



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

### Appeal No. 43 of 2020

Asad Mustafa Securities Private Limited.

..... Appellant

Versus

Commissioner (SMD)

..... Respondent

### Date of hearing:

February 6, 2025

### Present:

#### For the Appellant:

1. Mr. Mustafa Khan

#### For the Respondent:

1. Mr. Mahboob Ahmed, Additional Director, Adjudication-I, SECP
2. Mr. Muhammad Akram Farooka, Assistant Director, Adjudication-I, SECP

## Order

1. This Order shall dispose of Appeal No. 43 of 2020 filed by Asad Mustafa Securities Private Limited (the "Appellant") against the Order dated April 21, 2020 (the "Impugned Order") passed by the Commissioner (SMD), Securities and Exchange Commission of Pakistan (the "Respondent") under the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the "AML 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 Limited (PSX) and a licensed securities broker under the Securities Act, 2015. A thematic Review (the "Review") was conducted by the Respondent in February 2019 to assess the Appellant's compliance with the AML Regulations. The Review revealed several

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deficiencies in the Appellant's AML framework, including but not limited to; absence of a comprehensive risk assessment framework, insufficient customer due diligence procedures, lack of training programs, and a deficient internal audit function. A Show Cause Notice (the "SCN") was issued on October 25, 2019, to which the Appellant responded in writing and was afforded a hearing opportunity on November 5, 2019. Subsequently, the Impugned Order was passed imposing penalties of PKR 50,000 under section 40A of the Securities and Exchange Commission of Pakistan Act 1997 (the "SECP Act") for violations of AML Regulations and PKR 200,000 under Section 150 of the Securities Act, 2015 for violations of the Licensing Regulations.

3. The Appellant challenged the legality and procedural soundness of the Impugned Order primarily on the following legal grounds. Firstly, the Appellant argued that the Review conducted by the Respondent, which formed the basis of the SCN and the Impugned Order, was legally flawed. The Appellant contended that although the AML Regulations, 2018 were promulgated under the SECP Act, 1997, the SECP invoked powers under the Securities Act, 2015 to conduct the Review and seek information. The Appellant argued that by relying on the Securities Act, 2015, rather than the enabling legislation for the AML Regulations, the SECP acted beyond its lawful authority. The Appellant submitted that, as a result, the Review and all subsequent proceedings were tainted by legal impropriety and ought to be declared void.
4. Secondly, the Appellant maintained that the Impugned Order misrepresented the Appellant's position by stating that there was an admission of non-compliance with AML policies and procedures. The Appellant asserted that although there may have been omissions in formal policy documentation due to oversight and limited capacity, practical compliance measures had been implemented and were promptly updated upon identification of deficiencies. The Appellant argued that the Respondent failed to consider the explanations provided, the Appellant's consistent compliance history, and the immediate steps taken to address the identified shortcomings.
5. Thirdly, the Appellant emphasized that the Respondent failed to engage with or consider the Appellant's written response to the initial findings issued in July, 2019. The Appellant submitted that it had provided point-wise responses and offered to share relevant policies and procedures, yet neither the SCN nor the Impugned Order engaged

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with these submissions or sought further clarification. The Appellant argued that this procedural lapse denied due process and rendered the Impugned Order legally defective.

6. Furthermore, the Appellant contended that the Impugned Order incorrectly found a contravention of Regulation 4(a) of the AML Regulations, which requires regulated persons to develop and implement effective AML/CFT policies. The Appellant submitted that it had long-established internal controls and procedures, many of which predated the Review, and were approved by the Board through a resolution dated 01.11.2018. The Appellant argued that the mere absence of some procedures from the submitted AML Policy did not prove non-existence or non-compliance.
7. Additionally, the Appellant argued that the findings under Regulations 5, 6(7), and 6(9) were similarly baseless. It submitted that Regulation 5 was not applicable, as no new products or technologies were introduced prior to July, 2019. Regarding Regulations 6(7) and 6(9), the Appellant emphasized its strict verification policies—refusing customers without income disclosure, rejecting physically absent clients, and prohibiting cash transactions and given its very limited and personally known client base, there were no instances of refused or closed accounts due to negative verification.
8. Furthermore, the Appellant submitted that the findings under Regulations 9(4)(a) and 14 were also flawed as it had a clear policy, approved by senior management, not to open accounts for high-risk persons, including PEPs, and that all new relationships were subject to direct management oversight. As for Regulation 14, the Appellant confirmed that no transaction met the reporting thresholds for STRs or CTRs, and all transactions were duly verified.
9. Moreover, the Appellant contended that the findings under Regulations 18(c)(i–iv), 20(b), and 4(d) with para 15(a) of the Guidelines were factually incorrect. It submitted that the Compliance Officer performed all required functions, and any initial omissions were inadvertent. Regarding training under Regulation 20(b), the Appellant provided evidence of in-house training tailored to its small workforce. On Regulation 4(d), the Appellant pointed out that the Guidelines were issued only shortly before the Review,



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and that all missing documentation was updated and communicated via letter dated 16.03.2019.

10. The Appellant also argued that the finding of non-compliance under Regulations 16(9)(e) and (f) of the Licensing Regulations lacked merit. While acknowledging that some information was omitted in the AML Policy, the Appellant clarified that it maintained an effective, operational, and independent audit and compliance framework. The Appellant contended that Regulation 16(9) addresses broader internal controls, not limited to AML and that the Impugned Order overlooked the proactive steps already taken by the Appellant and mistakenly inferred non-compliance based solely on a gap in documentation. In light of all of the above contentions, the Appellant iterated that the Impugned Order failed to engage with these facts, rendering its findings legally defective and liable to be set aside.
11. , In conclusion, the Appellant submitted that it is a small, low-volume securities broker with no prior compliance issues or evidence of bad faith. Any omissions were due to genuine difficulty in understanding a new and evolving AML regime. The Appellant submitted that it attended all SECP capacity-building sessions, cooperated fully, and promptly updated all documents when notified. In this context, the Appellant requested that the imposition of a PKR 250,000/- penalty—when the Appellant earned only PKR 164,481/- during the Review period—is unduly harsh and disproportionate.
12. The Respondent, categorically denied all grounds raised by the Appellant. The Respondent asserted that the Review was conducted lawfully under the Securities Act, 2015, given that the Appellant is a regulated entity thereunder, and that the AML Regulations 2018, although promulgated under the SECP Act, 1997, are enforceable upon regulated persons via powers under both statutes. The Respondent submitted that the objection regarding jurisdiction and applicability of the Securities Act, 2015 was termed misconceived and without legal merit. The Respondent further contended that the Appellant was found to be non-compliant during the Review in February 2019 and admitted to deficiencies in its AML/CFT policies and controls, which were only rectified after the deficiencies were highlighted. Subsequent compliance, in the Respondent's view, cannot serve to absolve the Appellant of responsibility for past contraventions.

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13. The Respondent maintained that the Appellant's response to the letter of findings and the SCN were duly considered, and that the Impugned Order was passed only after providing a fair opportunity of hearing. The Respondent denied that there was any failure to engage with the Appellant's submissions. On the substantive allegations, the Respondent maintained that the Appellant had failed to develop, implement, and maintain effective AML/CFT policies, as required under Regulations 4(a), 5, 6(7), 6(9), 9(4)(a), 14(5), 18(c), and 20(b) of the AML Regulations 2018, and Regulations 16(9)(e) and 16(9)(f) of the Licensing Regulations. In particular, it emphasized that the Appellant lacked a comprehensive and documented AML/CFT policy at the time of Review, had no suitable training program for employees, and did not maintain the required internal audit and compliance functions.
14. The Respondent dismissed the Appellant's claim of 'small scale' and technical difficulty in understanding the AML regime as irrelevant to the determination of non-compliance. It stated that no leniency was warranted beyond the already minimal penalty imposed. The Respondent also rejected the assertion that the penalty imposed was harsh or disproportionate, emphasizing that the fine of PKR 250,000 was reasonable considering the nature and scope of violations.
15. After hearing both parties, examining the record and the relevant law, this Bench is of the view that the thematic review carried out by the Respondent was within its jurisdiction and consistent with its supervisory mandate under the applicable legal framework. The AML Regulations 2018 are binding upon all regulated entities, including the Appellant, and compliance therewith must be demonstrated both in practice and in documentation.
16. The Bench found no procedural irregularity in the issuance of the SCN or the passing of the Impugned Order. While the Appellant did subsequently rectify the deficiencies highlighted during the Review, the fact remains that, at the time of Inspection, the Appellant was in breach of various provisions of the AML Regulations, including but not limited to Regulations 4(a), 5, 6(7), 6(9), 9(4)(a), 14(5), 18(c), and 20(b) and that a regulated entity is required to meet the standards prescribed under the applicable regulations irrespective of its scale of business.

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17. However, this Bench is also conscious of the Appellant's limited resources, its clean compliance history prior to the Review, and the fact that the AML framework was still evolving during the relevant period. The Bench is of the considered view that while the violations are established and the Impugned Order is legally sustainable, the quantum of penalty warrants reconsideration in light of the principle of proportionality.
18. Accordingly, the penalty imposed vide the Impugned Order is reduced from **PKR 250,000/- to PKR 100,000/-**, and the Appellant is directed to ensure continued and demonstrable compliance with the AML Regulations 2018 in letter and spirit.
19. Consequently, the appeal is hereby dismissed with no order as to costs.

(Zeeshan Rehman Khattak)  
Commissioner

(Mujtaba Ahmad Lodhi)  
Commissioner

Announced on: **11 JUN 2025**