



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 62 of 2013

First Dawood Investment Bank Limited

.... Appellant

Versus

Executive Director (Securities Market Division), SECP

.... Respondent

Dates of hearing:

09/01/15 and 06/05/2015

Present:

For the Appellant:

Mr. Aziz Nishtar

For the Respondent

Mr. Amir M. Khan Afridi, Director (SMD)

ORDER

1. This Order shall dispose of Appeal No. 62 of 2013 filed under section 33 of the Securities and Exchange Commission of Pakistan Commission Act, 1997 against the Order dated 22/11/13 (the Impugned Order) passed by the Respondent.
2. The brief facts of the Appeal are that the Appellant filed an application (the Application) for grant of certificate of registration as a "Debt Securities Trustee" under Regulation 6(2) of the Debt Trustee Regulations 2012 (the Regulations) on 05/09/12. The review of the Application and the attached documents revealed that;



Securities and Exchange Commission of Pakistan

- a. Licenses granted to the Appellant to undertake the business of leasing and investment finance services have been expired.
 - b. A show cause notice regarding winding up of the Appellant has been served under the Companies Ordinance, 1984 read with Non-Banking Finance Companies Rules, 2003 and Non-Banking Finance Companies and Notified Entities Regulations, 2008.
 - c. Deposit taking permission earlier granted to the Appellant has been revoked.
 - d. The Appellant has been declared as a defaulter by the Pakistan Credit Rating Agency Limited.
3. The Respondent vide letter dated 04/10/12 asked the Appellant to justify as to how it can be granted registration as Debt Securities Trustee. The Appellant replied vide letter dated 29/11/12 and inter alia stated that it has forwarded the Application for renewal of license for carrying on the business of Leasing and Investment Finance Services. The Appellant further stated that it has not been voluntarily taking deposits and its rating has been downgraded by the Credit Rating Agency to "D" despite the fact that reasonable restructuring/settlement has been achieved.
4. In order to decide the matter in just manner, an opportunity of hearing was provided to the Appellant in terms of regulation 8(1) of the Regulations. The hearing was conducted on 05/07/13 which was attended by Mr. Rasheed Y Cinoy, Chief Executive Officer (the CEO) of the Appellant, and Mr. Muhammad Rizwan-ul-Haque, Senior Executive Vice President of the Appellant. The CEO stated that he has joined the Appellant as CEO in September 2012 and is fully involved in Appellant operations including the trusteeship business and the improved performance. The CEO further stated that the Appellant had applied to Respondent for the renewal of Investment Banking License and have not yet received any response. While replying the issue of going concern it was stated that Appellant has settled liabilities worth over Rs.9 billion during the last five years and the



Securities and Exchange Commission of Pakistan

credit rating of the Appellant shall improve once they complete their restructuring. However, the Respondent being dissatisfied with the response of the Appellant refused the Application of the Appellant for registration as a Debt Securities Trustee under Regulation 8(1) of the Regulations.

5. The Appellant has preferred the instant appeal against the Impugned Order on the following grounds:

- i. The Respondent had no jurisdiction to pass the Impugned Order against the Appellant.
- ii. The Impugned Order is based on extraneous parameters which are not provided under the Regulations.
- iii. The Respondent has unlawfully refused the Application on the basis that some past directors are still holding offices. As matter of fact said directors are not disqualified under law to hold office and rejection of the Application on this ground is an arbitrary exercise of power.
- iv. The Respondent has treated non-compliance with equity requirement as a reason of refusal of Application. It is noteworthy that in current economic conditions Securities and Exchange Commission of Pakistan (the Commission) has dispensed with equity compliance.
- v. The matter of renewal of license is pending with the Commission since 2009 and during renewal process an NBFC enjoys all the rights conferred and subject to all the limitations imposed.
- vi. The Respondent has drawn the adverse inference from the filing of complaints, although mere filing of complaint or lodging of FIR does not prejudice the rights or status of any person unless liability is established by the competent authority.
- vii. The Respondent has reached to the conclusion on assumptions that the Appellant has defrauded its own PPTFC holders. This is strange, as matter of fact the Appellant never committed fraud with the investors of PPTFCs.



Securities and Exchange Commission of Pakistan

viii. The Respondent did not bother to address that how fiduciary duties were breached. Therefore, the Respondent has violated the principle of natural justice and Article 10A of the Constitution of Pakistan, 1973.

6. The Respondent has denied he grounds of appeal as follows:

- i. The Commission has delegated the powers of regulations 8(1) of the Debt Securities Regulations, 2012 to the Executive Director/ Head of the Department (SMD), therefore the Respondent has duly exercised its jurisdiction.
- ii. The Impugned Order has been passed within the parameters of the Regulations and the Appellant cannot be allowed to undertake trusteeship business as it is against the interest of the investors and the capital market.
- iii. The Commission in its sixteenth meeting held on 27th, 28th & 29th June, 2012 resolved that restriction be imposed on the following for grant of further licenses:
 - a. Mr. Rafiq Dawood, Ex-CEO/Chairman FDIBL;
 - b. Mr. Ayaz Dawood, CEO – BRR Investments (Pvt.) Ltd. The management company of BRR Guardian Modaraba & Crescent Standard Modaraba and Executive Director of FDIBL;
 - c. Muhammad Shoaib, Ex-Group Director Finance, FDIBL; and
 - d. Companies of First Dawood Group including the AppellantThe names of these directors were specifically mentioned in the minutes so as long as there are still holding offices provides a very solid grounds to reject registration Application.
- iv. Maintaining the minimum equity is extremely essential requirement of the law, however the Appellant has failed to comply with this requirement. The minimum equity requirement for the Appellant was Rs.1.7 million but as on 30/06/13 its equity was Rs.232 million thus there was a shortfall of Rs.1.468 million.
- v. The renewal application of the Appellant is not pending with the Respondent and as per the decision of the Commission explained in point (iii) above, the Appellant



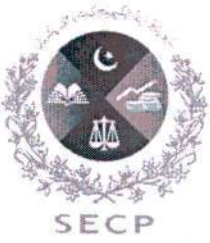
Securities and Exchange Commission of Pakistan

or any of the Companies of First Dawood Group cannot be granted any further licenses under the Regulation 6 of the Regulations.

- vi. The Respondent while considering the Application for grant of certificate of registration was required to take into account the ability of the applicant to safeguard the interest of debt securities holders, the capability to efficiently handle its functions as Debt Securities Trustee and any other matter as deemed necessary.
- vii. The Appellant defaulted in respect of its issued Privately Placed Term Finance Certificates (PPTFC) and subsequently accumulated the said instrument from the secondary market through its related party at a discount, thus defrauded the holders of PPTFCs.
- viii. The management and sponsors of Appellant have not performed their fiduciary responsibilities with due care and in a professional manner and thus management and sponsors have been guilty of breach of trust.

7. We have perused the record and heard the Parties i.e. Appellant and Respondent.

8. Inter alia the record reveals that despite the change of the CEO of the Appellant, the Dawood Family continues to control the Appellant through its Mr. Rafique Dawood as Chairman of the Board of the Appellant and Mr. Ayaz Dawood as Executive Director. It is important to mention that the Commission has barred the above stated persons to be the part of Appellant. Further the Appellant is not compliant with the minimum equity requirement and there was a shortfall of Rs.1.468 million as on 30/06/13. The Appellant has also been declared as defaulter by the Pakistan Credit Rating Agency Limited and the auditor of Appellant in its report annexed to the financial statements for the year ended 30/06/12 has shown doubt on Appellant's ability to continue as a going concern and the auditor has retained the same status in its report dated 30/06/13. Keeping in view the interest of the investors we believe that the Respondent has rightly refused the Application for registration under the Regulations.



Securities and Exchange Commission of Pakistan

9. In the above circumstances we feel that the Application of the Appellant to undertake trusteeship business did not deem appropriate in the interest of the investors and the capital market. We find no reason to interfere with the Impugned Order therefore, instant Appeal is hereby dismissed.
10. Parties to bear their own cost.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Tahir Mahmood)
Commissioner (CLD)

Announced on: **17 DEC 2015**