



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 29 of 2020

Ilyas Saeed Associates (Pvt.) Limited

...Appellant

versus

Executive Director (ED), Adjudication, SECP

...Respondent

Date of hearing:

April 17, 2025

Present:

For the Appellant:

Mr. Imran Ilyas

For the Respondent:

1. Mr. Mubasher Saeed Saddozai, Executive Director, Adjudication-I, SECP
2. Mr. Muhammad Faisal, Assistant Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 29 of 2020 filed by Ilyas Saeed Associates (Pvt.) Limited (the Appellant), against the Order dated February 19, 2020 (Impugned Order) passed by the Executive Director, Adjudication (the Respondent) under Section 150 and 159 read with Section 64 of the Securities Act, 2015 (the Act) and Regulations 3 and 4(c) of the Share Registrars and Balloters Regulations, 2017 (the Regulations).
2. The brief facts of the case are that the Appellant was licensed by the Securities and Exchange Commission of Pakistan (the Commission) as a Balloter and Transfer Agent under the Balloters and Transfer Agents Rules, 2015 (the Rules) for a period of three years. The Rules were repealed by a



Securities and Exchange Commission of Pakistan

notification dated January 11, 2017, and were replaced with the Regulations. Under Regulation 3 of the Regulations, all persons registered under the repealed Rules were deemed to be licensed under the Regulations until the expiry of their existing certificates. The Appellant's certificate of registration under the repealed Rules therefore remained valid until April 7, 2019, at which date it expired. The Appellant, however, did not apply for renewal or fresh grant of licence under the Regulations until September 30, 2019. Regulation 4(c) of the Regulations required all existing share registrars and balloters to increase their paid-up capital to a minimum of PKR 3 million by June 30, 2018. The Appellant, however, did not complete this enhancement by the stipulated date and only initiated the process in June, 2019. By a letter dated July 1, 2019, the Commission drew the Appellant's attention to the requirements of Regulations 3 and 4(c) and invited an application for a fresh licence. Thereafter, the Appellant filed its renewal/fresh licence application dated September 30, 2019.

3. On January 27, 2020, the Commission issued a Show Cause Notice (SCN) alleging contraventions of Section 64 of the Act and Regulations 3 and 4(c) of the Regulations, on account of carrying on regulated SRB (Share Registrar & Balloter) activities after expiry of its licence; and failure to meet the minimum capital requirement. The Appellant submitted a reply dated January 28, 2020, and a personal hearing was held dated February 17, 2020. The Respondent concluded the proceedings by an order dated February 19, 2020, and imposed an aggregate penalty of 500,000/- under Section Sections 150(2) and 159(3) of the Act.
4. The Appellant challenged the Impugned Order, *inter alia*, on the grounds that no criminal intent (*mens rea*) was ever present, as the delay in renewal and capital enhancement stemmed from a *bona fide* misinterpretation of the Regulations. The Appellant argued that no culpable act (*actus reus*) occurred, since it rendered no fresh share registrar and balloter services during the period of default and derived no wrongful gain. The Appellant further contended that Section 159(3) of the Act, requires simultaneous contravention of Sections 3, 22 and 64 of the Act, and that the Respondent's order failed to demonstrate breaches of Sections 3 or 22 of the Act. The Appellant emphasized that, in the absence of breaches of all three provisions, penalty under Section 159(3) of the Act could not lawfully be levied.
5. The Appellant asserted that the phrase "if required" in Regulation 4(c) admits more than one reasonable construction and that the Appellant reasonably understood it to apply only where additional capital was operationally necessary. The Appellant further argued that, under the principle of statutory interpretation,



Securities and Exchange Commission of Pakistan

any ambiguity must be resolved in favor of the Appellant. The Appellant highlighted that it has maintained an unblemished compliance record since incorporation and that this was the sole instance of procedural oversight. The Appellant emphasized that, upon receiving the SECP's July 1, 2019 reminder, it immediately initiated all required steps for licence renewal and capital enhancement.

6. The Appellant submitted that the combined penalty of 500,000/- is manifestly excessive, given that only a nominal annual retainer was earned and no client suffered loss. The Appellant argued that the quantum of penalty should bear a reasonable relationship to the gravity of the contravention, which in this case was purely technical and transient. The Appellant noted that its application for renewal or fresh grant of licence was filed dated September 30, 2019, well before the issuance of the SCN, demonstrating its *bona fide* efforts to comply.
7. The Respondent vehemently denied the contentions of the Appellants and submitted that under Regulation 3 of the Regulations, the Appellant's deemed licence expired with its original certificate on 7 April 2019, and that the application filed on 30 September 2019 amounted to a lapse of nearly five months, thereby contravening Section 64 of the Act and Regulation 3 of the Regulations itself. The Respondent argued that Regulation 4(c) of the Regulations imposes an unconditional requirement on all SRBs registered under the repealed Rules with paid-up capital below PKR 3 million, and that the qualifying phrase "if required" merely identifies those entities to which the obligation applies; consequently, the Appellant's delay until June, 2019 demonstrated clear non-compliance.
8. The Respondent emphasized that the number of clients served or the nominal fee charged is immaterial, because Section 64 of the Act makes a valid licence a precondition for performing any regulated SRB activity; the Appellant's provision of services after expiry of its registration therefore remained unauthorized. The Respondent submitted that the SCN dated 27 January, 2020 was issued lawfully in light of continued non-compliance despite the SECP's reminder of 1 July, 2019, and that the SCN correctly noted both the delayed application and the capital shortfall.
9. The Respondent contended that the Impugned Order is a speaking order which fully addresses the Appellant's written and oral submissions, correctly applies the regulatory framework, and rests on cogent findings of fact and law. The Respondent argued that Sections 150(2) and 159(3) of the Act each provide



Securities and Exchange Commission of Pakistan

independent bases for penalty, misconduct and unlicensed activity, respectively and there is no requirement to demonstrate concurrent breach of multiple sections to invoke Section 159(3).

10. The Respondent asserted that, although the Appellant filed for renewal before the SCN was issued, this belated application does not negate the period of unlicensed activity between 8 April, 2019 and 30 September, 2019, during which the Appellant remained in clear violation. The Respondent further submitted that the penalties imposed (PKR 400,000 under Section 159(3) of the Act and PKR 100,000 under Section 150(2) of the Act.) are proportionate to the statutory breaches and necessary to uphold regulatory discipline and deter future non-compliance.
11. The Bench has carefully examined the arguments advanced by both parties, the provisions of law under consideration, and the material placed on record. The Bench notes that the Appellant's certificate of registration under the Rules expired on 7 April, 2019, and that under Regulation 3 of the Regulations, the deemed licence continued only "till the time its existing certificate of registration remains valid." Accordingly, any SRB activity conducted after 7 April, 2019 required a fresh licence. The Bench observes that the Appellant did not file its application for renewal or fresh grant of licence until 30 September 2019, constituting a lapse of nearly five months. This period of unlicensed activity *prima facie* contravened Section 64 of the Act and Regulation 3 of the Regulations. The Bench further notes that Regulation 4(c) imposed a clear obligation on all existing SRBs with paid-up capital below PKR 3 million to enhance their capital "by June 30, 2018." The Appellant's initiation of this process only in June, 2019 amounted to non-compliance with a statutory timeline.
12. The Bench finds no merit in Appellant's reliance on the principle of *mens rea*, as these proceedings are civil and regulatory in nature. The Bench holds that it is rightly pointed out by the Respondent, and as held in *Zephyr Textiles Mills Ltd V. HOD (Enforcement)*, penalties for breach of civil obligations do not require proof of intent.
13. With regard to the scope of Section 159(3) of the Act, the Bench considers the Appellant's reliance on the rule of construction for "and" versus "or." The Bench places reliance on PLD 1978 158 where the Balochistan High Court held that:

Appellate Bench

Appeal Nos. 29 of 2020

Page 4 of 5



Securities and Exchange Commission of Pakistan

"In ordinary usage, 'and' is used in a conjunctive sense and 'or' in a disjunctive sense but very often the intention of the Legislature is best deciphered by reading the two words, one for the other."

Applying this principle, the Bench concludes that Legislature's use of "or" between Sections 3, 22 and 64 in Section 159(3) of the Act discloses an intention to punish breach of any one of those provisions.

14. The Bench rejects the Appellant's argument on ambiguity in Regulation 4(c) of the Regulations, holding that the phrase "if required" merely identifies entities subject to the obligation and does not qualify the time-limit. Any residual doubt as to interpretation is outweighed by the clear policy of investor protection.
15. On the matter of mitigation, the Bench acknowledges that the Appellant's lapse was a first-time, inadvertent mistake; that upon SECP's 1 July, 2019 reminder the Appellant immediately initiated compliance; and that it maintained a spotless record otherwise. The Bench emphasizes the overarching objective of promoting the growth and protection of Pakistan's capital markets, observing that overly punitive measures for technical lapses may undermine market confidence and discourage new entrants.
16. In view of the foregoing, while the breaches of licence validity and capital requirement are upheld, the Bench exercises its discretion to apply enforcement measures in a proportionate manner. The penalties imposed under the Impugned Order are waived and converted into a written warning, to serve as a deterrent against future non-compliance without jeopardizing the Appellant's ongoing viability. Accordingly, the Appeal is disposed of without any order as to cost.


(Zeeshan Rehman Khattak)
Commissioner


(Akif Saeed)
Chairman/Commissioner

Announced on:

21 MAY 2025