

Before Commissioner (SMD)

In the matter of Show Cause Notice issued ACM Gold (Pvt.) Limited

Dates of Hearing

September 29, 2020

Order-Redacted Version

Order dated April 6, 2021 was passed by Commissioner (SMD) in the matter of ACM Gold (Pvt.) Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated July 09, 2019.
2. Name of Respondent	ACM Gold (Pvt.) Limited (the "Respondent")
3. Nature of Offence	Alleged contraventions of <u>Section 57, 112, 94 & 104 of the Futures Market Act, 2016 (the "Act")</u> and <u>Section 22 of the Securities & Exchange Ordinance, 1969 (Now Repealed) (the "Ordinance")</u> .
4. Action Taken	<p>Key findings were reported in the following manner:</p> <p>I have examined the written as well as oral submissions of the Respondent and its Authorized Representatives. In this regard, I observe that</p> <ul style="list-style-type: none">i. Crediting of "third party" cheques into trading account of Abdur Rehman was not denied by the Respondent and similarly funds received from other person were returned to Mr. Abdur Rehman. This reflects that Respondent extended services for routing of funds from one bank account to another bank account with a different title.ii. Respondent continued its business without verifying the financial positions and sources of funds of client(s) and Abdur Rehman.iii. The Respondent fail to sought information from the customers introduced and represented by Abdur Rehman to have knowledge of their respective circumstances and investment objectives as envisaged in Section 57 of the Act.iv. Respondent failed to ensure segregation and identification of customers assets of the clients(s) represented by Abdur Rehman in contravention of Section 57 of the Act.

	<p>v. Respondent's internal controls were deficient to identify and report abnormal/unusual transactions at per the requisite policy & procedures in accordance with statutory obligations of the Respondent.</p> <p>vi. The above highlighted factors contributed and supported the illegal deposit taking activity of Abdur Rehman from public on basis of a void agreement(s) for Future contracts/ commodity trades whereby Abdur Rehman along with Tahir Mushtaq through a front company namely; M/S. A&T Consultants (Pvt.) Ltd induced various persons for purported investment/trading in Future contracts/ commodity trades by opening trading account at the Respondent. The aforementioned facilitation to Abdur Rehman by the Respondent could only be possible if Respondent had remained hand in gloves with Mr. Abdur Rehman in his illegal investment advisory & indirect deposit taking activity through layering using the Respondent.</p> <p>vii. Furthermore, in normal course of business, Respondent should not have ignored the authorization of one person i.e. Mr. Abdur Rehman by multiple/different customers for trading in their respective accounts. In the instance case, inducement to invest by opening trading account at the Respondent by Abdur Rehman and Tahir Mushtaq reflects that both Abdur Rehman and Tahir Mushtaq were working/functioning with the connivance and for the benefit of the Respondent by introducing clientele to Respondent's business employing inducement practices.</p> <p>viii. Word 'agent' is defined in section 182 of the Contract Act as "a person employed to do any act for another or represent another in dealings with third person". It will be seen from this section, that no particular formality is required to constitute the agency. The essence of the matter, is that the Principal authorizes the agent to represent or act for him in bringing or to act in bringing the Principal into contractual relationship with a third person. Such authority of agency need not necessarily be in writing but is to be inferred from circumstances in each case. The circumstances and facts observed above indicates that both Abdur Rehman and Tahir Mushtaq were functioning as an agent of the Respondent. Thus, Respondent is also liable for acts of Abdur Rehman and Tahir Mushtaq as envisage in Section 112 of the Act, which is reproduced hereunder:</p> <p><u>For the purposes of this Act, an act, omission or failure of a representative, employee or other person acting for or on behalf of a licensed person within the scope of his office or employment shall be deemed to be the act, omission or</u></p>
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	<p><u>failure of the licensed person as well as of the representative, employee or other person.</u></p> <p>ix. Furthermore, it is evident that from the available record that Respondent concealed its relationship with an associate namely ACM Gold and Forex Trading (Pty) Limited (South Africa) from the Commission. Though during the course of hearing Mr. Irfan Perdesi the Ex-CEO of Respondent admitted that an associated entity of Respondent namely ACM Gold and Forex Trading (Pty) Limited is registered and based in South Africa, but that fact was never disclosed to the Commission despite Commission's letter dated August 07, 2017 to Respondent on the matter.</p> <p>x. In context of allegations of depriving general public from their funds through employment of deceptive devices through course of business which operated as fraud and/or deception and criminal breach of trust, Commission has already referred the matter NAB, which is looking into the matter in details.</p> <p>In view of foregoing, in terms of powers conferred under section 94 of the Act as well as section 22 of the Ordinance, a penalty of Rs. 50,000,000/- (Rupees Fifty Million Only) is hereby imposed on the Respondent on contravention of above-mentioned regulatory framework. Furthermore, I in terms of powers conferred under section 94 hereby also cancel the license of the Respondent in relation to all regulated futures Broker, with immediate effect.</p>
5. Penalty Imposed	Rs. 50,000,000/-
6. Current Status of Order	Penalty not deposited and Appeal has been filed by the respondents.