



BEFORE APPELLATE BENCH NO. I

In the matter of
Appeal No.61, 62, 63 of 2006

Mr. Mehmood Ahmed, Ex-Chief Executive Officer
Crescent Standard Business Management (Pvt.) Ltd
4th Floor, Crescent Standard Tower
10-B, Block E-2
Gulberg III
Lahore

Mr. Siyyid Tahir Nawazish, Ex-Director
Crescent Standard Business Management (Pvt.) Ltd
4th Floor, Crescent Standard Tower
10-B, Block E-2
Gulberg III
Lahore

Crescent Standard Business Management (Pvt.) Ltd
Through its Chief Executive Officer, Mr. Tariq Aleem
4th Floor, Crescent Standard Tower
10-B, Block E-2
Gulberg III
Lahore.....Appellants

Versus

Mr. Arif Mian
Executive Director (S.M.D)
Securities and Exchange Commission of Pakistan
NIC Building Jinnah Avenue, Islamabad. Respondent

Present:

For the Appellant:
Ahmed Bilal Kahlon, Advocate

For the Respondent:
Imran Hayat Butt
Director, SECP



ORDER

1. This order shall dispose of the appeal No. 61, 62, 63 of 2006 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by the appellants against the order dated July 22, 2006 “Impugned Order” passed by Executive Director, Securities Market Division (SMD).
2. As the appeals have arisen out of the same Impugned Order, therefore they have been clubbed together and are being disposed of through this order. The brief facts of the case are that on 01-02-2006, Crescent Standard Business Management (Private) Limited (“CSBM”), sold twenty million shares of Crescent Standard Investment Bank Limited (“CSIBL”) through First National Equities Limited (“FCEL”) to Javed Omar Vohra & Co. Limited (“JOV”) @12 Rupees per share. On 3-2-2006, CSBM again sold four and a half million shares of CSIBL through Dossalani Securities to JOV @ 11.98 Rupees per share. An aggregate of 24.5 million shares were thus sold to JOV within 3 days. After the sale to JOV, the price of CSIBL shares materially dropped. The history of CSIBL shares reveals that the prices of CSIBL never touched the same level after February 16, 2006 (13 days after selling the shares to JOV). The price of CSIBL at the time of making the Impugned Order was 4.55 Rupees per share.
3. Mr. Mahmood Ahmed (Appellant in appeal No.61) was the director and Chief Executive Officer (“CEO”) of CSBM as well as CSIBL (associated companies), whereas Mr. Siyyid Tahir Nawazish (Appellant in appeal No.62) was the CEO of JOV, and a director of CSBM and consultant to Mr. Mahmood Ahmed CEO of CSIBL at the time of the aforesaid transaction.
4. Before the execution of the transaction, the Commission on 03-10-2005, commenced inspections of books of accounts of CSIBL and in November 2005 communicated to the Board of Directors of CSIBL critical information regarding mismanagement of the books of accounts, and unauthorized transactions undertaken by CSIBL and the overall poor financial condition of CSIBL.



5. On 28-11-2005, the Board of Directors of CSIBL held a meeting to discuss the findings of the inspection and certain non-public information regarding CSIBL . Mr. Mahmood Ahmed, being the CEO was present in the aforesaid meeting and had therefore obtained the information regarding the inspection and its findings by the Commission as an insider.

Both, Mr. Mahmood Ahmed and Mr. Siyyid Tahir Nawazish being the only directors of CSBM were issued show-cause notices dated 05-04-2006 calling upon them to show as to why action should not be taken against them under section 15(B) of the Securities and Exchange Ordinance, 1969 (“the Ordinance”) for insider trading in contravention of section 15(A) of the Ordinance. The Directors submitted separate replies and the legal counsels of the respective directors argued the case before the Executive Director (SMD).

6. In the Impugned Order, the Executive Director directed CSBM under sub section (3) of section 15(B) of the Ordinance to pay an amount of Rs.182.435 million (equivalent to the cumulative sum of difference between the price per share of the 24.5 million CSIBL shares paid by JOV to CSBM as part of transaction in question.) to JOV.
7. We have heard the parties in detail and perused the record. The preliminary issue raised by CSBM as Appellant in appeal No 63 needs to be adjudicated first before going into the merits of the case. The objection raised by CSBM is that being a legal entity it was never issued a show cause notice and therefore the impugned order was passed without providing an opportunity of hearing to it, which is against the principles of natural justice. The Appellant has relied on cases cited at Dewan Salman Fibre Limited and others vs. Government of NWFP PLD 2004 SC 441 and Abdul Hafeez Abbasi vs. Management Director (PIA) 2002 SCMR 1034. Respondent in response to this objection states that the Appellant was duly represented by its Board of Directors comprising of Mr. Mahmood Ahmed and Siyyid Tahir Nawazish.
8. The record shows that Mr. Mahmood Ahmed and Mr. Siyyid Tahir Nawazish were send notices of show cause in their capacity as Directors of CSBM. Therefore it can safely be



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said that CSBM being a corporate body/artificial person was fully represented in the proceedings through its directors. Since both the directors constituted the entire board of directors, the notice sent to the directors was sufficient notice to the Company.

9. However the counsel during the course of arguments stated that during the pendency of show cause notices, the term of office of both the director and CEO expired and they no more represented CSBM. Both these persons continued appearing in their personal capacity to defend themselves against the show cause notices, which had only been issued to them and not CSBM. In these circumstances, CSBM was not being represented by anyone in any capacity and therefore the Impugned Order was passed against CSBM ex-parte. In these present circumstances, we feel it would be appropriate to remand the case back to the Department, who are directed to issue a show cause notice to CSBM as well and provide it with an opportunity of hearing at the earliest.

(Mr. Razi- ur-Rehman Khan)
Chairman, SECP

(Mr. Rashid. I Malik)
Commissioner (CLD)

Islamabad
Announced: 7-3-08