



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

BEFORE APPELLATE BENCH No. I

In the matter of

Appeal No. 16 of 2015

Mari Petroleum Company Limited

....Appellant

Versus

Director (MSSID), Securities and Exchange Commission of Pakistan

.... Respondent

Date of hearing

09-03-2015

ORDER

Present:

For the Appellant:

Shahid Raza, Partner, Orr Dignam & Co.

Syed Hassan Ali Raza, Senior Associate, Orr Dignam & Co.

Mr. Assad Rabbani, Company Secretary, Mari petroleum Company Limited

For Respondent

Amir Saleem, Deputy Director (SMD)

Aoun Zaidi, Assistant Director (SMD)

Salman Hayat, Assistant Director (SMD)

1. This order shall dispose of appeal No. 16 of 2015 filed under section 33 of the Securities and Exchange Commission of Pakistan (the

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“Commission”) Act, 1997 (the “SECP Act”) against the order dated 02-02-2015 (the “Impugned Order”) passed by the Respondent No. 1.

2. The brief facts of the case are that the Appellant is a public limited company listed on all the stock exchanges of Pakistan. An announcement was made by the Appellant on Karachi Stock Exchange (“KSE”) on June 04, 2014 at 12:56 p.m. that a meeting of Board of Directors (“BOD”) of the Appellant was held on June 04, 2014 in which the Appellant has declared a cash dividend of 10%. Subsequently an announcement regarding approval of proposal for dismantling of Mari GPA by its BOD was disseminated to the KSE at 3:17 p.m.
3. The Appellant vide its letter dated November 12, 2014 informed KSE that the Economic Coordination Committee (ECC) in its meeting held on November 12, 2014 has approved the proposal for dismantling of Mari GPA and replacing it with Market Oriented Formula. However it was observed that in addition to the information provided by Appellant through its letter mentioned above, the information with respect to decision that 88% of the undistributed balance will be transferred to Government of Pakistan (GOP) as redeemable preference share capital while remaining 12% will be issued to General Public, has not been disclosed to the stock exchange.
4. In consequence thereto, the Commission served a Show Cause Notice dated December 12, 2014 (SCN) upon the Appellant under section 22 of the Securities and Exchange Ordinance, 1969 (the “Ordinance”) for violation of section 15D(1) of the Ordinance and Regulation 5.19.13(c) of the KSE Regulations.

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5. After detailed scrutiny of facts, relevant law, considering the response/comments of the Appellant and providing opportunity of personal hearing, the Respondent has imposed a penalty of Rs. 1,000,000 (One Million Rupees Only) on the Appellant through Impugned Order.
6. The Appellant has filed the instant appeal against the Impugned Order on the following grounds:
 - a. The Impugned Order and SCN are misconceived and not sustainable in the eyes of law as these are based upon presumptions and unsubstantiated facts. The facts of the Impugned Order and SCN are based upon a press release which has no evidentiary value.
 - b. The appellant was not aware of the alleged decision of ECC therefore the Appellant cannot be penalized for an omission which was not in his knowledge. Furthermore, the Respondent has ignored the fact that there is no evidence on record which can corroborate the assumption that Appellant was in knowledge of this information.
 - c. It is the matter of record that officially the decision of ECC was communicated on 07-02-2015 to the Appellant. This fact indicates that the Impugned Order dated 02-02-2015 has been passed much before the communication of decision of ECC therefore is contradictory and beyond the scope of SCN. Furthermore, the press release did not contain the complete information of the ECC decision.

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- d. That disclosure of any information relying upon press release would have been an irresponsible, speculative and careless act on the part of Appellant which is not desirable in any regulatory and legal framework.
- e. The Respondent erred in law by ignoring the facts and passing the Impugned Order in sheer violation of legal and regulatory norms.

7. The Respondent stated that:

- a. The Impugned Order was passed in accordance with the relevant law after due care, thorough appraisal of facts and taking into account 'Interest of the investors at large'. It has been fully substantiated that the Appellant was in knowledge, on November 12, 2014 not just that ECC has approved the dismantling of the Mari GPA but also with respect to the decision that 88% of the undistributed balance will be transferred to the GOP as redeemable preference shares capital while remaining 12% would be issued to the general public.
- b. The fact of knowledge is substantiated from the point that on the same day, the Appellant has provided partial information relating to dismantling of MARI GPA to stock exchanges but failed to share the price sensitive information relating to issuance of preference shares against the undistributed reserves.
- c. If the Appellant is relying on a formal letter of Ministry of Petroleum and Natural Resources, which was received by the Appellant on February 07, 2015, in order to disseminate the material non-public information, then the Company should have also disseminated the material non-public information regarding the dismantling of the Mari


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GPA after receiving a formal letter as alleged by the Appellant. It can be clearly observed from the information provided by the Appellant, that the Appellant was fully aware of the material information provided by the ECC through press release dated November 12, 2014, however only its details were provided vide letter dated February 07, 2015. Furthermore, the Respondent vide its letter dated December 09, 2014 directed the Company to disclose the complete set of price sensitive information to the stock exchanges. The Appellate in response, vide its letter dated December 10, 2014 complied with the direction by disseminating the broad parameters for amendments in Mari GPA as approved by ECC. Therefore it is quite evident that the Appellate was in knowledge of the aforesaid material information.

- d. The Appellant was duty bound in accordance with the provisions of Section 15D (1) of the Ordinance and Regulation 5.19.13(c) of the KSE Regulations, to disseminate complete details of the decision of the ECC in its announcement made on November 12, 2014.
 - e. The order is well reasoned, lawful and in compliance with the SECP Act and other relevant laws.
8. We have heard the parties and their representatives and observed that Appellant has not denied the nature of information as price sensitive and its effects on market value of shares and their trading. However, the case of the Appellant is that he was not in knowledge of the information which was alleged to be held.
9. Admittedly, the press release of Ministry of Finance dated November 12, 2014 (the Press Release) contained information regarding the decision of ECC that 88% of the undistributed balance will be transferred to the GOP as

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redeemable preference shares capital while remaining 12% would be issued to the general public in addition to the decision of dismantling of the Mari GPA. It is also established fact that on the same date, the Appellant has informed stock exchanges with respect to the decision of dismantling of the Mari GPA only through a letter. Now, supposedly, if we admit the plea of Appellant that he was not in knowledge of this information then the question arises that how the Appellant came to know about the approval of the proposal for dismantling of Mari GPA and replacing it with a Market Oriented Formula by ECC on the same day. When confronted, the Appellant could not disclose any satisfactory source except Press Release before this bench. Therefore, it is explicitly clear that all the decisions of ECC which were published through Press Release were in the knowledge of Appellant on November 12, 2014 including the decision in question. For further clarity of this fact, the relevant part of Press Release is reproduced below:

“ECC also approved replacement of Mari Gas Company’s cost plus gas agreement with a market oriented crude oil linked formula on the precedence of PPL for Sui and Kandhkot fields. It was also decided that 88% of the distributable balance would be transferred to GoP as redeemable preference share capital after fulfilling all legal and corporate formalities while remaining 12% would be issued to General Public ensuring that their shares/interests in the company are fully protected.”

Emphasis Added

10. The above referred contents of Press Release exhibit that both the decisions/information were published together. Therefore, the plea of Appellant if read together with his letter dated November 12, 2014 addressed to stock exchanges is misconceived to the extent that the price sensitive information was not in knowledge of the Appellant.

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11. The point agitated by the Appellant regarding the veracity of press release, and that the Appellant has waited till the official communication of decision of ECC so to forward an authentic information and avoid from irresponsible and speculative attitude is also inappropriate and cannot stand in law for simple reason that a party cannot be allowed by law to approbate and reprobate at the same time. The appellant has disclosed partial information without waiting for official communication however is taking defense of non-conveyance of information through official authentic channel as a ground for his unlawful omission. The Honourable High Court of Sindh in a case titled *United Bank Ltd. Vs. Messer Sarhad Ghee Mills ltd. and others (1999 YLR 323)* has observed that "where a person relied on one document in respect of a particular transaction, but disputed effectiveness of the same document in relation to the other aspects, such a person could not be allowed to approbate and reprobate."

12. In light of the discussion above, we find no substance in Appeal and see no reason to interfere with the Impugned Order. The appeal is dismissed with no order as to cost.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Tahir Mehmood)
Commissioner (CLD)

Announced on: **14 MAY 2015**