



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 29 of 2021

Arif Habib Limited

.....Appellant

Versus

Executive Director, Adjudication – I

.....Respondent

Date of Hearing:

January 16, 2025

Present:

For the Appellant:

1. Mr. Rabel Akhand, Authorized Representative
2. Mr. Faizan Hanif, Authorized Representative

For the Respondent:

1. Mr. Sohail Qadri, HoD, Adjudication-I, SECP
2. Mr. Naveed Iqbal, Deputy Director, Adjudication-I, SECP
3. Mr. Muhammad Faisal, Assistant Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of proceedings initiated through Appeal No. 29 of 2021 filed by Arif Habib Limited (the “Appellant”), against order dated September 15, 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”), read with Section 6(A)(2)(h) of the Anti-Money Laundering Act, 2010 (the “AML Act”) and Rule 4(1)(A) and 6(1) of the AML/CFT Sanction Rules, 2020 (the “Rules”).

Appellate Bench

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2. The brief facts of the case are that an inspection was initiated against the Appellant by the Joint Inspection Team (JIT) through an inspection notice dated December 17, 2019. The JIT, comprising representatives from the Pakistan Stock Exchange Limited (PSX), Central Depository Company of Pakistan Limited (CDC), and National Clearing Company of Pakistan Limited (NCCPL), conducted a review of the Respondent's compliance with the Securities and Exchange Commission of Pakistan (Anti-Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the "AML Regulations"). The findings of the JIT revealed instances of *prima facie* non-compliances by the Appellant. The Appellant was found to have failed in obtaining necessary evidence regarding the source of funds for certain corporate and individual clients whose trading activity did not align with their financial profiles. The Appellant also did not establish the ultimate beneficial ownership of certain accounts, violating multiple provisions of the AML Regulations. Additionally, the Appellant categorized "high-trading" clients as "low risk" without sufficient verification and failed to conduct proper screening, maintain a database of beneficial owners, and verify identities through NADRA *Verisys*. Moreover, the Appellant did not assign risk categories to certain clients and failed to obtain senior management approval for "high-risk" clients.
3. In light of the aforementioned non-compliances, a show-cause notice dated June 24, 2020 (the "SCN") was served to the Appellant to which the Appellant submitted a written reply on July 24, 2020. Hearing on the matter was held on July 28, 2020. The Appellant's representatives reiterated their submissions and subsequently provided additional documents via email on July 30, 2020. Upon examination, the Respondent observed that the Appellant had furnished certain records, but some of them were obtained after the inspection. Furthermore, the classification of certain clients as "low risk" lacked adequate verification, and the Appellant's arguments regarding senior management approval and risk categorization were found untenable. Consequently, the Respondent concluded that the Appellant had contravened multiple provisions of the AML Regulations i.e. Regulation 6(3)(a) and 13(1), 4(a) read with 13(7), 6(4) read with Annexure-I (Note i), 9(4)(a), and, in the exercise of powers conferred under Section 40A of the Act, imposed a penalty of Rs. 875,000/- while directing the compliance officer of the Appellant to ensure that the AML/CFT policy is being updated in a timely manner.


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4. The Appellant has preferred this Appeal, *inter-alia*, on the grounds that it has been wrongly penalized for alleged violations of the AML Regulations. The Appellant submitted that the process of Customer Due Diligence (CDD) and monitoring constituted an ongoing obligation, rather than a static requirement, and that the requisite information concerning the source of funds and beneficial ownership had been duly procured and furnished, subsequent to the inspection. The Appellant further submitted that the provision of such information at a later stage did not, in itself, amount to non-compliance with the regulatory framework, as the scheme of the AML Regulations envisaged a continuous and evolving process of due diligence rather than a rigid or retrospective evaluation. The Appellant contended that its classification of clients as "low risk" was based on the discretion of the regulated entity and industry norms. The Appellant argued that it had a recognized and advanced information management system in place for the AML compliances and the screening, record maintenance and the identity verification of the clients was being carried out on a regular basis. The Appellant also contended that its internal approval processes satisfied the requirements for senior management authorization. The Appellant further asserted that the Impugned Order mentions that the Appellant has contravened the licensing regulations and that in fact the SCN was not issued for violations of the licensing regulations and the SCN proceedings did not include any mention of the licensing Regulations, therefore the penalty imposed with regard to the licensing regulations is misconceived, based on factual and legal error. While concluding the arguments the Appellant prayed for setting aside the Impugned Order and a restraint against publishing the Impugned Order on public forums.

5. In response to the submissions of the Appellant, the Respondent, *inter alia*, contended that the Impugned Order has been passed in strict compliance with the law after a thorough examination of all relevant facts and due consideration of the Appellant's submissions. The Respondent asserted that Customer Due Diligence (CDD) is required both at the inception stage and throughout the relationship period, and that subsequent submission of documents by the Appellant does not absolve it from initial non-compliance. The Respondent refuted the Appellant's assertion that the imposition of a penalty for furnishing information subsequent to the inspection was arbitrary, contending that regulatory compliance is to be assessed at the time of inspection and not afterwards at the discretion of the regulated entity. The Respondent further submitted that the violations attributed to the Appellant were duly

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established through a rigorous examination of the record, and the findings were grounded in a comprehensive regulatory review. The Respondent argued that *post-facto* submission of documents does not absolve the Appellant from its obligations under the AML framework, as compliance must be demonstrated proactively and not in response to regulatory scrutiny. The Respondent stated that the imposition of a penalty was warranted in light of the established violations.

6. The Respondent further argued that the Appellant failed to provide documentary evidence to support its claims regarding compliance with AML screening and record-keeping requirements, particularly concerning 12 client accounts. The Respondent contested the Appellant's argument that it had obtained the necessary senior management approval, asserting that the Impugned Order clearly outlined the deficiencies in this regard. The Respondent argued that as per Regulation 9(4)(a) of the AML Regulations, the categorization of clients cannot be inferred merely from the standard account opening procedure and mandates explicit senior management approval for establishing or continuing business relationships with high-risk clients and that the Appellant failed to provide adequate documentary evidence demonstrating compliance with the aforementioned requirement. The Respondent conceded that the reference to "Licensing Regulations" in the Impugned Order may not have been applicable, but the violations pertained to the AML Regulations are well established. Accordingly, the Respondent prayed for the dismissal of the appeal, asserting that the Impugned Order was legally sound and duly issued following the prescribed due process.
7. The Appellate Bench (the "Bench") has heard the arguments advanced by both parties and has undertaken a meticulous examination of the record and submissions placed before it. It is a settled principle that a regulated entity bears a continuous obligation to ensure full and effective compliance with the statutory and regulatory framework governing AML/CFT measures. The Bench is of the view that the Appellant, in its capacity as a licensed securities broker, was required to strictly adhere to the AML Regulations, ensuring that its internal control mechanisms, customer due diligence (CDD) procedures, and risk management framework were robust, comprehensive, and aligned with the prescribed regulatory requirements. The Bench has noted that the deficiencies outlined in the Impugned Order primarily pertain to lapses in critical compliance areas, including but not limited to, deficiencies in CDD protocols, improper risk categorization of clients, inadequate record



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maintenance, and the failure to obtain requisite senior management approvals for high-risk clients. These obligations form the cornerstone of an effective AML/CFT compliance regime and are intended to mitigate the risks associated with money laundering and terrorist financing.

8. The Bench has noted that the Respondent has correctly contended that regulatory compliance must be demonstrated at the relevant time of assessment and that subsequent corrective actions taken by the Appellant do not exonerate it from liability for initial non-compliance. The Bench deems it important to mention that compliance under the AML framework is not discretionary, rather, it is an ongoing obligation that must be proactively fulfilled by a regulated entity. However, the Bench has observed that the Appellant has undertaken significant remedial measures, including the enhancement of its internal compliance mechanisms and the implementation of corrective actions to align its operational practices with regulatory expectations. It is further noted that the Appellant has taken concrete steps to rectify the identified deficiencies by strengthening its CDD framework, improving its client screening processes, and ensuring a more stringent approach towards risk assessment and senior management approvals. In view of these remedial efforts, the Bench finds it appropriate to consider the extent to which the Appellant's corrective actions have mitigated the risks associated with its previous non-compliance and whether the nature of the infractions warrants a reconsideration of the penalty imposed through the Impugned Order.
9. In view of the foregoing, the Bench, after due consideration of the facts and circumstances of the appeal, is of the considered opinion that the penalty of Rs. 875,000/- (Rupees Eight Lac Seventy-Five Thousand) imposed upon the Appellant is disproportionate to the nature, extent, and gravity of the identified non-compliances. The Bench has observed that the Appellant has exhibited due diligence in undertaking expeditious remedial measures, has acted in good faith to rectify the deficiencies, and has demonstrated a *bona fide* commitment to strengthening its regulatory compliance framework.
10. Consequently, in the interest of justice and equity, the Bench, while maintaining the finding of non-compliances, deems it appropriate to exercise discretion in revising the quantum of the penalty imposed. The penalty is hereby reduced to Rs. 300,000/ (Rupees Three Hundred Thousand)-. The Appellant is also further directed to ensure strict and continuous adherence


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to the requirements prescribed under the AML Regulations, with particular emphasis on customer due diligence, risk categorization, record maintenance, and senior management approvals, so as to prevent recurrence of any similar deficiencies in the future. The Appeal, having been determined on its merits, stands disposed of with no order as to costs.

(Abdul Rehman Warraich)
Commissioner

(Mujtaba Ahmad Lodhi)
Commissioner

Announced on:

11 APR 2025