



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 22 of 2015

First National Equities Limited

.... Appellant

Versus

Director/HOD (LCID, Securities Market Division)

SECP

.... Respondent

Date of hearing 6/05/2015

Present:

For the Appellant:

Mr. Ali A Malik, Chief Executive Officer, First National Equities Limited

For the Respondent

- i. Mr. Imran Inayat Butt, Director (LCID SMD)
- ii. Ms. Najia Ubaid, Deputy Director (LCID SMD)

ORDER

1. This Order shall dispose of Appeal No. 22 of 2015 filed under section 33 of the Securities and Exchange Commission of Pakistan Commission Act, 1997 against the Order dated 20/02/15 (Impugned Order) passed by the Respondent.



Securities and Exchange Commission of Pakistan

2. The brief facts of the case are that First National Equities Limited (Appellant) submitted two Net Capital Balance (NCB) Certificates as of June 30, 2014 and October 27, 2014 to the Securities and Exchange Commission of Pakistan (Commission) vide email dated November 27, 2014. NCB Certificate as of June 30, 2014 depicted negative balance of Rs.441 million approximately and a balance of Rs.30 million with an observation/qualification on the NCB Certificate of October 31, 2014 with respect to current liabilities amounting to Rs.394 million approximately.
3. Analysis of the NCB Certificates revealed that the Appellant failed to maintain required minimum NCB as required in terms of Rule 3 of the Securities and Exchange Rules, 1971 (SEC Rules). In view of the above, the Respondent served a Show Cause Notice (SCN) to the Appellant under Section 22 of the Securities and Exchange Ordinance, 1969 (Ordinance) and Rule 8 of the Brokers and Agents Registration Rules, 2001 (Brokers Rules). Hearing in the matter of aforesaid SCN was scheduled for December 8, 2014 at Islamabad. The Appellant vide letter dated December 5, 2014 submitted its written response to the SCN and requested for extension in the date of hearing. Acceding to the request of the Appellant, the hearing was rescheduled to January 21, 2015 at the Commission's Karachi office. The Chief Regulatory Officer of Karachi Stock Exchange Limited (KSE) was also advised to attend the hearing in the said matter.
4. Mr. Ali A. Malik, Chief Executive Officer and Mr. Ali Raza, Head of Operations (Representatives of the Respondent) and Mr. Abbas Mirza (Representative KSE) attended the hearing on January 21, 2015.
5. The Respondent while passing the Impugned Order noted that though, violation of rules and regulation is a matter of concern, however, considering the efforts made by the Appellant to improve its financial position; assurance of compliance with the



Securities and Exchange Commission of Pakistan

regulatory requirements; bank guarantee with the KSE; settlement of obligations on T+1 basis and taking a lenient view a penalty of Rs.500,000 was imposed upon the Appellant. Moreover, the Appellant was directed to:

- i) submit its NCB Certificate as of March 10, 2015; and
- ii) provide documentary evidence regarding settlement of all the outstanding liabilities.

6. Aggrieved of the Impugned Order the Appellant has preferred the instant Appeal on the following grounds:

- a. The Impugned Order is against the law and circumstances as well as law on the subject.
- b. The learned Respondent failed to take into consideration the reply filed by the Appellant. In its reply, the Appellant has categorically taken the stance that three (3) of its liabilities BAF, BOP and that payable to Trade Creditors cannot be taken as current liabilities. The learned Respondent failed to take into consideration the reply and the stance taken by the Appellant and thus, the Impugned Order cannot be taken to be a speaking order passed after consideration of the issues raised by the Appellant.
- c. There is no violation of Rule 8 of the Brokers Rules or Rule 3 of the SEC Rules and hence the Impugned Order is liable to be set aside.

7. The Respondent has rebutted the grounds of the Appeal as follows:

- a. The contents of the corresponding paragraph are legal hence does not warrant any response.
- b. The contents of the corresponding paragraph are denied. The Impugned Order as relied on the auditor's report, for the year ended dated October 31, 2014, which clearly indicates the referred liabilities as current liabilities. During the course of



Securities and Exchange Commission of Pakistan

hearing the Appellant emphasized that he will settle the liabilities in the near future and assured regarding settlement of liabilities by the end of March 2015 which further strengthen the version of the auditor of the liabilities being the current liabilities.

- c. Denied, considering the liabilities as current liabilities as referred to in para “b” above, negatively affects the NCB of the Appellant:
- The Appellant is allowed trading exposure at the KSE on the basis of NCB, which actually was negative as on June 30, 2014. The Appellant at the first trading day of each week before commencement of trading is required to submit its status by clicking “Yes/No”, as the case may be, at the functionality at the National Clearing House System (“NCHS”), regarding maintenance of minimum required NCB as specified in the SEC Rules and the KSE Rule Book, that allows the brokers to trade during the week. The said functionality stops the brokers to proceed with trading, if it does not report “Yes”. However, the Appellant despite being aware of the fact that its NCB was negative kept on clicking the “YES” option of the functionality.
 - The Appellant being registered as a broker is expected to exercise due skill, care and diligence in the conduct of its business and ensure full compliance of the laws and relevant rules and regulations. Moreover, the Appellant being aware of the fact that its NCB is in negative, kept on reporting in the NCHS that it has maintained minimum NCB and/or capital adequacy requirements.
 - The Respondent had serious reservations on such conduct of the Appellant that can be termed as misrepresentation and deception and were performed only for the continuity of its business. The Appellant is required to demonstrate fairness in the conduct of its business and is not expected to make any false/misleading statement and to engage in such act that compromise the market transparency; clients’ interest; systemic risk to the stock market and increase the default risk at the cost of Respondent’s own interest.



Securities and Exchange Commission of Pakistan

- The Chief Compliance Officer of the KSE, as referred to in the Impugned Order confirms that there are number of issues outstanding against the Appellant and that the Appellant was required to provide weekly status of segregation of clients funds and about settlement of outstanding issues against it.
8. We have heard the parties and taken into consideration written submission made by the Appellant and Respondent. We have also perused the relevant provisions of the Ordinance which have been referred above.
 9. The representative of the Appellant at the hearing has contended that the Appellant has undertaken settlement with the banks and with Attock Petroleum being a creditor. He further stated that there are no outstanding clients' disputes against the Appellant and the management of the Appellant is undertaking personal guarantees for resolving matters. It has been requested by the representative that a time span of 7 to 8 months may be given to the Appellant to ensure capital adequacy. At the end it was requested that considering the financial health of the Appellant, a lenient view may be taken with respect to the imposition of penalty.
 10. In view of this Bench the misrepresentation of the Appellant concerning the mandatory capital adequacy requirements to the NCHS is willful violation and the distinction made by the Appellant concerning its current liabilities is not justified, keeping in view the Auditors report.
 11. The ground of the Appellant with respect to the non-consideration of the submissions made by the Appellant has been examined. Review of the Impugned Order exhibits that it is a well-reasoned and speaking order and has been passed after thoroughly examining the facts of the matter and after affording proper opportunity to the Appellant. So this can be safely held that the Impugned Order is in accordance with the principles enshrined in Section 24-A of the General Clauses Act, 1897 as elaborated by the Superior courts of Pakistan.



Securities and Exchange Commission of Pakistan

12. In view of the foregoing the non-compliance is established. However, keeping in view the efforts made by the Appellant and considering the financial health of the Appellant, this Bench in exercise of its powers under Section 33 of the SECP Act, 1997 while taking a lenient view hereby reduces the penalty imposed through the Impugned Order to Rs.150,000 and direct the Appellant to ensure compliance in future.

13. Accordingly the instant Appeal is dismissed with no order as to cost.

(**Fida Hussain Samoo**)
Commissioner (Insurance)

(**Tahir Mahmood**)
Commissioner (CLD)

Announced on: **03 NOV 2015**