



# Securities and Exchange Commission of Pakistan

## **BEFORE APPELLATE BENCH NO. IV**

In the matter of

**Appeal No. 46 of 2016**

1. Mr. Pervez Ahmed
2. Mrs. Rehana Pervez Ahmed
3. Mrs. Ayesha Ahmed Mansoor
4. Mr. Ali Pervez Ahmed
5. Mr. Hassan Ibrahim Ahmed
6. Mr. Muhammad Khalid Khan
7. Mr. Mazhar Pervaiz Malik

...Appellants

Versus

The Director (Corporate Supervision Department),  
Securities and Exchange Commission of Pakistan

...Respondent

Date of Hearing 08/11/16

### **Present:**

#### **For the Appellants:**

- 1) Mr. Adil Bandial, Counsel

#### **For the Respondent:**

- 1) Ms. Amina Aziz, Director
- 2) Ms. Zohra Sarwar Khan, Deputy Director

### **ORDER**

1. This Order is passed in the matter of appeal No. 46 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the Order dated 05/04/16 (Impugned Order) passed by the Respondent.

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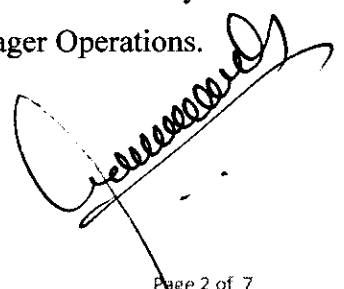


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2. Brief facts of the case are that Note 2 to the quarterly accounts of Pervez Ahmed Securities Limited (Company) for the period ended 31/12/14 revealed that the Company sold its Trading Rights Entitlement Certificate (TRE Certificate) and shares of Lahore Stock Exchange (LSE). As per minutes of Board of Directors meeting held on 18/07/14, TRE Certificate and 337,950 shares of LSE were sold to Pervez Ahmed Capital (Private) Limited (PACL), an associated undertaking, against a total consideration of Rs.8.376 million with Rs. 5 million for TRE Certificate and Rs. 3.376 million for shares of LSE i.e. Rs. 10 per share of LSE.
3. The Company is primarily a brokerage house engaged in the shares brokerage and trading, consultancy services and underwriting. The aforementioned disposal constituted a sizable part of the undertaking of the Company since subsequent to the disposal, the Company cannot continue with its core business segment i.e. brokerage business. It was apprehended that the Company has, prima facie, violated the provisions of section 196(3)(a) of the Companies Ordinance, 1984 (Ordinance) as it disposed of a sizable part of its undertaking without obtaining prior authorization or approval of its shareholders.
4. Show Cause Notice dated 13/11/15 (SCN) was served upon the Appellants under section 196 read with section 476 of the Ordinance to show cause as to why penalty may be not imposed under section 196 of the Ordinance. The Appellants were provided opportunity of hearings on 21/01/16 and 15/02/16 but the hearings were adjourned on the Appellants' requests. The hearing held on 14/04/16 was attended by Mr. Furqan Naveed of Cornelius, Lane & Mufti Advocates & Solicitors (CLM) and Mr. Salman Farooq – Manager Operations who also requested for further time for submission of written reply which was duly granted. The Appellants submitted their reply vide letter dated 26/04/16 and, thereafter, another hearing was held on 04/05/16 which was attended by Mr. Adil Umar Bandial of CLM and Mr. Salman Farooq – Manager Operations.



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5. The Respondent was not satisfied with the response of the Appellants and imposed a penalty of Rs 100,000 on each of the Appellants aggregating to a total amount of Rs 700,000 in exercise of powers under section 196(4) of the Ordinance.
6. The Appellants preferred the appeal on the following grounds:
  - i) Over the course of time, due to market conditions and the internal position of the Company, the value of brokerage services kept diminishing and with the passage of time it became the least significant portion of the business activities of the Company. Since 2010, the Company did not have the Net Capital Balance (NCB) necessary for provision of brokerage services in Pakistan. For this reason, since 2010 the Company had not been able to utilize its TRE Certificate and the brokerage service of the Company remained inactive. Due to the long inactivity of the brokerage business, the value of TRE Certificate had totally diminished and it had lost its market value. Therefore, keeping in view the inactivity of the brokerage business of the Company, TRE Certificate has been suspended by the Commission and this fact further supports the contention that TRE Certificate had lost its market value and it was not contributing to the income of the Company at all. Moreover, the Stock Exchange (Corporatization, Demutualization and Integration) Act, 2012 (Demutualization Act) was passed in 2012 and pursuant thereto, the brokerage business of all the inactive brokerage houses which had a negative NCB would have ceased to be operational and the TRE Certificates of such brokerage houses would have become redundant and lost its value completely. The Appellants, as responsible managers of the Company and custodian of the rights of shareholders, decided to sell the TRE Certificate and the shares which otherwise would have lost all value to the detriment of the Company and the shareholders. In this regard, the Appellants endeavored vigilantly to find a buyer and the only company interested in buying the TRE Certificate and the Shares was PACL. The Company sold the TRE Certificate at a profit of Rs 0.9 million. At the time of sale of TRE Certificate and the shares to the purchaser, the value of TRE Certificate as intimated by LSE vide notice no. 804 dated 14/02/16 and Notice no. 3897 dated 20/06/16 was Rs

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4.1 million. It is a matter of record that the Company sold the TRE Certificate for consideration of Rs 5 million. The decision of the Appellants to sell the TRE Certificate was only in the best interest of the Company and the shareholders and this sale secured the shareholders Rs 5 million out of an asset which was an insignificant part of its business activities and had lost its market value completely. The sale of TRE Certificate was never hidden from the shareholders. In the quarterly accounts of the Company for the period ending on 31/12/14, the sale reflected complete details. The same is also evident from the fact that the shareholders have never objected to the said transaction. This fact alone is enough to establish that the transaction was transparent and it was in the best interest of the Company and the shareholders.

- ii) The transaction has not caused any loss whatsoever to the Company or shareholders. On the contrary, the transaction has generated not only revenue but profit from an asset which had lost its value. The Respondent has not taken this factor into consideration while imposing such exorbitant penalty on the Appellants. There was no malafide on part of the Appellants, therefore, the imposition of heavy penalty is not justified in these circumstances.
- iii) The submissions made by the Appellants have not been given due consideration and the Impugned Order has been passed in a mechanical manner without appreciating the facts and circumstances of the case. The Impugned SCN was issued and the Impugned Order was passed in absence of any tangible or intangible evidence supporting the same. The transparency and the protection of the rights of Company and shareholders which is the sole purpose of the provisions of the Ordinance and is also the essence of the instant transaction has been penalized in the Impugned Order. This factor has been ignored by the Respondent and, therefore, the Impugned Order is liable to be set aside.

7. The Respondent rebutted the arguments of the Appellants as follows:

- i) It is reiterated that value of TRE Certificate does not diminish automatically and TRE Certificate was suspended due to inadequacy of NCB. Furthermore, Stock Exchange TRE Certificate is a license issued to a selected few and the inability of the Appellant to operate profitably and suspension of TRE due to

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non-maintenance of requisite NCB does not render TRE Certificate as worthless. The Company also did not mention as to why any party would buy a worthless certificate. The Company had deliberately ignored the value of shares of Lahore Stock Exchange sold to PACL an associated undertaking which were worth 40 million as per annual audited accounts of the Company for the year ended 30/06/10. When TRE Certificate was suspended, the Appellants did not make any visible efforts to revoke the suspension, instead, impairment was charged which resulted in reducing its' value through book entries. The accounts reflect the losses attributable to Appellants' incapability to operate Company profitably and non-maintenance of NCB. It is falsely asserted that the Commission suspended TRE Certificate while on the contrary, the Company sustained losses and management was incapable of meeting NCB over the years which resulted in TRE Certificate being suspended. Furthermore, neither losses nor suspension of business automatically diminish the core business activity as an insignificant segment unless some other business segments are operational, which was not applicable in the instant case. The Letter of LSE has been misinterpreted that demutualization would render TRE Certificate as redundant. The contents of said letter are self-explanatory which refers to the procedure for registration of brokers, manner of transfer of TRE Certificate and grace period given to Company i.e. until August 2014 to be registered as broker under Broker and Agents Registration Rules, 2001. The Company, instead of being registered as brokers in accordance with the laid down procedure, sold TRE Certificate and shares of LSE to its associated undertaking.

- ii) The Appellants have given contradictory statements that TRE Certificate had no worth and at the same time have quoted that TRE Certificate was worth 4.1 million which was sold on profit for Rs 0.9 million. The value of TRE Certificate is admitted by the Company bearing significant value. Secondly, the Company provided no evidence which could establish that efforts were made to find a buyer. Instead, the Appellants having direct interest in PACL, sold TRE Certificate to carry out their significant business activity without the knowledge and approval of the shareholders. The shareholders had invested in

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the Company keeping in view the representation from Company in prospectus, wherein, brokerage has been identified as an independent business segment. TRE Certificate and membership of LSE were the main instruments which established that the Company's primary business was of brokerage. The value ascertained for TRE Certificate and shareholding of LSE was significant. It was essential, therefore, that the matter which had been direct impact on primary business should have been presented before the shareholders. The law does not relieve directors from their responsibility towards disclosing affairs of the Company in a fair and transparent manner on the mere assertion of deriving gain from any transaction or post facto approval or disclosure. The Appellants, therefore, failed to present the matter before the shareholders in terms of section 196 of the Ordinance and perform their duties with diligence and ensure transparency.

- iii) The Respondent, after analyzing the facts of the case and giving ample opportunity to the Appellants to respond to alleged non-compliance of the law, issued the Order incorporating all background facts. The Appellant has failed to provide as to what tangible and intangible evidence was missed. The Company failed to comply with the legal requirements of transparency and disclosure to shareholders as provided in the Ordinance. Furthermore, the Company has failed to provide justification as to how a transaction to benefit an associated company in which Appellants are directly interested in is in the interest of shareholders.

8. We have heard the parties i.e. the Appellants and the Respondent.

9. The Appellants have argued that at the time of the sale of TRE Certificate the brokerage business of the Company was inactive and the same was not a significant asset of the Company or part of its business activities. Further, the sale of TRE Certificate was never hidden from the shareholders. The transparency and the protection of the rights of Company and shareholders is the essence of the transaction which has been penalized in the Impugned Order. The Respondent has argued that value of TRE Certificate does not diminish

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automatically and TRE Certificate was suspended due to inadequacy of NCB. Furthermore, the Company failed to comply with the legal requirements of transparency and disclosure to shareholders in terms of section 196(3) of the Ordinance.

10. We are of the view that the Respondent did not fully consider all the facts and circumstances of the instant case before imposing penalty. Firstly, the Appellant's TRE Certificate was insignificant in terms of generating revenue. Secondly, in terms of section 16 of the Demutualization Act, any person who shall retain the TRE Certificate has to register as a broker not later than six months from the date of issuance of TRE Certificate and commence business within the specified time, failing to which shall result in lapse of TRE Certificate in two years from the demutualization. In the instant case, the Company was unable to comply with the requirements of section 16 of Demutualization Act and considered it more appropriate to squeeze some value out of it by selling it off before expiry.
11. In view thereof, we remand the matter to the Respondent to reassess the facts of the instant case.

(Fida Hussain Samoo)

Commissioner (Insurance)

(Zafar Abdullah)

Commissioner (SCD)

Announced on: **22 NOV 2016**