



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 104 of 2017

Switch Securities (Pvt.) Ltd

...Appellant

Versus

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

...Respondent

Dates of Hearing: 23/01/2020, 27/02/2020

Present:

For the Appellant:

Mr. Ijaz Mahmood Chaudhary (Legal Counsel)

For the Respondent:

- i. Mr. Osman Syed, Joint Director (Adjudication-1)
- ii. Mr. M. Akram, Assistant Director (Adjudication-1)

ORDER

1. This Order is passed in the matter of appeal No.104 of 2017 filed under section 33 of the Securities and Exchange Commission of Pakistan Commission Act, 1997 against the Order dated 11/10/17 (the Impugned Order) passed by the Commissioner, Securities Market Division (the Respondent).
2. The brief facts of the case are that the Securities and Exchange Commission of Pakistan (the Commission) conducted review of annual accounts of Switch Securities (Private) Limited (the

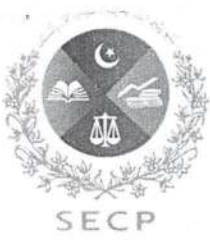


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Appellant) for the year ended 30/06/16. Review of the Accounts revealed that the Appellant has received an amount of Rs.96.995 million under loan agreement from 19 individuals on predetermined return ranging from 9% to 22%. Details are as under:

S. No.	Names of Individuals provided Funds at predetermined Rate	Amount of loan obtained by the Appellant (Rs) in 2016	Rate of return in (% age)
1	Nishat Ahmed	10,745,485	9
2	Muhammad Rashid	3,401,852	17.95 - 18.05
3.	Talat Nishat	12,642,397	18
4.	Syed Imitiaz Husain	11,702,772	15.45 - 17.05
5.	Amreen Mehmood	1,591,314	13.45 - 13.55
6.	Abida Farhat	13,187,080	14.45 - 22.05
7.	Amina Riaz	13,996,227	18.45 - 18.55
8.	Safdar Husain Khan	994,485	14
9.	Nida Mehmood	350,298	13.45 - 13.55
10.	Mehmood Aslam	1,306,775	13.45 - 13.55
11.	Fehmeeda Perveen	202,303	13.95 - 14.05
12.	Jibran Mehmood	1,167,515	16.45 - 16.55
13.	Shahid Mehmood	3,041,917	16.95 - 17.05
14.	Agha Hassan Haider	3,543,151	14.95 - 15.05
15.	Nighat Fatima	2,828,914	12 - 12.5
16.	Syed Mohammad Sohail	3,040,690	16.45 - 16.55
17.	Shabbir Kambaty	2,156,700	13.95 - 14.05
18.	Sameera Mohsin Gillani	10,102,854	13.95 - 16.55
19.	Farhat Arif	992,352	13.95 - 14.05

Copies of agreements between the Appellant and the above-mentioned individuals which were provided by the Appellant vide letter dated 21/03/17 for placement of funds between the



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Appellant and the above-mentioned individuals reflects pre-determined rate of return, tenure and loan amount. Furthermore, review of the trading data for the period from 30/06/15 to 19/06/17 of the Appellant revealed that three (3) out of 19 individuals who provided long term loans to the Appellant amounting to Rs.17.6 million are also customers of the Appellant. The names of such persons are as under:

S. No.	Names of Customers of the Appellant Provided Funds at predetermined Rate	Amount of loan obtained by the Appellant (Rs) in 2016	Rate of Return in (% age)
1.	Nishat Ahmed	10,745,485	9
2.	Muhammad Rashid	3,401,852	17.95 - 18.05
3.	Agha Hassan Haider	3,5431,151	14.95 - 15.05

The above instances revealed that the Appellant by accepting money from its customers and individuals with pre-determined rate of return has, prima facie, raised deposits and contravened section 64(2), 65(2) of the Securities Act, clause 4.4.6 of the Rule Book of Pakistan Stock Exchange (the PSX Rule Book) and Regulation 16(2)(k) of the Securities Brokers (Licensing and Operations) Regulations, 2016 (the Regulations).

3. In light of the findings of the Review, the Respondent served Show Cause Notice dated 19/07/17 (the SCN) to the Appellant under section 150 of the Securities Act, 2015 (the Securities Act). The Appellant was called upon to show cause in writing as to why action should not be taken under section 150 of the Securities Act for the aforementioned non-compliances and was advised to appear before the Respondent on 31/07/17 to explain the stance in person. Thereafter, written response of the Appellant was received on 26/07/17 and on the date of hearing, Mr. Ali Raza Jaffery, Chief Executive Officer of the Appellant appeared before the Respondent in person at the Commission's Head office located in Islamabad and made his submissions.



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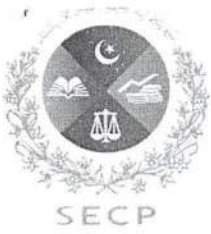
4. The Respondent dissatisfied with the response held that violations of the regulatory framework committed by the Appellant are established and the Appellant by obtaining short term and long-term loans from its customers on pre-determined/guaranteed rate of return has violated the provisions of the Regulations and the Securities Act. Furthermore, the Respondent held that the Appellant was provided ample time to repay the loans obtained from its customers; however, the Appellant did not pay any heed to the direction of the Commission and continued to gain extra time without submitting any justifiable reason. The Respondent, therefore, by virtue of section 150 of the Securities Act imposed a penalty of Rs.1,000,000 and suspended the license of the Appellant as securities broker until the time the Appellant ensured repayment of deposits to its customers and complied with Circular No.20 of 2017 (the Circular). Furthermore, in exercise of the powers conferred under section 12, 31 and 55 of the Securities Act, the Respondent directed PSX, Central Depository Company of Pakistan (the CDC) and National Clearing Company of Pakistan (the NCCPL) to proceed further as per regulatory framework and in light of the Impugned Order.
5. The Appellant preferred the appeal on the grounds that the Impugned Order passed by the Respondent is against the law and facts of the case and, therefore, is not sustainable in the eyes of the law. Furthermore, the Appellant argued that all references made to admissions on behalf of the Appellant in the Impugned Order are a result of miscomprehension on behalf of the Respondent. The Appellant further argued that the very premise on which the SCN was issued is flawed as there was no violation of the Regulations given that the Regulations were prospective in nature and by virtue of the Circular, the cutoff date fixed for compliance was 31/10/17. Furthermore, the Appellant argued that they cannot be punished for violation of a provision of law which is not mentioned in the SCN. In the instant case, neither section 88 of the Companies Ordinance 1984 (the Companies Ordinance) nor section 84 of the Companies Act, 2017 (the Companies Act) were mentioned in the SCN, however, both the said provisions have been relied upon in the Impugned Order. Furthermore, the Appellant argued that there are several references to Mr. Ali Aslam Malik (Sponsor of the Appellant) and discussions and correspondences conducted with him by the Commission with regard to the SCN, however, the authenticity of such discussions and correspondences is neither denied nor accepted as all such



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references are clearly extraneous to the scope of the SCN. Furthermore, it was argued by the Appellant that it is settled law that no person including companies should be singled out or treated differently than others and under Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 (the Constitution) and under Article 25 of the Constitution, everyone is subject to equal protection under the law.

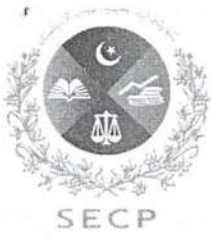
6. The Respondent rebutted the arguments of the Appellant on the grounds that the Impugned Order is a speaking order which has covered the factual and legal aspects of the matter and all written and verbal arguments of the Appellant have duly been considered at the time of passing the Impugned Order. Furthermore, the Respondent argued that Appellant was involved in unauthorized deposit taking by way of extending loans to its customers and such act is in not only in contravention of the Companies Act but the Securities Act as well. The Respondent further argued that as a licensee, the Appellant is only allowed to do business which is allowed under the provisions of the law and section 65(2) of the Securities Act provides that a regulated person that is licensed to indulge in a regulated securities activity shall be restricted to undertake only that activity exclusively. Moreover, Clause 4.4.6 of the PSX Rule Book sets out that the applicant must not be engaged in any business other than that of a broker or other related business which has not been approved by the Commission. Furthermore, the Respondent argued that unlawful deposit taking is prohibited under the primary law i.e. Companies Act and Securities Act and the Appellant had assured at the hearing that it would return the loans obtained from its customers. On the date of hearing on 08/08/17, the Sponsor of the Appellant appeared before the Respondent and requested to allow a one-month period for repayment of deposits. The Sponsor, however, did not settle the deposits raised from the customers and was again asked to appear before the Respondent on 18/09/17 and at the said hearing again requested for further extension of time until 30/11/17 to settle the deposits obtained by the Appellant from its customers. Furthermore, the Sponsor vide letter dated 19/09/17 also made the same commitment in writing to the Respondent that the Appellant would settle the deposits by 30/11/17. Therefore, the Appellant was given ample opportunities for compliance by the Respondent but failed to comply. The Respondent further argued that the Commission never discriminates among licensees while taking cognizance of any violation



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and any deviation from the provisions of the license would be considered a violation under the law. Furthermore, the Respondent argued that there is a prohibition on acceptance of deposits from public under section 88 of the Companies Ordinance which is now substituted with section 84 of the Companies Act, therefore, it is imperative upon the Appellant to comply with the said provisions as required under the relevant law. Furthermore, the Respondent argued that it is also a trite law that mere technicalities should not come in the way of justice.

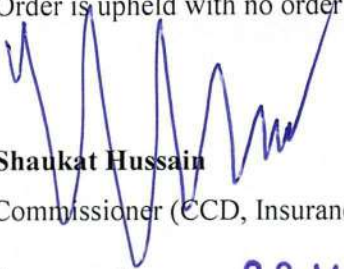
7. We have heard the parties i.e. the Appellant and the Respondent. We are of the view that the Appellant was involved in unlawful acceptance of deposits from its customers on pre-determined/guaranteed rate of return and has violated the said provisions of the Securities Act and the Regulations. The Appellant cannot indulge in any activity which its license does not permit in terms of section 64(2) and section 65(2) of the Securities Act and Clause 4.4.6 of the PSX Rule Book. Furthermore, Regulation 16(2)(k) of the Regulations provides that, “A Securities Broker shall not accept any money from a customer on a promise of predetermined or guaranteed return.” The Appellant’s argument that the Circular gave brokers a time period of 60 days to comply with the Regulations by 31/10/17 and that Regulations only had a prospective effect has no merit whatsoever. We are of the view that the Circular was only issued to warn brokers from further unauthorized deposit taking activity which is illegal and in contravention of the primary law i.e. the Companies Act and the Securities Act, therefore, even before the Circular was issued, the Appellant was under an obligation to ensure that no unauthorized deposit taking take place. Furthermore, in the instant case the SCN was issued prior to the Circular being issued on 30/08/17 and the Appellant had given assurances that they would fully comply and return the loans from customers which they failed to do so. The Appellant’s assurances, therefore, that they would return the loans is an admission on their part that they had violated provisions of the Securities Act and the Regulations. Furthermore, the Appellant’s argument that section 88 of Companies Ordinance and section 84 of the Companies Act were not mentioned in the SCN but relied on in the Impugned Order does not hold any merit as the Impugned Order was passed under section 150 of the Securities Act. We are of the view that that the aforesaid provisions of the Companies Ordinance and Companies Act were

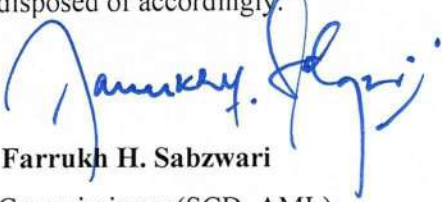


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only mentioned by the Respondent in the Impugned Order to emphasize on the fact that there is a prohibition on acceptance of deposits from public under the relevant law.

8. In view of the foregoing, we see no reason to interfere with the Impugned Order. The Impugned Order is upheld with no order as to costs. The appeal is disposed of accordingly.


Shaukat Hussain
Commissioner (CCD, Insurance)


Farrukh H. Sabzwari
Commissioner (SCD, AML)

Announced on: **08 MAY 2020**