



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 10 of 2018

M/s. Din Capital Limited

...Appellant

Versus

Commissioner (Securities Market Division) Securities and Exchange
Commission of Pakistan

...Respondent

Dates of Hearing:

22/03/19, 16/09/19

Present:

For the Appellant:

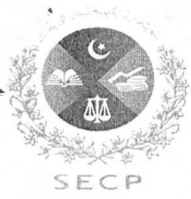
- i. Barrister Rehan Kayani (Counsel)
- ii. Mr. Ahmed Masood (Counsel)
- iii. Mr. Ali Nanji, Chief Executive Din Capital Ltd
- iv. Mr. Ghayas Uddin, Director Din Capital Ltd

For the Respondent:

- i. Ms. Amina Aziz, Director (SMD)
- ii. Ms. Mehwish Naveed, Management Executive (SMD)

ORDER

1. This order is passed in the matter of appeal No.10 of 2018 filed under section 33 of the Securities and Exchange Commission of Pakistan (Commission) Act, 1997 (SECP Act) against the order (Impugned Order) dated 05/10/17 passed by the Respondent.



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2. The brief facts of the case are that the Commission conducted an inspection under section 138 of the Securities Act, 2015 (Securities Act) to ascertain the compliance of Din Capital Limited (Appellant) with the regulatory framework from 01/01/15 to 31/12/16 (Review Period). The inspection report, *prima facie*, revealed that the Appellant was non-compliant with the following:

I. **Operating with an un-approved/un-registered agent and branch office** – Regulation 16(2)(g) of the Securities Brokers (Licensing and Operations Regulations), 2016 (Brokers Regulations) and clause 22 of the Pakistan Stock Exchange Limited (PSX) Rule Book (Rule Book) which requires a securities broker not to operate and have any branch without approval of PSX and clause 4.12 of the Rule Book which requires approval of PSX in case a broker appoints an agent. The following documents/instances were cited as indicating that the Appellant was running a branch office in Hyderabad without making compliance to aforementioned provisions of law and allowed Mr. Imtiaz Hussain Shaikh to work as un-approved/un-registered agent of the Appellant in violation of regulation 16 of Brokers Regulations and clause 22 and 4.12 of the Rule Book:

- a) As per ledger No.1102002, the Appellant paid rent between 01/07/15 and 30/06/16 for its un-registered un-approved Hyderabad branch.
- b) Client Trial Balance of the Appellant showed trading of clients of Hyderabad branch, executed between 01/01/16 and 31/12/16 under the head of Mr. Imtiaz Hussain Shaikh.
- c) General Ledger of the Respondent showed commission payments made to Mr. Imtiaz Hussain Shaikh between 01/07/15 and 30/06/16 under the head of Dealers/Agents Balances.
- d) The visit of inspection team to Hyderabad branch office revealed the following facts:-
 - The Hyderabad branch was located at First Floor, Lehvish Shopping Mall Cantt., Hyderabad,



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- Mr. Imtiaz Hussain Shaikh was dealing as an unaccredited agent of the Appellant,
- e) The following documents/information were found in the alleged branch office:-

- Account Opening Forms of Din Capital Limited,
- Envelopes of Din Capital Limited,
- Central Depository Company (CDC) and trade confirmations of different clients of Din Capital Limited,
- Copies of Zakat Declaration Forms for exemption,
- Multiple computers in the office,
- 8-10 persons were working at the branch.

II. **Non-provision of information to inspection team** – The Appellant did not provide the requisite information/documents to the inspection team/authorized person of the Commission despite repeated instructions in violation of section 138(5) of Securities Act, 2015. The following information/documents were not provided to the inspection team:-

- Loan agreement pertaining to MG Media.
- Ledger of loan to executives (0901004) for the period upto 31/12/16.
- Detail of Receipts/payments to MG Media, nature, detail of agreement, terms and conditions etc. and supporting evidence in respect of transactions appearing in client/general ledgers.
- Details in respect of rent expense appearing in ledger (1102002), details of Mr. Imtiaz Hussain Sheikh and Ms. Farhana Sheikh along with agreements/details of payments.
- Details of cash received from Mr. Junaid dated 06/01/15 and the required evidence.
- Reconciliations along with reasons, proper narrations match with the ageing schedule balance in respect of the following difference



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noted by the inspection team in schedules/trial balance and Net Capital Balance (NCB) of the Appellant as on 31/12/16.

| Description | As per NCB | As per schedule/TB |
|----------------------------------|-------------|--------------------|
| Ageing of trade receivables | 400,901,187 | 486,273,954 |
| Overdue receivables | 107,399,766 | 174,608,775 |
| Securities purchased for clients | 77,305,627 | 115,820,915 |
| Trade payable | 119,415,396 | 221,350,227 |
| Exposure | 112,286,870 | 92,120,630 |

- Details and reconciliation of the following accounts:
 - Receivable from National Clearing Company of Pakistan Limited (NCCPL) amounting to Rs. 24.85 million
 - IPO payable as per NCB Rs 213.86
 - Other liabilities as per NCB Rs 1,580,917
 - SST payable as per NCB Rs 11,037,785
 - Capital gain tax payable: Rs.1,156,626
 - Short-term loan as per NCB Rs 213,510,711
- Details were not provided to the inspection team in terms of following transactions where it was observed that second leg was neither available in general ledger nor in client ledger.

| Voucher No. | Date | Particulars | Amount |
|-------------|------------|------------------|------------|
| PY 1307 | 14-Sept-15 | PAYMENT 21932086 | 10,000,000 |

- It was noted that as per Share Balance Report of 31/12/16, shares in below mentioned instances were appearing as negative balance:



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ANL- AZGARD NINE LTD

| Code and Title | CDC A/c | Balance | Pledged | Net Balance |
|--|---------|---------|---------|-------------|
| 064019 Suleman Khan | S-4242 | 3,000 | 5,000 | (2000) |
| 067016 Syed Muhammad Irfan Pirzada | S-6296 | 500 | 1,000 | (500) |
| 023005, Suleman Khan | S-2402 | 50,000 | 100,000 | (50,000) |

The above instances revealed that the Appellant was prima facie, non-compliant with section 138(5) of the Securities Act.

III. **Use of client Bank Account** - Clause 4.18 of the Rule Book requires that the clients' funds and securities shall not be used by the broker for any purpose other than as authorized by the client in writing in the manner and procedure prescribed by the Exchange and/or CDC.

- The Appellant was non-compliant with the said provisions and made payments from Client Bank account not pertaining to clients.
- The Appellant received amounts to/from clients by involving banks other than client designated banks.
- Review of the Appellant's Client Asset Segregation Statement (CASS) as on 31/12/16 submitted with PSX and back office records revealed the following differences:

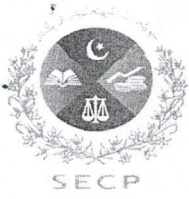
| Head of Account | Balance as per Statement (Amount in Rupees) | Balance as per Trial Balance |
|-----------------|---|------------------------------|
| Trade Payables | 126,150,948 | 159,172,938 |



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| | | |
|----------------------------|-------------|--------------|
| Exposure margins with SROs | 137,138,547 | 106,519,093 |
| Difference | 10,987,599 | (52,653,845) |

- IV. **Received/made payments in cash from/to clients** – Clause 4.24 of the Rule Book require a securities broker to receive/make payments of Rs 25,000/- and above to and from customers in the customer's own bank account and in the name of customers only in the manner as provided in standard terms and conditions of Standardized Account Opening Form (SAOF) prescribed under chapter 4 of the Rule Book. Findings of the inspection team revealed that cash was received from clients and payment in cash was made to the client by the Appellant without proper issuance of receipt and reporting of it to National Clearing House System (NCHS).
- V. **Executed transactions without permission of the client** - Findings of the inspection report revealed that the employees of Appellant traded in 36 accounts on behalf of a client named Mr. Adnan Abid without his formal written authorization in SAOF in violation of Regulation 19 of the Brokers Regulations.
- VI. **No Separate Account for Proprietary Trading and non-registration of director in the Unique Identification Number (UIN) database** – Clause 7.5 of Rule Book states that every broker who engages in proprietary trading shall have a separate account and the account shall be in the name of the broker, agent or an associate person and the title of the account must contain the word "proprietary". Moreover, UIN being maintained by NCCPL, requires the "Category" field, wherein, broker has to specify the clients' status. Findings of the inspection report revealed that the Appellant did not register one of its directors in the UIN database.
- VII. **Non-implementation of KYC and CDD Policies** – Clause 4.17 of Rule Book requires brokers to formulate and implement Know Your Customer (KYC) and



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Customer Due Diligence (CDD) policies in accordance with the said clause and guidelines issued by PSX and the Commission.

VIII. **Non-maintenance of SAOFs and non-availability of the requisite documents –** Regulation 13 of the Brokers Regulations requires that securities broker shall ensure that the information contained in the account opening form is updated, complete and correct and ensure that the mobile number and/or the email address of the customer is registered in the central depository's and clearing company's record as per the regulations of both. Clause 4.17 of the Rule Book also requires that the brokers adopt SAOFs as amended from time to time for all their account holders. Findings of the inspection report revealed that SAOFs of the account holders were not properly filled, updated and requisite documents were not attached.

IX. **Discrepancies in CDC - Sub Account Opening Forms -** Regulations 6.2.2 of CDC Regulations provide that it is broker's responsibility to ensure that all the required particulars are properly filled in Sub-Account Opening Form. Regulations 13(3) of Brokers Regulations also requires that securities broker shall ensure that the information contained in the account opening form is updated, complete and correct and shall ensure the mobile number and/or the email address of the customer is registered in the central depository's and clearing company's record as per the regulations of both. Findings of the inspection report revealed that requisite information was not available in the CDC-sub account opening forms of the clients/sub-account holders.

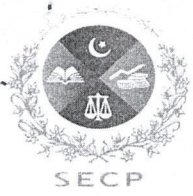
3. Show Cause Notice dated 05/10/17 (SCN) was served to the Appellant under section 150 of the Securities Act. The Appellant through its chief executive was called upon to show cause in writing as to why action should not be taken under section 150 of the Securities Act for contravening various provisions of the regulatory framework mentioned above. The written



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response was submitted by the Appellant during the hearing on 16/10/17 at the Commission's Karachi office.

4. The Respondent dissatisfied with the response of the Appellant suspended the licence of the Appellant as a securities broker in exercise of powers conferred by virtue of section 150 of the Securities Act and imposed a penalty of Rs. 5,000,000/- (5 million) on the Appellant. Moreover, the Surveillance, Supervision and Enforcement Department of Securities Market Division was directed to conduct an investigation of the Appellant in order to ascertain the misuse of clients' funds/shares, deposit taking and benami trading in particular and also confirm compliance/claims of the Appellant in respect of the aforesaid violations. Furthermore, PSX, CDC and NCCPL were directed to proceed further as per their regulatory framework and in light of the Impugned Order.
5. In the Appellate Bench hearing held on 22/03/19, the Appellate Bench was of the opinion that the matter was sub judice before the Honourable Sindh High Court (Court) and the Appeal could not be heard as the Appellant had filed for a stay which had been granted by the Court in November 2017 in Constitutional Petition No.D-7867 of 2017. However, subsequently on 23/05/19, while adjourning the matter, the Court ordered that, 'It is clarified that the stay order granted by the Court in this petition has in no way restrained the Appellate Bench to proceed the appeal which may be heard and decided in accordance with law.'
6. The Appellant has preferred the appeal on the following grounds:
 - (a) The Securities Act envisages four kinds of penalties for violations (1) public reprimand, (2) monetary penalty, (3) suspension and, finally (4) cancellation. The Respondent accepted that the Appellant has rectified all alleged violations and yet proceeded to suspend the licence. The imposition of penalty of suspension is to ensure that a recalcitrant licence holder is given an opportunity to rectify and redress any violation. In the instant case when the Respondent has already conceded



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that the Appellant has rectified all the alleged violations, then to suspend the licence is self-contradictory and unenforceable.

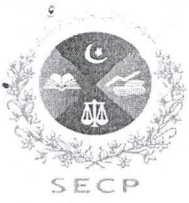
- (b) The penalties imposed on the Appellant, both of suspension and monetary fine, are excessive, disproportionate and unreasonable as the alleged violations relate to compliance matters and not a single violation concerns defrauding clients or causing losses to them. Moreover, most of the alleged violations relate to 2015-16, which have been redressed.
- (c) The relevant Commissioner of the Respondent himself issued Circular No.25 of 2017 dated 31/10/17 (Circular) regarding illegal/unregistered agents and branch offices of securities brokers, pursuant to statutory powers vested in him, directing all brokers to disassociate themselves from unauthorized brokers/agents by 31/11/17. However, in disregard of its own Circular and malafidely, the relevant Commissioner penalized the Appellant for violation of a requirement when the said Commissioner himself had granted amnesty for a period of 30 days from the date of issuance of the Circular. The period of 30 days had not expired at the time of passing of the Impugned Order in case of the Appellant.
- (d) The Impugned Order suffered from patent errors in so far as it finds the Appellant guilty of having unauthorized/unlicensed agents/brokers stationed at its Hyderabad office when the Appellant does not have any office in Hyderabad, whether registered or otherwise. Mr. Imtiaz Hussain Shaikh and seven other individuals were working as freelancers and their services have been discontinued and the Commission was assured that the same will not be repeated in future.
- (e) A lenient view should be taken by the Appellate Bench as the Appellant no longer wishes to continue trading as a broker and is now in the process of surrendering their licence.
7. The Respondent rebutted the arguments on the following grounds:
- (a) The Appellant has misconstrued para 9 of the Impugned Order. The Respondent has acknowledged that the Appellant made some rectifications, however, the Appellant continued to commit some serious violations at the time of passing of the



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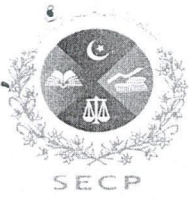
Impugned Order such as misuse of clients' bank account and unauthorized trading in client account. Furthermore, even if some rectifications were made it does not mean the Appellant would be pardoned as the violations committed by the Appellant were of a serious nature which also jeopardised investors' interest, therefore, the licence of the Appellant was suspended until they achieved full compliance of regulatory requirements enshrined in the SCN. The provisions of section 150 of the Securities Act, 2015 empowers the Commission to suspend the licence and impose penalty at the same time.

- (b) The SCN was served on the Appellant after finding considerable evidences against the Appellant. It was revealed in the Letter of Findings that as per ledger No.1102002, the Appellant paid rent between 01/07/15 and 30/06/16 for its unregistered/unapproved Hyderabad Branch. Furthermore, client trial balance of the Appellant also showed trading of clients of Hyderabad branch, executed between 01/01/16 and 31/12/16 under the head of Mr. Imtiaz Hussain Shaikh. Furthermore, General Ledger of the Appellant showed commission payments made to Mr. Imtiaz Hussain Shaikh between 01/07/15 and 30/06/16 under the head of Dealers/Agents Balances. The visit of inspection team to Hyderabad branch office further revealed which the Appellant has also admitted that Mr. Imtiaz Hussain Shaikh and seven other individuals were working as freelancers and their location was Karachi head office and Hyderabad. The Appellant further informed that services of these freelancers have been discontinued and assured the Commission that the same would not be repeated in future. It is imperative to note that to act as an agent of a securities broker is a licensed activity under the Securities Act, 2015 and there is no concept of freelancers in the regulatory framework. Therefore, for the Appellant to allow such individuals to act as agents of the Appellant and operate a branch office without prior registration together with the Appellant's own admission in this regard abundantly established that the Appellant was non-compliant with Regulation 16(2)(g) of the Brokers Regulations and clause 22 and 4.12 of the Rule Book.



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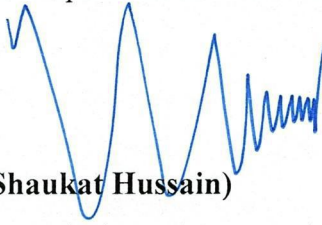
- (c) The Circular was only issued to create awareness among licence holders to comply with the requirements and it did not give any amnesty as it cannot override the requirements of the law. The Appellant has not given any cogent reasons for setting aside the Impugned Order, therefore, the Appeal may be rejected and the Impugned Order upheld.
8. We have heard the parties i.e. the Appellant and the Respondent. The Appellant has argued that the Appellant rectified all alleged violations and yet the Respondent suspended their licence. The Appellant further argued that in disregard of its own Circular, the relevant Commissioner penalized the Appellant when the said Commissioner himself had granted amnesty for a period of 30 days which had not expired at the time of passing of the Impugned Order. Furthermore, the Appellant argued that they do not have an unregistered office at Hyderabad and a lenient view should be taken given the fact that the Appellant now wants to surrender their licence. The Respondent has argued that the Circular was only issued to create awareness among licence holders to comply with the requirements and it did not give any amnesty. Furthermore, the Respondent argued that it was never accepted that violations by the Appellant had been rectified, therefore, the licence was suspended and the Appellant's admission vis-a-vis trading by unauthorized persons and misuse of clients funds abundantly established that the Appellant was non-compliant with Regulation 16(2)(g) of the Brokers Regulations, clause 22 and 4.12 of the Rule Book.
9. We are of the view that the Appellant has committed violations which are of a very serious nature such as misuse of clients' funds and trading by unauthorized persons at an unauthorized branch office in terms of Regulation 16(2)(g) of the Brokers Regulations and Rule 22 of the Rule Book and not all have been redressed. The Appellant could not rebut the evidence presented by the Respondent during the hearing on how an unauthorized branch office was operational in Hyderabad. Furthermore, while it is correct to state that the Circular gave a period of 30 days to all brokers to fully comply with the requirements of the law as licensed brokers, however, SCN was issued to the Appellant on 05/10/17 prior to the Circular



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being issued on 31/10/17, therefore, the Circular is not applicable to the Appellant and the Appellant was required to fully comply with the requirements within the period of 7 days from receipt of the SCN. However, we have also noted that the Appellant has shown the willingness to be fully compliant of the law and want to surrender their licence. Furthermore, we have also perused the letter from PSX dated 25/07/19, wherein, it was stated that, *“In order to proceed in the matter of Surrender/Relinquishment, you will be required to ensure payment of penalty imposed on the Brokerage House through orders issued by the Securities and Exchange Commission of Pakistan and conclusion of proceedings pending in the Appellate Bench of the Commission/Honourable High Court of Sindh.”*

10. In view of the foregoing, we are taking a lenient view as the Appellant no longer wishes to continue trading as a broker and hereby reduce the penalty imposed from Rupees five million to Rupees one million. The Appeal is disposed of accordingly with no order as to costs.



(Shaukat Hussain)

Commissioner (Insurance)



(Farrukh H. Sabzwari)

Commissioner (AML)

Announced on: **10 OCT 2019**