



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 43 of 2017

Pearl Brokerage (Pvt.) Limited

Appellant

Versus

Executive Director, (PRPD), SECP, Islamabad.

Respondent

Date of hearing: 20/04/18

Present:

For Appellant:

Syed M. Zulqarnain Shah (Attorney)

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. 43 of 2017, filed by Pearl Brokerage (Pvt.) Limited (the Appellant) against the Order dated 05/05/17 (the Impugned Order) passed by the Executive Director- PRPD (the Respondent) under Section 22 of the Securities and Exchange Ordinance, 1969 (the Ordinance) and Rule 8 of the Brokers and Agents Registration Rules, 2001.
2. The Securities and Exchange Commission of Pakistan (the Commission) in exercise of powers under sub-section (1) of Section 6 of the Ordinance read with Rules 3 and 4 of the



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Stock Exchange Members (Inspection of Books and Records) Rules, 2001 ordered inspection of the books and records of the Appellant. The inspection team submitted its report, which highlighted certain regulatory violations. Therefore, a Show Cause Notice dated 14/02/17 (the SCN) was issued. Hearing in the matter was held on 15/03/17. The Appellant submitted a written response to the SCN on 24/03/17. Thirteen allegations of regulatory violations were levelled against the Appellant, however, upon satisfaction of compliance, except two, all other allegations were dropped. The Appellant was penalized on two counts; overstatement of Net Capital Balance (the NCB) as on 30/06/14 and non-segregation of client assets. A penalty of Rs.150,000/- was imposed on the Appellant by the Respondent.

3. The Appellant has challenged the Impugned Order, *inter alia* on the grounds, that NCB as on June 30, 2014 was not over-stated and it was prepared and re-verified by F. R. A. N. T. S & Co. Chartered Accountants according to Commission's guidelines and legal framework. Furthermore, on the Commission's instruction, the Appellant obtained a third party opinion from Shafiq & Co. Chartered Accountants with regard to the accuracy of NCB. The Appellant denied the Respondent's assertion that third party chartered accountants must have category "A" or "B" status on the assertion that there is no such requirement in law. The Appellant also rejected the Respondent's allegation with respect to non-segregation of its client's accounts. The Appellant stated that prior to 11/01/16, Lahore and Islamabad brokers were required to trade through Karachi stock exchange brokers. The Appellant stated that client's transactions were executed through Fair Trade Capital Securities (Private) Limited (FTC), therefore, the balance receivable from FTC reflects the Appellant's clients' money. Moreover, the balance of NCCPL also represents the clients' money.
4. The Respondent' rebutted the grounds of appeal through written comments and prayed to dismiss the appeal because of regulatory violations with respect to overstatement of NCB and no segregation of client's assets.



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5. The Appellant Bench (the Bench) has heard the arguments of the parties. The Appellant and Respondent have reiterated their arguments before the Bench. The Appellant, to prove that the NCB was not overstated, presented a certificate of FTC before the Bench, which certifies that on 30/06/14 cash balance in Appellant's trading account was Rs. 4,282,912.80/-. The Appellant's representative further argued that the balance of NCCPL has also been included in calculation of NCB because it represents clients' money. In view of FTC certificate and NCCPL balance, our assessment is that NCB has not been overstated.
6. The Respondent's objection with respect to verification of NCB from a third party Chartered Accountants having "A" or "B" category is also not tenable because, there is no provision in laws whereby the Appellant was obliged to have the NCB verified from third party Chartered Accountants, having "A" or "B" category. At this juncture, we want to make it clear that, the PSX Rule Book 4.23, only imposes category "A" or "B" requirement on statutory auditors, whereas third party Chartered accountant cannot be considered as statutory auditor. In the present case, the Appellant's statutory auditor, namely, F. R. A. N. T. S & Co. Chartered Accountants is in "B" category and they have not only prepared the NCB statement, but have also verified it. Therefore, we believe that imposition of category "A" or "B" requirement on third party auditor is unjust and undesirable.
7. The allegation of non-segregation of Appellant and its clients' accounts is established and the Appellant did not refute it. It is important to note that the Respondent's representative has conceded with the Appellant's argument about the non-segregation of Appellant and its clients' accounts and trading procedure of Islamabad and Lahore brokers prior to 11/01/16 whereby they were required to trade through Karachi stock exchange brokers (third party broker). Although, the Respondent's representative has conceded with the Appellant's argument, the Bench is of the view that as per clause 2(a) of Special Terms and Conditions of Standardized Account Opening Form, the Appellant was required to maintain separate bank accounts titled "Account holders/Clients Accounts" for credit amounts of clients. However, as



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the Appellant admits that the amount receivable from FTC belongs to its client; therefore, we are not inclined to penalize the Appellant on technical default to comply with the provision.

8. Therefore, by taking a lenient view we hereby convert the Impugned Order's penalty of fine into a warning and direct the Appellant to ensure full compliance of similar and all other regulatory requirements with respect to NCB and its ancillary matters in future to avoid legal consequences.
9. The Appeal is disposed of accordingly, parties to bear their own cost.


(Shaukat Hussain)

Commissioner (CCD-CLD)


(Tahir Mahmood)

Commissioner (CSD-CLD)

Announced on:

28 JUN 2018