



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 7 of 2022

M/s. Kashf Foundation

Versus

...Appellant

Executive Director, Adjudication-I

...Respondent

Date of hearing:

January 16, 2025

Present:

For the Appellant:

1. Saira Soofi (Authorized Representative)
2. Mehek Zafar
3. Shehla Sattar

For the Respondent:

1. Asima Wajid, Additional Joint Director, Adjudication Department-I, Adjudication Division, SECP
2. Sohail Qadri, Director/HOD, Adjudication Department-I, Adjudication Division, SECP
3. Naveed Iqbal, Deputy Director, Adjudication Department-I, Adjudication Division, SECP



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ORDER

1. This Order shall dispose of Appeal No. 07 of 2022, filed by Kashf Foundation (the "Appellant") through Ms. Saira Soofi (Authorized Representative), against the Order dated December 30, 2021 (the "Impugned Order") passed by the Director (Adjudication-I) (the "Respondent"), under Section 6(A)(2)(h) of the Anti-Money Laundering Act, 2010 (the "AML Act"), read with Rule 4(1) of the AML/CFT Sanctions Rules, 2020 (the "Rules"), and Regulation 31 of the Securities and Exchange Commission of Pakistan (Anti-Money Laundering and Countering Financing of Terrorism) Regulations, 2020 (the "AML/CFT Regulations").
2. The brief facts of the case are that the Appellant, a company incorporated under Section 42 of the Companies Act, 2017, is licensed to operate as a non-bank microfinance company. The Securities and Exchange Commission of Pakistan (the "SECP") conducted an Inspection ("the Inspection"), during which it was found that the Appellant's screening process for monitoring and identifying potential matches with designated persons and entities under the AML/CFT regulations was deficient. The Inspection identified issues with the database used by the Appellant for screening its customers, nominees, and beneficial owners. As a result, a Show-Cause Notice ("the SCN") was issued to the Appellant on June 3, 2021, detailing the violations of Regulation 25(1)(a) of the AML/CFT Regulations. After reviewing the Appellant's response and hearing arguments, the Respondent imposed a penalty of Rs. 480,000 under Section 6A(2)(h) of the AML Act.
3. The Appellant filed the Appeal on several grounds. Firstly, the Authorized Representative of the Appellant asserted that the Appellant had fully complied with Regulation 25(1)(a) of the AML/CFT Regulations and that its policy aligns with the regulatory requirements.



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The Authorized Representative further emphasized that the Appellant had also implemented an efficient system for screening customers and their associates against lists of proscribed persons, utilizing multiple sources, including those issued by the Ministry of Foreign Affairs (MoFA), NACTA, the Ministry of Interior (MoI), and international lists such as those of the European Union, France, and the OFAC.

4. Additionally, the Authorized Representative contended that the deficiencies pointed out by the Commission were minor and trivial, affecting only a minuscule fraction (0.01%) of the 1.1 million individuals screened by the Appellant. Furthermore, the Appellant asserted that none of the individuals in question matched with proscribed persons on the lists provided by the relevant authorities. The Authorized Representative acknowledged that there were some minor technical glitches, such as omissions in data or discrepancies in CNICs, but argued that these did not cause any financial harm, as none of the identified clients were associated with proscribed individuals. The Authorized Representative further stressed that it immediately rectified any lapses pointed out by the Commission, which it believed demonstrated its commitment for compliance and its good faith efforts to meet the regulatory requirements. Finally, the Authorized Representative contended that the penalty imposed by the Respondent was excessive, as there was no intentional or wilful violation of the law and that the Respondent failed to establish any malafide intent in the Appellant's actions.
5. The Respondent denied the Appellant's claim of full compliance with Regulation 25(1)(a) and emphasized that the Appellant's screening process was deficient. The Respondent highlighted that instances of incomplete, inaccurate, or unreliable data entered into the system hindered the identification of matches with proscribed persons and entities, which



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constituted a substantive violation of Regulation 25(1)(a) and, hence, the penalty was imposed on these shortcomings.

6. The Respondent further refuted the Appellant's argument that the omissions were trivial, asserting that such deficiencies highlighted systemic flaws in the Appellant's screening procedures. The Respondent argued that these flaws prevented the effective identification of certain clients and their associates, who were not being scanned against the relevant proscribed persons' lists.
7. Additionally, the Respondent denied the Appellant's claim that no clients associated with proscribed persons received financial services. The Respondent stated that the Appellant failed to maintain a fully functional system capable of continuously screening clients and associates against all relevant proscribed persons' lists. With regard to the Appellant's technical lapses, such as CNIC discrepancies, the Respondent acknowledged that corrective actions were taken but stressed that these issues revealed significant deficiencies in the Appellant's internal procedures which posed a risk of dealing with proscribed individuals or entities. The Respondent maintained that the penalty imposed was both appropriate and proportionate, given the scale and nature of the violation, particularly in light of the systemic shortcomings in the Appellant's screening process.
8. After careful consideration of the arguments presented by both the Appellant and the Respondent, the Bench finds that the Appellant has made significant efforts to comply with Regulation 25(1)(a) of the AML/CFT Regulations and have implemented a robust screening system, utilizing multiple authoritative sources, and have also promptly addressed any minor technical glitches, such as data omissions and CNIC discrepancies. The Bench acknowledges that these deficiencies were minimal and did not result in



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financial harm or the provision of services to proscribed individuals. Furthermore, the Bench is of the view that the Appellant has demonstrated good faith by taking corrective actions in a timely manner, which highlights a genuine commitment to compliance. The Respondent's claim that the deficiencies were substantial and systemic is noted; however, the Bench is of the view that the violation was not intentional or wilful and did not pose a significant risk.

9. In light of the above, the Bench finds that the penalty of Rs. 480,000 imposed on the Appellant is disproportionate to the nature and extent of the violation. The Bench considers that the Appellant's actions indicate an ongoing commitment to compliance with regulatory requirements and in the absence of malicious intent the penalty should appropriately reflect the minor nature of the deficiencies and the Appellant's proactive steps to rectify the situation.
10. Accordingly, the Bench, hereby, reduces the penalty to Rs. 150,000, considering the Appellant's efforts to comply with the regulations and to promptly address any shortcomings. The Appeal is disposed of in the above terms, with no order as to costs.

(Abdul Rehman Warraich)
Commissioner

(Mujtaba Ahmad Lodhi)
Commissioner

Announced on:

21 FEB 2025