



Securities and Exchange Commission of Pakistan

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BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 07 of 2012

Wasim Hyder Jalbani Appellant

Versus

HOD/Director (MSCI)
Securities and Exchange Commission of Pakistan Respondent

Date of hearing 19/09/12

ORDER

Present:

For the Appellant:

Mr. Rabel Akhund, Advocate

Department representative:

Mr. Aamir. M Khan Afridi, Director (CI), SMD



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1. This order is in appeal No. 07 of 2012 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 (the "SECP Act") against the order dated 29/02/12 (the "Impugned Order") passed by the Respondent.
2. The facts leading to the case are that an on-site inspection of JS Investment Limited ("JSIL") and the funds under its management including JS Islamic Fund, JS Capital Protected Fund IV, JS Value Fund and JS Aggressive Asset Allocation Fund (the "Funds") was ordered by the Commission vide Order dated 23/07/10 under section 282(I) of the Companies Ordinance, 1984 (the "Ordinance"). During the aforementioned inspection, the trading details for the employees of the Funds were reviewed, including the details of trading activity undertaken by the Fund Manager of JSIL namely Mr. Wasim Hyder Jalbani's (the "Appellant") brother Mr. Shakeel Ahmed Jalbani ("SAJ") for the period covering 01/01/09 to 30/06/10 ("Review Period").
3. On perusal of the trading data of the Karachi Stock Exchange (Guarantee) Limited ("KSE") for the Review Period, it was observed that SAJ was an active market participant and carried out his trading activity through Standard Capital Securities (Pvt.) Limited ("the Brokerage House"). The trading activity of SAJ was reviewed in relation with the trading of the Funds. The analysis of the trading data revealed that most of the transactions were made between SAJ and the Funds. In this regard, four types of suspicious transactions were identified which were carried out by SAJ. Following are the details of those transactions:



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- i. scrips were purchased from the market at lower rates and sold to the Funds at higher rates.
 - ii. scrips were sold in the market at higher rates and subsequently the same quantity was bought from the Funds at lower rates in order to square up the transactions.
 - iii. scrips were earlier purchased from the Funds at lower rates and subsequently sold in the market after increase in the rates.
 - iv. scrips were earlier purchased from the Funds and consequently partly sold to the Funds and rest were sold in the market. Most of these transactions were squared on the same day.
4. Further, it was identified that major trading portion of SAJ was executed in correlation with the Funds wherein the timing of trades executed by SAJ was in close correlation with the trading of Funds. The suspicious trading by SAJ was observed in 21 different scrips' which includes: Attock Cement Pakistan Limited, Lucky Cement Limited, Pakistan Telecommunication Limited, Fauji Fertilizer Company Limited, DG Khan Cement Limited, Glaxo Smith Kline (Pak) Limited, Oil and Gas Development Company Limited, Faysal Bank Limited, United Bank Limited, Hub Power Company Limited, Honda Atlas Car Limited, Meezan Bank Limited, Pakistan State Oil Limited, National Bank of Pakistan Limited, Pakistan Petroleum Limited, Pakistan Oilfield Limited, MCB Bank Limited, Agriautos Industries Limited, Pak. Suzuki Motors Limited, Nishat Mills Limited and Engro Corporation Limited.



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5. The details received from the Brokerage House revealed that SAJ had authorized the Appellant to operate his trading account on his behalf. Moreover, it was also noted that cheque number CD-1517950 of Bank Alfalah Limited (KSE Branch) dated 07/12/09 amounting to Rs. 3.5 million issued by the Brokerage House in the name of SAJ was actually credited in the bank account of the Appellant, maintained at Habib Metropolitan Bank Limited (Main Branch Karachi) on 10/12/09 as the cheque was in format of "&Co". Similarly another cheque of Rs. 735,000/- of JS Bank Limited was issued by the Brokerage House and credited in the bank account of SAJ maintained at United Bank Limited (Naushero Feroze Branch, Sindh), however, after few days later the same amount was transferred online into the bank account of the Appellant.
6. From the scrutiny of available record, it was revealed that during the year 2009-2010, Appellant besides being the Fund Manager also remained part of the Investment Committee ("IC") of the Funds. Appellant was involved in the decision making process of investment / disinvestment of portfolios of the Funds and was privy to inside information pertaining to investment by the Funds.
7. Show cause notice dated 19/10/11 ("SCN") was issued to the Appellant to explain as to why action should not be taken against him under section 15(A) of the Securities and Exchange Ordinance, 1969 (the "SEO"). Respondent filed reply to the SCN and hearing in the matter was held. The Respondent dissatisfied with the response of the Appellant passed the Impugned Order and imposed a fine of Rs. 2,500,000/- (Rupees Two



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Million and Five Hundred Thousand Only) for contravention of section 15A (1) of the SEO.

8. The Appellant has filed the instant appeal against the Impugned Order. The Appellant's counsel stated that the appeal is only filed to contest the quantum of penalty imposed and argued that:

a) Para 11(iii) of the Impugned Order set out a table showing the Respondent's calculation of profit earned by SAJ as follows:

Sr.No	Scrip Name	Profit Realized (Rs.)
1	Attock Cement Pak Ltd	812,200
2	Lucky Cement Ltd	198,866
3	Pakistan Telecommunication Ltd	161,385
4	Fauji Fertilizer Company Limited	258,489
5	DG Khan Cement	17,750
6	Oil and Gas Development Co. Ltd	70,071
7	Honda Atlas Car Ltd	101,324
8	Meezan Bank Ltd	97,681
9	Pakistan State Oil Ltd	75,022
10	Pakistan Petroleum Ltd	34,342
11	Pakistan Oil Fields Ltd	34,361
12	Agriautos Industries Ltd	37,500
13	Pak Suzuki Motors Ltd	26,818
14	Nishat Mills Ltd	21,518
	Total	1,947,327



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Para 11 (iii) of the Impugned Order states that the profit figures have been calculated after accepting the Appellant's *first* contention that the Appellant was Fund Manager of only two funds, namely, *JS Islamic Fund* and *JS Value Fund*, therefore, only the transactions relating to these two funds should be considered by the Commission, whilst the rest should be taken out of consideration. The Impugned Order, however, did not state that the Respondent has also calculated the profit figure after taking into account the *second* contention of the Appellant i.e. excluding from consideration transactions by SAJ which are in the nature of investment transactions. The Respondent did not apply the *first* and *second* contention consistently throughout the table above. The Respondent has erroneously taken into consideration transactions which are in the nature of investment transactions and in other cases has erroneously taken into consideration transactions with Fund counterparties of which the Appellant was accepted not to be the Fund Manager. Had the Respondent taken into consideration both the contentions throughout in calculating the profit, the profit figure would have drastically reduced to Rs. 746,265 from Rs 1,947,327; and

- b) the aforementioned error in calculating profit made by SAJ has resulted in overstatement of the profit by 61.68%. The profit made by SAJ have been used as yardstick to determine the penalty of Rs 2,500,000/- imposed on the Appellant. The interest of justice will be served by reducing the penalty imposed on the Impugned Order by 61.68% i.e. to Rs 958,000;



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9. The department representative argued that:
- a) the Appellant's counsel assertion that the calculation of profit in the Impugned Order was made by excluding the transaction which were 'investment' in nature is not correct. The only exclusion from calculating the profits stated in the Impugned Order was with respect to the transactions of SAJ with funds namely *JS Capital Protected Fund IV* and *JS Aggressive Asset Allocation Fund*, which was done after accepting the plea of the Respondent that he was not the Fund Manager of the aforesaid two funds; and
 - b) the calculation of penalty was not only based on the profit made by the Appellant. The Respondent took a lenient view and instead of imposing maximum penalty of Rs 10 million on the Appellant, passed the Impugned Order and imposed the penalty of Rs 2.5 million. The amount of penalty imposed on the Appellant had no direct relation to the profit made by the Appellant.
10. We have heard the parties and have gone through the record. Our para-wise findings on the issue are as under:
- a) the Appellant's *first* contention that the Appellant was Fund Manager of only two funds, namely, *JS Islamic Fund* and *JS Value Fund*, therefore, only the transactions relating to these two funds should be considered by the Commission, whilst the rest should be taken out of consideration was accepted by the Respondent. The Respondent only considered 14 out of 21 scripts, wherein, the above mentioned two funds were the counterparty to SAJ. The



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second contention of the Appellant i.e. excluding from consideration transactions by SAJ which are in the nature of investment transactions was not accepted by the Respondent, as such, the calculation is based on the inclusion of only those transactions which are related to the aforementioned two funds. Be that as it may, we do not see as to how the penalty is co-related with the profit made by SAJ.

- b) On the issue of quantum of penalty we have been aided by the order of the Appellate Bench in the matter of *Muhammad Hanif Y. Bawany vs. Director (SM)* in appeal no 8 of 2011, wherein, it has been held:

“corporate insiders, in every jurisdiction, face hefty fines and/or prison sentences for trading securities on the basis of inside information. In the United States of America, ‘insider trading’ is punishable by monetary penalties and imprisonment. Reference is made to the case of Securities & Exchange Commission v. Milken, 1990 WL 455346, Fed. Sec. L. Rep. where Mr. Milken pleaded guilty to six counts of insider trading. Mr. Milken was fined 600 million dollars; sentenced to ten years in prison and was permanently barred from the securities industry by US, Securities and Exchange Commission. Reference is also made to the recent case titled U.S. v. Rajaratnam, 1:09-cr-01184, U.S. District Court, Southern District of New York (Manhattan) in which Raj Rajaratnam, the hedge-fund tycoon and Galleon Group LLC co-founder, was found



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guilty of all 14 counts against him in the largest illegal stock-tipping case and faces up to 19 years in prison."

The Respondent has already taken a lenient view in the Impugned Order and imposed a penalty of Rs. 2.5 million only (Rupees two million and five hundred thousand only), whereas, section 15E (1) of the Ordinance provides for penalty which may extend to higher of ten million rupees or three times the amount of gain i.e. Rs 5,841,981 (in the instant case).

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

(Mohammed Asif Arif)
Commissioner (Insurance)

(Tahir Mahmood)
Commissioner (CLD)

Announced on: 15/11/12