

Securities and Exchange Commission of Pakistan

APPELLATE BENCH NO. 1

In the matter of

Appeal No. 4 of 2018

Pak Meezan Securities (Pvt.) Ltd

...Appellant

Versus

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

...Respondent

Date of Hearing: 11/12/18

Present:

For the Appellant (via video conferencing)

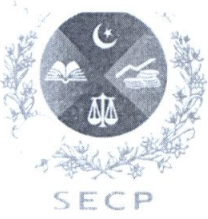
- (i) Mr. Asif Malik, CEO Pak Meezan Securities
- (ii) Mr. Shafqat Ali, Advisor, Pak Meezan Securities

For the Respondent:

- (i) Mr. Nasir Askar, Director (SMD)
- (ii) Ms. Mehwish Naveed, Management Executive (SMD)

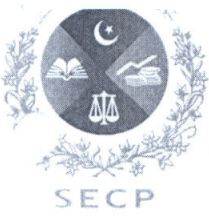
ORDER

1. This Order is passed in the matter of Appeal No.4 of 2018 filed under section 33 of the Securities and Exchange Commission of Pakistan (Commission) Act, 1997 (SECP Act) against the order (Impugned Order) dated 13/10/17 passed by the Commissioner (Securities Market Division) (Respondent).



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2. The brief facts of the case are that by virtue of the Securities Brokers (Licensing and Operations) Regulations, 2016 (Regulations), new regulatory regime was introduced w.e.f. 30/06/16 and in terms of proviso of regulation 3 of the Regulations, the Appellant was deemed licensed under section 177(3) and 178(2) of the Securities Act, 2015 (Securities Act). The licence renewal date of M/s Pak Meezan Securities (Pvt.) Ltd (Appellant) was 21/04/17. The Appellant was required to submit its Application for renewal of licence as securities broker under the Regulations on or before 21/03/17. The Appellant, however, failed to submit its application for renewal of licence as securities broker within its stipulated period. Therefore, the licence of the Appellant as a securities broker stood expired with effect from 22/03/17. Furthermore, the Pakistan Stock Exchange Limited (PSX) had already suspended the trading terminals of the Appellant with effect from 10/10/16 on account of not maintaining the required Net Capital Balance. In view of the above facts, the Appellant, prima facie, was found not compliant with the provisions of Regulation 9(1) of the Regulations.
3. Show Cause Notice (SCN) dated 14/07/17 was issued to the Appellant under section 152 of the Securities Act read with Regulation 11 of the Regulations whereby it was called upon to explain as to why the Appellant's licence as securities broker may not be cancelled in terms of Regulation 11(3)(e) of the Regulations. The Appellant submitted its response vide letter dated 30/08/17. The Appellant was also provided an opportunity of hearing on 27/07/17 which was adjourned on Appellant's request. Further opportunities of hearing were provided on 20/09/17 and then 22/09/17 which were also adjourned on Appellant's request. Finally, hearing was held on 28/09/17, wherein, Mr. Asif Malik, Chief Executive Officer (CEO) of the Appellant appeared before the Respondent and made his submissions.
4. The Respondent dissatisfied with the response of the Appellant held that by not applying for renewal of licence, the Appellant was non-compliant with the provisions of Regulation 9(1) of the Regulations. Furthermore, the Respondent held that the contentions of the Appellant with regard to failure to apply for renewal of licence were not tenable and the request for



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processing application for renewal of licence which had already expired could not be acceded to. Therefore, the licence of the Appellant as securities broker was cancelled in terms of Regulation 11(3)e of the Regulations by the Respondent. The Appellant was further directed by the Respondent to:

- (a) Immediately initiate the process for changing the name and Memorandum of Association of the company or winding up of the company as the case may be;
- (b) Surrender the latest certificate of registration as a broker issued by the Commission in original to the PSX;

Furthermore, in exercise of the powers conferred upon section 12, 31 and 55 of the Securities Act, PSX, Central Depository Company of Pakistan Limited (CDCPL), National Clearing Company of Pakistan Limited (NCCPL) were directed by the Respondent in the following manner:

A. PSX was directed to:

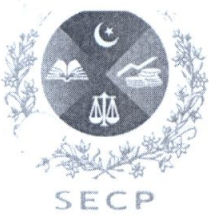
- a. Immediately suspend the TRE Certificate of the Appellant and proceed further for the cancellation of TREC after following due process under the applicable regulatory framework;
- b. Obtain the latest Certificate of Registration as broker issued by the Commission to the Appellant in original and send the same to the Commission.

B. CDC was directed to:

- a. Immediately suspend the admission of the Appellant as CDS participant and proceed further for termination of the same after following the due process under the applicable regulatory framework;

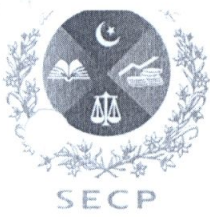
C. NCCPL was directed to:

- a. Immediately suspend the admission of the Appellant as Broker Clearing Member and proceed further for termination of the same after following the due process under the applicable regulatory framework; and
- b. Immediately close out the outstanding positions of the Appellant, if any and release the excess margins after final determination of loss, if any, under the applicable regulatory framework.



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5. The Appellant preferred the appeal on the following grounds:
- The Commission returned the Application for renewal of licence to the Appellant with an objection that the Application should be filed through the securities exchange i.e. PSX in terms of Regulation 5(3) of the Regulations.
 - The licence of the Appellant was cancelled without considering that the CEO was out of the country and was facing serious family issues which was required to be considered on humanitarian grounds; and
 - The Appellate Bench should remand the Impugned Order to the Respondent for fresh proceedings on the grounds that the SCN was not issued correctly by the competent authority.
6. The Respondent rebutted the arguments of the Appellant on the following grounds:
- The Appellant vide letter dated 15/09/17 submitted the Application for renewal of licence as a securities broker to the Commission, however, the Application for renewal had to be submitted through securities exchange i.e. PSX to the Commission in terms of Regulation 5(3) of the Regulations which was not so in the instant case.
 - In pursuance of the SCN issued in terms of section 152 of Securities Act read with regulation 11(3)(e) of the Regulations, all legal requirements were met and the Appellant was given an opportunity of hearing on 28/09/17 to explain why the licence of the Appellant should not be cancelled. Furthermore, all written and verbal arguments of the Appellant were duly considered at the hearing while passing the Impugned Order; and
 - The SCN was issued correctly by the Respondent as the Commission had delegated its powers to the Respondent under S.R.O 123(I)/2017 dated 27/02/17.
7. We have heard the parties i.e. the Appellant and the Respondent. The Appellant has argued that the reason Application for renewal of licence was not submitted within time was because the CEO was out of the country and was facing serious family issues. Secondly, the Appellant has argued that the Impugned Order should be remanded to



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the Respondent for fresh proceedings on the grounds that the SCN was not issued correctly by the competent authority. The Respondent has argued that the Application for renewal of licence had to be submitted through PSX in terms of Regulation 5(3) of the Regulations which was not so in the instant case. Furthermore, the Respondent has argued that the SCN was issued correctly as the powers to issue show cause notice were delegated by the Commission pursuant to S.R.O. 123(I)/2017 dated 27/02/17.

8. We are of the view that the Appellant has not given satisfactory reasons for non-compliance with the provisions of Regulation 9(1) of the Regulations. The Appellant's argument that the CEO was out of the country and was facing serious family issues has no basis in the law as it is not a valid reason in terms of the Regulations. The SCN was also issued correctly by the Respondent who had the relevant powers to issue such notice under the powers delegated by the Commission pursuant to S.R.O. 123(I)/2017 dated 27/02/17. Furthermore, a hearing was held on 28/09/17 pursuant to the SCN, wherein, the Appellant's arguments were fully heard and the Impugned Order was subsequently passed.
9. In view of the above, we see no reason to interfere with the Impugned Order. The Appeal is, therefore, dismissed and the Impugned Order is upheld with no order as to costs.


(Tahir Mahmood)

Commissioner (Insurance)


(Shauzab Ali)

Commissioner (SCD)

Announced on:

07 FEB 2019