



**Securities and Exchange Commission of Pakistan
Appellate Bench Registry**

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 118 of 2021

Mr. Tahir Mushtaq

...Appellant

Versus

The Commissioner (SMD), SECP

...Respondent

Dates of hearing:

August 22, 2024 &
December 26, 2024

Present:

For the Appellant:

Ms. Sara Seerat, Barrister

For the Respondent:

1. Mr. Sohail Qadri, HOD/Director, Adjudication-I, SECP
2. Mahboob Ahmed (Additional Director, Adjudication-I)
3. Mr. Muhammad Akram, Assistant Director (Adjudication-I), SECP

ORDER

1. This Order shall dispose of Appeal No. 118 of 2021 filed by Mr. Tahir Mushtaq (the Appellant) in the matter of ACM Gold (Private) Limited against the Order dated April 6, 2021 (the Impugned Order) passed by the Commissioner, SMD (the Respondent) under Section 104 of the Futures Market Act, 2016 (the Act) and Section 22 of the Securities and Exchange Ordinance, 1969 (the Ordinance).



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2. The brief facts of the case are that the Securities and Exchange Commission of Pakistan (the Commission), upon receipt of complaints, had initiated an investigation under Section 83 of the Act, against Sheikh Muhammad Shabbir (SMS), a futures broker registered with the Pakistan Mercantile Exchange Limited (PMEX), and ACM Gold (Private) Limited (ACM). The investigation revealed that the Appellant, who had maintained a trading account with SMS, had contravened Sections 104(4) and 104(5) of the Act and Section 22 of the Ordinance. It had been established that the Appellant, while serving as the Chief Executive Officer of A&T Consultants (Pvt.) Limited (A&T), had engaged in the provision of futures advisory services without obtaining the requisite license under the Act, thereby acting in contravention of the applicable regulatory framework. Furthermore, the investigation had disclosed that the Appellant had acted as an agent/representative of ACM without obtaining the mandatory registration, in violation of Section 5A of the repealed Ordinance and Section 49 of the Act. The investigation further revealed that, despite not being a licensed futures broker or a registered agent, the Appellant had actively solicited funds from investors for purported investments in a "commodity exchange account" and had executed formal agreements with such investors to that effect. The investigation further revealed that the Appellant in collusion with Mr. Abdur Rehman i.e. A&T Partner, had received and collected investment funds in his own favor, as well as in the favor of SMS and ACM Gold, thereby engaging in activities beyond the scope of permissible conduct under the Act and the Ordinance. In view of the aforesaid findings, a Show-Cause Notice dated July 9, 2019 (SCN) was issued to the Appellant. The Appellant submitted his written reply to the SCN vide letter dated October 16, 2019. Hearing in the matter was conducted on October 5, 2020. The Respondent concluded the proceedings and imposed a penalty of Rs. 186,000,000/- (Rupees one hundred and eighty-six million only) on the Appellant under Sections 104(4) and 104(5) of the Act read with Section 22 of the Ordinance.
3. The Appellant has filed this appeal *inter alia* on the grounds that the Impugned Order relies on conjectures and surmises in the absence of any evidence to support the findings listed at serial numbers "i" through "iv" of paragraph 2 of the Impugned Order. Similarly, there is a disconnect between facts and findings contained in paragraphs 7 and 8 of the Impugned Order. The Appellant submitted that the regulatory mandate of the Respondent is confined to overseeing regulated persons and regulated activities and does not extend to private agreements between private individuals for investment through a regulated person. The Appellant stated that the Impugned Order has been passed without any evidence in support of the basic presumption that the Appellant was a "regulated person" or engaged in "regulated activity" as defined in the



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Act and, in view thereof, the Respondent lacked the authority to issue the SCN and to initiate proceedings against the Appellant, as he was neither a licensed nor a regulated person under any law in force at the relevant time.

4. The Appellant stated that he was tricked into entrusting Mr. Abdul Rehman with funds, without any knowledge whatsoever of his intention to deceive or defraud the owners of such funds. The Appellant argued that the Respondent committed an error in law by failing to consider the legal effect of pending civil suits seeking cancellation of agreements, which were specifically pleaded in the written reply to the SCN submitted on October 16, 2019. The Appellant contended that the imposition of a penalty under the Impugned Order is unlawful, as there was no *mens rea* or intention on his part to deceive his friends, family, or any investors who had entrusted their funds to him, Mr. Abdul Rehman, or A&T. Furthermore, the Appellant asserted that he had only relied on the expertise of Mr. Abdul Rehman, as recorded in the investigation proceedings conducted under Section 139 of the Securities Act, 2015, against ACM on August 04, 2017. The Appellant pleaded that he was not a party to any fraudulent activity but was himself deceived by Mr. Abdul Rehman.
5. The Appellant submitted that the Impugned Order is premised on the incorrect presumption that the funds of the individuals referred to as "investors" were paid into the bank account of A&T. It is this incorrect presumption that has led to the finding that A&T held itself out to be an agent of a regulated person or an investment advisor, and that had the facts pertaining to the said transactions been investigated thoroughly, the Commission would have undoubtedly arrived at the conclusion that it was Mr. Abdul Rehman who defrauded the investors and that A&T was not a party to the transaction.
6. The Appellant argued that the Commission has committed a jurisdictional error by not confronting the Appellant with the material that it intended to use against the Appellant during the investigation or at any stage prior to the passing of the Impugned Order. The Appellant stated that instead of a complete investigation report of 82 pages, only a one page 'Executive Summary' along with two other sheets and the Appellant's statements during the investigation proceedings, were provided. The Appellant stated that the SCN and the Impugned Order merely alleged violations without providing time, dates of alleged violations the list of complaints or the nature of the complaints against the Appellant. The Appellant stated that the Respondent's



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failure to provide the complete investigation report and record has resulted into miscarriage of justice and was a blatant denial of the constitutional right to a fair hearing.

7. The Appellant stated that neither the Act nor the Ordinance applied to the facts of the case, as the Ordinance had been repealed before the commencement of any proceedings against the Appellant and more than four years before the issuance of the SCN. Consequently, the Appellant submitted that the Impugned Order is liable to be *set aside* for being based on erroneous presumptions, misapplication of law, and failure to consider the factual and legal submissions advanced by the Appellant.

8. In response to the submissions of the Appellant, the Respondent *inter alia*, submitted that;

i. The Commission, upon receipt of complaints, had initiated an investigation under Section 83 of the Act against Sheikh Muhammad Shabbir (SMS), a futures broker registered with the Pakistan Mercantile Exchange Limited (PMEX), and ACM Gold (Private) Limited (ACM). The investigation revealed that the Appellant, who had maintained a trading account with SMS, had contravened Sections 104(4) and 104(5) of the Act and Section 22 of the Ordinance. It had been established that the Appellant, while serving as the Chief Executive Officer of A&T, had engaged in the provision of future advisory services without obtaining the requisite license under the Act, thereby acting in contravention of the applicable regulatory framework. Furthermore, the investigation had disclosed that the Appellant had acted as an agent/representative of the ACM without obtaining the mandatory registration, in violation of Section 5A of the repealed Ordinance and Section 49 of the Act. The investigation further transpired that, despite not being a licensed futures broker or a registered agent, the Appellant had actively solicited funds from investors for purported investments in a "commodity exchange account" and had executed formal agreements with such investors to that effect. The investigation further revealed that the Appellant, in collusion with Mr. Abdur Rehman i.e. A&T Partner, had received and collected investment funds in his own favor, as well as in the favor of SMS and ACM Gold, thereby engaging in activities beyond the scope of permissible conduct under the Act and Ordinance. The Respondent further argued that;

a. The Appellant admitted that he, along with Mr. Abdur Rehman, formed a company with the name and style "A&T Consultants (Private) Limited", wherein the Appellant was acting as Chief Executive Officer. Further, as per



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his signed statement furnished to the investigation team, it was admitted that A&T collected cheques (from various persons/investors) issued in favor of ACM and signed investment consultancy/advisory agreements with those investors.

- b. The Appellant as CEO of A&T executed above-referred agreements for providing regulated activities of a futures advisor and future broker, to the public/investors without a legal mandate and in contravention of Section 47 of the Act. In this regard, reference can be made to Section 2(23) & Section 2(23) of the Act, where the terms future advisor and future broker are defined.
- c. The existence of a relationship between the Appellant and Mr. Abdur Rehman for a common gain cannot be denied as both used A&T for this purpose and induced various persons for purported investment/trading in future contracts/ commodity trades by opening trading accounts with ACM and SMS. Thus, both played the role of a future broker and also acted as an agent of ACM Gold & SMS. The circumstances and facts observed above, indicates that both Abdur Rehman and the Appellant were functioning as agents and representatives of ACM & SMS, in contravention of Section 5A of the Ordinance (Now Repealed) and Section 49 of the Act, which requires statutory registration for the said role(s), which attracts the penal provision of Section 104(4) of the Act and Section 22 of the Ordinance (now repealed).
- d. The available record reveals that by crediting the cheques of induced investors into trading accounts of Mr. Abdur Rehman maintained at ACM Gold (Private) Limited & SMS, funds of various persons/induced investors, were routed from their respective bank accounts to the bank account of Mr. Abdur Rehman.
- e. The Appellant and Mr. Abdur Rehman undertook indirect deposit-taking activity through placement of funds, layering and extraction by using trading accounts maintained at ACM & SMS, while exploiting public/induced investors on the basis of void agreement(s) for future contracts/ commodity trades.
- f. The Appellant's contention that A&T was the brain-child of Mr. Abdur Rehman, is not tenable and is only to disassociate himself from his partner and to shift blame on all wrongdoings done by both of them in together and organized manner by misusing platform of A&T. Further, the submission that Appellant's claim is against Mr. Abdur Rehman and the amount of Rs. 317



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million belongs to the Appellant and his family and friends also reflects that he even lured/induced family and friends to invest through him in an unregulated manner, which is against the provisions of the Act as well as the essence of the SECP AML Regulatory framework made under the AML Act. It appears from the foregoing that filing a claim of Rs. 317 million, is a deceitful effort on part of the Appellant, to give false impression to his family and friends (induced by him for trading in futures contracts) that he is innocent and the scam/fraud is done only by Mr. Abdur Rehman. Being shareholders and directors of A&T, a vehicle used to induce public/investor, both the Appellant and Abdur Rehman are sailors of the same boat.

- g. It is evident from all above that the Appellant is involved in fraud, deceit and deliberate disregard of the regulatory requirements and liable to penal action under 104(5) of the Act.
- h. In the context of allegations of depriving the general public from their funds through employment of deceptive devices through the course of business which operated as fraud and/or deception and criminal breach of trust, the Commission has already referred the matter to NAB, which is looking into the matter in detail.
- ii. The Respondent argued that the Impugned Order is fair and has been passed after due consideration of the facts of the case, and non-compliance of the provisions of the law by the Appellant is established. The Impugned Order itself is a speaking Order. The Respondent further stated that, as per settled legal principles, the Commission was required to invoke provisions of the repealed law because at the time of violations, such law was in force. In view thereof, the assertion raised by the Appellant that the Respondent cannot invoke the provisions of the Ordinance is incorrect.
- iii. The Respondent submitted that the referred civil suits and decree were not relevant to the matter adjudicated through the Impugned Order. Furthermore, the referred suit and decrees have no direction or order to restrain the Commission from performing its regulatory role. Lastly, the Respondent argued that the Impugned Order is fair and has been passed after due consideration of the facts of the case and the established non-compliance of the Law by the Appellant.



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9. The Appellate Bench (the Bench) has meticulously examined the facts of the case and the submissions of both parties. The Bench observes that the Impugned Order simultaneously invoked Section 104 of the Act, and Section 22 of the Ordinance, without drawing any clear legal distinction between the two. The Impugned Order does not specify whether the penalty of Rs. 186 million was imposed under the Act, or the repealed Ordinance. This lack of clarity is particularly material because the quantum and nature of penalties under both laws differ, and each law prescribes distinct legal procedures and requirements for enforcement. Section 124 of the Act, clearly stipulates:

"The Securities and Exchange Ordinance, 1969 (XVII of 1969) shall, hereinafter called as repealed Ordinance, stand repealed from the date of coming into force of this Act or any part of this Act."

10. The Bench is of the view that it is evident that upon the coming into force of the Act, the Ordinance ceased to be operative on June 15, 2016. Hence, reliance on a repealed law in conjunction with an extant statute, without delineating the temporal application of each, reflects a fundamental legal infirmity in the Impugned Order. The Bench holds that where two distinct statutes are referred to, it is incumbent upon the adjudicating authority to clearly identify the violations under each law, the specific time period during which the violations allegedly occurred, and the corresponding penal provisions under which liability is being imposed. The maximum quantum of penalty under Section 22 of the Ordinance was Rs. 50 million, whereas the maximum penalty under Section 104(5) of the Act was increased to Rs. 100 million. Therefore, it becomes crucial for the adjudicating authority to establish the timeline of alleged non-compliances and invoke the relevant provision applicable at the time the offence was committed. Failure to do so results in legal uncertainty and contravenes Article 12 of the Constitution of the Islamic Republic of Pakistan, 1973, which provides:

"No law shall authorize the punishment of a person for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed."

This constitutional safeguard mandates that a person cannot be penalized retroactively or beyond the limits of the law as it stood at the material time. The absence of temporal linkage



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between the alleged offences and the specific statutory provisions applied renders the Impugned Order legally unsustainable and violative of the fundamental rights guaranteed to the appellant.

11. The Bench further notes that the investigation report, on which the Impugned Order is substantially based, was not provided to the Appellant. The SCN served on the Appellant included only an executive summary and two annexures, without furnishing the full report that formed the basis for the allegations. The Appellant was thereby deprived of an effective opportunity to defend himself against the specific claims made in the SCN and subsequently affirmed in the Impugned Order. The right to due process is a fundamental right guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, which states:

"For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process."

12. It is the consistent view of this Bench that investigation reports are integral to the due process, and in all adjudicatory proceedings, such reports must be shared with the accused party. Failure to do so deprives the individual of a fair opportunity to contest the findings, rebut the evidence, and properly respond to the allegations.
13. The Bench further observes that the Impugned Order records serious findings including that the Appellant solicited funds, executed advisory agreements, and caused investor funds to be credited into trading accounts maintained with regulated entities. However, the Bench observes with concern that no supporting material evidence, such as copies and numbers of the alleged cheques, agreements, transaction records, or documentary proof, was annexed with the SCN or relied upon in the Impugned Order itself. It is a settled principle that findings must be supported by credible evidence. Where findings of fact are not corroborated by the material on record, the order becomes vulnerable to challenge on the ground of being perverse or speculative. Mere assertions without documentary substantiation cannot form the basis for penal action.
14. Moreover, except, verbal assertions, the Respondent, neither in the SCN/Impugned Order nor during the proceedings before the Bench, produced any evidence to establish alleged violations committed by the Appellant. In view of the foregoing defects and breaches of legal and constitutional safeguards, the Bench is of the considered view that the Impugned Order;



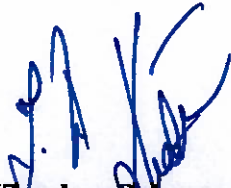
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- a. Is based on an uncertain and ambiguous application of law, without clearly identifying the statutory regime under which the penalty has been imposed;
- b. Has been passed in violation of the due process, owing to the non-provision of the investigation report to the Appellant;
- c. Is unsupported by material evidence to establish alleged violations, and therefore lacks the evidentiary foundation necessary for a valid determination.

15. Accordingly, both the Impugned Order and the SCN are *set aside*, however, the Respondent may initiate *de novo* proceedings by issuing a fresh SCN, if the investigation report has sufficient substance to implicate the Appellant. The *de novo* consideration/SCN/Order should be in accordance with law and after providing the Appellant;

- a. a complete copy of the investigation report,
- b. an opportunity to respond to the evidence implicating him, and
- c. a clear specification of alleged violations under the applicable legal framework.

16. The order has been passed without any costs.


(Zeeshan Rehman Khattak)
Commissioner


(Akif Saeed)
Chairman/ Commissioner

Announced on:

09 DEC 2025