

# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. 1

In the matter of

Appeal No. 110 of 2017

Sunrise Capital (Pvt.) Limited

...Appellant

Versus

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

...Respondent

Date of Hearing: 11/12/18

### Present:

For the Appellant:

i) Mr. M. Azam Khan, CEO Sunrise Capital (Pvt.) Limited

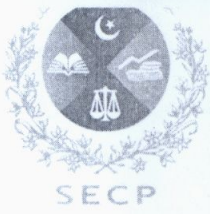
For the Respondent:

i) Mr. Nasir Askar, Director (SMD)

ii) Ms. Mehwish Naveed, Management Executive (SMD)

### ORDER

1. This Order is passed in the matter of Appeal No.110 of 2017 filed under section 33 of the Securities and Exchange Commission of Pakistan (Commission) Act, 1997 (SECP Act) against the order (Impugned Order) dated 14/09/17 passed by the Respondent.
2. The brief facts of the case are that the Commission conducted a compliance review (Review) of regulatory requirements/framework of Sunrise Capital (Pvt.) Limited (Appellant) for the period from 01/01/16 to 30/09/16. The Review revealed the non-compliances of the Appellant inter alia non-provision of information, non-maintenance of proper books of accounts and investors' complaints. The Commission, keeping in



# Securities and Exchange Commission of Pakistan

view the gravity of the foregoing non-compliances, initiated an investigation against the Appellant on 15/02/17 under section 139 of the Securities Act, 2015 (Securities Act) read with the enabling provisions of SECP Act. The investigation report was concluded on 23/05/17. The review of the investigation report prima facie, transpired that the Appellant was non-compliant with the following provisions of the applicable laws:

S. No.	Violations	Regulatory Framework Violated
1.	Non-provision of required information	Section 139 of Securities Act, 2015
2.	Improper books of accounts	Section 79(1) of Securities Act, 2015

Details of these violations and relevant instances are re-produced as under:-

## A) Non-provision of Information:

Section 139(2)(a) of the Securities Act requires that any person who is reasonably believed or suspected by the investigator to have in his possession or under his control any record or document relevant to an investigation or who is believed or suspected or otherwise having such information in his possession or under his control is liable to produce to the investigator any record or document specified by the investigator. The Appellant did not provide complete General Ledgers of the following accounts to investigation team of the Commission despite a notice dated 24/04/17 which was given by the investigation team to the Appellant.

- a) Account titled Sunrise Capital (Pvt.) Limited bearing ledger code ID0005 had activity but the ledger of the same was not provided. Detail of transactions identified during inspection this account are as below:

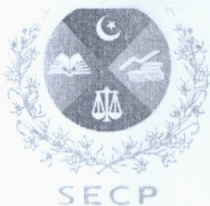


## Securities and Exchange Commission of Pakistan

Voucher Date	Voucher No	Remarks	Counter	Debit	Credit
29-JUN-16	PAYV- 0000029687		C-ID0005	-	4195000

b) Ledger account of Mohammad Mumtaz Khan, bearing ledger code ID0002 had activity but the ledger of the same was not provided. As per trail of balance as on 31/12/16, an amount of Rs 1,263,511 was appearing as receivable from Mr. Muhammad Mumtaz Khan. Details of transactions/activity in this account are as below:

Voucher Date	Voucher No.	Remarks	Counter	Debit	Credit
03-JUL-15	PAYV- 0000023606	Payment to Client	C-ID0002	-	20000
13 JUL-15	PAYV- 0000023787	Paid cheque to Client ID0002	C-ID0002	-	145,000
16 JUL-15	PAYV- 0000023846	Paid cheque to client ID0002	C-ID0002	-	46,000
23 JUL 15	PAYV- 00023877	Payment to client ID0002	C-ID002	-	250,000
24 JUL 15	PAYV- 0000023887		C-ID0002	-	200,000
30- AUG 15	PAYV- 0000025108	PAYMENT REC FROM CLIENT to ID0002	C-ID0002	-	22,779,972

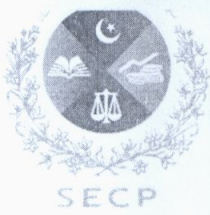


# Securities and Exchange Commission of Pakistan

29-SEP-15	RCDV- 0000017345	REC FROM CLIENT	C-ID0002	-	7,220,742
05-APR-16	RCDV- 0000017845	Received Payment	C-ID0002	3,729,971	-
26-APR-16	RCDV- 0000017965	Rec Cheque from Client ID0002	C-ID0002	725,000	-
27-APR-16	RCDV- 0000017985	Rec Cheque from Client ID0002	C-ID0002	1,059,000	-
29-APR-16	RCDV- 0000018005	Rec Cheque from Client ID0002	C-ID0002	1,495,000	-
04-MAY-16	RCDV- 0000018025	Rec Cheque from Client ID0002	C-ID0002	608,000	-
21-JUN-16	RCDV- 0000018185	Rec from Client Id0002	C-ID0002	750,000	-

## B) Non- maintenance of Proper books of Accounts:

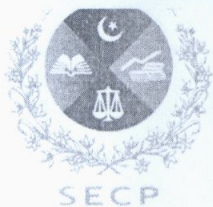
In terms of section 79(1) of the Securities Act, the Appellant is required to keep accounting and other records as prescribed which shall sufficiently explain the transactions and financial position of all business relating to the license and maintain true and fair financial statements which are to be prepared from time to time and shall keep those records in such manner and form as to enable them to be conveniently and properly audited. Examination of the documents provided by the Appellant, prima facie, revealed that proper books of accounts were not maintained by it in accordance with section 79(1) of the Securities Act. Instances are as under:-



## Securities and Exchange Commission of Pakistan

- i. **Improper recording in ledgers-** The Appellant made payments to National Clearing Company of Pakistan Limited/Pakistan Stock Exchange Limited (NCCPL/PSX) but the same were recorded wrongly in ledger account namely “Long Term Loans from Directors” bearing code “CL0801” and such transactions were narrated as either “Loan received from Directors” or “Loan repaid to Directors”.

Voucher Date	Voucher No.	Major Counter	Remarks	Amount	Actual Beneficiary	Remarks of Team
03-DEC-15	PAYV-0000030612	N-CA0614	Loan Re-Pay to Director	2,000,000	PSX	Amount paid to PSX
03-DEC-15	RCDV-0000019447	N-CA0614	Received Loan	2,100,000	Sunrise Capital (Pvt.) Ltd	Amount withdrawn from PSX Cash management System
04-DEC-15	PAYV-0000030613	N-CA0614	Loan Repaid to Director	2,050,000	PSX	Amount paid to PSX
04-DEC-15	RCVD-0000019449	N-CA0614	Received Loan from Director	2,200,000	PSX	Amount withdrawn from PSX Cash management System
07-DEC-15	RCDV-0000019450	N-CA0614		2,000,000	Sunrise Capital (Pvt.) Ltd	Amount withdrawn from PSX Cash management system



## Securities and Exchange Commission of Pakistan

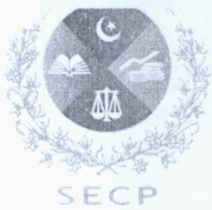
08-DEC-15	PAYV- 0000030620	N- CA0614	Loan Repay to Directors	2,000,000	PSX	Amount paid to PSX
08-DEC-15	RCDV- 0000019453	N- CA0614	Loan Rec from Director	1,600,000	Sunrise Capital (Pvt.) Ltd	Amount withdrawn from PSX Cash management System

**ii. Absence of trade identification-** The client ledgers provided by the Appellant did not contain unique reference to the transactions being recorded in respective client account i.e. voucher no., transaction ID etc. and such discrepancy created an inherent limitation to enable a particular transaction to be identified at any point in time and trace the same from imitation of the order to final settlement.

**iii. Absence of original entry in Books of Accounts-** Perusal of trading data revealed that majority of trades were executed from the Appellant's proprietary account (Code: ID0780, ID0781, ID0782, ID0783). Upon review of said ledger, it transpired that Appellant recorded entries on net basis (i.e. amount which remains outstanding after sale and purchase or vice versa into provided ledgers) and recorded only capital/(Loss) into its books of accounts.

**iv. Wrong record of entries/transactions in NCSS contra account/Existence of omnibus account-** Review of a ledger namely "NCSS contra account" (Code: CL0106) showed that several types of irrelevant entries were appearing in the said account such as trading receipts, payments. Moreover, certain unusual entries involving receipt and payment from and to clients/directors were also posted in the said account.

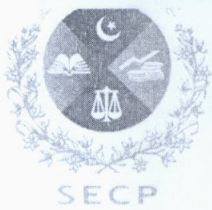
**v. Difference in Net Capital Balance (NCB) audited by two different auditors-** The NCB as of 30/06/16 filed by the Appellant with PSX certified by M/s Zahid Jameel & Co. Chartered Accountants was later disowned by the auditor. Later on, it was certified by RSM Avas Hyder Liaquat Nauman, Chartered Accountants, wherein, it was revealed that the Appellant overstated the NCB by Rs. 19.15 million. Both NCB are re-produced as under:-



# Securities and Exchange Commission of Pakistan

SECP

	Zahid Jamil & Co. Chartered Accountants		RSM Avais Hyder Liaquat Nauman Chartered Accountants		
Particulars	As at June 30, 2016 (Amount in Rupees)		As at June 30, 2016 (Amount in Rupees)		Net Change
Current Assets					
Cash in Hand or in Bank					
Cash in hand	89,000		141,727		(52,727)
Cash at Bank pertaining to brokerage house	18,687,404		76,938		18,610,466
Cash at Bank pertaining to clients	4,027,802	22,804,206	30,202	248,867	3,997,600
<b>Exposure deposits with PSX</b>		1,201,660		1,200,835	825
<b>Trade receivables</b>					
Book value	5,305,731		9,744,692		
Less: Overdue for more than 14 days	(1,463,598)	3,842,133	(4,352,282)	5,392,410	(1,550,277)
<b>Investments in listed securities in the name of broker broker</b>					
Securities on the exposure list marked to market	216,250		216,250		-
Less: 15% discount	32,438	183,812	(32,438)	183,813	-



# Securities and Exchange Commission of Pakistan

SECP

Securities Purchase for clients		-		500,845	(500,845)	
<b>Total Current Assets</b>			<b>28,031,811</b>		<b>7,526,770</b>	<b>20,505,042</b>
<b>Current Liabilities</b>						
Trade Payables		3,943,033		3,970,669		
Less: Overdue for more than 30 days		(3,742,567)	200,466	(3,666,062)	304,607	(104,141)
Other Liabilities			5,583,360		4,133,322	1,450,038
Total Current Liabilities			5,783,826		4,437,929	1,345,897
Net Capital Balance			22,247,985		3,088,841	19,159,144

As per record of the Commission, the Appellant had also been penalized by the Commission for the violations mentioned hereunder:-

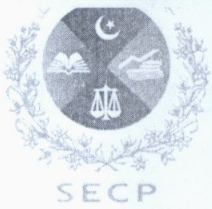
- (i) A penalty of Rs. 300,000/- was imposed on the Appellant vide order dated 12/01/17 in the matter of non-filing of quarterly information through financial reporting system (FRS) for the period of September, 2013 to March, 2016. The Appellant neither deposited the aforesaid penalty nor filed an Appeal before the Appellate Bench in terms of section 33 of the SECP Act.
  - (ii) A penalty of Rs. 300,000/- was imposed on the Appellant vide order dated 28/04/17 in the matter of non-filing of monthly NCB and Liquid Capital (LC) Statements for the month of October 2016 and November 2016 in contravention of sub-regulations 04 of Regulations 06 of the Securities Brokers (Licensing and Operations) Regulations, 2016. The Appellant neither deposited the aforesaid penalty nor filed an Appeal before the Appellate Bench in terms of section 33 of the SECP Act.
3. In light of the above findings/violations, Show Cause Notice dated 25/07/17 (SCN) was issued to the Appellant under section 150 and section 159 of the Securities Act. The Appellant through its Chief Executive was called upon to show cause in writing within seven days as to why penal action should not be taken under section 150 of the Securities Act for contravening various provisions of the regulatory framework. The written response of the Appellant was received on 02/08/17. On 03/08/17, Mr. Muhammad Azam Khan, Chief Executive of the Appellant (CEO) appeared before



## Securities and Exchange Commission of Pakistan

the Respondent through video conferencing from the Commission office located at Karachi and reiterated the submissions made by the Appellant in writing.

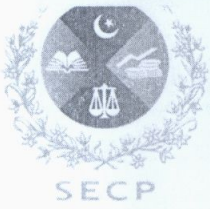
4. The Respondent dissatisfied with the response of the Appellant held that Order of the Honourable Sindh High Court and subsequent proceedings initiated by the PSX are separate and had no bearing on the SCN in hand. In exercise of the powers conferred on the Respondent under section 150(1)(ii) and 150(2) of the Securities Act, the license as Securities Broker of the PSX was cancelled and a penalty of Rs 5,000,000/- was imposed. With regard to recovery of the penalties imposed, vide Orders dated 12/01/17 and 18/04/17 concerned department of the Commission was directed by the Respondent to take up the matter as per prevailing law and procedures. Furthermore, in exercise of the powers conferred on the Respondent under section 12, 31 and 55 of the Securities Act, PSX, Central Depository Company (CDC) and NCCPL were directed to proceed further as per regulatory framework and in light of the Impugned Order.
5. The Appellant preferred the instant Appeal on the grounds that the non-compliance in question was not deliberate. The Appellant's representative, however, argued that the matter is sub-judice and as per the order of Honourable Sindh High Court dated 16/06/17 in Suit No. 2754 of 2016 (Order of the Honourable Sindh High Court), with regard to further action as to the fate of Trading Right Entitlement Certificate (TREC), the matter was to be adjudicated as per the regulations and before taking any coercive action against the shareholders/directors, an approval was to be taken from the Honourable Court. The Appellant's representative further argued that the Appellant has also provided a detailed reply to the SCN and the same should be placed on record for purposes of the Appeal. Furthermore, the Appellant's representative argued that he was unaware of the Review proceedings of the Appellant before December 2016 and the claim verification process has since been completed by PSX as per the Order of the Honourable Sindh High Court and also that all claims have been fully settled. Furthermore, the Appellant's representative argued at the hearing as well as made a written request to the Appellate Bench vide letter dated 18/12/18 to issue a direction to fully unfreeze the bank accounts and also remove names of the Appellant's representative i.e. the CEO and all Directors of the Appellant from Exit Control List (ECL) which have been frozen since 14/09/17 on the recommendations of the Commission.



## Securities and Exchange Commission of Pakistan

SECP


6. The Respondent's representatives rebutted the arguments of the Appellant on the grounds that a company is a separate legal entity distinct from its members and the license of securities brokers was granted to the Appellant and not the shareholders of the Appellant. Furthermore, the Respondent's representatives argued that the reason for cancellation of license was that the Commission conducted Review of the Appellant for the period 01/01/16 to 30/09/16 and the said Review revealed non-compliances of the Appellant which included but were not limited to non-provisions of information, non-maintenance of proper books of accounts and investors' complaints. The Respondent's representatives further argued that on 15/05/17 the Commission, initiated investigation against the Appellant under section 139 of the Securities Act read with the enabling provisions of SECP Act which concluded on 23/05/17 and it transpired that the Appellant was not in compliance of section 139 and 79(1) of the Securities Act, 2015 and had also failed to cooperate with the investigators of the Commission. Furthermore, the Respondent's representative argued that the Appellant had also failed to maintain proper books of accounts as required under the relevant provisions of the Securities Act, 2015. Therefore, keeping in view the omissions on part of the Appellant, its license of securities brokers was cancelled through the Impugned Order by the Respondent. The Respondent's representatives further argued that the Order of the Honourable Sindh High Court has been considered, however, it was observed the Order has no bearing on the SCN served on the Appellant as the Respondent has not taken any action with respect to TREC nor any action has been taken against the shareholders of the Appellant. The Respondent's representatives concluded that the license of the Appellant, therefore, has only been cancelled through the Impugned Order after following the due process.
7. We have heard the parties i.e. the Appellant and the Respondent. The Appellant's representative has argued that he was unaware of the Review Proceedings of the Appellant before December 2016 and that all claims have been settled and no action can be taken against the Appellant as the matter is sub-judice before the Honourable Sindh High Court. The Respondent's representatives have argued that the Appellant was found to be in non-compliance of the provisions of Securities Act, 2015 which resulted in cancellation of license and also the judgment of the Honourable Sindh High Court does not bar the Respondent from taking penal action.



# Securities and Exchange Commission of Pakistan

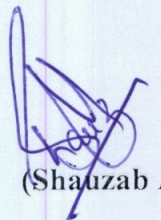
SECP

8. We have reviewed the documents provided to us by the Appellant and the Respondent and concur with the Respondent that the judgment of the Honourable Sindh High Court does not bar the Respondent from taking penal action against the Appellant vis-à-vis cancellation of license for non-compliance. Furthermore, we are of the view that the argument of the Appellant's representative that he was unaware of the Review Proceedings before December 2016 has no bearing on the instant proceedings and Impugned Order which was passed after giving a fair opportunity of hearing to the Appellant's representative. Furthermore, we are of the view that while it has been confirmed by PSX that all claims have been fully settled, it has no bearing on the fact that the Appellant has violated the relevant provisions of the law and has also not complied with earlier orders of the Commission dated 12/01/17 and 28/04/17. Furthermore, the request of the Appellant's representative that a direction be given by the Appellate Bench for unfreezing the bank accounts of the Appellant and Directors and also remove names of the Appellant's representative i.e. the CEO and other Directors from ECL are issues which are outside the ambit of the instant proceedings and the Impugned Order too has not stated anything to this effect. The Appellant, therefore, should pursue issues pertaining to unfreezing of bank accounts and removal of names from ECL at the appropriate forum.
9. In view of the above, the Impugned Order is upheld with no order as to costs and the Appeal is dismissed.



(Tahir Mahmood)

Commissioner (Insurance)



(Shauzab Ali)

Commissioner (SCD)

Announced on: **29 JAN 2019**