



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 31 of 2017

- i. Escorts Investment Bank Limited
 - ii. Mr. Bairam Qureshi, Former Chairman, Escorts Investment Bank Ltd
 - iii. Ms. Shazia Bashir, Former Chief Executive Escorts Investment Bank Ltd
 - iv. Mr. Mutahir Ahmed, Former Director, Escorts Investment Bank Ltd
 - v. Mr. Tajammul H. Bokhari, Former Director, Escorts Investment Bank Ltd
 - vi. Mr. Zulfiqar Ali Khan, Former Director, Escorts Investment Bank Ltd
- ...Appellants

versus

- i. Commissioner (Specialized Companies Division),
Securities and Exchange Commission of Pakistan
 - ii. Securities and Exchange Commission of Pakistan
- ...Respondents

Date of Hearing: 04/06/2020

Present:

For the Appellant No.1

- i. Mr. Ajwad Ali, Company Secretary
- ii. Mr. Jahanzeb Sukhera, Legal Counsel

For the Appellants 2-6

- i. Ms. Rabia Hassan, Advocate High Court (Axis Law Chambers)
- ii. Mr. Salman Ejaz, Advocate High Court (Axis Law Chambers)

For the Respondents:

- i. Ms. Amina Aziz, Director (Adjudication-1)
- ii. Ms. Tanzila Mirza, Additional Director (Adjudication-1)
- iii. Mr. Murtaza Abbas Naqvi, Additional Director (SCD)

ORDER

1. This Order is passed in appeal No.31 of 2017 filed under section 33 of the Securities and Exchange Commission of Pakistan Commission Act, 1997 (SECP Act) against the order dated



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10/03/17 (Impugned Order) passed by Commissioner, Specialized Companies Division (Respondent No.1).

2. The brief facts of the case are that Escorts Investments Bank (Appellant No.1) was incorporated on 15/05/95 and is listed on the Pakistan Stock Exchange (PSX). The Appellant No.1 was licensed by the Securities and Exchange Commission of Pakistan (Commission) to provide Investment Finance Services, which inter alia, expired in May 2014. On 08/09/16, the Commission issued direction to the Appellant No.1 under section 282D of the Companies Ordinance, 1984 (Ordinance) to cease taking any fresh deposits in any form with immediate effect. Furthermore, the Appellant No.1 was also directed not to repay/settle deposits of its sponsors/directors/associated companies and other related parties, till the time other deposits are completely paid-off. In view of the fact that the Appellant No.1 was directed not to raise any fresh deposits, its deposit raising permission did not stand valid. The outstanding deposits of the Appellant No.1 stood at Rs.471 million as of 31/12/16. As per existing regulatory framework, the Appellant No.1 required an amount of Rs.1.089 million as equity to meet the Minimum Equity Requirement (MER). However, its equity stood at Rs.470 million (including subordinated loan of Rs.154 million) showing a shortfall of Rs.619 million as on 31/12/16. The Commission had been vigorously following the matter and pursuing the Appellant No.1 for compliance with MER and re-payment of outstanding deposits. In this regard, the then CEO (Appellant No.3) had meetings with the officers of the Commission on 20/10/16, 10/11/16 and 29/11/16 and during these meetings, the Appellant No.3 while showing intention to get the benefit of Statutory Liquidity Requirement (SLR) against the sponsors' deposits agreed that the deposits of sponsors and associates will be converted into subordinated loan. The Appellant No. 3 further discussed options regarding sale of assets of the Appellant No.1 to pay off the outstanding deposits. It was highlighted by the Appellant No.3 that the sponsors were also meeting some of the prospective buyers for sale of sponsors' shareholding of the Appellant No.1. The Appellant No.3 also agreed to get the approval of its Board of Directors for the revival plan for repayment of depositors and provide an undertaking from all of the sponsors that they will bridge the liquidity shortfall by injecting equity in shape of cash through sale of personal assets. The Commission apprised the Appellant No.3 that the resolution of all the problems of the Appellant No.1 is the injection of funds. However, when the plan was



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submitted on 05/01/17, it did not carry any undertaking from sponsors/Appellant No.3 but a legal opinion was provided regarding concept of a limited liability company, which was not in agreement to the actions agreed by the Appellant No.3. The Appellant No.1 had been facing severe financial problems and was unable to pay off the outstanding deposits. However, no serious efforts were made either by the then management or on part of the Board of Directors to overcome the shortfall in complying with the MER.

3. Show Cause Notice dated 21/02/17 (SCN) was issued to the Appellant No.1. Mr. Bairam Qureishy, Ms. Shazia Bashir, Mr. Mutahir Ahmed, Mr. Tajammal H. Bokhari, Mr. Zulfiqar Ali Khan, (Appellants 2-6) under section 282 M(1) of the Ordinance for violation of Rule 7(3) of the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003 (NBFC Rules) and Regulation 4 of the Non-Banking Finance Companies and Notified Entities Regulations, 2008 (NBFC Regulations.) The replies to the SCN were required to be submitted by 28/02/17 and hearing was scheduled for 02/03/17. The Appellant No. 3 on behalf of the Appellants sought an extension in time for the submission of their reply to the SCN, which was acceded to by the Commission by allowing further time up to 07/03/17 for the submission of written response and the matter was re-fixed for hearing on 10/03/17. Sardar Qasim Farooq Ali, Legal Consultant on behalf of the Appellants submitted written response on 06/03/17 and attended the hearing on 10/03/17.
4. The Respondent No.1 dissatisfied with the response of the Appellants held that they continued to operate without compliance with the MER. The Respondent No.1 further held that the Commission is obligated to protect the deposit holders and shareholders of the Appellant No.1 and by not complying with its financial obligations, the Appellant No.1 had not only acted against the interest of its deposit holders but had also damaged the confidence and trust of the investors and public. Therefore, considering the non-compliance and failure of Appellants No. 2-6 in protecting the rights of the deposit holders, a penalty of Rs.1,000,000 was imposed on each of the Appellants 2-6. Moreover, the Appellant No.1 and its Board of Directors were given a time of three months from date of the order to comply with the MER failing which appropriate legal actions would be initiated.



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5. The Appellant No.1 at the hearing submitted that they are no longer pressing the instant appeal as the Impugned Order pertains to the former management of the Appellant No.1 before its acquisition by Bahria Town Private Limited (BTPL).
6. The Appellants 2-6 preferred the appeal on the following grounds:
 - i. The Impugned Order incorrectly holds that the Appellants 2-6 have not been making concrete efforts to comply with the MER. As the public announcement of intention to acquire shares shows, AKD Securities Limited acting on behalf of BTPL at the time was in the process of acquiring 71.68% ordinary shares of the Appellant No.1. Moreover, this was not an abstract plan, on the contrary, the public announcement displayed the seriousness of the plan. The acquisition of shares by BTPL resulted in the injection of capital into the Appellant No.1 and the MER requirement was, therefore, met and the depositors were paid off. Therefore, this was a concrete step being taken by the Appellant No.1 to comply with the requirements of Rule 7(3) of the NBFC Rules. While the Impugned Order makes explicit reference to the deal with BTPL, however, it does not state how the said deal failed to qualify as a concrete effort to comply with the MER. The failure of the Impugned Order to take this critical fact into consideration renders the Impugned Order legally defective and it is, therefore, liable to be set aside.
 - ii. The Appellants 2-6 were in the process of liquidating their personal assets in order to inject further capital into the Appellant No.1 even if the deal with BTPL had not come to fruition. This would have potentially enabled the Appellant No.1 to settle all deposits. The concrete nature of this step can be gauged by the fact that the Appellant No.1 had initiated the process of making payments to its depositors, as evidenced by the payment of Rs.5 million to Mr. Rashid Nawaz Tipu, one of the depositors of the Appellant No.1. This showed that the Appellants 2-6 not only had a concrete plan to comply with the MER through the acquisition and sale of shares to BTPL, but also, had a secondary concrete plan to meet the shortfall via its sponsors. Furthermore, even if liquidating their personal assets would not have settled the deposits, it still demonstrates that the Appellants 2-6 were doing everything reasonable to comply the legal requirements. The Appellants 2-6 had been making concrete efforts to comply with the MER since September 2016 and as communicated to the Commission, the Appellant No.1 had been



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in the process of negotiating an equity participation deal with Exim Sourcing. However, Exim Sourcing could not issue a public offer. Nevertheless, it is clear that this was a concrete step, which has been taken by the Appellants 2-6 to comply with the MER. The Impugned Order failed to take any of the concrete efforts into consideration when finding the Appellants liable for violating Rule 7(3) of the NBFC Rules and Regulation 4 of the NBFC Regulations. Furthermore, deposits of Rs.600 million out of a total of Rs.1,000 million were paid and payments had been made to most of the depositors, constituting approximately 56% of the total depositors of the Appellant No.1 up until January 2017. The Appellants have been actively engaged in paying off its creditors and the acquisition of shareholding by BTPL had settled all pending deposits. The Appellant No.1 was also expected to receive Rs.40 million from the proceeds of sale of 40% of its shares in the PSX which was to be utilized to make payments to the Appellant No.1's depositors. Based on this fact, it is clear that the Appellants 2-6 were continuously in the process of making payments to its depositors and approached the Commission with rational and cogent business plans. The first cogent business plan was given through letter dated 10/10/16, which was followed by a revival plan on 15/12/16. The finalized revival plan (Revival Plan) was provided to the Commission on 05/01/17. Furthermore, the Commission never objected to particular elements of the Revival Plan nor was there any suggestion that it was unworkable. The Commission represented through their letters dated 21/02/17, 22/12/16 and 20/12/16 to the Appellants that they would be allowed to fulfill the requirement of MER under applicable laws through the Revival Plan that created a legitimate expectation in the mind of the Appellants 2-6 that they would not have to face any coercive action. Furthermore, the Appellants 2-6 relied on this legitimate expectation to their detriment *inter alia* by taking a number of steps such as the creation of a subordinated loan in favour of the Appellant No.1 by the sponsors. The Impugned Order fails to take all these facts into consideration and, therefore, is liable to be set aside.

7. The Respondents rebutted the arguments of the Appellants 2-6 on the following grounds:
 - i. In terms of NBF Regulatory framework, the NBFCs with valid deposit raising permission were allowed a time period of one year to comply with the Minimum Equity Requirement (MER). As per the record available with the Commission, all the efforts of the management of Appellants was concentrated on selling the bank or finding a prospective

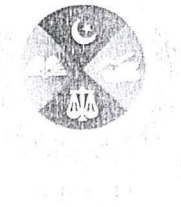


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buyer who could possibly inject funds and revive the bank. When the revival plan was submitted on 21/10/16 and 15/12/16 by the Appellant No.3, it talked about sale of current/available assets of the bank, repayment to the depositors and sale of personal assets of the sponsors to bridge any gap between the assets and liabilities but it did not carry any clause regarding injection of funds by the sponsors to comply with the MER.

- ii. The sponsors vide their letter dated 15/12/16 submitted that the gap of Rs.165.4 million between the total discharged liabilities of Rs.476.7 million and the actual liquidity in hand of Rs.350 million would be bridged by the sponsors of Appellant No.1. When the plan, however, was re-submitted on 05/01/17, it did not carry any undertaking from sponsors/Appellant No.3 and a legal opinion was provided regarding concept of a limited liability company in contrast to the actions agreed by the Appellant No.3 during various meetings with the officers of the Commission. As far as the payments to the depositors was concerned, the Appellant No.1 did not show seriousness in honouring its commitments. The Appellants had outstanding overdue deposits of Rs.448 million as on 31/04/17. Furthermore, the Appellant No.1 had made a written commitment to make payment of Rs.15.4 million to a depositor on 31/03/17. Subsequently, the Appellant No.1 flatly refused to honour its commitment on the pretext that BTPL is acquiring the majority stake in the Appellant No.1 and only partial payments have been made by them. The Appellants have argued that they were expecting to receive Rs.40 million from the proceeds of sale of 40% shares in PSX, however, when the matter was taken up with the Appellant No.1 after receipt of the funds, the Appellant No.1 refused to make payment to the depositors. Furthermore, the Appellant No.1 was allowed time until 24/11/16 to comply with the MER of Rs.750 million but despite lapse of considerable time, no concrete efforts were seen on part of the Appellants to comply with the requirements of the regulatory framework especially MER. Furthermore, the revival plans submitted by Appellants 2-6 on 21/10/16 and 15/12/16 did not address the issue of compliance with the MER.

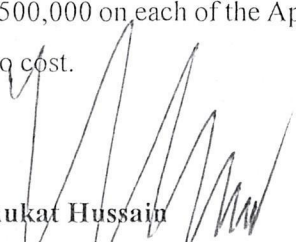
8. We have heard the parties i.e. the Appellant and the Respondent. The Appellant No.1 argued that they are no longer interested in pursuing the appeal as it pertains to the former management of Appellant No.1, therefore, the appeal is dismissed as withdrawn to the extent of Appellant No.1. The Appellants 2-6 who are former directors of the Appellant No.1 are of




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the view that had they not made serious efforts for the Revival Plan, the acquisition by BTPL would not have taken place. The Appellants 2-6 further argued they were even willing to sell their personal assets to settle outstanding deposits, however, that alone would not have sufficed but it demonstrates that they were making reasonable efforts to meet the legal requirements. The Respondent No.1 has argued that the Appellants were non-compliant by not complying with the MER and failed to pay outstanding deposits. Furthermore, the Respondent No.1 was of the view that no concrete Revival Plan was submitted by the Appellants 2-6. We are of the view that at the time of the Impugned Order, the Appellant No.1 was non-compliant and it was clear that they did not comply with the MER and had outstanding deposits. This situation continued until the acquisition of Appellant No.1 by BPTL, therefore, penalty was rightly imposed by the Respondent No.1 for violation of Rule 7(3) of the NBFC Rules and Regulation 4 of the NBFC Regulations. We concur with the Appellants 2-6, however, that the acquisition by BPTL in 2017 would not have been possible without their reasonable efforts and that subsequently all outstanding deposits were paid and the requirement of MER was fully complied with.

9. In view of the foregoing, we take a lenient view and reduce the penalty from Rs.1,000,000 to Rs.500,000 on each of the Appellants 2-6. The appeal is disposed of accordingly with no order as to cost.


Shaukat Hussain
Commissioner (CCD, Insurance)


Shauzab Ali
Commissioner (SMD)

Announced on:

29 JUL 2020