



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 33 of 2021

M/s. Royal Securities (Private) Limited

...Appellant

Versus

Commissioner (Securities Market Division,
Securities and Exchange Commission of Pakistan, Islamabad

...Respondent

Date of Hearing: 15/03/21 & 16/06/21

Present:

For the Appellant via Zoom video conferencing:

- i. Mr. Mansoor Al Ghangro, Counsel, MZGLAW Advocates
- ii. Mr. Imran Khan, CEO, Royal Securities (Pvt.) Ltd
- iii. Mr. Rizwan Riaz, Director, Royal Securities (Pvt.) Ltd

For the Respondent via Zoom video conferencing:

- i. Ms. Amina Aziz, Director (Adjudication-1)
- ii. Mr. Imran Shamsie, Deputy Director (Adjudication Advisory & Legal Department)
- iii. Ms. Mehwish Naveed, Assistant Director (Adjudication Advisory & Legal Department)
- iv. Mr. Muhammad Faisal, Assistant Director (Adjudication-1)
- v. Mr. Qaiser Iqbal, Additional Joint Director, CRO, Karachi
- vi. Mr. Nadeem Rafique, Deputy Director, Onsite Department, Karachi

ORDER

1. This Order is passed in Appeal No. 33 of 2021 filed by Royal Securities Pvt. Ltd., (the Appellant) under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the SECP Act) against the Order dated 22/02/21 (the Impugned Order) passed by the Commissioner, Securities Market Division, Securities and Exchange Commission of Pakistan (the Respondent).



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2. The brief facts of the case are that the Joint Inspection Team of PSX, Central Depository Company and National Clearing Company of Pakistan Limited (the JIT) conducted an inspection into the affairs of Royal Securities (Private) Limited (the Appellant) to ascertain its compliance with the Securities Brokers (Licensing & Operations) Regulations, 2016 (the Securities Brokers Regulations). The JIT's inspection report (the Report) revealed that the Appellant was *prima facie* involved in deposit-taking activity and borrowing of funds in contravention with the provisions of the Securities Brokers Regulations. Alleged violations are as under:

- a) The Appellant was maintaining two accounts in its back-office system namely "Royal Traders Account" (the RTA) & "A.R. Traders" (the ART) in its trial balance. These accounts only contained funds deposits and funds withdrawal transactions. However, no UINs were opened against these accounts. As informed by the Appellant, M/S. Royal Traders & M/S. A.R Traders are sole proprietorship concerns of one of its directors who had deposited and withdrawn funds through these firms for National Clearing Company of Pakistan Limited (the NCCPL) clearing purpose against his trading transactions. The Appellant also obtained a loan of Rs. 104 million from ART during the period 29/01/18 until 28/05/18.
- b) The Appellant received an amount of Rs. 40 million from Mr. Muhammad Hasan Mangi (the MHM) vide his cheque dated 10/11/16. The amount was credited into the bank account of the Appellant and was shown in the ledger of the "Royal Traders Loan ' account. The Appellant did not open any trading account of MHM and had utilized Rs. 40 million of an individual and routed these funds through RTA.
- c) A Complaint was also received against the Appellant by an individual namely Mr. Shahzaib Mughal (the Complainant) dated 09/08/19. The Complainant provided that he had invested Rs. 3 million with the Appellant and the said amount was given to Mr. Atif Shabbir, a major shareholder of the Appellant at that point in time. A receipt dated 30/09/18 of Rs. 3 million was issued on the letterhead of the Appellant and with an official stamp. The Complainant stated that subsequent to the referred investment, he approached shareholders/directors of the Appellant to acquire details of purchased shares. However, the Appellant failed to provide the requisite details upon which the Complainant demanded a refund and return of his invested amount. It was also observed that the Appellant did not open a trading account for the Complainant. As per the Complainant, a cheque dated 26/06/19, amounting to Rs. 3 million was issued by Sponsor/Director to the Complainant to settle the claim, however, the cheque was dishonored on 28/06/19. The



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Complainant then lodged FIR No. 121/2019 in Police Station Qasimabad against the directors/shareholder of the Appellant.

3. The Respondent was of the view that the aforementioned instances revealed that the Appellant, in connivance with its Director/Shareholder, was involved in illegal deposit-taking activity and borrowing of funds in contravention of Regulation 16(2)(Ka) of the Securities Brokers Regulations. Furthermore, the Respondent took notice that the books of accounts including Net Capital Balance (the NCB) and financial statements of the Appellant from 31/12/16 to 30/06/19 *prima facie* did not reflect a true and fair view. Therefore, violation of section 79(1) read with section 84(b) of the Securities Act, 2015 (the Securities Act), Regulation 33(1), 33(1)(a)(b) and 33(5)(a) of the Securities Brokers Regulations had been established. Furthermore, it was observed by the Respondent that the Appellant failed to conduct appropriate customer due diligence (the CDD) in violation of Regulation 6(2) read with 6(3)(a), (b), (c), 6(5) and 6(10) of the Securities and Exchange Commission of Pakistan (Anti-Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the AML Regulations).
4. The Show Cause Notice dated 15/05/20 (the SCN) was issued to the Appellant who was directed to show cause in writing within fourteen (14) days from the date of the SCN as to why penalties may not be imposed upon it under section 150 of the Securities Act and section 40A of the SECP Act for contravening the Securities Brokers Regulations and AML Regulations. The Appellant submitted a written reply to the SCN vide letter dated 17/05/20. Hearing in the matter was held on 05/01/21 and Mr. Rizwan Riaz (Managing Director/Shareholder) and Mr. Muhammad Hammad (Compliance Officer) appeared as authorized representatives and made their submissions.
5. The Respondent after hearing the submissions of the Appellant held that in terms of AML Regulations, MHM, RTA, ART and the Complainant were not customers of the Appellant and the transaction between them could not fall within the scope of business relations as per section 2(ia) and 2(f) of the AML Regulations, therefore, violations of AML Regulations could not be attributed towards the Appellant. However, contraventions of the provisions of the Securities Act and Securities Brokers Regulations had been established and a penalty of Rs. 10,000,000/- (Rupees Ten Million Only) was imposed on the Appellant by the Respondent. Furthermore, the Respondent in terms of section 150(1) of the Securities Act, also suspended the license of the Appellant in relation to all regulated activities and directed the Appellant to inform all its customers regarding suspension of its license. The Respondent further advised the relevant department of the Securities and Exchange Commission of Pakistan (the Commission) to undertake comprehensive investigation into the affairs of Appellant to



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ascertain its compliance with the applicable regulatory framework within 90 days from the date of the Impugned Order and that after investigation matter of suspension shall be revisited by the Commission.

6. The Appellant preferred the Appeal *inter alia* on the grounds that the Respondent has acted in stark contravention of the principles of proportionality in imposing an excessive penalty of Rs 10 million coupled with a suspension of the Appellant's license in relation to all the regulated securities activities. Furthermore, the Appellant argued that the Respondent failed to appreciate that Royal Traders is a sole proprietorship concern of Mr. Rizwan Riaz who is a substantial shareholder and Director of the Appellant and a loan to the Appellant from Royal Traders is permissible in terms of Regulation 16(2)(Ka)(iv) of the Regulations. Furthermore, the Appellant argued that the entire amount was repaid by the Appellant to Royal Traders (sole proprietorship) and A.R. Traders (partnership concern of Rizwan Riaz, defunct since June 2018), between 29/01/18 and 28/05/18. The Appellant stated further that there was no reason or cause to open UINs against these entities in presence of the UIN of Mr. Rizwan Riaz since Royal Traders and A.R. Traders are sole proprietorship and partnership concerns of Mr. Rizwan Riaz. Furthermore, the Appellant argued that the Respondent failed to appreciate that the entire amount of Rs 40 million was returned to MHM through cross-cheques following the same process through which it had been received. The Appellant further argued that the amount of Rs 40 million was inadvertently credited to the Appellant's account and that the Respondent has failed to appreciate that no loan was created in the books and accounts of the Appellant in favour of MHM as that was never the intent of the parties. Furthermore, the Appellant argued that Mr. Atif Shabbir had never been a Director of the Appellant nor held any managerial position in the Appellant and never received any amount from the Complainant, therefore, no UIN or trading account was created in his favour. The Appellant stated that the Respondent failed to appreciate that the Appellant took all remedial measures to ensure that its books of accounts and financial statements, were a true and accurate representation of the business being conducted by the Appellant. Furthermore, the Appellant argued that the Respondent also failed to appreciate that the Appellant had already been given a warning by Pakistan Stock Exchange (the PSX) for the violations pursuant to their Order dated 08/04/20 (the Order of PSX), wherein, PSX had come to conclusion that "*Keeping under consideration the arguments presented under the hearing, evidences submitted in support of the rectification of identified non-compliances and assurances provided by RSPL to comply with the relevant Rules and Regulations, the Exchange has decided to issue a warning.... You are hereby advised to remain vigilant in future and ensure compliance with all rules and regulations*". Therefore, the Appellant argued, that in view of the Order of PSX, there was no reason to issue show-cause for the same violations and a lenient view should be taken in the matter and penalty reduced.



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7. The Respondent rebutted the arguments of the Appellant *inter alia* on the grounds that the Impugned Order was passed after careful scrutiny of all the facts of the case. The Respondent argued that documentary evidence on record indicates that the amount of Rs 40 million was received by the Appellant as a loan from MHM vide agreement dated 10/11/16 (the Loan Agreement) and was settled in July 2019 by issuing a cheque of Rs 40 million to MHM from the bank account of the Appellant. The Respondent further argued that the record available indicated that MHM provided funds in the name of the Appellant and which were accepted by it and routed in other accounts, therefore, the existence of the relationship between the two parties cannot be denied. Furthermore, the Respondent argued that although the Appellant has denied any association with the Complainant as a client or otherwise, the Complainant had provided copy of receipt dated 30/09/18 on the letterhead of the Appellant confirming his investment of Rs 3 million for investment/purchase of shares through the Appellant. Furthermore, the Respondent argued that the Appellant had not opened any UIN accounts of ART, RTA, MHM and the Complainant, despite the record, indicates acceptance of money from such individuals without having any customer relationship. Therefore, the Respondent argued that it had been observed that the Appellant through his shareholders/directors was involved in illegal deposit-taking activity in contravention of the requirements of Regulation 16(2)(Ka) of the Regulations. Furthermore, the Respondent argued that the Order of PSX was under the PSX Regulations and had no correlation with the Impugned Order which was issued under the Securities Act and the Securities Brokers Regulations.
8. We have heard the parties i.e. the Appellant and the Respondent. We are of the view that Regulation 16(2)(Ka) of the Securities Brokers Regulations is very clear and unequivocal which provides that, "*A securities broker shall not: accept any money or deposit or borrowing by whatsoever name called and in whatsoever manner from any person including an individual or any segment of public or any segment of public or directors and sponsors of a securities broker...*". The Appellant's argument that the loan amounts were fully returned and that loan to the Appellant from Royal Traders was permissible is without any merit whatsoever as this was a loan from a third party and not from a sponsor/director or substantial shareholder of the Appellant. Furthermore, we have observed that the JIT provided a copy of the Loan Agreement between MHM and Mr. Rizwan Riaz and the Appellant instead of recording the liability of MHM in the books of accounts, recorded the same in the ledger of RTA. The Appellant's argument that the amount of Rs 40 million was credited inadvertently to the Appellant's account is also without any merit. The Appellant has also not been able to establish that they had received no money from the Complainant as all the evidence provided by the Respondent points towards the fact that the



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Appellant was involved in illegal-deposit taking activity and borrowing of funds in contravention with the provisions of the Securities Brokers Regulations. As a result, the books of accounts of the Appellant also did not reflect a true and fair view. Furthermore, even if a complaint has subsequently been withdrawn or the Appellant has made rectifications, it does not absolve the Appellant of any violations which may have been committed. The Appellant, therefore, has not been able to establish that they had not violated the provisions of the Securities Act and the Securities Brokers Regulations. Furthermore, we are of the view that the fact that PSX had issued a warning has no correlation with the Impugned Order which was issued under the Securities Act while the Order of PSX was under clause 20.4A.2 of the PSX Regulations. We are also of the view, therefore, that penalty was rightly imposed on the Appellant along with suspension of license for the aforesaid violations which are of a very serious nature. Furthermore, comprehensive investigation had to take place into the affairs of the Appellant within 90 days of the Impugned Order and, thereafter, decision of suspension of license had to be revisited by the Respondent.

9. In view of the foregoing, we remand the matter to the Respondent to ascertain whether suspension of license should continue after detailed scrutiny of the investigation report.
10. The Appeal is disposed of accordingly with no order as to costs.

Sadia Khan

Commissioner (SCD-S&ED)

Farrukh Sabzwari

Commissioner (SCD-PRDD)

Announced on:

12 JUL 2021