



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 29 of 2015

Etezaz ud Din Ahmed

... Appellant

Versus

Director/HOD (MSRD) Securities and
Exchange Commission of Pakistan

...Respondent

Date of Hearing 16/09/15

Present:

Appellant:

Etezaz ud Din Ahmed

For the Respondent:

- (i) Nasir Askar, Director (SMD)
- (ii) Nazish Zubair, Deputy Director (SMD)

ORDER

1. This order is in appeal No.29 of 2015 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by Mr. Etezaz ud Din Ahmed (Appellant) against the order dated 24/03/15 (Impugned Order) passed by the Respondent.



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2. The Appellant was the complainant in the matter initiated through Show Cause Notice (SCN) under section 22 of the Securities and Exchange Ordinance 1969 (Ordinance) against M/s Black Stone Equities (Pvt.) Limited (BSEL). Brief facts of the case are that the Appellant filed a complaint against the BSEL and alleged that he had invested a total sum of Rs.4.84 million with the BSEL up to June 2013 for stock trading but the BSEL failed to trade in his account and shares were not transferred in his sub-account maintained with the Central Depository of Pakistan Limited (CDC). The Appellant sought recovery of Rs.2.38 million against fictitious losses booked by BSEL and payment of Rs.3.00 million for using his capital for personal gains by BSEL.
3. The Respondent forwarded the complaint of the Appellant to the Islamabad Stock Exchange (ISE) on 23/12/13 for resolution as per its regulations. The Respondent received an award dated 01/12/13 forwarded by ISE which disclosed regulatory violations on the part of BSEL. As per award most of the shares of the Appellant were not transferred in his account during July 2008 to 30/06/13.
4. In view of the above a SCN under section 22 of the Securities and Exchange Ordinance 1969 (the Ordinance) and Rule 8 of the Brokers and Agents Registration Rules 2001 (Broker Rules) was issued to the BSEL. Hearing in the matter was held on 10/02/15 which was attended by the CEO of BSEL. During the hearing CEO of the BSEL admitted the violations, however, it was requested that a lenient view is taken. The Respondent being dissatisfied with the submissions imposed a penalty of Rs.500,000 on BSEL.
5. The Appellant has preferred the instant appeal against the Impugned Order on the following grounds:
 - (i) The Respondent has admitted the irregularities committed by BSEL in paragraph 3 and paragraph 8 of the Impugned Order. The Respondent has



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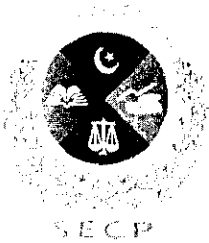
established the claim of Appellant by stating in the Impugned Order that the CEO of BSEL did not trade under UIN of the complainant and violated the regulations governing custody of shares meant to prevent fraud which stamps from continued irregularities and, therefore, penalized BSEL for violation of laws and relevant rules and regulations and for deviating from procedure provided in the regulatory framework. Further it is documentarily proven both by the arbitrators as well as the Respondent that neither trades were executed under the UIN of the Appellant, and nor were they parked in the sub CDC account of the Appellant maintained in BSEL for most part of trading. This is an extremely important aspect confirmed by the arbitrators and the Respondent. The account statement issued by BSEL during the period has lost its credibility as these were not market trades but well engineered/manipulated fraudulent trades/statement of accounts generated from the back office of BSEL reflecting profit and losses at BSEL's own will and discretion. Further, NCCPL record for July 2013 reflects that UIN shares worth Rs.4.22 million were bought against Appellant's total investment of Rs.4.84 million. The shares were purchased by BSEL mobilizing its own resources to match deficit shares in Appellant's account; and

- (ii) BSEL willfully defaulted to trade in the UIN of the Appellant. In view of the violations of regulations mentioned above, the fraudulent acts of generating fictitious trading/statement of accounts during the year 2008-13 must be investigated by the Commission/Appellate Bench in light of the Securities and Exchange Ordinance, 1969 (SEO) and action against BSEL must be initiated under section 24 of the SEO. Further, the Appellant must be compensated for all losses booked incurred by the Appellant period during the period 2008-2013 and the Appellate Bench may inquire from the Respondent the findings pertaining to books of Accounts of BSEL for the period 2008-2013.

6. The Respondent rebutted the arguments as follows:

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- (i) The Core issue of the dispute was not neglected and the Respondent has already taken action against BSEL in light of section 22 of SEO. A penalty of Rs.500,000 was imposed on BSEL. Further, BSEL was also directed to strictly comply with the Commission's rules and regulations in the future or face punitive action under the law; and
 - (ii) The Respondent not only seriously took up the matter but also forwarded it to ISE immediately for quick resolution. Further, the award was passed in favour of the Appellant considering the stance of both parties and factual evidence available. The grievances of the Appellant, therefore, were properly addressed with the best possible solution. The Respondent and the adjudication committee formulated for resolving the issue of the Appellant have neither concealed any facts nor passed any order against the law. The penalty imposed on BSEL is already based on the records provided by the Appellant. In case the Appellant did not want to rely on the records provided by him, he should not have provided the adjudication committee with such information. Further, all the transaction data is in intact, secure and safe with NCCPL and CDC which can be obtained whenever required.
7. We have heard the arguments and perused the record provided to us by the Appellants.
8. We concur with the Appellant that he has been a victim of fraudulent activity by BSEL. The Respondent has admitted in paragraph 8 (1) of the Impugned Order that, "...trading showed in client ledger account and his shares were not transferred to the Complainant's CDC sub-account even after the implementation of securities transfer project in December 2010 wherein the settlement of the vast majority of securities transactions executed in stock exchanges were performed directly from the respective investors. This is a fact admitted on record by the Respondent..." The Respondent rightly imposed penalty on the BSEL, however, from the facts it is a serious case of fraud and penalty alone is not enough to put the matter to rest. The Appellant must




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also be fully compensated for his losses and the matter must be thoroughly investigated further as BSEL seem to be engaged in fraudulent activity.

9. In view of the foregoing, we set aside the Impugned Order and remand the matter to the Respondent to probe it further under the Ordinance and fully address the grievance of the Appellant so that losses suffered by him are compensated within 45 days of the passing of this Order and report to the Appellate Bench.


(Zafar Abdullah)
Commissioner (SCD)


(Tahir Mahmood)
Commissioner (CLD)

Announced on: 21 SEP 2015