Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 30 of 2024

Aqeel Hayat (MicroCred Financial Services Limited)

...Appellant

versus

The Commissioner, SCD, SECP

...Respondent

Date of hearing: October 31, 2025

Present:

For the Appellant:

1. Mr. Haroon Jan Baryalay, Advocate
2. Mr. Aqeel Hayat (Appellant in Person)

For the Respondent:

1. Mr. Sohail Qadri, HOD/Director, Adjudication-I, SECP
2. Ms. Asima Wajid, Additional Joint Director, Adjudication-I, SECP

ORDER

1. This order shall dispose of Appeal No. 30 of 2024 filed by Mr. Aqeel Hayat, ex-CEO of MicroCred Financial Services Limited (the Appellant) against the Order dated March 26, 2024 (the Impugned Order) passed by the Commissioner SCD (Adjudication-I) (the Respondent), under Section 282J of the Companies Ordinance 1984 (the Ordinance) for contraventions of clause (viii) of the licensing conditions under Rule 5(7) of the Non-Banking Finance Companies (Establishment and Regulations) Rules, 2003 (the NBFC Rules) and clauses 2(6), 2(7), 3(3)(a), 5(3), 5(4), 6 and clause O(iv) of Annexure-B read with clause 8(6) of the Circular 15 of 2022 dated December 27, 2022 (the Circular).

2. The brief facts of the case are that the MicroCred Financial Services Limited (the Company) was incorporated on July 7, 2022, as a public unlisted Non-Banking Finance Company under the Companies Act, 2017 (the Act) and a license was granted by the Securities and Exchange Commission of Pakistan (the Commission) on September 30, 2022 (valid up to September 30, 2025) to undertake investment finance business as a non-banking finance company. An offsite review of the Company revealed that the Company failed to comply with the requirements of the licensing conditions in terms of Rule 5(7) of the NBFC Rules and clauses of the Circular. The violations pertained to fair-treatment, full disclosure, and protection of personal information of the borrowers, and requirements of lending activities through the mobile application (the "App"). Accordingly, the Commission took cognizance of the matter and served a Show-Cause Notice (the "SCN") dated September 4, 2023 and addendum to first SCN dated December 13, 2023 (Addendum) on the Appellant, two directors and the Company.

3. The Appellant, two other directors i.e. Ms. Liu Xiaorong and Mr. Wu Wensheng (the Sponsor Directors) and the Company through the Counsel, submitted replies to the SCN vide letters dated September 25, 2023 and November 6, 2023 whereby it was prayed to allow two months to submit the duly audited compliance report. It was also submitted that infractions mentioned in the SCN have either been rectified or the Company is in the process of doing so. Moreover, the Appellant and others also requested the Respondent to take a lenient view and not to impose any penalty. Hearings in the matter of the SCN were held on October 20, 2023 and November 13, 2023. During the pendency of the SCN proceedings, it came on record of the Respondent that subsequent to removal of the Application "UdharPaisa" (the App) from the white-list on August 2, 2023, a loan was disbursed during October 2023, hence, requirement of the Circular was violated. In view thereof, the Addendum was issued to the Appellant and others. The Addendum was replied by the Appellant vide letter dated December 26, 2023 whereby it was submitted that loan disbursement in October, 2023 was not in his knowledge and when it came on record he immediately raised his concern with the Sponsor Directors vide email dated November 8, 2023 and informed them that after removal of the App from the white-list disbursement of fresh loan was not allowed. The Appellant further stated that he also asked *Jazzcash* (Mobile Wallet) vide email dated November 8, 2023 to disable the loan disbursement for the Company. The Appellant also stated that considering these circumstances, he resigned on October 31, 2023. The Appellant stated that the effective date of resignation was November 30, 2023. Mr. Wu Wensheng vide email dated December 29, 2023 *inter alia* informed that the Company intends to wind-up its operation on a voluntary basis. Thereafter, hearing was held on January 10, 2024 wherein the Appellant's Counsel apprised that the all financial and operational decisions were being made by the Sponsor Directors and the Appellant

was not even a signatory for operating the Company's Bank Account. It was also submitted by the Counsel that the App, website and other IT related services were being managed by the Chinese management from China. The Appellant's Counsel submitted that he is only representing the Appellant in the SCN and the Addendum proceedings. In order to provide an opportunity of hearing to the Company, Ms. Liu Xiaorong and Mr. Wu Wensheng, the matter was re-fixed for February 1, 2024 and March 7, 2024, however, no one appeared. The Appellant also submitted his submission vide email dated January 17, 2024 and iterated that he has no role in the violations alleged in the SCN and the Addendum.

4. The Respondent concluded the SCN and Addendum proceedings through the Impugned Order and imposed a penalty of Rs. 500,000/- (Five Hundred thousand Rupees) on the Appellant. Aggregate amount of penalty of Rs. 4,500,000/- (Rupees Four Million Five Hundred Thousand only) was imposed on the Appellant, the Sponsor Directors and the Company. In addition to imposition of penalty, the Company's license was cancelled and the licensing department was also advised to consider the Impugned Order while dealing with any future request for fit and proper criteria of the Appellant and the Sponsor Directors.

5. The Appellant challenged the Impugned Order and submitted that the SCN had been jointly responded by him and the Sponsor Directors on September 25, 2023. However, the Sponsor Directors subsequently failed to furnish requisite information to the Appellant and also stopped responding to the Commission. The Appellant submitted that after the second hearing held on November 13, 2023, he and the legal counsel expressly conveyed to the Respondent that they were no longer representing the Sponsor Directors. The Appellant contended that the Impugned Order had incorrectly observed that he concealed the fact of his resignation during the hearing of November 13, 2023. The Appellant submitted that he had resigned as CEO of the Company on October 31, 2023, however, on November, 13, 2023, he was still serving as CEO while completing his thirty-day notice period and was, therefore, fully empowered to represent the Company in responding to the SCN and Addendum.

6. The Appellant further contended that paragraph 14 of the Impugned Order incorrectly stated that he represented the Sponsor Directors, whereas they had been represented by the same legal counsel. He asserted that the Sponsor Directors subsequently became non-responsive and failed to instruct the legal counsel, due to which the counsel ceased representation of the Sponsor Directors on December 31, 2023 and continued to act only for the Appellant thereafter.

7. The Appellant denied the allegation that during the hearing held on October 20, 2023, he mis-stated that equity investment of USD 100 million and USD 330 million had been made by the Sponsors. He submitted that during the hearing held on November 13, 2023, he and the counsel clarified that the amounts mentioned were in Pakistani Rupees and not in US Dollars. The Appellant maintained that this clarification was also evident from the documents submitted to the Respondent vide written reply dated November 6, 2023, including the proceeds realization certificate issued by United Bank Limited and the auditor certificate issued by the statutory auditors, M/s. Alam & Aulakh, Chartered Accountants. He stated that despite this documentary evidence, the Respondent appeared to have neither reviewed nor acknowledged the record. The Appellant argued that in terms of the judgments in *Muhammad Lehrasab Khan v. Mst. Aqeel-un-Nisa (2001 SCMR 338) and Mst. Tayyeba Ambareen v. Shafqat Ali Kiyani (2023 SCMR 246)*, the appellate forum is empowered to intervene where there is misreading or non-reading of evidence and to re-appraise erroneous findings.

8. The Appellant submitted that the Impugned Order, being premised on factual mistakes, was erroneous and bad in law. He contended that the erroneous findings were detrimental to his professional standing and reputation and would adversely affect his employment prospects. He asserted that the factual errors required to be expunged from the record in the interest of justice and fairness.

9. The Appellant further argued that the Respondent failed to appreciate that under Section 183 of the Companies Act, 2017, the business and operations of a company are subject to the overall supervision of the Board of Directors, while the CEO is responsible only to implement the Board's decisions. Being subject to the "control and directions of the Board", the CEO cannot be held responsible for policy decisions issued by the Board or the Sponsor Directors, especially where he was not involved in such decisions. The Appellant submitted that as a contractual employee under Section 190 of the Act, he stood in a master-servant relationship *vis-à-vis* the Board and Shareholders and had no authority to enforce his will upon them. The Impugned Order, however, erroneously held him responsible for the decisions of the Sponsor Directors, who were both shareholders and represented the majority of the Board. In support, the Appellant referred to the email dated December 29, 2023 wherein the Sponsor Directors acknowledged their responsibility for the lapses and stated: "All our staff, especially the CEO, always provided us sound advice to conduct our operations in a compliant and fair manner. We take responsibility for a few lapses that have led to some issues such as the Show Cause Notice." The

Appellant also relied upon the Indian Supreme Court judgment in *Ram Pershad v. Commissioner of Income Tax (1973 AIR 637)* to submit that a CEO is responsible only for executing the Board's directions.

10. The Appellant submitted that despite limited support from the Sponsor Directors, he submitted the six-monthly compliance report on November 28, 2023 under clause (viii) of the licensing conditions. This compliance Report provided a detailed list of compliances completed by the Company, which was undertaken by the Appellant prior to completion of his resignation notice period. The Appellant admitted that the report could not be audited by statutory auditors due to the non-responsiveness of the Sponsor Directors, and therefore the Respondent erred in attributing responsibility to him for failure to conduct the audit.

11. The Appellant further contended that he had already provided concrete evidence of remedial actions taken regarding inappropriate calls by call-centre agents, including termination of certain employees. He also submitted evidence that the designated telephone numbers had been uploaded on the Company's website, thereby addressing the alleged violations of clauses 5(3) and 5(4) of the Circular.

12. The Appellant argued that the non-compliance with clauses 2(6) and 2(7) of the Circular relating to gateway fees and upfront deductions was attributable to the Sponsor Directors and the financial managers/IT team based in China as the decision-making powers rested with them and not him. The Appellant submitted that he made efforts to rectify these violations by advising the Sponsor Directors through an email dated November 3, 2023 to provide evidence of refunds made to customers, however, they failed to respond. The Appellant also submitted that the App advertisement had been rectified under clause 3(3)(a) of the Circular, but the Respondent failed to take this into account.

13. The Appellant further explained that during October 2023, the Company unlawfully disbursed 330 loans amounting to approximately Rs. 5.7 million even though the App had been delisted from the SECP whitelist and the license had been suspended on August 2, 2023. The Appellant submitted that he was unaware of these disbursements and, upon learning of the issue on October 30, 2023 through a complaint from the Commission, he immediately raised the matter with the Sponsor Directors and resigned on October, 31 2023, which was accepted by the Board on November 8, 2023 and communicated on November 27, 2023. Nevertheless, he sent an email on November 7, 2023 advising the Sponsor Directors to investigate the disbursements and take necessary action, however, they remained unwilling to cooperate. The Appellant emphasized that the Chief Financial Officer (CFO) of the Company, Chunliu

Chen, appointed through a Board resolution dated October 17, 2023 and filing of Form-29 on October 20, 2023, acted directly under instructions of the Board members in China and failed to seek authorization from him. The Appellant contended that the Respondent failed to consider his remedial steps and erroneously held him liable for the illegal actions of the Board and CFO. The Appellant further argued that as a member of the management based in China, the CFO had taken directions directly from the Board members based in China and failed to seek authorization from the CEO in relation to the unlawful loan disbursement. The Appellant contended that notwithstanding his diligent and continuous efforts to rectify the alleged non-compliances, the Respondent nevertheless proceeded to impose upon him an identical penalty as that levied on the other persons. The Appellant submitted that this was done despite his consistent cooperation with the Commission, whereas the other concerned persons failed to respond and discontinued their cooperation both with the Appellant and the Commission in addressing and rectifying the alleged violations of the applicable legal provisions. The Appellant further argued that while the Impugned Order records adverse findings against him, no similar observations have been made regarding the Sponsor Directors, despite the fact that they authorized the unlawful loan disbursements and were responsible for the upfront deductions and gateway fees charged to customers.

14. The Respondent rebutted the grounds raised in the Appeal and submitted that under Section 2 of the Companies Act, 2017, a chief executive—subject to the control and directions of the board—is entrusted with the whole, or substantially the whole, of the powers of management of the affairs of a company. Accordingly, the Appellant, being the CEO of the Company, was responsible for managing its affairs and ensuring compliance with the applicable regulatory framework. The Respondent asserted that the Appellant, in his capacity as CEO, had admitted various non-compliances of law during the hearing proceedings as well as in written correspondence. The Respondent further stated that paragraph 17(viii) of the Impugned Order had adequately explained the role and responsibilities of the CEO.

15. The Respondent contended that the Appellant did not disclose his resignation at the time of the hearing held on November 13, 2023, nor did he submit any substantive evidence in this regard. The Respondent argued that since the non-compliances occurred during the Appellant's tenure as CEO, he could not be absolved of liability on this basis.

16. The Respondent vehemently denied the allegation that the Impugned Order had incorrectly attributed a statement to the Appellant regarding equity investment of USD 100 million and USD 330 million. The Respondent submitted that the Appellant had not specifically identified any paragraph of the Impugned

Order containing the alleged misstatement. The Respondent clarified that paragraph 5 of the Impugned Order reflected that the representatives of the Company had asserted that the Company made an initial investment of USD 100 million and thereafter USD 330 million, without repatriating any amount, while maintaining a bank account with UBL. The Respondent further submitted that the case-law relied upon by the Appellant – *Muhammad Lehrasab Khan v. Mst. Aqeel-Un-Nisa (2001 SCMR 338) and Mst. Tayyeba Ambareen v. Shafqat Ali Kiyani (2023 SCMR 246)* – was irrelevant to the matter at hand.

17. The Respondent again vehemently denied the allegations of unfairness and maintained that the Impugned Order was both fair and speaking, and had been passed after due consideration of the facts which established non-compliances of law by the Appellant.

18. Reiterating its position under Section 2 of the Companies Act, 2017, the Respondent submitted that the Appellant, being the CEO entrusted with substantial powers of management, remained responsible for ensuring compliance with all applicable laws. The Respondent again asserted that the case law relied upon by the Appellant was irrelevant.

19. The Respondent contended that the Appellant failed to comply with the licensing conditions prescribed under Rule 5(7) of the NBFC Regulations. It was submitted that clause (viii) of the Licensing Conditions mandated submission of a six-monthly compliance report duly audited by statutory auditors, but the Company failed to provide the requisite report. The Respondent noted that although the Appellant argued a change in legal requirements and a change in the Company's auditor, such assertions were untenable, as the Company was granted a licence on September 30, 2022, yet failed to request any extension or submit the required report within the prescribed time. Even after issuance of the SCN, the Company only requested an additional two months for compliance through its written response and during the hearing on October 20, 2023. The Respondent further submitted that the report furnished on November 27, 2023 was merely a draft and not duly audited, thereby establishing non-compliance with clause (viii) of the Licensing Conditions.

20. The Respondent submitted that the Company violated clause 5(3) of the Circular, which prohibits digital lenders from engaging in unfair collection practices including threats, violence, or other illegal means. The Commission continued receiving complaints regarding harassment and threatening calls made to customers and their contacts. Despite repeated complaints being forwarded to the Company, such issues persisted. The Respondent noted that the Company had outsourced loan collection services

to *Smart Talk and Mobivi Tech*, yet failed to terminate their contracts despite multiple complaints. The Respondent further submitted that the Company violated clause 5(4) of the Circular by allowing calls to be made from undesignated phone numbers and by failing to ensure that designated phone numbers were displayed on the website and the App. Although *Smart Talk and Mobivi Tech* had taken 102 disciplinary actions against 23 customer service agents, calls continued to be made from non-designated numbers. The Respondent asserted that subsequent compliance does not absolve earlier defaults.

21. The Respondent submitted that the Company charged a gateway fee of Rs. 1,800 in violation of clause 2(6) of the Circular. The said fee comprised SMS charges, disbursement/collection fee, AML/CFT verification, credit information report, and server charges. The Respondent noted that the Company failed to provide details of the total amount collected under the gateway fee, its bifurcation between credit and non-credit intermediation services, or its accounting treatment in financial statements. The Respondent further submitted that the Company violated clause 2(7) of the Circular by making upfront deductions from loan amounts, as evidenced through multiple complaints where the disbursed amount was less than the approved amount. Despite repeated complaints, the Company and its directors did not provide the details of such deductions. The Respondent also submitted that the Company violated clause 3(3)(a) of the Circular through misleading advertisements which stated loan amounts of Rs. 60,000, Rs. 40,000, and Rs. 20,000 for 9, 6, and 3 months respectively, despite the Company actually providing loans for a maximum tenure of 30 days. The Respondent contended again that subsequent compliance does not absolve the Appellant of the liability.

22. The Respondent submitted that the Company's digital lending App was removed from the SECP white-list on August 2, 2023 due to non-approval under clause 6 of the Circular. However, the Company disbursed loans in October, 2023 in violation of clauses 6(6) and O(iv) of Annexure B read with clause 8(6) of the Circular, by using a fake *Google Store* button embedded in its website. The Respondent stated that the Appellant had admitted this default and expressed his inability to ensure compliance due to non-cooperation of the Company's management based in China. The Respondent further noted that the remaining notices did not submit their stance despite ample opportunity. Accordingly, the Respondent asserted that non-compliance with clause 6(6) and clause O(iv) of Annexure B read with clause 8(6) of the Circular was conclusively established.

23. The Bench has examined the record, the Impugned Order, the arguments advanced by the Appellant, and the submissions of the Respondent. The primary controversy before us pertains to whether the

findings recorded in the Impugned Order correctly attributed responsibility for the established non-compliances to the Appellant in his capacity as Chief Executive Officer of the Company, and whether any mitigating circumstances exist which warrant modification of the penalty imposed upon him.

24. The record reflects that the Appellant was serving as the CEO during the period in which the violations took place. In terms of Section 2 of the Companies Act, 2017, a chief executive, subject to the control and directions of the board, is entrusted with the whole, or substantially the whole, of the powers of management of the affairs of a company. The Respondent was, therefore, correct in holding that the Appellant could not completely disassociate himself from the operations of the Company or from the overall responsibility to ensure compliance with the applicable regulatory framework. The Appellant himself admitted certain aspects of non-compliance both in writing and during the hearing proceedings.

25. However, the Bench finds persuasive material on record which establishes that although the Appellant formally held the position of CEO, the actual decision-making authority concerning the affairs of the Company, including its financial operations, advertisement policy, fee structure, loan disbursement process, and IT functioning, rested primarily with the Sponsor Directors and management personnel based in China. The email dated December 29, 2023 written by the Sponsor Directors, and produced by the Appellant, explicitly acknowledged that the lapses giving rise to the SCN occurred under their direction, and further stated that:

"All our staff, especially the CEO, always provided us sound advice... We take responsibility for a few lapses that have led to some issues such as the Show Cause Notice."

This admission, emanating from the controlling shareholders who constituted the majority of the Board, significantly corroborates the Appellant's contention that he lacked effective authority to enforce decisions or implement remedial steps independently. The CFO, appointed by the Sponsor Directors, reported directly to them, and the IT team responsible for operating the App and its backend processes was also based in China. The unlawful disbursement of loans in October 2023, after the App had been delisted and while the licence remained suspended, appears to have occurred through actions taken outside the Appellant's control and without his authorization, as reflected from the emails exchanged by the Appellant wherein he sought clarification and demanded corrective action from the Sponsor Directors immediately upon being made aware of the matter.

26. The Respondent's finding that the Appellant concealed his resignation is not supported by the record. The Appellant had tendered his resignation on October 31, 2023 and was serving his notice period on

November 13, 2023. During this period, he continued to perform duties as CEO and remained authorized to represent the Company. The clarification subsequently given by the Appellant and his counsel during the second hearing, to the effect that the counsel was thereafter representing only the Appellant and not the Sponsor Directors, is reflected in the material before us and is consistent with the admitted fact that the Sponsor Directors had become non-responsive and had ceased to furnish instructions.

27. With respect to the allegation that the Impugned Order incorrectly attributed to the Appellant a statement relating to equity investment of USD 100 million and USD 330 million, the Bench notes that while the Appellant disputes the attribution, such discrepancy does not appear to have any material bearing upon the conclusions drawn by the Respondent with regard to regulatory breaches. The findings on non-compliances are supported primarily through documentary evidence, including customer complaints, records of gateway fee deductions, misleading advertisements, and undisputed failure to submit an audited six-monthly compliance report within the prescribed timelines.

28. The Bench, therefore, finds that the Respondent correctly concluded that violations of clause (viii) of the Licensing Conditions and clauses 2(6), 2(7), 3(3)(a), 5(3), 5(4), 6(6) and O(iv) of Annexure B read with clause 8(6) of the Circular stood established on record. However, the material produced by the Appellant demonstrates that despite repeated attempts to secure compliance from the Sponsor Directors and other management personnel based in China, he was not in a position to compel them to implement corrective measures or to provide the information required for regulatory compliance. The Sponsor Directors' own written acknowledgment materially supports this position.

29. The Bench further finds that the operative direction contained in the Impugned Order, whereby the Licensing Department was advised to examine any future fit and proper application of the Appellant in light of the Impugned Order, is without statutory basis. Such a direction is beyond the scope of the proceedings before the Respondent, is not anchored in any provision of the applicable regulatory framework, and directly affects the Appellant's future employment prospects in a manner inconsistent with principles of fairness and due process. This portion of the Impugned Order therefore warrants deletion.

30. In light of the foregoing, while the findings of non-compliance recorded by the Respondent are upheld, the Bench is of the considered view that the circumstances of the case, including the structure of authority within the Company, the Sponsor Directors' express acknowledgment of responsibility, the

Appellant's attempts to seek corrective action, and the lack of effective control available to him, constitute mitigating factors warranting modification of the penalty. In view of the foregoing, to the extent of the Appellant, paragraph 19(c) of the Impugned Order is hereby set aside and expunged. The penalty of Rs. 500,000/- imposed upon the Appellant is reduced to Rs. 100,000/-. The Appellant is further advised to remain careful in future and to avoid any association with a company wherein he does not possess the requisite authority to discharge his responsibilities.

31. The Appeal is disposed of accordingly, with no order as to costs.

(Abdul Rehman Warraich)
Commissioner

(Akif Saeed)
Chairman/Commissioner

Announced on: 04 DEC 2025