

Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. 1

In the matter of

Appeal No. 02 of 2017

M/s. Din Capital Limited

...Appellant

Versus

Executive Director,
Securities Market Division,
Public Offering & Regulated Persons Department,
Securities and Exchange Commission of Pakistan

...Respondent

Dates of Hearing: 11/12/18, 22/03/19, 28/03/19

Present:

For the Appellant:

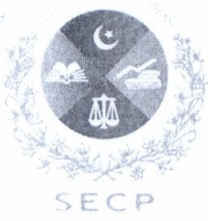
- i. Mr. Ali Nanji, Chief Executive Din Capital Ltd
- ii. Mr. Ghayasuddin, Director Din Capital Ltd
- ii. Mr. Rehan Kayani, Counsel

For the Respondent:

- i. Mr. Nasir Askar, Director (SMD)
- ii. Mr. Adil Anwar, Director, Adjudication (SMD)
- iii. Ms. Mehwish Naveed, Management Executive, Adjudication (SMD)

ORDER

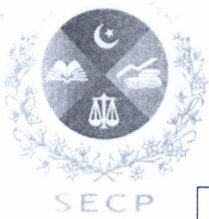
1. This Order is passed in the matter of appeal No.02 of 2017 filed under section 33 of the Securities and Exchange Commission of Pakistan (Commission) Act, 1997 (SECP Act) against the order (Impugned Order) dated 03/10/16 passed by the Respondent.



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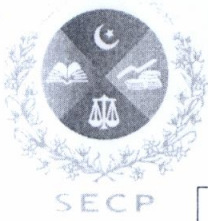
2. The brief facts of the case are that vide Order dated 31/10/15, the Commission in exercise of its powers under section 6(1) of the Securities and Exchange Ordinance, 1969 (Ordinance) read with rule 3 and rule 4 of the Stock Exchange Member (Inspection of Books and Records) Rules, 2001 (Inspection Rules) ordered an onsite inspection of the books and records required to be maintained by Din Capital Limited (Appellant) during the period from 01/07/14 to 30/06/15. The inspection team informed on 01/04/16 that the Appellant did not provide the requisite information and documents. The non-provision of information and documents placed a significant limitation on the inspection team's ability to assess the compliance status of the Appellant with the applicable regulatory framework. The Commission vide letter dated 27/04/16 advised the Appellant to explain its position with regard to non-provision of information to the inspection team. The Appellant vide letter dated 02/05/16 explained its position and submitted certain additional information. Examination of the information submitted by the Appellant vide its letter dated 02/05/16 revealed that the following information was still outstanding:

| Information requested by the inspection team | Observation |
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| Clients Securities Balance report, as extracted from back office Records, showing position as at 30/06/15 (Not from CDCPL) along with reconciliation of difference, if any, between securities balance as per back office and that of CDCPL. | Hard copy of back office record was provided, no reconciliation was provided as required by the inspection team. |
| Details of profits earned on utilized funds of clients during the period from 18/03/15 to 30/06/15. | Only date and amount was provided but no further evidence was provided. |



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| Reason/supporting evidence of the selected instances of the payments and receipts appearing in the ledger account title "JS Bank Client Account" required vide email dated 18/12/15 | Copies of few cheques were received. Reasons/supporting of the selected evidence was not provided. |
| Regulation 22.2(g) of Rule Book requires Brokers to provide branch-wise list of employees, along with their CNIC and residential addresses list submitted to the Exchange during the period from 01/07/14 to 30/06/15 | No reply or response was provided. |
| Phone records and trade confirmations Memo along with courier receipts of the attached trades required vide email dated 16/12/15 | Hard copy of trade confirmations of few transactions has been provided. However, no response received with regard to telephone recording in respect of selected transactions. |
| Proper receipt and proof of immediately reporting the same with the exchange in respect of cash dealings. | No response was provided. |
| CDC balance and custody shares valuation Report of clients | Custody Shares Valuation Report of clients was not provided, only copy of CDC balance report of 4 clients provided. |
| Information partially provided without any supporting evidence (Explanation with documentary support of following): a. The team has noted that entries are booked into clients account | No response was provided. |



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| <p>with the description “IPO PROFIT REV/CASH EXP. DEMAND”.</p> <p>b. The team has noted that a client account title bears words “Sukkur Branch”. It is clarified that as per exchange records Respondent don’t have any branch at Sukkur.</p> <p>c. Many of Clients has “C/O” in their titles</p> | |
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3. Show Cause Notice dated 22/07/16 (SCN) was served on the Appellant under section 22 of the Ordinance and rule 8 of the Broker Rules. The Chief Executive Officer of the Appellant vide letter dated 04/08/16 filed written response to the SCN. Furthermore, Mr. Ali Asghar Nanji (Chief Executive Officer), Mr. Muhammad Ghayasuddin (Director) and Mr. Muhammad Waqas Ashraf (Chief Financial Officer) of the Appellant attended the hearing on 05/08/16 on behalf of Appellant through video conferencing from Commission’s regional office, Karachi.

4. The Respondent dissatisfied with the response of the Appellant held that non provision of information/documents to the inspection team by a regulated and licensed entity is a serious matter as it hampers the ability of the Commission to ascertain the compliance level of the entity with the regulatory framework. The Respondent held that the Commission does not expect such a conduct from its regulated entities and keeping in view the seriousness of the issue, the Commission could have suspended the registration of the Appellant. However, taking into account the compliance history of the Appellant coupled with the assurance given to comply with the regulatory framework in letter and spirit in future, in exercise of powers conferred under section 22 of the Ordinance, a penalty of Rs 500,000/- was imposed on the Appellant by the Respondent. The Appellant was directed by the Respondent to ensure compliance with regulatory framework in letter and spirit as any non-compliance in future



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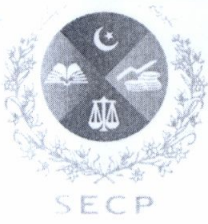
may result in suspension or cancellation of its registration and the inspection team was also directed to commence afresh onsite inspection of the Appellant. The Appellant was further directed by the Respondent to extend full cooperation and provide the requisite information and necessary record, within the time frame as stipulated by the inspection team.

5. The Appellant preferred the instant appeal on the following grounds:

- a) The Appellant being compliant of all the orders and directions of the Commission has been furnishing the requisite information and documents to members of inspection team and the delay was inadvertent. The Appellant on 02/05/16 furnished the reply and submitted all the requisite information in accordance with directives of the Commission.
- b) The Respondent on one hand admitted that the compliance history of the Appellant was good and that the Appellant had given assurance to comply with the regulatory framework in letter and spirit in future, yet the Respondent pursuant to powers conferred on him under section 22 of the Ordinance imposed penalty of Rs 500,000/- on the Appellant which was not justified.
- c) The Respondent has erred in considering the facts available on record as neither warning nor adverse remarks by inspection team came to the knowledge of the Appellant nor lenient view has been taken in this particular case as penalty of Rs 500,000/- was imposed.
- d) The Appellant is also planning to surrender TREC as they are no longer interested in continuing with the brokerage business. The Impugned Order is, therefore, liable to be set aside.

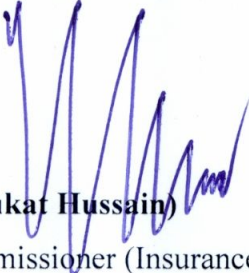
6. The Respondent rebutted the arguments of the Appellant on the following grounds:

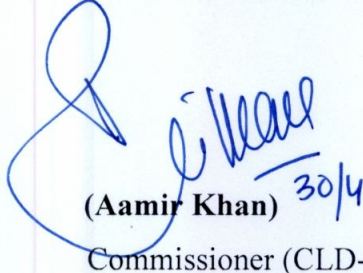
- a) The inspection team sought a total of 30 documents from the Appellant out of which 19 were sought through pre-inspection letter dated 03/09/15 and remaining 11 were sought through emails dated 15/12/15, 16/12/15, 18/12/15 and 23/12/15. The inspection team issued the final reminder to the Appellant on 13/01/16 with regard to the information not provided by it.



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- b) The inspection team informed the Commission on 01/04/16 that the Appellant had still not provided the requisite information and documents to it. The Commission vide letter dated 27/04/16 advised the Appellant to explain its position with regard to non-provision of information to the inspection team. The Appellant provided some additional information but still failed to provide complete information in response to the letter. Therefore, SCN was issued by the Respondent. Non-provision of information and documents to the inspection team by a regulated and a licensed entity is a serious matter and the delay of several months may hamper the ability of the inspection team of the Commission to ascertain the compliance of the entity with the regulatory framework. Therefore, considering all the facts and circumstances of the case, a penalty of Rs 500,000 was imposed on the Appellant.
7. We have heard the parties i.e. the Appellant and the Respondent. The Appellant has argued that any delay in the provision of information was inadvertent, therefore, a lenient view should be taken and Impugned Order set aside. The Respondent has argued that the delay in provision of information by the Appellant hampered ability of the inspection team to carry out the inspection, therefore, penalty was rightly imposed on the Appellant.
8. We are of the view that since the Appellant has accepted default and also belatedly provided the information which was required for inspection, taking a lenient view the penalty imposed by the Respondent is reduced to Rs 100,000 from Rs 500,000 with no order as to costs.


(Shaukat Hussain)
Commissioner (Insurance Division)


(Aamir Khan) 30/4
Commissioner (CLD-CSD)

Announced on: **30 APR 2019**