



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. 1

In the matter of

Appeal No. 30 of 2017

Sakarwala Capital Securities (Pvt.) Limited

...Appellant

Versus

Executive Director,

Securities Market Division (SMD),

Securities and Exchange Commission of Pakistan

...Respondent

Date of Hearing 07/06/18

Present:

For the Appellant:

- i. Mr. Ghulam Mujtaba Sakarwala, CEO Sakarwala Capital Securities (Pvt.) Ltd

For the Respondent:

- i. Mr. Kamal Ali, Additional Director (SMD)
- ii. Mr. Asif Khan, Deputy Director (SMD)

ORDER

1. This Order is passed in the matter of Appeal No.30 of 2017 filed under section 33 of the Securities and Exchange Commission of Pakistan (Commission) Act, 1997 (SECP Act) against the order (Impugned Order) dated 10/03/17 passed by the Respondent.
2. Sakarwala Capital Securities (Pvt.) Ltd (Appellant) is a Trading Entitlement Certificate Holder of Pakistan Stock Exchange Limited (PSX) and registered as a broker with the Securities and Exchange Commission of Pakistan under the Brokers and Agents Registration Rules, 2001



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(Brokers Rules). The Commission vide order dated 02/05/16 appointed an inspection team to inspect the books and record of the Appellant. As per the inspection report, the Appellant did not maintain proper books of accounts during 01/01/15 to 31/12/15 in contravention of rule 8(1) Securities and Exchange Rules, 1971 (SE Rules) detailed as under:

- i. Wrongly categorized the loan account of Rs 300,000/- namely provided to Zishan Abid Kholia under the head of client account.
 - ii. The Appellant understated its liability by Rs 726,209 which was payable to NCCPL for the trades dated 30/12/15 and 31/12/15.
 - iii. The account of "Hedge and Diff Account" was appearing in Trial Balance but not appearing in the General Ledger for the six month ended 31/12/15.
 - iv. Transactions in the ledger account of Ms. Rabia did not match with CDC activity report (01/07/15 to 31/12/15).
 - v. An opening credit balance of Rs 4.72 million was appearing in ledger of Ms. Rabia as on 01/07/15. However, the same was not appearing in the clients ledgers for the six month ended 30/06/15.
3. The Respondent served the Show Cause Notice (SCN) to the Appellant dated 27/12/16. The hearing in the matter was scheduled for 06/01/17. On the request of the Appellants, the hearing was re-scheduled for 16/02/17. On the given date, Mr. Ghulam Mujtaba Sakarwala, Chief Executive Officer of the Appellant (Authorised Representative) appeared before the Respondent and made his verbal and written submissions.
4. The Respondent dissatisfied with the response of the Appellant held that the Appellant had failed to comply with the requirements of Rule 8(1) of the SE Rules and non-compliance with the SE Rules by a regulated person was a serious matter. Therefore, in exercise of the powers under section 22 of the Securities and Exchange Ordinance, 1969 (Ordinance), a penalty of Rs 200,000 was imposed on the Appellant by the Respondent. The Appellant was further directed by the Respondent to ensure strict compliance of the regulatory framework in letter and spirit, in future.



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5. The Appellant preferred the instant appeal on the grounds that, a family account bearing a debit balance amounting to Rs 100,150/- on 30/06/15 and PKR 300,150/- on 31/12/15 was categorized as a 'loan account' once the matter was highlighted by the Respondent. The Appellant argued that it was merely an inadvertent categorization under the head of client account rather than the loan account. Furthermore, the Appellant argued that as far as failure to record liability of 726,209/- was concerned, it records payables and receivables on settlement date basis rather than trade date basis. The Appellant further argued that the account of Hedge and Diff Account was appearing in Trial Balance and in the General Ledger of the same which was shared with the inspection team and enclosed with the comment provided in the letter of Finding. Furthermore, the Appellant argued that the account of Ms. Rabia was a personal account and entailed few transactions which reflected in the CDC Activity Report and the ledger of Ms. Rabia for the period 01/01/15 until 30/06/15 showed that the opening credit balance of Rs 4.72 million as on 01/07/15 was appearing on the ledger for the six months ended 30/06/15.
6. The Respondent rebutted the arguments of the Appellant on the grounds that it was undertaken by the Appellant that the discrepancies in the books of accounts were being removed. The Respondent argued that it was also assured by the Appellant that all the liabilities would be recorded and loan account would be categorized correctly in the future and the Appellant had asked for a lenient view to be taken by the Respondent. The Respondent argued that pursuant to Rule 8(1) of SE Rules, the Appellant was required to maintain the requisite books of account and other documents in a manner that disclose a true, accurate and up-to-date position of his business, which includes ledgers (or other comparable records) reflecting assets, liability, reverse, capital, income and expense accounts and record of transactions with the banks. The Respondent argued that the Appellant's wrong categorization of loan account of Rs 300,000/- along with other discrepancies i.e. understatement of Rs 726,209, non-appearance of Hedge and Diff Account in the General Ledger, non-matching of client ledger transactions with CDC activity report and non-appearance of credit balance of Rs 4.72 million in ledger of Ms. Rabia as on 01/07/15 is violation of rule 8(1) of SE Rules. Furthermore, the Respondent argued that as per para 3.4.2 of the audited financial statements of 30/06/15, the Appellant's accounting



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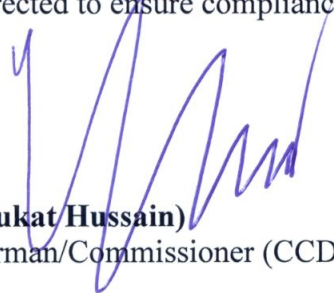
policy for recognition of regular purchase and sale of financial assets is on trade date rather than the settlement date. Moreover, the Respondent argued that no evidence was produced by the Appellant in order to substantiate its stance i.e. accounting was on settlement basis and that during the hearing the Appellant only stated that it would record the liability as per law in the future. The Respondent argued that the Hedge and Diff Account was appearing in Trial Balance but not in General Ledger for the six months ended 31/12/15 and the Appellant could not produce any evidence to show that Hedge and Diff Account was appearing in the General Ledger. Furthermore, the Respondent argued that the Appellant could not provide reasons for mismatching of ledger account of Ms. Rabia with CDC activity and also could not clarify why the account had not been used for financing activities and also during the hearing no evidence was provided which showed that the opening balance of Rs 4.72 million as on 01/07/15 was appearing in the ledger for the six months ended 30/06/15. The Respondent further argued that the Appellant in its written reply to SCN and during the hearing only submitted that it was a family/personal account, which was being used for different purposes and now the same account has been removed/closed. Furthermore, the Respondent argued that it was also affirmed by the Appellant that differences between client ledger account and CDC account would be removed and in addition, it was assured by the Appellant that it would close all accounts being used for personal purposes.

7. The Appellate Bench has heard the parties i.e. the Appellant and Respondent and perused the relevant record. The Appellant, at the hearing, accepted that there were discrepancies in the books of accounts and stated that the observations made by the Respondent have been addressed, however, the Appellant also requested leniency in the matter by waiving off penalty. We are of the view that the Appellant failed to comply with the requirements of Rule 8(1) of the SE Rules by failing to maintain proper books of accounts and non-compliance is a serious matter, therefore, no leniency can be shown.



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8. In view of the above, the Impugned Order is upheld with no order as to costs and the Appellant is directed to ensure compliance in future.


(Shaukat Hussain)
Chairman/Commissioner (CCD-CLD)


(Shauzab Ali)
Commissioner (SCD-S&ED/IE & IR)

Announced on: **03 JUL 2018**