



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 41 of 2019

H.H Misbah Securities (Pvt.) Limited

Appellant

Versus

The Commissioner, (SMD), SECP, Islamabad.

Respondent

Date of hearing:

September 3, 2020

Present:

For Appellant:

1. Mr. Shafqat Ali, Consultant
2. Mr. Abdul Wahab, CEO
3. Mr. Abid Abdul Rasheed, Compliance Officer

For Respondent:

1. Mr. Osman Syed, Joint Director (Adjudication-I), SECP
2. Mr. Muhammad Faisal, Assistant Director (Adjudication-I), SECP

ORDER

1. This Order shall dispose of Appeal No. 41 of 2019 filed by M/s. H.H Misbah Securities (Pvt.) Limited (the Appellant) against the Order dated June 10, 2019 (the Impugned Order) passed by the Commissioner, SMD (Respondent) under Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (the SECP Act) read with Section 150 the Securities Act, 2015 (the Act).
2. The brief facts of the case are that the Appellant is a Trading Rights Entitlement Certificate (TREC) holder of the Pakistan Stock Exchange Limited (the PSX) and licensed as a securities broker. The Joint Inspection Team of PSX, Central Depository Company and National Clearing

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Company of Pakistan Limited conducted a thematic review of the Appellant [July 1, 2018 to December 31, 2018] (the Review) to assess its compliance with the regulatory requirements contained in the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the Regulations). The Review, inter alia, revealed the following non-compliances;

- i. The Appellant had not updated the requirements of Regulation 13 & 7 of the Regulations in its AML/KYC policy, hence, violated Regulation 4(a) of the Regulations.
 - ii. The Appellant had not included the requirements of Regulation 3, 4, 5, 6, 9, 11 & 14 of the Regulations in its AML/KYC policy hence violated Regulation 4(a) of the Regulation.
 - iii. The Appellant had not implemented any independent audit function, hence violated Regulation 4(d) of the Regulations.
 - iv. The Appellant had incorrectly categorized two of its clients, as their categorization mentioned in the back office was inconsistent with the outcome of their CDD.
 - v. The Appellant had not obtained any evidence of income from twenty-five of its clients, hence violated requirements of Regulation 6(3) of the Regulations.
 - vi. The Appellant had assigned incorrect ratings to fourteen clients, hence violated requirements of Regulation 3 and 6(8) of the Regulations.
 - vii. The Appellant failed to ascertain/ obtain details regarding the beneficial ownership of clients in thirteen cases, hence violated requirements of Regulation 6(3), 6(5) and 6(7) of the Regulations.
 - viii. The Appellant had not developed mechanism and procedure to monitor clients' business on an ongoing basis, hence violated requirements of Regulation 13 of the Regulations.
 - ix. The Appellant did not formulate the Job description of compliance officer.
 - x. The Appellant did not provide any evidence of training provided to their relevant employees on regulatory requirements and its own AML/CFT policy.
3. The Respondent issued a show-cause notice dated May 2, 2019 (the SCN) to the Appellant. The Appellant submitted a written reply to the SCN vide letter dated on May 8, 2019 and hearing in the matter was held on May 9, 2019. In terms of powers conferred



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under section 40A of the Act, the Respondent imposed a penalty of Rs. 300,000/- (Rupees three hundred thousand) on the Appellant.

4. The Appellant *inter alia* filed this Appeal on the grounds that the Respondent was not authorized to take cognizance of findings identified by the Oversight Committee (the OC) through Joint Inspection Team (the JIT) under Regulation No. 21 of the Joint Inspection Regulations, 2015 (the JIT Regulations). The Appellant stated that only the stock exchange, CDC or NCCPL were authorized to take enforcement action under the regulation, therefore, the Impugned Order and penalty under Section 40A is unlawful. The Appellant further submitted that, in violation of the requirement of Regulations 13(2) of the JIT Regulations, instead of allowing fourteen days, only seven days were provided to the Appellant to file a reply on the Review findings. The Appellant stated that it had rectified all non-compliances before the date of hearing i.e, May 9, 2019, therefore, as per the decision of Appellate Bench No. 1 in the matter of Appeal Nos. 26, 27 & 28 of 2014, the Respondent should not impose penalty without allowing the Appellant an opportunity to rectify such non-compliances. The Appellant stated that the Regulations were promulgated on June 13, 2018, however, guidelines on the Regulations were issued on September 11, 2018, therefore, the Respondent unlawfully conducted review of the compliances of Regulations for the period starting from September 1, 2018, which was 10 days earlier to the issuance of the SECP's Guidelines. The Appellant stated that KYC and CCD requirements implemented by the Karachi Stock Exchange (presently PSX) in 2012 under regulation 4.18 of PSX Rulebook cannot be treated as requirements of the Regulations, therefore, the Respondent was not authorized to penalize the Appellant on the basis of alleged violations of KYC and CDD requirements introduced under regulatory framework of 2012.
5. The Respondent had denied the Appellants' assertion that he had no authority to proceed on the basis of Review findings. The Respondent stated that whenever a JIT is formed, the inspection is conducted by a joint inspection team of SROs as per the requirement of the Regulation but it does not mean that they are empowered to take enforcement action under the given Regulations, hence, the Respondent has rightly passed the Impugned Order.
6. The Respondent stated that the case laws referred by the Appellant are not relevant to present case because these are related to rectification of any non-compliance identified in the Audit



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Report. The Respondent stated that the regulatory requirements relating to KYC/CDD and anti-money laundering had been implemented since year 2012 and all licensed persons were required to ensure compliance in accordance with law, therefore, the Regulations cannot be termed as a new set of requirements and the argument of the Appellant that sufficient time was not available for compliance is unjustifiable. The Respondent stated that it is a settled law in *Bakht Munir v. Qadir Khan and another* (PLD 2014 Lahore 87), when the law required a thing to be done in a particular manner, the same must be done accordingly and if the prescribed procedure was not followed, it would presume that the same had not been done in accordance with law.

7. The Respondent stated that the arguments put forth by the Appellant are not tenable as Regulations were promulgated dated June 13, 2018 and the Appellants' policies were not updated in consonance with the Regulations till inspection period. The Appellant was found non-compliant with the provisions of the Regulations and implementation of requirements contained therein were not subject to issuance of the Anti-Money Laundering, Countering Financing of Terrorism, and Proliferation Financing Guidelines.
8. The Appellate Bench (the Bench) has heard the parties and perused the record. The Appellants' representatives and the Respondent's representatives reiterated their grounds of appeal and rebuttal thereof.
9. The Bench has carefully gone through the contents of the Impugned Order and other relevant record, which revealed that the Review was carried out by the Oversight Committee under the direction of the Commission. We are of the view that the Respondent had duly followed the legal process while initiating the Review, issuing the SCN and passing of the Impugned Order.
10. The Bench has examined the arguments of the parties and found that the Appellant's assertions are insignificant to distort the findings of the Impugned Order because the requirements contained under the Regulations were not new, rather these were introduced in 2012 by the Karachi Stock Exchange (presently PSX), with the approval of the Commission, through regulation 4.18 of the Rule Book (current Regulation 4.17). The Bench is of the view that these requirements were made mandatory for the securities brokers to formulate and implement an effective KYC and CDD



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policy in accordance with the KYC and CDD guidelines issued by the Karachi Stock Exchange in 2012. The Bench has compared the requirements of the regulatory framework of 2012 with the Regulations and SECP's AML guidelines 2018, and observed that they do not reflect any material difference. Therefore, the Bench has no doubt to hold that the Regulations had not introduced any significantly new regulatory requirements, rather prior regulatory requirements had been streamlined. The Bench has observed that even prior to the promulgation of the Regulations, the Appellant was required to have customer identification, CDD and beneficial ownership under the previous regulatory legal framework but the Appellant had failed to comply with the applicable requirements. Furthermore, the Bench is of the view that issuance of AML Guidelines was not a precondition for the implementation of the Regulations, therefore, the Regulations should have been followed from the date of promulgation.

11. In view of the forgoing, the Bench find no reason to interfere with the merits of the Impugned Order, therefore, we hereby dismiss the Appeal, without any order as to cost.

(Farrukh Hamid Sabzwari)

Commissioner (SCD-PRDD)

(Shaukat Hussain)

Commissioner (INS,C&CD)

Announced on: **02 DEC 2020**