



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN  
APPELLATE BENCH REGISTRY

**BEFORE APPELLATE BENCH**

In the matter of

**Appeal No. 5 of 2010**

Salman Ali Hussain

.....

Appellant

Versus

Director (SMD)

Securities and Exchange Commission of Pakistan

.....

Respondent

Dates of hearing

07-07-10, 28-04-11

**ORDER**

**Present:**

**Appellant:**

Mr. Salman Ali Hussain

**For the Appellant:**

Mr. Iqbal L. Bawaney, Advocate

Mr. Salman I. Bawaney, Advocate

Muhammad Tahir Qureshi, Advocate

**Respondent:**

Mr. Imran Inayat Butt, Director (SMD)



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

1. This order shall dispose of appeal No. 5 of 2010 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 09-12-09 (the "Impugned Order") issued by the Respondent.
2. The Appellant was employed with Alfalah GHP Investment Management Limited (the "Company") as Fund Manager and was also acting as Manager, equity trading department and member of the Investment Committee of the Company. The Appellant was involved in decision making with respect to day to day investments of the funds namely Alfalah GHP Value Fund, Alfalah GHP Islamic Fund and Alfalah GHP Alpha Fund (the "funds"). The Appellant was also responsible for the managing equity portfolio of Alfalah GHP Principle Protected Fund. In his capacity as the Fund Manager and member of Investment Committee of the Company, the Appellant was privy to the investment decisions made by the funds.
3. During onsite inspection of the Company and the funds, the trade details for the employees of the Company were reviewed, including the details of trading activity undertaken by the Appellant from December 2008 to May 2009. On perusal of the trading data of the Karachi Stock Exchange (Guarantee) Limited ("KSE") for the period under review, it transpired that the Appellant traded in his personal capacity through Growth Securities (Private) Limited (member KSE) and his trading concentrated in the same shares in which the funds had traded. The Appellant traded in a manner, whereby, the Appellant bought shares at a lower rate prior to initiation of buying activity of the funds and sold his shares once the price appreciated resulting from the purchases made by the funds. It was also noted that in some instances the Appellant's trades perfectly matched the trades of the funds and that the funds solely



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN  
APPELLATE BENCH REGISTRY

bought the shares sold by the Appellant. The details of the shares/ scrips and the profits realized in each scrip are as under:

Sr. No.	Scrip Name	No. of Shares	Profit Realized (Rs.)
1.	Tariq Glass Limited	17,000	12,171
2.	National Bank of Pakistan	10,000	4,900
3.	Mybank Limited	150,000	43,745
4.	Descon Oxychem Limited	25,000	23,750
5.	Ecopack Limited	32,000	20,025
6.	Engro Chemicals (Pakistan) Ltd	25,000	21,543
7.	Pakistan State Oil Company Ltd	10,000	8,535
8.	Faysal Bank Limited	30,000	9,900
9.	ICI Pakistan Limited	9,900	9,231
10.	Huffaz Seamless Pipe Industries Ltd	6,000	7,755
11.	Kohinoor Energy Limited	9,000	38,070
12.	Oil & Gas Development Company	30,000	12,245
13.	Mari Gas Company Limited	3,000	89,885
14.	Arif Habib Securities Limited	5,000	1,680
15.	Adamjee Insurance Company Ltd	7,500	6,861
16.	Bank Islami Pakistan Limited	45,000	18,800
17.	Meezan Bank Limited	25,000	6,310
18.	Pakistan Petroleum Limited	29,000	22,186
			<b>357,592</b>

4. In light of the above, show cause notice dated 25-09-09 (“SCN”) under section 15(E) of the Securities and Exchange Ordinance, 1969 (the “Ordinance”) was issued to the Appellant. The Appellant filed reply to the SCN and a hearing in the matter was held. The Respondent, dissatisfied with the response of the Appellant, passed the Impugned Order and imposed a penalty of Rs. 357,592/- being an amount equivalent to the gain made based on inside information and further directed the Appellant to surrender Rs. 357,592/- being the amount of profit realized by the Appellant.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN  
APPELLATE BENCH REGISTRY

5. The Appellant preferred to file the instant appeal against the Impugned Order. The Appellant's counsel at the outset stated that there is no factual controversy regarding the trading done by the Appellant in the scrips. The Appellant's counsel argued:
- a) The Appellant never had any direct or indirect access to unpublished, price sensitive information of the public listed companies, as such the Appellant cannot be deemed as an "insider" in terms of section 15 C of the Ordinance;
  - b) The statutory intent behind section 15 B of the Ordinance is to prohibit persons from gaining 'insider information' of issuer companies and making gains by purchase or sale of shares of such issuer companies, whereas, in the instant case the Appellant was not privy to such information;
  - c) The Appellant's conduct does not fall under the ambit of 'insider trading' as defined in section 15A(2) of the Ordinance, as such, the allegation of 'insider trading' is baseless. The Appellant was not an 'insider' of the issuer. Section 15A (2) of the Ordinance states that for 'insider trading' there must be some direct or indirect connection or access to information of the securities that are traded. The probation on trading would have attracted only if the Appellant had purchased the securities of the Company or units of the funds;
  - d) The Respondent ignored the fact that the Company did not place bar on the employees' trading in the securities and that the Appellant had made full disclosure to the Company while dealing with securities as



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN  
APPELLATE BENCH REGISTRY

per the Company policy. The Company did not object to the Appellant's trading which amounts to post facto approval by the Company;

- e) The Appellant's counsel in his written arguments placed reliance on Directive 2003/6/EC dated 28-01-03 (the "Directive") of the European Union Parliament and Council and it was stated that the Directive distinguishes between insider trading and *front running*, which are two different acts. Without admitting that the Appellant was involved in *front running*, it was contended that *front running* is not an offence under the laws in Pakistan. The Appellant's counsel also drew parallel with section 224 of the Companies Ordinance, 1984 and it was stated that the directors and beneficial owners (who are deemed as insiders) are allowed to sell and purchase the securities without being charged for insider trading. On the other hand the Appellant, who was Fund Manager of funds, has been charged with the offence of insider trading, when he had invested personally, based on his own analysis and without any access to 'inside information'.
6. The Respondent stated that the Appellant was an 'insider' in terms of section 15C of the Ordinance. The Appellant was involved in decision making with respect to day to day investments of the funds. Based on the 'inside information' of the funds' trading, the Appellant bought shares at a lower rate prior to initiation of buying activity of the funds and sold his shares at higher price once the price appreciated resulting from the purchases made by the funds. The Appellant opened his account with Growth Securities (Private) Limited just before the funds invested in the scrips and closed it shortly after making the gains. Twelve (12) of the Appellant's aforementioned trades matched with the trades of the fund,



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN  
APPELLATE BENCH REGISTRY

which cannot be a mere coincidence. Further, out of eighteen (18) scrips traded by the Appellant, majority were in illiquid scrips which would not have attracted high trading volumes in normal market condition had the Company not invested its funds.

7. We have heard the parties. Section 15A 2(a) of the Ordinance is reproduced for ease of reference:

*15A. Prohibition of insider trading- (1) No person shall indulge in insider trading.*

*(2) Insider trading shall include,-*

- a) an insider person transacting any deal, directly or indirectly, using inside information involving listed securities to which the inside information pertains, or using others to transact such deals;*

Emphasis added

The terms 'insiders' and 'inside information' have been defined in section 15C and section 15B of the Ordinance respectively. The relevant clauses of subsection are reproduced for ease of reference:

*15C Insiders- (1) Insider shall include,-*

- g) any person obtaining inside information as part of his employment or when discharging his usual duties in an*



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN  
APPELLATE BENCH REGISTRY

*official capacity, or in any other way relating to work performed under contract of employment or otherwise;*

15B *Inside Information-* (1) *The expression "inside information" means,-*

a) *information which has not been made public relating, directly or indirectly, to listed securities or one or more issuers and which, if it were made public, would be likely to have any effect on the prices of those listed securities or on the price of related securities;*

a) The argument of the Appellant's counsel that an 'insider' can only be a person who has 'inside information' of the issuer or is employed with the issuer is not acceptable as section 15C of the Ordinance is wider in scope. In terms of section 15(C)(1)(g) of the Ordinance, any employee who has information which could effect price of listed securities and uses the information for making profits is an 'insider'. The Appellant is a 'Fund Manager' and member of the Investment Committee of the funds, as such, he was involved in decision making relating to the funds' investment in listed securities. The information available with the Appellant as 'Fund Manager' was not available in the public domain. The Appellant received the information relating to the fund investment while discharging his duties in an official capacity. The Appellant made use of the 'inside information' to make profit as such he was an 'insider' for the purposes of this Ordinance;



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN  
APPELLATE BENCH REGISTRY

- b) The argument of the Appellant's counsel that the statutory intent behind section 15B of the Ordinance is to prohibit persons from gaining 'inside information' of the issuers and making gains by purchase or sale of shares of such issuer is restrictive and does not fully represent the intention of the legislature. Section 15B of the Ordinance states that the inside information may relate *directly* or *indirectly* to the listed securities or to the issuer. The information must, however, be of such nature that could have an effect on the price of the listed securities. The information available with the Appellant did not relate to the issuer, instead the information was regarding the investment to be made by the funds in the listed securities. The information available with the Appellant as an 'insider' could have had an effect on the price of the listed security, if it had been made public. The Appellant did not dispute that the investments were made by him and has also not called into question the calculation of gain made. The Appellant, as Fund Manager, cannot be allowed to make personal profits based on the inside information;
- c) the Appellant's counsel argument that the prohibition on trading would have attracted only if the Appellant had purchased the securities of the Company or units of the funds is fanciful. The Appellant on the basis of 'inside information' bought shares at a lower rate prior to initiation of buying activity of the funds and sold his shares once the price appreciated resulting from the purchases made by the funds and has thus indulged in 'insider trading';
- d) the Appellant failed to abide by the policy of the Company for trading of shares in personal capacity. The Appellant in terms of the policy failed to obtain prior permission of the Company before trading in the



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

securities. Moreover, the Appellant in terms of the above referred policy was required to trade through Alfalah Securities (Pvt.) Ltd, whereas he traded through Growth Securities (Pvt.) Ltd, which was again clear violation of the policy;

- e) it has been established that the Appellant was involved in 'insider trading' as such the question of whether or not the Appellant was *front running* does not arise. Further, section 224 of the Companies Ordinance, 1984 deals with trading of securities by the directors or beneficial owners of a company and not with 'insider trading'. In case directors or beneficial owners of a company are involved in 'insider trading' they may also be charged under section 15 of the Ordinance.

We, therefore, do not see any reason to interfere with the Impugned Order.

The appeal is dismissed. Parties to bear their own cost.

**(MUHAMMAD ALI)**  
Chairman

**(MR. TAHIR MEHMOOD)**  
Commissioner (CLD)

Announced on: 1<sup>st</sup> June 2011