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**SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY**

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 18 of 2007

Ghulam Muhammad Malkani

Chief Executive Officer,

JS Global Capital Limited

.....

Appellant

Versus

Executive Director (SMD)

Securities and Exchange Commission of Pakistan

.....

Respondent

Date of hearings

02-03-10 and 01-04-10

ORDER

Present:

Appellant:

Ghulam Muhammad Malkani

For the Respondent Department:

Imran Inayat Butt

Director (SMD)



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1. This order shall dispose of appeal No. 18 of 2007 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 30-05-07 (the "Impugned Order") passed by the Respondent.
2. On the examination of returns of beneficial ownership filed by the Appellant under section 222 of the Companies Ordinance, 1984 (the "Ordinance"), it transpired that the Appellant and his spouse made transactions in the shares of the JS Global Capital Limited (the "Company") within a period of six (6) months. The transaction resulted in gain of Rs. 263,985, which was calculated in the manner prescribed in rule 16 of the Companies (General Provisions and Forms) Rules, 1985 (the "Rules"). The Appellant, in accordance with the requirement of section 224 of the Ordinance, failed to make a report and tender the amount of gain to the Company and also failed to inform the registrar and the Commission.
3. Show cause notice dated 06-09-06 ("SCN") under section 224(2) of the Ordinance was issued to the Appellant. The Appellant responded to the SCN and hearing in the matter was held. The Respondent, dissatisfied with the response of the Appellant, passed the Impugned Order and directed the Appellant to deposit the amount of gain of Rs. 263,985 with the Commission.
4. The Appellant preferred appeal against the Impugned Order. The Appellant argued that the manner of calculating the amount of gain under rule 16 of the Rules is inconsistent and in contravention of section 224(2)



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of the Ordinance. The purpose of section 224 of the Ordinance is to prevent beneficial owners from making profits on the basis of inside information. Rule 16 of the Rules is not based on the principle stated above as such it is *ultra vires* of section 224 of the Ordinance. It was further contended that there was no gain in the transactions of shares during the period 04-02-05 to 21-04-05, infact, a loss of Rs. 55,690 was incurred.

5. The departmental representative argued that rule 16 of the Rules is neither inconsistent nor contravenes section 224(2) of the Ordinance. It was argued that rule 16 of the Rules provides the manner to calculate the gain/loss made in a period of six (6) months. The Appellant's contention that there was a loss of Rs. 55,690 is not acceptable, as it has not been calculated in accordance with the Rules.
6. We have heard the parties. In terms of section 506 of the Ordinance, the Federal Government is empowered to make rules to carry out the purpose of the Ordinance. Rule 16 of the Rules carries out purpose of section 224 of the Ordinance by providing the manner in which the amount of the gain/loss is to be calculated. Rule 16 of the Rules is reproduced for ease of reference:

16. Computation of amount to be tendered to a listed company by certain beneficial owners under section 224.---

(1) Any gain made from the purchase and sale, or sale and purchase, of a listed security within a period of less than six months, which is required to be reported to the Commission and the registrar, and to be tendered to the company under section 224 shall be computed in the following manner, namely:-



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- a) *the purchase at lowest rates shall be matched against the sales at highest rates prevailing within the six months, and the recoverable amount calculated with respect to every individual transaction by reference to the difference between the purchase price and the sale price of any purchase and sale, or sale and purchase disregarding any other transactions, that is to say, the lowest in rate and highest out rate of the purchases and sales or the sales and purchases shall be matched; and*
- b) *the purchases and sales shall be matched as aforesaid so long as the securities involved in the purchase and sale are of the same class and of the same listed company and for this purpose the shares shall be deemed as fungibles.*

(2)

(3).....

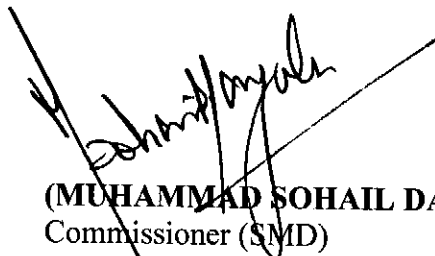
The purpose of section 224 of the Ordinance is to discourage profit making by trading in the securities of the Company with whom the person has a fiduciary relationship or of which he is beneficial owner. The aforementioned section requires that the gain made by such person should be deposited with the Company and where the Company does not recover the amount from such person or the person does not tender the amount to the Company, the gain so made vests with the Commission. Rule 16 of the Rules was introduced to provide the method for calculating the gain. The Appellant has challenged rule 16 of the Rules and called into question its applicability *vis-a-vis* section 224 of the Ordinance. We are of the view

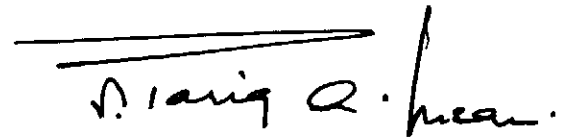


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that rule 16 of Rules has been framed within the four corners of section 224 of the Ordinance and there is no illegality in the framing of the section as alleged by the Appellant. The rule is consistent with the statute and neither contradicts nor repeals the express provisions of the statute from which it derives authority.

In view of the foregoing, we do not find any ground to interfere with the Impugned Order. The appeal is dismissed with no order as to cost.


(MUHAMMAD SOHAIL DAYALA)
Commissioner (SMD)


(S. TARIQ A. HUSAIN)
Commissioner (LD)

Announced on: 30.04.10