Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 39 of 2017

Fine Securities (SMC-Pvt.) Limited

Appellant

Versus

Executive Director, (PRPD), SECP, Islamabad.

Respondent

Date of hearing: 20/04/18

Present:

For Appellant:

i. Mr. Ali Lakhany
ii. Mr. M. Ali

For Respondent:

i. Mr. Asif Khan- Deputy Director (SMD)
ii. Salman Arshad- Deputy Director (SMD)

ORDER

1. This Order is in the matter of Appeal No. 39 of 2017, filed by Fine Securities (SMC-Pvt.) Limited (the Appellant) against the Order dated 28/04/17 (the Impugned Order) passed by the Executive Director (the Respondent) under Section 150 of the Securities Act, 2015 (the Act).

2. Brief facts of the case are that it has been alleged by the Respondent that the Appellant in contravention of Pakistan Stock Exchange (the PSX) notice no. PSX/N-5086 dated September 15, 2016 (the PSX Notice) and regulation 6(4) of the Securities Brokers (Licensing and Operations) Regulations, 2016 (the Regulations) had failed to file online monthly statements of net capital balance and liquid capital (the Statements) for the months of October 2016 and November 2016 (Default Period). The PSX further directed the Appellant vide reminders dated December 16, 2016, and January 18, 2017, to file the Statements within 15 days of the subsequent month. The Securities and Exchange Commission of Pakistan also issued a reminder on December 28, 2016.

3. In view of above stated alleged violation, the Respondent issued a Show Cause Notice dated 14/02/17 (the SCN) to the Appellant whereas the Appellant submitted the reply of SCN vide a letter dated 18/02/17. Hearing in the mater, before the Respondent was held on 09/03/17, which was attended by Mr. Waqas ur Rehman. The SCN proceeding was concluded through the Impugned Order and a penalty of Rs. 200,000/- was imposed on the Appellant by the Respondent.

4. The Appellant has challenged the Impugned Order before the Appellate Bench (the Bench) through the instant Appeal and requested to set-aside the Impugned Order whereas, the Respondent has prayed to dismiss the Appeal.

5. The Bench has heard the parties and perused the record. It has been noticed by the Bench with great concern that while adjudicating the matter the Respondent has not applied a judicial mind. The operative para six of the Impugned Order states that the Appellant had failed to file online Statements for the Default Period. The Respondent, to establish the alleged violation, had relied upon the Regulation 6(4) of the Regulations and the PSX Notice, however, none of these provisions require online filing of the Statements. The most astonishing fact of the case is that the Impugned Order has been passed for non-filing of online Statements, however, the SCN does not contain any such allegation.

6. The Bench is the appellate quasi-judicial body of the Commission, therefore, while deciding appeals under Section 33 of the SECP Act, 1997, it has to see whether the adjudicating authority has applied the relevant law in letter and spirit or failed to demonstrate the desired application of law. In the present case, the Appellant had been penalized for the violation which was neither alleged in the SCN, nor was it a requirement of the law. Accordingly, the entire proceedings against the Appellant, including the Impugned Order are absolute nullity. Therefore, the Bench, hereby set-aside the Impugned Order being passed without any legal sanction. The Appeal is allowed without any order as to cost.

(Shaukat Hussain)
Commissioner (CCD-CLD)

(Tahir Mahmood)
Commissioner (CSD-CLD)

Announced on: 21 JUN 2018