



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 02 of 2013

Pakistan Petroleum Fund Trust Company (Pvt.) Limited ...Appellant

Versus

Director/HOD (MSCID, SECP) ...Respondent

Date of Hearing 02/12/14

ORDER

For the Appellant:

1. Barrister Yousuf Khosa, Partner RIAA Law, Islamabad
2. Mr. Abdul Manan, Advocate, RIAA Law, Islamabad
3. Ms. Umaira Iqbal Raza, Advocate, RIAA Law, Islamabad
4. Mr. Kamran Wahab Khan, CFO, Pakistan Petroleum Limited (PPL)

For the Respondent:

1. Mr. Awais Ali, Assistant Director (SCD)
2. Mr. Amir Saleem, Assistant Director (SCD)



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1. This order is in appeal No. 02 of 2013 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order (the "Impugned Order") dated 30/11/10 passed by the Respondent.
2. The facts leading to this case are that Pakistan Petroleum Provident Fund Trust Company (Private) Limited ("Appellant") is a private limited company which manages the funds mentioned below of the employees of Pakistan Petroleum Ltd ("PPL"):

S. No	Name of the Funds
1.	Executive Staff Pension Fund
2.	Non-Executive Staff Pension Fund
3.	Executive Staff Gratuity Fund
4	Non-Executive Staff Gratuity Fund
5	Senior Provident Fund
6	Junior Provident Fund

3. The management of these funds is governed by its Trust Deed and the Rules made thereunder and the members/beneficiaries of the funds are the employees of PPL.
4. On 13/08/12, PPL announced the financial results for the year ended 30/06/12 wherein it announced Earning Per Shares ("EPS") of Rs. 31.13 over previous year's EPS of Rs. 23.92. PPL also announced final cash dividend of 65% in addition to Bonus shares of 25%. Perusal of Ready market trading Data of Karachi Stock Exchange Limited ("KSE") from 07/08/12 to 09/08/12 transpired that Pakistan Petroleum Limited Senior Provident Fund ("Fund") managed by the Company bought 662,500 shares of PPL through KASB Securities Limited, broker of KSE. The buying by Appellant constituted about



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18% of the total volume in the scrip during the aforesaid period. Keeping in view the above, the matter was taken up with PPL vide letter dated 17/08/12. In this regard PPL vide its letter dated 31/08/12 submitted reply along with supporting documents. The review of documents provided by PPL revealed that Board of Trustees of the Fund consisted of members of senior management of PPL including the Chief Executive Officer (“CEO”) of the Board of Trustees of the Fund, Mr. Asim Murtaza Khan (“AMK”), Mr. Moin Raza Khan, Director (“MRK”) and Mr. Kamran Wahab Khan, Director (“KWK”) who were serving as Managing Director, Deputy Managing Director and General Manager (Finance)/Chief Financial Officer on the Board of Directors (“BoD”) of PPL.

5. Show cause Notice (“SCN”) was issued to the Appellant, AMK, MRK and KWK as to why action should not be taken against them under section 15E(3) of the Securities and Exchange Ordinance, 1969 (“Ordinance”) for passing on/disclosing of financial results of PPL before its public dissemination on 13/08/12 which was not available publicly and was inside information. M/s Orr Dignam & Co Advocates (“Legal Counsel”) submitted written reply vide letter dated 10/10/12 and hearing in the matter was held on 23/10/12. The Legal Counsel asserted in their written reply as well as during the course of hearing that the Trustees in their capacities as Managing Director, Deputy Managing Director and Chief Financial Officer did not provide any inside information to the Fund or any other persons in their said capacities.
6. The Respondent after carefully considering the arguments both in written and verbal form, held that although AMK and MRK were in possession of inside information regarding financial results of PPL before the purchase of shares by the Fund, there was no evidence on record to substantiate transmission of



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information from AMK and MRK to the IC but it was their duty, however, to ensure that operations were conducted in a transparent manner. Furthermore, it was established that KWK is a member of the IC of the Appellant by virtue of being Head of the Finance Department of PPL and was an insider person who disclosed the inside information relating to financial results of PPL to the Fund. The pattern of trading clearly established that the purchase of PPL shares by the Fund just few days prior to the announcement of financial results of PPL was based on inside information. The case of insider trading, therefore, was established on the evidence and material on record against them. The Respondent in exercise of his powers under section 15E(1) of the Ordinance imposed a penalty of Rs. 1,000,000 (Rupees one million) on the Appellant for contravention of the provision of section 15A(1) by trading in the shares of PPL on the basis of inside information.

7. The Appellant has preferred the instant appeal against the Impugned Order. The Appellant's counsel argued that:

- a) the requirements of 'inside information' and 'insider trading' have not been met. Insider trading is defined in section 15A(2) of the Ordinance which outlines four necessary pre-requisites to be satisfied. Section 15A(2)(a) of the Ordinance is not applicable as the Appellant did not transact any deal for itself; section 15A(2)(b) of the Ordinance is not applicable because the Appellant did not pass on or disclose any inside information to the Fund; section 15A(2)(c) of the Ordinance is not applicable because the Appellant did not possess or disclose any information which was not already known to the BOD; and section 15A(2)(d) of the Ordinance is not applicable because the Appellant did not make any suggestion or recommendation to the BOD;



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- b) section 15B(1) of the Ordinance states that the only information which is not 'public' and is 'price sensitive' to the listed securities i.e. capable of effecting the price of such securities can be termed as 'inside information'. In the instant case, the Board of Trustees had already decided in principle in January 2012 to make investment in the PPL shares at which time the financial results of PPL for the year ended 30/06/12 were not available. In view of the dividends consistently declared by PPL in the immediately preceding four years and when the PPL shares were being divested by the Government of Pakistan by a public offer in January 2012, the Trustee had decided to submit an offer for the acquisition of 847,716 PPL shares at the then prevailing PPL share price of Rs.163.97. It is important to note that the share price of PPL shares was far lesser in January 2012, however, the only reason that the investment was not made in PPL shares earlier was because the public offer was withdrawn. The Trustee had formulated an investment policy, which was amended on 24/08/11 (the "Investment Policy") whereby the Secretary of the Fund was authorized to determine and submit proposals to the BOD for investment. As per Clause 1 (ii) of the investment policy, whenever the Secretary determined that surplus monies were available in the Fund, he was required to submit an investment proposal to the IC. In this case the investment proposal was forwarded by Chief Accountant M. Zeeshan who does not report to the IC.
- c) the information which was utilized for making such decision of investment in PPL shares by the IC and Board of Trustees related to the average historic yield on investment in PPL shares, which was a fact available in public domain as amply described in the SCN reply. The quarterly financial statements of listed companies are published within one month of

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the close of the accounting period. Accordingly, all material information of PPL for the nine months ended 31/03/12 was in the knowledge of the general public and the shareholders. The annual performance and anticipated financial results, as analyzed by the market, was extremely close to the actual results (including EPS) when it was officially announced. The information regarding the expected final cash payout along with the issue of bonus shares was already publicly available in research reports of various analysts; and

- d) the investment was done during the Closed Period by persons on the IC who were deemed to be insiders but legal advice was sought and it was advised by the legal counsel that investment was being done on part of the Fund and not by individuals, therefore, the Closed Period does not apply.

8. The department's representative argued that:

- a) all the three components of section 15 of the Ordinance are present in the instant case. In the instant case, KWK is the insider, the financial results and payouts was inside information and the buying of PPL shares by the Fund on the basis of inside information just days before the announcement of financial results of PPL constitute insider trading. The timing of the transactions by the Fund creates serious doubts about the independence of their decision to buy shares. It is highly likely that the trading by the Fund in the shares of PPL was on the basis of inside information, regarding final results of the PPL, directly by virtue of being member of Finance department of PPL;



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- b) the Trustee of the Fund decided to invest PKR 735 million in PPL Shares in January, 2012 but the original decision was related to investment by all funds managed by the Appellant and was not only confined to Senior Provident Fund. There may be a possibility that the IC might have decided to purchase the PPL shares on the basis of expected results of the Company. However, the argument is untenable on the basis of the fact that members of IC were insiders of PPL themselves. KWK being CFO was actually aware of the financial results of the Company as he was custodian of the financial information and in possession of all the confidential and material information. Moreover, buying by the Appellant constitutes 18% of the total volume scrip during the aforesaid period;
- c) the average historical yield in a public figure gives an indication about the company's fore coming results; however, availability of the actual financial results was information which was not available to the public except the Board of Trustees. Research reports were only forecasting, estimating and predicting the financial results of PPL. The Board of Trustees of the Fund using the material information regarding financial results of PPL, disclosed to it by AMK, MRK and KWK, traded on behalf of the Fund by purchasing the aforementioned shares of PPL just before the announcement of financial results of PPL; and
- d) the timing of the transactions by the Fund creates serious doubts about independence of their decision to buy the shares. The Fund bought the shares during the Closed Period which indicates the dubious nature of the transactions. It is pertinent to mention here, that the spirit and rationale behind the announcement of Closed Period is to bar the insiders of the company to trade in the shares directly or indirectly.



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9. We have heard the parties. Sections 15(A),(B),(C),(D) and (E) of the Ordinance are 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;

(b) any other person to whom inside information has been passed or disclosed by 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;

(c) transaction by any person as specified in clauses (a) and (b), or any other person who knows, or ought to have known under normal and reasonable circumstances, that the information possessed and used for transacting any deal is inside information;

(d) an insider person suggesting or recommending to another person to engage in dealing in any listed securities to which the inside information possessed by the insider person pertains, without the inside information being disclosed to the person who has dealt in such securities:

(3) Nothing in this section shall apply to—

(a) any transaction performed under an agreement that was concluded before the time of gaining access to inside information; or

(b) the disclosure of inside information by an insider person as required under law.

(4) No contract shall be void or unenforceable by reason only of an offence under this section.

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 an effect on the prices of those listed securities or on the price of related securities;

(b) in relation to derivatives on commodities or information which has not been made public, relating, directly or indirectly, to one or more such derivatives and which are traded in accordance with accepted market practices on those markets;
or

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(c) in relation to persons responsible for the execution of orders concerning listed securities, information which is conveyed by a client to such person and related to the client's pending orders.

15C. Insiders.—(1) Insiders shall include, –

(a) sponsors, executive officers and directors of an issuer;

(b) sponsors, executive officers, directors and partners of a legal person or unincorporated business association, in which the issuer holds shares or voting rights, directly or indirectly, of twenty per cent or more;

(c) sponsors, executive officers, directors and partners of a legal person or unincorporated business association who holds, directly or indirectly, shares or voting rights of ten per cent or more in an issuer;

(d) sponsors, executive officers and directors of an organization, that has been engaged in the placement of listed securities or the public offer of securities or the issuing and marketing of such securities, who has had access to insider information during his employment till a period of one year after leaving employment;

(e) any natural person holding, directly or indirectly, ten per cent or more shares of an issuer;

(f) sponsors, executive officers and directors of credit institutions in which the issuer has an account;

(g) any person obtaining inside information as part of his employment or when discharging his usual duties in an official capacity, or in any other way relating to work performed under contract of employment or otherwise;

(h) any person obtaining inside information through unlawful means; and (i) a spouse, lineal ascendant or descendant, partner or nominee of a person referred to in clauses (a) to (h).

15D. Listed companies responsibilities to disclose inside information.—(1) Listed companies shall inform the public, in the manner specified by the Commission, as soon as possible of inside information which directly concerns the listed securities.

(2) Listed companies may delay the public disclosure of inside information, as referred to in sub-section (1) in order not to prejudice their legitimate interests, provided that such delay does not mislead the public and provided that the company is able to ensure the confidentiality of the information and the company shall inform the Commission of the decision to delay the public disclosure of inside information forthwith.

(3) Whenever a listed company or a person acting on its behalf, discloses any inside information to any third party in the normal exercise of employment, profession or duties, complete and effective public disclosure of that information must be made simultaneously in the manner specified by the Commission:

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Provided that the provisions shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, regulations, articles of association or contract.

(4) Listed companies or persons acting on its behalf, shall maintain and regularly update a list of persons employed, under contract or otherwise in the manner specified by the Commission who have access to inside information and provide such list to the Commission whenever the Commission requests it.

(5) Persons discharging managerial responsibilities within a listed company and, where applicable, persons closely associated with them, shall notify the Commission of transactions conducted on their own account relating to the securities of such listed company in the manner specified by the Commission.

(6) The Exchanges shall adopt structural provisions, operating procedures and surveillance techniques to detect and prevent insider trading and market abuse practices, within such time as may be specified by the Commission and according to the regulations made hereunder.

15E. Liability for contravention.—(1) Any person who contravenes the provisions of subsection (1) of section 15A shall, on being found guilty of contravention by the Commission, be liable to fine, which may extend to ten million rupees or three times the amount of gain made or loss avoided by such person, or loss suffered by another person, whichever amount is higher.

(2) In addition to the fine imposed under sub-section (1), such person,—

(a) may be directed by the Commission, —

(i) to surrender to the Commission, an amount equivalent to the gain made or loss avoided by him; or

(ii) to pay any other person who has suffered a loss, an amount equivalent to the loss so suffered by such person; and

(b) may, where such person is an executive officer, director, auditor, advisor, consultant of a listed company, be removed from such office by an order of the Commission and debarred from auditing any listed company for a period of upto three years; or

(c) may, where such person is registered as a broker or agent, be liable to cancellation of registration.

(3) Where an insider person discloses inside information to any other person who is not required to possess such information for any reason, the insider person shall be liable to fine, to be imposed by the Commission, which may extend to thirty million rupees.

(4) The Commission may, by notification in the official Gazette, make regulations to regulate persons who produce or disseminate research concerning listed securities or issuers of listed securities and persons who produce or disseminate other information recommending or suggesting investment strategy, intended for distribution channels or for the general public.

Emphasis Added

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- a) the afore-mentioned provisions of the law are explicit and clear. The Appellant's counsel has argued that none of the ingredients pursuant to section 15 of the Ordinance have been proven against the Appellant. They have also contended that there was no information known to the Appellant which was not already in the public domain. The Respondent has argued that the Trustees of the Fund had prior information regarding the financial results of PPL which was not available publically before its dissemination on 13/08/12 which appears to be logical as the members of IC possessed the information in view of their work profile;
- b) the Appellant has argued that as part of the investment plan it was already decided in January 2012 that the Appellant would invest in PPL shares even though the price of PPL shares was relatively lower and the financial results of PPL ending 30/06/12 were not available. Furthermore, the only reason investment was not made in PPL shares were because the public offer had been withdrawn. The Trustee had formulated an investment policy whereby the Secretary was authorized to determine and submit proposals to the BOD for investment. The Respondent has argued that there may be a possibility the investment was based on expected results of PPL; however, buying by PPFTCL constitutes about 18% of the total volume in the scrip during the aforesaid period. Moreover, the KWK was already in possession of insider information on the basis of which trading was conducted in PPL shares. We have reviewed the investment proposal for the IC of August 2012 and have taken notice that the Investment proposal was initiated by the Chief Accountant of PPL and not the Secretary of the Appellant pursuant to the investment policy. Further, it is not only the KWK who was a member of the investment committee but also MRK. It is important to note that if KWK as an insider would have access to the financial results of PPL so would the MRK and AMK, however, no action was taken against the latter two;

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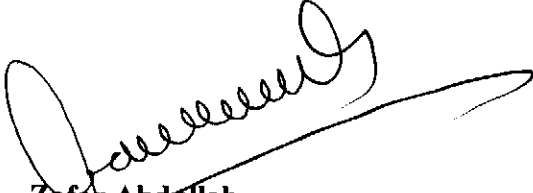
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- c) the Appellant has argued that the annual performance of the market was extremely close to the actual EPS and all material information of PPL for the nine months ended 31/03/12 was in the knowledge of the general public and the shareholders. The Respondent has argued that the BOD of the Fund using the material information regarding financial results of PPL purchased the shares of PPL just before the final results of PPL were announced; and
- d) the Appellant should have not traded during the Closed Period, however, the Appellant has given evidence that legal advice was sought on the said issue and there is nothing to suggest that it was done so intentionally. Moreover, it is the employees of the Fund and not the Appellant who benefitted from these gains.

In view of the observations pointed out in para 9(b) above that the investment proposal was sent to the Board of Trustees of the Appellant for approval by the Chief Accountant of PPL and not the Secretary of the Fund and no action taken against AMK and MRK despite being insiders like KWK; this raises further questions about allegations of insider trading and transparency within the Fund. Therefore, in light of the foregoing, we remand the Impugned Order to the Respondent for review and to further investigate allegations of insider trading by the Appellant in light of our observations above.


Zafar Abdullah
Commissioner (SMD)
Announced on: 19/12/14


Tahir Mahmood
Commissioner (CLD)