and submissions made by the Appellant during hearing.
 - The Impugned Order has been passed in accordance with law.
6. We have heard the parties i.e. Appellant and Respondent and perused the record of the appeal.
7. The SCN was issued to the Appellant for alleged involvement in insider trading and violations of the code of conduct provided in third schedule of the Brokers Rules. The alleged violation of insider trading was not established and the Appellant was exonerated, however penalty was imposed on account of procedural lapses in compliance of third schedule of the Brokers Rules. The Appellant purchased shares on behalf the CUSP, in its proprietary account, before opening of CUSP trading account/CDC sub-account and the



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Respondent started buying of Byco shares on behalf of CUSP two days prior to receipt of payment. Admittedly, the Respondent has purchased shares of Byco on behalf of CUSP in its Proprietary Account although there was bar in chapter 7 - Proprietary Trading Regulations of Pakistan Stock Exchange.

8. In view of above stated facts and circumstances this Bench believes that the act of Appellant to purchase shares of Byco in its own account was solely to facilitate the CUSP and the Appellant has not drawn any considerable gain while transferring Byco shares to CUSP sub-account. Although violations of Brokers Rules have been established however, while taking lenient view we hereby set aside the penalty of Rs.50,000 and convert the simple direction into stern warning, that in case of similar non-compliance in future, strict action shall be taken against the Appellant, in accordance with law.

9. Parties to bear their own cost.

(**Fida Hussain Samoo**)
Commissioner (Insurance)

(**Zafar Abdullah**)
Commissioner (SCD)

Announced on: **22 JUN 2016**