



20th May 2013,

SECP Policy Board Members,

Mr. Ashraf M. Wahtra, Deputy Governor of the State Bank of Pakistan (SBP).
Just. Rtd.M. Raza Khan, Secretary, Law and Justice Division;
Mr. Munir Qureshi, Secretary, Commerce Division;
Dr. Waqar Masood, Secretary, Finance Division;
Mr. Tahir Mahmood, Acting Chairman, SECP,

Sub: Allegations of Insider Trading in Azgard Nine limited shares trade by JS GL in 2007/2008, NBP paying Rs 1.75 Billion extra for Azgard/Agritech Shares, SBP allowing \$ 30 Million remittance to Azgard for a brand, and in JSCL by awarding Fee of US \$ 4.2 million to a Director in 2013-Ref: TIP letters dated 10 & 12 April 2013, 9 May 2013 and 18 May 2013 and SECP Replies dated 19 and 26 April 2013

Dear Sirs,

Transparency International Pakistan refers to its letter dated 18th May 2013, whereby TIP has requested 5 Members of the SECP Policy Board to immediately act against all the 38 companies and individuals who were actively involved in the Insider Trading of the Azgard Shares in 2007/2008 under Section 15 & 17 SECP Ordinance 1969.

At the outset, this is to inform the Policy Board Members, that it was only after Transparency International Pakistan took up the complaint of Insider Trading in Azgard Nine limited shares trade by JS Global Capital Ltd in 2007/2008, with SECP on 10th April 2013, SECP started proceedings against 23 companies and individuals under Section 17 of SECP Ordinance.

SECP has not yet taken any action since TIP wrote to SECP on 10th April 2013, (40 days) under Section 15 for recovery of 3 times the illegal gain, against the 38 companies and individuals, and action under Section 17 against remaining 15 companies and individuals. It seems that after the removal of Chairman SECP on 12-4-2013, the Commissioners of SECP have again started delaying tactics, and are not proceeding with the issue as per the orders of the ex Chairman. It is reported to TIP that this perception is being propagated that due to the fact that appointment ex-Chairman has been set aside, all actions taken by SECP during his tenure from 24-12-2001 to 12 April 2013 are also automatically rendered null and void.

Transparency International Pakistan would like to inform the Policy Board members that this is a wrong notion of SECP.

In this regard, TIP would like to refer to the Judgment announced by the full bench of the Supreme Court of Pakistan in the Constitution Petition No 8 & 9 of 2009 comprising of Mr. Justice Iftikhar Muhammad Chaudhry, CJ, Mr. Justice Javed Iqbal, Mr. Justice Sardar Muhammad Raza Khan, Mr. Justice Khalil-ur-Rehman Ramday, Mr. Justice Mian Shakirullah Jan, Mr. Justice Tassaduq Hussain Jilani, Mr. Justice Nasir-ul-Mulk, Mr. Justice Raja Fayyaz Ahmed, Mr. Justice Ch. Ijaz Ahmed, Mr. Justice Ghulam Rabbani, Mr. Justice



Sarmad Jalal Osmany, Mr. Justice Muhammad Sair Ali, Mr. Justice Mahmood Akhtar Shahid Siddiqui and Mr. Justice Jawwad S. Khawaja announced on July 31, 2009, which declared the appointment of Mr. Justice Abdul Hameed Dogar as the Chief Justice of Pakistan was un-constitutional; void ab initio. However, but in the same order, the Court had also ordered that, “ **provided that subject to whatever is contained hereinafter, the said unconstitutional appointment of Mr. Justice Abdul Hameed Dogar as the Chief Justice of Pakistan shall not affect the validity of any administrative or financial acts performed by him or of any oath made before him in the ordinary course of the affairs of the said office.**”

This is to inform the Board Members that though the Supreme Court of Pakistan in its judgment of 12-4-2013, Constitution Petition No. 59 of 2011 and CMAs Nos. 326 and 633 of 2012 and Crl. O. P. 94 of 2012 in Const. P. 59/2011, has set aside the appointing Mr. Muhammad Ali Ghulam Muhammad as Commissioner and Chairman SECP, but has also directed the Policy Board for following taking actions and to submit within 45 days, a report as to the performance of the SECP. **(Annex-A).**

“A copy of this Order shall be sent to each member of the Securities and Exchange Policy Board for action deemed appropriate by said Board in relation to the governance structure and decision making policies of SECP as per requirements of the SECP Act and for consideration on issues of policy-making highlighted by the present petition and for the effective performance of the Board’s functions under the SECP Act, particularly section 21 thereof. The Board having, inter alia, the duty to “oversee the performance of [SECP] to the extent that the purposes of the [SECP] Act are achieved”, shall look into this petition and documents placed on file and after making such further inquiries as may be deemed appropriate by it, submit within 45 days, a report as to the performance of the SECP.”

Transparency International Pakistan request the Policy Board Members, to kindly take immediate action on the above following issues on Azgard Case, as well as other such Insider Trading pending cases which are many, and include all such action taken in the report to be submitted to the Supreme Court on 27th May 2013.

1. Inform National Accountability Bureau to take action under NAO 1999 against the 38 companies and individuals, and Chairman & Commissioners of SECP from 2009 to 2013 for their wilful failure to prevent the grant, or rendition of any undue benefit and favour which they were required to prevent by exercising their authority.
2. Remove Mr. Zafar Abdullah from SECP, as he was fully involved in this crime as CEO of Crosby Dragon Fund, and is reportedly involved as SECP Commissioner in saving his name as well as all the other 37 companies and individuals who were actively involved in the illegal act against *Prohibitive insider trading*, by weakening the SECP criminal case in court of law.
3. Confirm from Evacuee Trust the allegation that TFC of Azgard valued at approx. Rs 1 Billion were sold by the JS Group to Evacuee Trust after April 2008, at four times the market price.
4. Confirm from Bank Julius Baer & Co. Ltd Switzerland the allegation that JS Group were the client for whom the Bank purchased 1,606,688 PICT shares at Rs.



101.59/share on 24 February 2012, whereas after on 30th March 2012, JS Group has a deal to sell their holding of PICT shares to ICSTSI Matitius Ltd, at Rs 150/share.

5. Take action on the loss occurred due to NICL imprudent investment of Rs. 2.00 billion in JS Principal Fund - Rs. 255.243 million on 13 March 2009, immediately after Mr. Muhammad Ayyaz Niazi was appointed as Chairman NICL w.e.f. February 12, 2009. [AGP Audit Report of NICL submitted in the Supreme Court in the **Suo Moto Case 18 of 2010**].

6. Take action against those responsible as Public has suffered losses of billions of rupees due to inside trading , and favoritism worth \$ 4.3 million in one case to the son of Jahangir Siddiqui, Chief of brokerage house Mr. Ali Jahangir.

7. Take action taken against the 38 companies and individuals guilty of inside trading, under Section 15 (A) (4) and Section 15 E, SECP Ordinance 1969;

15 B (4) In addition to compensation payable under sub-section (3), a person contravening the provisions of section 15A shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to three times the amount of gain accrued or loss avoided by such contravention, or with both.

15 E Liability for contravention.—(1) Any person who contravenes the provisions of sub- section (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.

TI Pakistan is striving to have transparency in procedures and Rule of Law in Pakistan, which is the only way to eliminate corruption and have good governance in country.

Yours Sincerely,


Syed Adil Gilani
Adviser

Encl: Copies of Supreme Court of Pakistan in its judgment of 12-4-2013 .

Copy forwarded for taking action under the rules regulations and the mandate to;

1. Muhammad Nawaz Sharif, President , PML N, Lahore,
2. Mr. Imran Khan, Chairman, Pakistan Tehreek-e-Insaf, Lahore,
3. Chairman, NAB, Islamabad
4. Governor, State Bank of Pakistan, Karachi, with request to take action against NBP and JSBL.
5. Registrar, Supreme Court of Pakistan, Islamabad

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present

Mr. Justice Jawwad S. Khawaja
Mr. Justice Khilji Arif Hussain

Constitution Petition No. 59 of 2011 and CMAs Nos. 326 and 633 of 2012 and
Crl. O. P. 94 of 2012 in Const. P. 59/2011.
(Petition under Article 184 (3) of the Constitution)

Muhammad Ashraf Tiwana etc. Petitioner(s)
Versus
Pakistan etc. ... Respondent(s)

For the Petitioner(s): Mr. Afnan Karim Kundi, ASC (in both cases)
Assisted by Barrister Momin Ali Khan (Advocate)

In Const. P. 59/2011:

For respondents-1&3: Mr. Anwar Mansoor Khan, Sr. ASC
Mr. Naveed Akhtar, S.O. Finance Division
For respondents-2,5&6: Mr. Muhammad Akram Sheikh, Sr. ASC assisted by
Barrister Sajeel Sheryar and
Ch. Hasan Murtaza Mann (Advocates)
For respondent-4: Mr. Salman Akram Raja, ASC assisted by
Malik Ghulam Sabir Advocate
Mr. Sameer Khose Advocate
Ms. Aneesa Agha Advocate
Malik Ahsan Mehmood Advocate
Ms. Zainab Qureshi Advocate

In Crl. O.P.94/12:

For respondent-1: Mr. Anwar Mansoor Khan, Sr. ASC
For respondent-2: Mr. Muhammad Akram Sheikh, Sr. ASC
Amicus Curiae: Nemo
For SECP: Mr. Muzaffar Ahmed Mirza, Dir. Litigation.
Date of Hearing: 09.04.2013

ORDER

Jawwad S. Khawaja, J. This petition has raised important questions of public importance relating to the enforcement of fundamental rights guaranteed in Chapter I of Part II of the Constitution. The salient aspect of this petition relates to the functioning and governance structure of the Securities and Exchange Commission of Pakistan (SECP) which is the apex regulator *inter alia*, of the corporate sector and the capital markets of the country.

2. Over the course of several days, we have heard and noted in detail, the submissions of learned counsel representing the parties. For reasons to be recorded we hold, declare and direct as under:-

3. That:-

- (a) the selection and appointment of respondent No. 4 namely, Muhammad Ali Ghulam Muhammad as Commissioner and Chairman SECP does not meet the requirements of the Securities and Exchange Commission of Pakistan Act 1997 (the SECP Act);
- (b) as a consequence, the notification No. SRO 21 (KE)/2011 dated 24th December 2010 appointing Mr. Muhammad Ali Ghulam Muhammad as Commissioner and Chairman SECP is set aside;
- (c) the Federal Government shall, without delay, make appointments to statutory positions in SECP which meet the requirements of the SECP Act including Sections 5, 6 and 7 thereof, in a credible, rigorous, transparent and open manner, through a selection and appointment process undertaken with due diligence and deliberation which manifestly and demonstrably ensures that the appointees meet the requirements of law as enunciated by precedent, including *mutatis mutandis*, the principles of law determined in the case of Muhammad Yasin vs. Federation of Pakistan (PLD 2012 SC 132);
- (d) the insertion of section 5(5) in the SECP Act through the Finance Act 2003 was violative of the Constitution and in particular Article 73 thereof;
- (e) Clause 3(1) of Chapter 11 of the SECP Service Rules (HR Handbook), which allow for termination *simpliciter* (without cause) of employees of SECP, is *ultra vires* the Constitution and *inter alia*, the SECP Act;
- (f) the above Clause must be replaced appropriately by provisions ensuring due process and adherence, *inter alia* to Articles 9, 10A, 14, 18 and 25 of the Constitution and which are consistent with the provisions of the SECP Act ensuring independent and objective decision making without fear or favour, required of an independent regulator;

- (g) the prayer in the petition for striking down the order dated 13.6.2011 terminating the employment of the petitioner is disallowed as not pressed, but without prejudice to his rights/remedies, if any, before a competent forum in accordance with law;
- (h) respondent No.1 (Federation) and respondent No.2 (SECP) shall bear the costs of the petitioner.

4. A copy of this Order shall be sent to each member of the Securities and Exchange Policy Board for action deemed appropriate by said Board in relation to the governance structure and decision making policies of SECP as per requirements of the SECP Act and for consideration on issues of policy-making highlighted by the present petition and for the effective performance of the Board's functions under the SECP Act, particularly section 21 thereof. The Board having, *inter alia*, the duty to "*oversee the performance of [SECP] to the extent that the purposes of the [SECP] Act are achieved*", shall look into this petition and documents placed on file and after making such further inquiries as may be deemed appropriate by it, submit within 45 days, a report as to the performance of the SECP.

5. A copy of this Order shall be sent to the Secretary, Ministry of Finance to enable the Federal Government to remain compliant with the law and legal principles enunciated by this Court, in terms of Article 189 of the Constitution. The Secretary (Finance) shall also look into this petition and documents placed on file (including those filed by the Ministry itself) to examine wrongdoings/shortcomings, if any, within the Ministry and the decision-making processes of the Federal Government under the SECP Act. A report in this respect shall be submitted in Court within 45 days.

Judge

Judge

Islamabad, the

Announced on 12.4.2013.

A. Khatami

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction).

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Javed Iqbal
Mr. Justice Sardar Muhammad Raza Khan
Mr. Justice Khalil-ur-Rehman Ramday
Mr. Justice Mian Shakirullah Jan
Mr. Justice Tassaduq Hussain Jilani
Mr. Justice Nasir-ul-Mulk
Mr. Justice Raja Fayyaz Ahmed
Mr. Justice Ch. Ijaz Ahmed
Mr. Justice Ghulam Rabbani
Mr. Justice Sarmad Jalal Osmany
Mr. Justice Muhammad Sair Ali
Mr. Justice Mahmood Akhtar Shahid Siddiqui
Mr. Justice Jawwad S. Khawaja.

CONSTITUTION PETITION NO. 09 OF 2009

Sindh High Court Bar Association through its Secretary.

....PETITIONER

CONSTITUTION PETITION NO. 08 OF 2009

Nadeem Ahmed Advocate

....PETITIONER

VERSUS

Federation of Pakistan through Secretary, Ministry of Law
and Justice, Islamabad and others.

....RESPONDENTS

For the petitioner:
(Const.P.09/2009)

Mr. Hamid Khan, Sr. ASC.
Mr. Rashid A. Razvi, ASC.
Mr. M. S. Khattak, AOR
Assisted by
M/s Waqar Rana, Waheed Khalid Khan
& Haq Nawaz Talpur, Advocates.

For the petitioner:
(Const.P.08/2009)

Mr. Muhammad Akram Sheikh, Sr. ASC.
Assisted by
Barristers Ms Natalya Kamal &
Syed Shehryar, Advocates

mentioned alleged judgments or any other such judgment and on account of the instruments mentioned in para 21 above, shall be deemed never to have ceased to be such Judges, irrespective of any notification issued regarding their reappointment or restoration;

ii) it is declared that the office of the Chief Justice of Pakistan never fell vacant on November 3, 2007 and as a consequence thereof it is further declared that the appointment of Mr. Justice Abdul Hameed Dogar as the Chief Justice of Pakistan was un-constitutional; void *ab initio* and of no legal effect;

Provided that subject to whatever is contained hereinafter, the said un-constitutional appointment of Mr. Justice Abdul Hameed Dogar as the Chief Justice of Pakistan shall not affect the validity of any administrative or financial acts performed by him or of any oath made before him in the ordinary course of the affairs of the said office;

iii) since Mr. Justice Abdul Hameed Dogar was never a constitutional Chief Justice of Pakistan, therefore, all appointments of Judges of the Supreme Court of Pakistan, of the Chief Justices of the High Courts and of the Judges of the