



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 30 of 2015

Mr. Bilal Vohra

...Appellant

Versus

Mr. Imran Inayat Butt
Head of Department (MSRD), SECP

...Respondent

Date of hearing:

17/09/15

Present:

For Appellant:

Mr. Ashfaq Tola, FCA

For Respondent:

- i. Mr. Nasir Askar, Director (LCID-SMD)
- ii. Ms. Asima Wajid, Deputy Director (LCID-SMD)

ORDER

1. This order shall dispose of Appeal No. 30 of 2015 filed by the Appellant under Section 33 of the Securities and Exchange Commission of Pakistan Act 1997 against the order dated 25/02/15 (the Impugned Order) passed by the Respondent.
2. The brief facts of the case are that the Appellant's application for grant of certificate of registration as a broker under the Brokers and Agents Registration Rules 2001 (the Rules) was received from Karachi Stock Exchange Limited (the Exchange). The documents were examined as per the requirements of the Securities & Exchange Rules, 1971 (the SE Rules) and it was found that application was submitted without the following documents;



Securities and Exchange Commission of Pakistan

- i. Copy of Form 29
- ii. Copy of Form A
- iii. Net Capital Balance (NCB) Certificate
- iv. Copy of Financial Statements
- v. List of Shareholders of Appellant
- vi. National Clearing Member ID

3. The Respondent advised the Appellant vide email dated 02/10/14 and the exchange vide letters dated 29/09/14, 03/10/14, 10/10/14, 22/10/14, 26/11/14, 02/01/15 and 14/01/14 to remove the above cited deficiencies. In reply, the Appellant vide letter dated 10/10/14 provided a list of shareholders and financial statements for the year ended 30/06/14. However, he failed to provide copy of Form A, Form 29 and Clearing Member ID. Subsequently, the Appellant vide letter dated 26/01/15 provided the Net Capital Balance (the NCB) certificate as at 30/06/14 issued by Naveed Zafar Ashfaq Jaffery & Co. Chartered Accountants (Chartered Accountants) showing negative balance of Rs.307,970,652. In the circumstances, the Respondent issued a Show Cause Notice (SCN) dated 04/02/15 to the Appellant due to negative NCB and hearing opportunity was provided in terms of Rule 5(4) of the Rules. On 17/02/15 the hearing was attended by Mr. Ashfaq Tola (authorized representative) on behalf of the Appellant and made following submissions.

- i. Section 16 (1), (3) and (11) of Stock Exchanges (Corporatization, Demutualization and Integration) Act, 2012 (the Act) is not applicable in the instant case.
- ii. Winding up application was filed by the lender in 2011 against the Appellant hence it was beyond their control to start the business.
- iii. Winding up petitions referred above were withdrawn by the banks in June 2014 through settlement agreements which is current in process.



Securities and Exchange Commission of Pakistan

- iv. NCB certificate prepared by the Chartered Accountants has been prepared following the historical unsettled debt with the banks.
 - v. Settlement impact if taken into account will give a positive balance of Rs.187.67 million.
4. The Respondent being dissatisfied with the response of the Appellant refused to grant the certificate of registration as broker in terms of Rule 5(5) of the Rules.
 5. The Appellant has preferred the appeal against the Impugned Order on the ground that Appellant was served a winding up notice from Bank Al-Falah Limited in 2011 and since then Appellant has made best efforts to settle all the outstanding liabilities towards the bank to avoid liquidation. Therefore it was beyond the control of the Appellant to comply with minimum net capital balance requirement.
 6. The Respondent rebutted the ground of appeal and stated that Section 16(1), (3) and (11) of the Act are applicable to the Appellant case, therefore additional time cannot be allowed to the Appellant for registration as broker. Further, as per Rule 19.3.2 (a) read with Schedule II of the Rule Book, a TREC holder can take maximum exposure of 25 times of its NCB cumulatively for all the markets, whereas Rule 3(b) the SE Rules, stipulates the requirements for maintaining at all times NCB amount Rs.2.5 million for the TREC holders of the exchange. In the presence of negative NCB of Rs.307, 970,652, the Appellant is not capable of taking any exposure in the market and, therefore, the application for grant of certificate of registration falls short of the prescribed criteria.
 7. We have heard the parties at length and perused the relevant record with the assistance of the parties i.e. Appellant & Respondent.
 8. During hearing proceeding, the Appellant submitted the following documents to establish that deficiency of negative NCB of Rs.307,970,652/- has been removed:
 - i. Sindh High Court order dated 05/08/2014 in J.M No.37 of 2011



Securities and Exchange Commission of Pakistan

- ii. Settlement Agreement including Schedule 1,2,3,4,5, dated 13/05/2014 between Javed Omer Vohra & Company Limited and Bank Al-Falah Limited.
 - iii. Application of Javed Omer Vohra & Company Limited for consent decree in suit no.B-41 of 2013 filed by Summit Bank Limited for recovery of Rs.107,815,552,18
 - iv. The Sindh High Court order dated 27/06/14 with respect to consent decree of suit No.B-41 of 2013
 - v. Settlement Agreement including Schedules and Annexure between Javed Omer Vohra & Company Limited and Summit Bank Limited
 - vi. Appellate Bench Order dated 07/03/08 in appeal no.61, 62 and 63 of 2006
9. In the light of above stated orders and settlement deeds, prima facie it appears that the Appellant has removed the deficiency of negative NCB, however there is need for deeper appreciation of the evidence to evaluate the authenticity and extent of actual execution of aforementioned settlement deeds and orders. Furthermore, the Appellant has taken a view that that Section 16 (1), (3) and (11) of the Act is not applicable in the instant case as it was registered broker even prior to the promulgation of the Act, however on the other hand its application for registration as a broker remained pending before the Respondent, which was eventually refused by the Respondent through the Impugned Order. The contention of the Appellant regarding non-application of Section 16 (1), (3) and (11) of the Act requires probe with open mind and by considering applicable legal requirements and facts of the case. The matter of application or non-application of Section 16 (1), (3) and (11) of the Act should have been discussed carefully in the Impugned Order, however the Respondent has rejected the plea of the Appellant without any cogent reason.
10. In view of the observations mentioned above, we find it appropriate to remand the case to the Respondent to consider and evaluate the evidentiary value of the documents mentioned in para seven of this order. Therefore the Impugned Order dated 25/02/15 is set aside and matter is remanded to the Respondent to decide it afresh. Without prejudice



Securities and Exchange Commission of Pakistan

to the aforesaid observations and discussion the Respondent is at liberty to call any document from the Appellant which he deem necessary to decide the issue, in just and equitable manner.

11. Parties to bear their own cost.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Tahir Mahmood)
Commissioner (CLD)

Announced on: **15 OCT 2015**