



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 24 of 2020

1. Alfalah GHP Investment Management Limited
2. Dominique Russo
3. Ali Sultan
4. Hanspeter Beire
5. Abid Naqvi
6. Tufail Ahmad
7. Edward Hurt
8. Mehreen Ahmed
9. Maheen Rahman

...Appellants

Versus

Securities and Exchange Commission of Pakistan, Adjudication Department-I

...Respondent

Date of hearing:

April 16, 2025

Present:

For the Appellants:

1. Mr. Haider Waheed
2. Ms. Zoha Serhandi
3. Ms. Anum Bawanay

For the Respondent:

1. Mr. Sohail Qadri, Director (HOD), (Adjudication-I, SECP)
2. Ms. Asima Wajid, Additional Joint Director, (Adjudication-I, SECP)

ORDER

1. This Order shall dispose of Appeal No. 24 of 2020 filed by Alfalah GHP Investments Assets Management Limited, the CEO and directors (the Appellants) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the SECP Act) against the Order dated March 24, 2020 (the Impugned Order) passed by the Executive Director, Adjudication-I (the Respondent) under Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (the Act).
2. The brief facts of the case are that Alfalah GHP Investments Assets Management Limited (the Company) is an unlisted public company and is licensed by the Securities and Exchange Commission of Pakistan (the Commission) to manage open-ended mutual funds and offer investment advisory services and voluntary pension schemes, while holding the relevant NBFC license. An onsite inspection



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of the Appellant Company was conducted by the Commission to ascertain compliance with requirements contained in the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the AML and CFT Regulations). The inspection report *inter alia*, revealed various non-compliances of the Company with regard to the AML & CFT Regulations. Pursuant to the inspection, a show-cause notice dated January 06, 2020 (SCN) was issued to the Appellants and hearing in the matter was held on January 16, 2020. After examining the submissions and considering the facts as submitted by the Appellants, it is established that the Appellants had violated Regulations 3(1), 3(2), 4(a), 4(d), 6(4), 6(5a), 7(1), 9(2), 9(4) read with 9(3), 13(3) and Regulation 14(A) of the AML and CFT Regulations. Subsequently, the Respondent in exercise of powers conferred under section 40A of the Act, imposed a collective penalty of Rs. 2,100,000/- on the Appellants for the aforementioned contraventions of the AML and CFT Regulations. The breakdown of the penalty is provided in the table below:

Sr. No	Name	Designation	Amount (Rs.)
1.	Alfalah GHP Investment Management Limited	Company	500,000/-
2.	Mr. Dominique Russo	Director	200,000/-
3.	Mr. Ali Sultan	Director	200,000/-
4.	Mr. Hanspeter Beier	Director	200,000/-
5.	Mr. Abid Naqvi	Director	200,000/-
6.	Mr. Tufail Ahmad	Director	200,000/-
7.	Ms. Edward Hurt	Director	200,000/-
8.	Ms. Mehreen Ahmed	Director	200,000/-
9.	Ms. Maheen Rehman	CEO and Director	200,000/-

3. The Appellants have preferred this Appeal, *inter alia*, on several grounds including the assertion that the Appellants always acted in good faith with best intention in accordance with its statutory responsibilities as envisaged in the AML and CFT Regulations and that the Appellant Company always gives due consideration to the interest of its unit holders.
4. The Authorized Representative (AR) of the Appellants conceded to the extent of the non-compliances committed by the Company and emphasized that the Company was making considerable efforts to comply with the AML and CFT Regulations.
5. The AR agitated the penalty imposed on the CEO and directors of the Company. The AR made the following arguments in support of his contention:
 - i. The negligence attributed to the BOD is not justified. The BOD is responsible for approving the requisite policies. The Management is responsible for implementation of those policies. The Board is not responsible for implementation of the policies.
 - ii. Before imposing a penalty on any individual Director, it is necessary to establish his personal involvement or negligence in the matter. In this case, penalties have been imposed on all Directors without establishing their personal involvement or negligence. This is unjustified and against the law.

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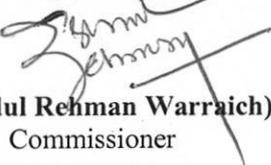
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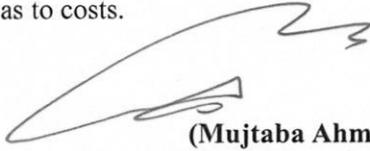
- iii. Violations of the law by a company cannot be automatically imputed to its directors without any cogent evidence or element of *mens rea*. A Company and its Directors are separate legal persons. Breach of any law by one does not necessarily mean a breach of law by the other.
 - iv. The SCN was not specifically addressed to the individual directors of the Company therefore the order passed against the directors is against the rights of the individual directors as enshrined under Article 10A of the Constitution of the Islamic Republic of Pakistan.
 - v. Holding the Directors liable for contraventions of the AML and CFT Regulations, without giving them a fair opportunity of presenting their case and without specific evidence against them can have harsh, unfair, and far reaching consequences with respect to their reputations and their professional careers.
 - vi. The BOD as well as the Management of the Company have made best efforts to ensure compliance with applicable law.
 - vii. The BOD has approved a policy to fulfil company's responsibilities in accordance with the AML and CFT laws and regulations. The BOD continues to review the AML & CFT policy of the Company and oversee its implementation. The BOD approved the Company's Annual Risk Assessment in its meeting held on August 29, 2019. This risk assessment has also been reviewed by the internal auditors i.e, M/s. Deloitte Yousaf Adil, Chartered Accountants as mentioned in their audit report for the quarter ended June 30, 2019.
 - viii. The Management has taken various measures to implement the policy and has, in the aftermath of the Commission's observations, also undertaken additional steps to strengthen the implementation.
 - ix. The AML and CFT Regulations are not exhaustive. These Regulations mostly contain broad guidelines, rather than the precise measures, to deal with every possible contingency. There is always some room for improvement in implementation of such regulations. These factors should be given due consideration by the Commission while reviewing compliance with these Regulations.
6. The Respondent argued in support of the impugned order. The Respondent's contentions are summarized below:
- i. The AML and CFT Regulations were issued in July 2018 and warranted immediate implementation. Although the audit committee had already approved the audit plan for the year, it should have revised the plan to comply with the new Regulations.
 - ii. Review of the minutes of the audit committee meetings held on August 15, 2018, October 25, 2018, February 20, 2019 and April 26, 2019 showed that no issue/observation/violation pertaining to the AML/CFT framework was discussed by the audit committee.
 - iii. Although the Company is a separate legal person, the BOD comprising of individual directors of the Company has important roles and responsibilities. The BOD has not properly overseen the implementation of the AML and CFT policy.
 - iv. Regarding the contention of the Appellants that the SCN was only addressed to the Company and the CEO, the Respondent argued that the directors were served the SCN through the CEO and an opportunity of hearing was provided wherein the CEO, Head of Compliance and Head of Operations appeared on behalf of the Board of directors and the Company.



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7. The Bench has heard the arguments of both the parties and perused the record. The observations and conclusions of the Bench are mentioned below:
- i. In a company, the BOD bears the primary responsibility for formulating and approving the company's policies, including those related to the AML/CFT framework, and for exercising effective oversight to ensure their proper implementation. This responsibility includes establishing appropriate governance and control mechanisms, such as robust internal and external audit functions and a strong compliance program.
 - ii. The Management of the company is tasked with supporting the Board in developing policies and is responsible for their day-to-day implementation.
 - iii. The BOD acts as a collective body and shares collective responsibility for policy oversight and compliance. A failure to discharge these duties with due care may attract regulatory consequences, and it is not necessary to establish individual fault or negligence to hold the BOD accountable in such matters.
 - iv. The SCN sent to the members of the BOD through the CEO, is not defective. The record shows that the SCN was communicated to the Directors and the Company also submitted response on behalf of the Directors. It is not justified to question the validity of the SCN which has been received and responded.
 - v. In the present case, the BOD has acted in a responsible and diligent manner. It has approved a policy as required by the AML and CFT law and regulations, enhanced the internal audit function by incorporating a separate section for audit of AML/CFT related internal controls into the internal audit plan, and has also been actively reviewing and discussing the AML&CFT Policy. Considering the actions taken by the BOD, the imposition of penalty on the members of the BOD is not justified.
 - vi. During the inspection, the Commission identified certain shortcomings in the implementation of the Policy and imposed a penalty of Rs. 500,000/=. The Company has acknowledged the identified shortcomings and has not challenged the imposed penalty. In response to the Commission's observations, the Management implemented additional measures to enhance the effectiveness of the policy framework. The positive gesture of the Company is acknowledged and appreciated.
8. In view of the above, the penalty imposed upon the members of the BOD is annulled while the penalty imposed upon the Company is upheld. The Board is advised to ensure ongoing oversight of the implementation of the Company's AML/CFT Policy through regular monitoring and evaluation, to maintain compliance with all applicable legal and regulatory requirements. The Management is further advised to continue undertaking necessary measures to ensure the effective and consistent enforcement of the Company's AML/CFT framework.
9. Accordingly, the Appeal is disposed of without any order as to costs.


(Abdul Rehman Warraich)
Commissioner


(Mujtaba Ahmad Lodhi)
Commissioner

Announced on:

02 JUL 2025