



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 20 of 2019

Azee Securities (Pvt.) Limited

Appellant

Versus

The Commissioner, (SMD), SECP, Islamabad.

Respondent

Date of hearing:

October 10, 2019

Present:

For Appellant:

Mr. Ghazi Naseem, Manager Compliance

For Respondent:

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

ORDER

1. This Order shall dispose of Appeal No. 20 of 2019 filed by M/s. Azee Securities (Pvt) Limited (the Appellant) against the Order dated April 8, 2019 (the Impugned Order) passed by the Commissioner-SMD (the Respondent) under 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (the SECP Act) read with Section 150 the Securities Act, 2015 (the Act).
2. Brief facts of the case are that the Appellant is a Trading Rights Entitlement Certificate holder of the Pakistan Stock Exchange Limited (PSX) and licensed as a securities broker under the Act. The Joint Inspection Team of PSX, Central Depository Company and National Clearing Company of Pakistan Limited (the Inspection) conducted an inspection of the Appellant to assess its compliance with the regulatory requirements contained in the Securities and Exchange Commission of Pakistan (Anti



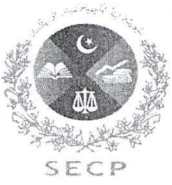
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Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the Regulations). The Inspection, *inter alia*, revealed the following:

- i. Non maintenance of consolidated list of its clients risk categorization.
- ii. The Anti Money Laundering and Countering Financing of Terrorism (AML&CFT) policy of the Appellant did not meet the requirements of the Regulations.
- iii. Non-establishment of internal audit function.
- iv. The Respondent had not:
 - a. conducted customer due diligence (CDD) of thirteen (13) clients;
 - b. obtained evidence of source of funds of two (2) clients;
 - c. categorized risk rating to three (3) clients; and
 - d. established beneficial ownership of three clients.
- v. Non-development of ongoing mechanism to ensure that the transactions were consistent with its knowledge of the customers.
- vi. Failure to report cash transaction (CTR) of Rs.2 million and above to the Financial Monitoring Unit (FMU).

3. In light of the above alleged violations, the Respondent issued a Show Cause Notice dated February 7, 2019 (the SCN) to the Appellant. The Appellant submitted a written reply to the SCN on February 28, 2019 and hearing in the matter was held on March 7, 2019. However, being dissatisfied with the response, the Respondent imposed a penalty of Rs. 850,000/- (Rupees eight hundred fifty thousand) on the Appellant under section 40A of the Act.

4. The Appellant has challenged the Impugned Order *Inter alia* on the grounds that the Respondent had failed to appreciate the Appellant's arguments and explanations given in reply to the SCN. The Appellant has taken the plea that client risk assessment requirement was met after the issuance of SECP's guidelines 2018 and client compliance assessment and risk assessment report was also submitted on November 30, 2018. The Appellant stated that AML/CFT policy was revised as per the requirements of the Regulation and submitted to the Respondent along with the board resolution. The Appellant has further taken the stance that it had established an internal audit function as per the requirement of the Regulations and submitted an internal audit report for 3QFY ending March 31, 2019. The Appellant stated that it is carrying out CDD as per the requirements of the Regulations and has placed appropriate mechanism for ongoing monitoring of CDD, however, the Respondent had highlighted the



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deficiencies of the accounts which, were opened prior to the Regulations. The Appellant contended that even prior to the Regulations, it had been using cash reporting window of NCHS for reporting. Furthermore, they stated, the Respondent had taken a sample of the cash transactions, which were carried out prior to the Regulations however, currently the Appellant is following the Regulations therefore, the Respondent had erred in observing that the Appellant had not reported CTR with FMU.

5. The Respondent has rebutted the grounds of Appeal and stated that all relevant facts and law had been considered during the proceedings and bare reading of the Impugned Order does not suggest any omission. The Respondent submitted that Appellant's AML Policy was reviewed however, it was not updated as per the requirements of clause 3 of the Regulations and it was observed that the AML policy was revised/updated after Inspection (*AML policy was revised on October 12, 2018 whereas, Inspection was carried out between July 2018 to August 2018*). The Respondent stated that requirement to establish an internal audit department was not new rather, it was part of the licensing requirements set out in the Securities Brokers (Licensing and Operations) Regulations, 2016 (Brokers Regulations), therefore, creation of an independent audit department, for ongoing monitoring of clients and formulation of AML/CFT policy after Inspection, does not absolve the Appellant's contraventions. The Respondent contended that the Appellant also failed to conduct CDD of its clients and the accounts hence, violated the requirements of the Regulations. The Respondent stated that CDD should have been done while accounts were opened because it was the requirement of the 2012 regulatory framework. Moreover, the Appellant had been unable to furnish any valid explanation for its failure to establish beneficial ownership or source of funds of its clients and reasons of neglect in risk categorization of its clients. During the hearing before the Appellate Bench (the Bench) the Respondent while referring FMU's opinion, apprised the Bench that violation of Regulation 14 of the Regulations is not established against the Appellant because cash was directly received and deposited in Bank account therefore, it was the responsibility of Bank to report it to FMU.
6. The Bench has heard the parties and perused the record. Appellant's representative reiterated the grounds of Appeal and added that inspection/review was carried out before the issuance of AML guidelines 2018 therefore, sufficient time was not provided to understand and comply with the requirements of the Regulations. Whereas the Respondent's representative rebutted such grounds and



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argued that the violated requirements of the Regulations were also part of the 2012 regulatory framework, therefore, the Respondent cannot take the plea that requirements of the Regulations were new and sufficient time was not provided to comply with.

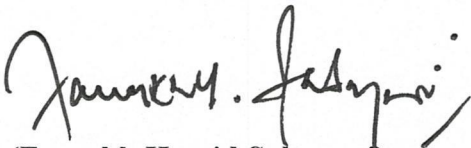
7. The Bench has carefully gone through the contents of the Impugned Order and other relevant record, which revealed that the Appellant had violated the requirements of Regulation 3, 4, 6, 13 and 14 of the Regulations, however, the Respondent had not specifically mentioned the aforesaid provisions in the Impugned Order. The Bench is of the view that the violated provisions should have been mentioned in the Impugned Order however, non-mentioning of specific provisions do not vitiate the proceedings when, otherwise violations were duly mentioned and established.
8. The Bench has examined the Appeal and found that the Appellant had admitted that requirement of client risk assessment, internal audit function and ongoing mechanism for monitoring CDD were met after enactment of the Regulations and SECP's AML guidelines 2018. The Bench has also minutely scrutinized ground "b" of the Appeal wherein Appellant has stated that Respondent had failed to explain that how prior regulatory framework and rules/regulations were violated. The Bench is of the view that Appellant's assertions are insignificant to distort the findings of the Impugned Order because the requirements contained under the Regulations were not new, rather these were introduced in 2012 by the Karachi Stock Exchange (presently PSX), with the approval of the Commission, through regulation 4.18 of the Rule Book (current Regulation 4.17). These requirements were made mandatory for the securities brokers to formulate and implement an effective KYC and CDD policy in accordance with the KYC and CDD guidelines issued by the Karachi Stock Exchange in 2012. The Bench has compared the requirements of the regulatory framework of 2012 with the Regulations and SECP's AML guidelines 2018, and observes that they do not reflect any material difference in terms of requirements, for instance, customer identification, risk assessment of customer, CDD and on-going monitoring. Furthermore, the requirement of an internal audit department was part of the licensing requirements of the Brokers Regulations and under Regulation 16 of the Brokers Regulations it was the duty of Appellant to have an independent audit function. Therefore, the Bench has no doubt to hold that the Regulations had not introduced new regulatory requirements rather prior regulatory requirements had been streamlined. The Bench has observed that even prior to the promulgation of the Regulations, the Appellant was required to have AML/CFT Policy, customer identification, risk assessment of customer, CDD, on-going monitoring, beneficial ownership,

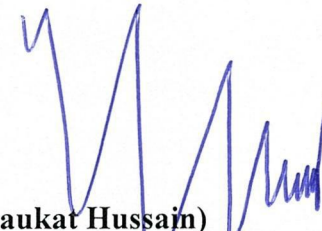


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evidence of sources of fund and internal audit department under the previous regulatory legal framework, however, the Appellant had failed to comply with the applicable requirements.

9. The Bench has also examined the issue of the Appellant's failure to comply with the requirement of CTR. As per FMU's referred opinion, this requirement was not applicable on the Appellant because in the instant, cash/currency was received and deposited in the Bank Account, therefore, penalty for failure to report currency transaction cannot be imposed on Appellant. The FMU's opinion also clarified that it was the responsibility of the Bank to fulfill CTR requirement therefore, this violation is not established against the Appellant.
10. The Bench is of the view that violations under the Regulations are of serious nature, however, alleged non-compliance of Regulation 14 (currency transaction report) was the most grave violation. Nevertheless, CTR violation has not been established against the Appellant, therefore, the Bench is inclined to take a lenient view. In the circumstances, while maintaining the verdict of the Impugned Order, to the extent of other violations, we hereby reduce the penalty of fine from Rupees 850,000/- to Rupees 250,000/- and direct the Appellant to comply with the regulatory and statutory requirements in letter and spirit, to avoid strict penal action in future.
11. The Appeal is disposed of accordingly, without any order as to cost.


(Farrukh Hamid Sabzwari)
Commissioner (AML)


(Shaukat Hussain)
Commissioner (Insurance)

Announced on: **22 NOV 2019**