



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 39 of 2019

Ghani Osman Securities (Pvt.) Ltd

...Appellant

Versus

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

...Respondent

Date of Hearing: 27/02/2020

Present:

For the Appellant:

- i. Mr. Haji Ghani, CEO
- ii. Mr. Asim Ahmed, Compliance Officer
- iii. Mr. Shafi, Consultant

For the Respondent:

- i. Mr. Osman Syed, Joint Director (Adjudication-1)
- ii. Mr. M. Akram, Assistant Director (Adjudication-1)

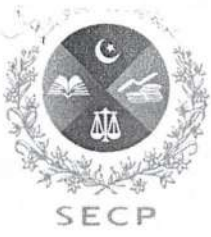
ORDER

1. This Order is passed in Appeal No. 39 of 2019 filed under section 33 of the Securities and Exchange Commission of Pakistan Commission Act, 1997 (the SECP Act) against the Order dated 10/06/19 (the Impugned Order) passed by Commissioner, Securities Market Division (the Respondent).



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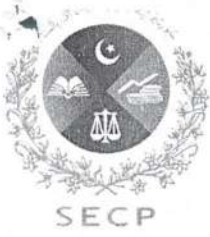
2. The brief facts of the case are that Ghani Osman Securities (Pvt.) Ltd (the Appellant) is a Trading Rights Entitlement Certificate (TREC) holder of the Pakistan Stock Exchange Limited (the PSX) and licensed as a securities broker with the Securities and Exchange Commission of Pakistan (the Commission). The Commission, in exercise of the powers conferred under section 169 of the Securities Act 2015 (the Securities Act), vide its inspection notice dated 06/03/19 conducted review of compliance status in consonance with the regulatory requirements contained in Securities and Exchange Commission of Pakistan (Anti-Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the AML Regulations). The team submitted its report on 04/04/19 (the Review Report) after receiving comments on the letter of findings dated 19/03/19. The Review Report revealed that the Appellant was non-compliant with the AML Regulations, detailed as under:
- a. The Appellant had not updated its policy as per the AML Regulations.
 - b. The Appellant had not implemented the requirement of having independent audit function.
 - c. The Appellant had not obtained evidence relating to income, business and its ownership and control structure of 25 sample clients. Furthermore, the Appellant had not carried out Enhanced Due Diligence (the EDD) with regard to one of its clients identified as Politically Exposed Person (the PEP).
 - d. Discrepancies were observed in the clients' risk profiling and its categorization as the Appellant had not mentioned any risk categories in the respective Know Your Customer/Customer Due Diligence (the KYC & CDD) forms of 26 sample clients. Furthermore, it was observed that the Appellant had categorized its clients (high/low/medium) without performing risk assessment. The Appellant had categorized 25 sample clients as low risk despite existence of high risk associated with the clients' profile. Moreover, the Appellant had not documented the reasons for categorization of its clients as low risk.
 - e. The Appellant, in 10 instances did not ascertain/obtain details regarding the beneficial owner.
 - f. The Appellant had not developed mechanism and procedures for ongoing monitoring of its clients.
 - g. The transaction executed in the certain clients' account, did not commensurate with their level of income and could be viewed as suspicious. The Appellant had not



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documented the basis of deciding whether STR should be filed or not. Moreover, the Appellant had not kept the record together of all internal findings and analysis done in relation to a suspicion irrespective of whether transaction was subsequently reported or not.

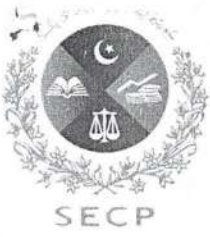
- h. Duties and responsibilities of the compliance officer were not incorporated in the job description.
 - i. The Appellant failed to provide any documentary evidence to establish suitable training program for its relevant employees.
3. Show Cause Notice dated 06/05/19 (the SCN) under section 40A of the SECP Act was served on the Appellant. The Appellant submitted its written reply vide its letter dated 10/05/19 and hearing in the matter was held on 13/05/19. Mr. Abdul Ghani (the Chief Executive Officer), Mr. Asim Ahmed (the Director) & Mr. Rizwan (the Company Secretary) attended the hearing as Authorised Representatives and reiterated the arguments made in their written submissions.
 4. The Respondent dissatisfied with the response of the Appellant held that contravention of the provisions of AML Regulations had been established. Therefore, in terms of powers under section 40A of the SECP Act, a penalty of Rs 250,000 was imposed on the Appellant. The Appellant was also advised to comply with the provisions of AML Regulations in letter and spirit.
 5. The Appellant preferred the instant appeal on the grounds that the Appellant was not authorized to conduct review of compliances by the Appellant pursuant to section 169 of the Securities Act. Furthermore, the Appellant argued that the Commission had power only to make regulations and not conduct review of compliance status in consonance with the regulatory requirements contained in AML Regulations. The Appellant further argued that Regulation 21 of Joint Inspection Regulations (the JI Regulations) empowered SRO(s) i.e. Securities Exchange, Central Depository Company (the CDC) or National Clearing Company of Pakistan Limited (the NCCPL) to take enforcement action against the Appellant provided the Oversight Committee (the OC) forwarded the findings of Joint Inspection Team (the JIT) to such SRO with adjudication notes. Furthermore, under Regulation 13(2) of JI Regulations, the Appellant was required to respond or submit its comments on findings of JIT within fourteen days (14)



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of receipt of letter of findings. In the instant case, however, the OC only gave the Appellant a period of seven (7) days to provide its comments. Furthermore, the Appellant argued that the Respondent was not authorized to impose penalty on the Appellant under the SECP Act for non-compliances of the PSX's KYC and CDD Guidelines (the PSX's Guidelines) issued in 2012 and notified under regulation 4.18 of the PSX Rule Book (the PSX's Regulation) as they were merely a guiding tool to the brokers for implementing KYC and CDD. Furthermore, neither PSX nor the Commission took cognizance for non-compliance of PSX Guidelines since their notification in 2012. Furthermore, the Appellant argued that the Respondent could have only taken action if it was reported that non-compliances were not rectified. The Appellant placed reliance on the judgment of the Appellate Bench of the Commission in the matter of *Karachi Stock Exchange, its Managing Director and Deputy Managing Director versus Director and Head of Department, Market Supervision and Registration Department (Appeal Nos. 26, 27 & 28 of 2014)*, wherein, it was held that the Respondent should not impose penalty without allowing the Appellant an opportunity to rectify such non-compliances. Furthermore, the Appellant argued that they had rectified all the discrepancies before the hearing and the Appellant's response to the observations in the Review Report did not reflect in the SCN.

6. The Respondent rebutted the arguments of the Appellant on the grounds that the Appellant had misconstrued that the Respondent had conducted a review under section 169 of the Securities Act. The Respondent argued that by virtue of section 169 of the Securities Act, the Commission is empowered to make regulations in order to provide mechanism for conducting inspections and investigation of regulated persons and that JI Regulations were made under section 169(2)(ii) of the Securities Act and the OC was formed under the JI Regulations in order to conduct a Thematic Review of the Appellant. Furthermore, the Respondent argued that they had shared preliminary findings with the Appellant in respect of compliance status of AML Regulations conducted by JIT. The Appellant, thereafter, was found to be non-compliant with AML Regulations and the Respondent took cognizance of the aforesaid facts and served a SCN. Subsequently, the Impugned Order was passed after following due process. Furthermore, the Respondent argued that regulatory requirements relating to KYC/CDD and Anti-Money Laundering have been implemented since 2012 considering public interest, the integrity of the Pakistan Capital market and the country's international commitments. Therefore, the

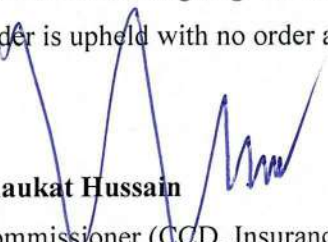


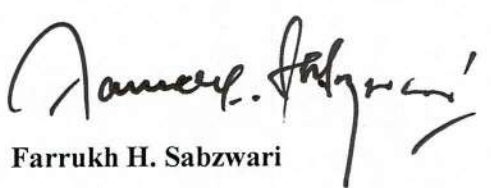
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Respondent argued that AML Regulations cannot be termed as a new set of requirements and it was mandatory for the Appellant to fully comply with them in letter and spirit.

7. We have heard the parties i.e. the Appellant and the Respondent. We are of the view that the Appellant has no solid argument as to why the Appellant was non-compliant with the AML Regulations. The Appellant's argument that the Commission had no powers to review compliance report does not hold merit as the main scope of the Regulations is to conduct inspection and in pursuance of Regulation 19 of the JI Regulations, the OC was formed under section 169(2)(ii) of the Securities Act. The inspection was conducted on the basis of Terms of Reference communicated by the Commission vide email dated 31/08/18 and the Review was carried out by JIT which comprised of staffs representing PSX, CDC and NCCPL. Furthermore, the Respondent shared preliminary findings with the Appellant in respect of the compliance status of the AML Regulations and while Regulation 13(2) states that a broker should be given 14 days and not 7 days as given by the OC to respond to any findings, it is trite law that technicalities should not come in the way of administration of justice. Furthermore, we are of the view that the regulatory requirements prescribed in the AML Regulations were not new as all securities brokers since 2012 had to comply with PSX's Regulation to formulate and implement an effective KYC and CDD policy in accordance with PSX's KYC and CDD Guidelines and put in place requisite policies and procedures to curtail activities relating to money laundering and financing of terrorism. The Appellant's argument that penalty should not have been imposed does not hold merit as the Appellant has admitted its violations even if they had been rectified at a subsequent stage. Therefore, penalty was rightly imposed on the Appellant for very serious violations of AML Regulations.

8. In view of the foregoing, we see no reason to interfere with the Impugned Order. The Impugned Order is upheld with no order as to cost.


Shaukat Hussain
Commissioner (CCD, Insurance)


Farrukh H. Sabzwari
Commissioner (SCD, AML)

Announced on: **21 MAY 2020**