



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 43 of 2019

M/s. Darson Securities (Private) Limited

...Appellant

Versus

Commissioner SMD, SECP

...Respondent

Date of hearing:

May 18, 2023

Present:

For the Appellant:

Malik Dilawayz Ahmed

For the Respondent:

1. Mr. Hammad Javed, Additional Director, Adjudication-I, SECP
2. Mr. Muhammad Faisal, Assistant Director, Adjudication-I, SECP

## ORDER

1. This Order shall dispose of Appeal No. 43 of 2019 filed by M/s. Darson Securities (Private) Limited (the "Appellant") through Malik Dilawayz Ahmed, Chief Executive Officer (the "Authorized



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Representative”) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the “SECP Act”) against the Order dated June 10, 2019 (the “Impugned Order”) passed by the Commissioner SMD, SECP, (the “Respondent”) under Section 40A of the SECP Act read with the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the “Regulations”).

2. The brief facts of the case are that the Appellant is a Trading Rights Entitlement Certificate (“TREC”) holder of the Pakistan Stock Exchange (the “PSX”) and licensed as a securities broker. The Securities and Exchange Commission of Pakistan (the “Commission”), in exercise of its powers conferred under section 169 of the Securities Act 2015, vide its inspection notice dated January 11, 2019 conducted review of the compliance status in consonance with the regulatory requirements of the Regulations. Non-compliances with regulations, 3, 4(a), 13, and 6(2) of the Regulations were observed during the inspection.
3. In light of the aforementioned violations, Show-Cause Notice (the “SCN”) dated May 03, 2019, was issued to the Appellant. The Appellant responded on May 22, 2019, and a hearing was scheduled for May 10, 2019, and again on May 24, 2019. After examining the submissions and considering the facts, the Respondent, in exercise of powers conferred under Section 40A of the SECP Act, imposed a penalty of Rs. 250,000/- on the Appellant for the aforementioned contraventions of the Regulations.
4. The Appellant has preferred this Appeal, inter alia, on the grounds that the Respondent, in the Impugned Order, claimed that the Commission, in exercise of the powers conferred under Section 169 of the Securities Act, 2015, had conducted a review of the compliance status in consonance with the regulatory requirements contained in the Regulations. Whereas, it is submitted by the Appellant that the Respondent inadvertently misinterpreted Section 169 of the Securities Act, 2015, which does not give the power to inspect but rather gives power to promulgate the regulations. The Appellant also submitted that the Respondent claimed that the provisions contained in the Regulations were already in force since 2012 in the form of the PSX Guidelines. However, those guidelines were not mandatory in nature; rather, they were recommendatory. It is further submitted by the Appellant that despite the fact that the guidelines were not mandatory, the Appellant was still following the PSX Guidelines in true letter and spirit, and all the policies were made as per the PSX Guidelines. It is also submitted by the



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Appellant that neither the PSX nor the Commission took cognizance of any non-compliance with the PSX Guidelines 2012 since their notification. Furthermore, the Appellant stated that the Regulations were promulgated on June 13, 2018, and thereafter the Appellant was in the process of updating its policy; however, the review was suddenly conducted, and the Appellant was not given the sufficient time to update its policy. The Appellant contended that they ensured full compliance with the Regulations post-inspection period, as evidenced by the final explanation given in the Appellant's Letter dated May 22, 2019. The Appellant argued that the Respondent should not impose a severe penalty without allowing the Appellant an opportunity to rectify the non-compliance, relying on the Appeal No 26, 27 & 28 of 2014 of the Appellate Bench (the "Bench"). Furthermore, the Appellant emphasized that the Respondent falsely alleged that the Appellant did not have an ongoing monitoring system and contended that it had complete monitoring system in place. It is also submitted by the Appellant that the Respondent has wrongly alleged that the Appellant had no KYC documents and the risk categorization was not based on appropriate risk assessment. The Appellant further submitted that the customer risk rating was based on ML/TF risk posed by each relevant factor. The Appellant, therefore, requested the Bench, to take a lenient view keeping in view the afore-stated circumstances.

5. The Respondent countered the grounds of the Appeal and presented arguments stating that violations of the Regulations were observed during the inspection. The Respondent mentioned that anti-money laundering policies have been in existence since 2012 under the PSX Guidelines, and they were not new to the Appellant. The Respondent reiterated that several violations of Regulations by the Appellant were observed during the inspection and the same renders the Appellant liable to penalty.
6. The Bench has heard the arguments of both the parties and perused the record. The Bench is of the opinion that the Appellant had an obligation to adhere to the relevant requirements of the Regulations which should have been followed by the Appellant in true letter and spirit. In this particular case, the Appellant failed to comply with the mandatory requirements and neglected to implement mandatory policies that have been in effect since 2012. Money laundering is a serious crime and its severity cannot be underestimated. Regulated individuals are expected to be highly vigilant in adhering to AML laws and should not offer excuses to avoid compliance. However, the Bench has also noted that the Appellant has made efforts to rectify the non-compliances and is striving to adhere to the Regulations.



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7. In view of the foregoing, the Bench, considers it justified to reduce the penalty to Rs. 150,000/-. The instant Appeal is disposed of on above terms without any order as to costs.

(Abdul Rehman Warraich)

Commissioner

(Akif Saeed)

Chairman/Commissioner

Announced on: 29 AUG 2023