



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 29 of 2014

1. National Asset Management Company Limited
2. Lt. Gen. (Rtd.)M. Hamid Khan
3. Mr. Saleem Shahzada
4. Mr. Imtiaz Bashir
5. Mr. M. Asim Mustafa
6. Mr. Shafiq A. Khan
7. Hafiz Avais Ghani

...Appellants

Versus

Mr. Shahid Nasim, Executive Director
Specialized Companies Division,
Securities and Exchange Commission of Pakistan.

...Respondent

Date of Hearing 02/04/15

Present:

For the Appellants:

Barrister M. Saad Buttar

For the Respondents:

(i) Mr. Javed Akhtar Malik, Joint Director

(ii) Mr. Zonish Inayat, Assistant Director

ORDER

1. This order is in appeal No. 29 of 2014 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by above stated appellants against the order dated 30/05/14 (Impugned Order) passed by the Respondent.

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National Asset Management Company Limited (NAMCO) is a non-banking finance company registered as a public un-listed company and incorporated under Companies Ordinance 1984 (Ordinance), whereas rest of appellants are current and two ex-directors of NAMCO.

2. The brief facts of the case are that Chief Executive Officer (CEO) of NAMCO resigned with effect from 31/05/13, thereafter, the Respondent vide its letter dated 10/05/13 advised NAMCO to timely propose the name of new CEO, however, NAMCO failed to comply with the requirement contained in Regulation 10(b) and 10(c) of Non-Banking Finance Companies and Notified Entities Regulations, 2008 (Regulations 2008) until issuance of the show cause notice (SCN) dated 07/02/14. Similarly, NAMCO violated the Regulation 10(b) of the Regulations 2008 by not appointing directors after the resignation of Mr. Avais Ghani and Mr. Shafiq A. Khan and until the issuance of SCN, NAMCO did not propose any candidate to fill these casual vacancies.

Chronological Correspondence b/w the Respondent and NAMCO on Appointment of CEO & Directors

Dates and Instructions by the Respondent	Dates and Replies by NAMCO
May 10, 2013 <ul style="list-style-type: none">• Appointment of CEO prior to expiry of May 31,2013	June 18, 2013 <ul style="list-style-type: none">• In process to finalize he suitable candidate
June 25, 2013 <ul style="list-style-type: none">• BOD was advised to Propose name for CEO	June 27,2013 <ul style="list-style-type: none">• Application for appointment of CEO shall be made by July 15, 2013
August 23, 2013 <ul style="list-style-type: none">• BOD was advised that CEO	September 18, 2013 <ul style="list-style-type: none">• NAMCO informed that candidate

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should be appointed latest by September 15, 2013 to avoid enforcement action.	has been shortlisted, however requested time until September 28, 2013. <u>(Said timeline for appointment was not complied)</u>
-----	October 10, 2013 <ul style="list-style-type: none">The Respondent was informed about the resignation of Mr. Avais Ghani from NAMCO BOD.
	January 20, 2014 <ul style="list-style-type: none">The Respondent was informed about the resignation of Mr. Shafiq Ahmed Khan from NMCO BOD.

- It is pertinent to mention here that NAMCO was cautioned by the Respondent vide its letter dated 11/06/13 for not adhering with the timeline for not submitting the application for appointment of directors in terms of provisions contained in the Regulations 2008 and was advised that the Commission had taken a lenient view and, therefore, no action was being taken against NAMCO with a clear warning that such regulatory lapses should not reoccur in future. NAMCO failed to comply with the applicable provisions and requirements of regulatory framework in true letter and spirit.
- NAMCO is managing one closed-end collective investment scheme i.e. NAMCO Balanced Fund (NBF) and one open end collective investment scheme i.e. NAMCO Income Fund (NIF). The certificate holders of NBF resolved and approved conversion of NBF from closed end to open end scheme in meeting held on 31/01/13 and thereafter the Commission vide letter dated 03/05/13 conveyed its approval of conversion in terms of Regulation 65(4) of the Regulation 2008 and

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was explicitly communicated to NAMCO that it should be executed not later than 01/07/13.

- NAMCO on 05/06/13 submitted second supplemental trust deed of NBF for approval, which was approved by the Respondent and NAMCO, was asked to share draft offering document of NBF by 26/06/13, which it failed to comply with. Thereafter, once again NAMCO was advised through email dated 07/08/13 to get NBF registered as notified entity and submit the draft offering document without any further delay. Upon receipt of NBF's draft offering document, NAMCO was intimated the comments and recommendations of the Respondent vide email dated 09/07/13 and it was also emphasized that NAMCO must apply for NBF's registration as notified entity, however, NAMCO failed to proceed for the registration of NBF as notified entity.
- The Respondent vide email dated 18/07/13 asked NAMCO for registration of NBF as notified entity prior to approval of its offering documents. NAMCO instead of registration applied to the Respondent for an extension in timeline for the conversion of NBF into an open end scheme, therefore, the Respondent in good faith granted twenty days extension until 20/07/13, however, NAMCO failed to comply with the requirements. Finally, it was communicated to the Commission by NAMCO vide email dated 04/12/13 that NBF's trust deed was still pending with sub-registrar for registration.

Chronological Correspondence b/w the Respondent and NAMCO on offering Document & Registration of NBF as Notified Entity

Dates and Instructions by the Commission	Dates and Replies by NAMCO
-----	January 31, 2013 • Conversion of NBF into open end scheme approved by certificate holders
May 03, 2013 • Conversion was approved by the	

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<p>Respondent with instruction that effective date should not be later than July 1, 2013 (<i>Not complied by NAMCO</i>)</p>	<p>-----</p>
<p>-----</p>	<p>June 5, 2013</p> <ul style="list-style-type: none"> • NAMCO submitted second supplemental Trust Deed of NBF for approval • Respondent approved and communicated to NAMCO on June 19, 2013.
<ul style="list-style-type: none"> • NAMCO was asked to share NBF draft offering document by June 26, 2013, however, it failed. 	<p>-----</p>
<p>July 8, 2013</p> <ul style="list-style-type: none"> • Through email NAMCO was asked to <ol style="list-style-type: none"> 1. Submit offering document without further delay 2. To get register NBF as notified entity 	
<p>July 9, 2013</p> <ul style="list-style-type: none"> • Draft offering document was returned with comments and recommendations. • NAMCO was asked to apply for NBF's registration as notified entity. • (<i>later on NAMCO submitted offering document after proposed recommendations</i>) 	<p>-----</p>
<p>July 1, 2013</p> <ul style="list-style-type: none"> • NAMCO requested for an extension in time line for conversion, which was granted until July 20, 2013. 	
<p>July 18, 2013</p> <ul style="list-style-type: none"> • NAMCO was asked to share update and to get NBF registered prior to approval of offering document. 	<ul style="list-style-type: none"> • NAMCO failed to register NBF within prescribed time limit of July 20, 2013.
<ul style="list-style-type: none"> • Instead of compliance NAMCO applied for another extension of one month for conversion of NBF. 	<ul style="list-style-type: none"> • NAMCO failed to apprise the certificate holders of NBF regarding the conversion status

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	subsequent to its failure to meet deadline.
<ul style="list-style-type: none">• The Respondent granted in – principle approval of supplemental trust deed on June 19, 2013.• Since then NAMCO has failed to secure registration of NBF as notified entity as required under Regulation 44 of the Regulation 2008.• Instead of registration, NAMCO through various communiques attributed delay in registration since July 16, 2013 to the Respondent	
August 23, 2013 <ul style="list-style-type: none">• NAMCO BOD was advised vide letter to ensure compliance of all pending matters including conversion of NBF latest by September 15, 2013 to avoid enforcement action.	September 18, 2013 <ul style="list-style-type: none">• NAMCO reiterated its stance and committed to resolve the issue without any timeframe.
December 4, 2013 <ul style="list-style-type: none">• Vide email NAMCO was asked to update the Respondent in the issue.	December 4, 2013 NAMCO apprise that NBF's trust deed is still with sub-registrar for registration.
February 7, 2013 <ul style="list-style-type: none">• In result of continuous violations SCN was served.	

7. In view of the foregoing, as a result of continuous violations of Regulation 10(b), 10(c) and 65 of the Regulations 2008, NAMCO and its directors were served with Show Cause Notice dated 07/02/14 (SCN) under section 282J(1)(2), 282D and 282M of the Ordinance. The Respondent being dissatisfied with the reply of Appellants imposed penalty of an amount of Rs.1,000,000 on NAMCO and Rs.100,000 on each of its current directors (Lt. Gen (Rtd.) M. Hamid Khan, Mr. Saleem Shahzada, Mr. Imtiaz Bashir, Mr. M. Asim Mustafa as well as on two ex-directors namely Mr. Shafiq A. Khan and Hafiz Avais Ghani since the violations pertained to their period as directors of NAMCO.

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8. The Appellants have preferred the instant appeal against the Impugned decision on the following grounds:

- a) The Appellants had assured the Respondent that the Appellant had already fulfilled many deficiencies pointed out in the Impugned SCN and have made satisfactory and positive efforts to comply with the Regulation 10(b) and 10(c) and Regulation 65 of the NBFCs and NEs Regulations. The Respondent instead of approving the appointment of directors/CEO and granting reasonable time to the Company for conversion of closed end fund has opted to pass the Impugned Order for imposition of penalties which is not warranted by the law. The failure of the Respondent to approve the appointment of the CEO and directors for over three months resulted in hindering the functioning of the Company. It is a settled law that no one can be prejudiced by an act of a public functionary. It is pertinent to mention that when the Board of Directors of the Appellant company in its meeting dated 26/02/14 appointed and approved Mr. Zaheer Ahmad Paracha as Director and CEO of the Company and submitted with the Respondent for its approval vide letter dated 27/02/14 and 04/03/14, the Respondent did not approve the same. The same happened when Mr. Haroon Abdullah was duly appointed as director of the Company but the Respondent withheld his approval.
- b) The Appellants have not been provided proper hearing opportunity of hearing as required under the law and the principles of natural justice and equity have totally been violated in the instant case. The Impugned Order is based upon surmises and conjectures and same is not based upon sound and cogent reasons, as such is liable to be set aside.

9. The Respondent rebutted the arguments as follows:

- a) The Appellants continued to operate in violation of Regulation 10(b) & 10(c) of the Regulations 2008 and the position of CEO remained vacant for over eight months period despite repeated reminders by the Respondent. Similarly, the Appellants also

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failed to appoint new directors to fill the casual vacancies created on account of resignation by two of its directors on Board. Only after the issuance of the SCN dated 07/02/14, the Board approved the appointment of CEO and directors on 26/02/14. The Appellants also failed to convert NBF into open end scheme in compliance with regulation 65 of Regulations, 2008. The Appellants had also not been able to secure registration of NBF. Moreover, conversion of NBF into an open end scheme within the extended deadline of 20/07/13 and further extension to the Appellants until 15/11/13 for ensuring compliance was not adhered to by the Appellants. Therefore, the Appellants' claim that many deficiencies were already fulfilled and that reasonable time for conversion of the fund was not granted by the Respondent is denied.

- b) The Appellants were provided ample opportunities of being heard before issuance of the Order. The Appellants were provided hearing opportunities on 21/03/14 and 07/04/14 and all these opportunities of being heard were availed by the Appellants through their CEO designate, director and the authorized representative as evidence from the attendance record where they provided their point of view in detail both in verbal and in writing. Therefore, the Appellants' claim that they were not provided hearing opportunities required under the law by the Respondent are baseless.

10. We have heard the parties i.e. the Appellants and the Respondent.

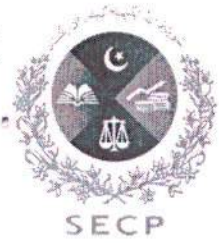
11. The Appellants have admitted their default by stating that they had tried to subsequently remove the deficiencies pointed out in the SCN. We have observed that the approval of the board of directors and CEO was only done after issuance of the SCN. Extension of deadline for conversion of closed end fund into open end scheme was granted by the Respondent; however, it was never acceded to by the Appellants. Further, we have perused the record which confirms that Appellants had been provided hearing opportunities by the Respondent and had fully presented their case. This Bench is of the view that the Appellants without any plausible reasons failed to comply with


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Regulation 10(b), 10(c) and 65 of the Regulations, 2008 and penalty was rightly imposed on the Appellants under section 282J(1) of the Ordinance.

12. In view of the foregoing, the Impugned Order is upheld. The appeal is dismissed with no order as to costs.

(Fida Hussain Samoo)

Commissioner (Insurance)

(Tahir Mahmood)

Commissioner (CLD)

Announced on: **15 DEC 2015**