



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 46 of 2017

Shaukat Shafi Securities (Pvt.) Limited

Appellant

Versus

Executive Director, (PRPD), SECP, Islamabad.

Respondent

Date of hearing: 20/04/18

Present:

For Appellant:

- i. Mr. Muhammad Aslam Khan (IECnet S.K.S.S.S. Chartered Accountants)
- ii. Mr. M. Zeeshan

For Respondent:

- i. Mr. Asif Khan- Deputy Director (SMD)
- ii. Salman Arshad- Deputy Director (SMD)

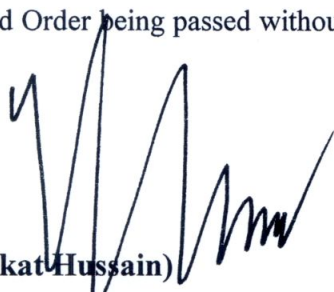
ORDER

1. This Order is in the matter of Appeal No. 46 of 2017, filed by Shaukat Shafi Securities (Pvt.) Limited (the Appellant) against the Order dated 28/04/17 (the Impugned Order) passed by the Executive Director (the Respondent) under Section 150 of the Securities Act, 2015 (the Act).
2. Brief facts of the case are that it has been alleged by the Respondent that the Appellant in contravention of Pakistan Stock Exchange (the PSX) notice no. PSX/N-5086 dated September 15, 2016 (the PSX Notice) and regulation 6(4) of the Securities Brokers (Licensing and Operations) Regulations, 2016 (the Regulations) had failed to file online monthly statements of net capital balance and liquid capital (the Statements) for the months of October 2016 and November 2016 and December 2016 (Default Period). The PSX further directed the Appellant vide reminders dated December 16, 2016, and January 18, 2017, to file the Statements within 15 days of the subsequent month. The Securities and Exchange Commission of Pakistan also issued a reminder on December 28, 2016.



Securities and Exchange Commission of Pakistan

3. In view of above stated violation, a Show Cause Notice dated 14/02/17 (the SCN) was issued however, the Appellant has not responded. Hearing in the matter of SCN was held on 02/03/17, which was attended by Mr. Usman Shafi. The SCN proceeding was concluded through the Impugned Order and a penalty of Rs. 300,000/- was imposed on the Appellant by the Respondent.
4. The Appellant has challenged the Impugned Order before the Appellate Bench (the Bench) through the instant Appeal and requested to set-aside the Impugned Order whereas, the Respondent has prayed to dismiss the Appeal.
5. The Bench has heard the parties and perused the record. It has been noticed by the Bench with great concern that while adjudicating the matter the Respondent has not applied a judicial mind. The Respondent, to establish the violation of non-filing of online Statements had relied upon the Regulation 6(4) of the Regulations and the PSX Notice, however, none of these provisions require online filing of the Statements. The most astonishing fact of the case is that the Impugned Order has been passed for non-filing of online Statements, however, the SCN does not contain any such allegation.
6. The Bench is the appellate quasi-judicial body of the Commissions therefore, while deciding appeals under Section 33 of the SECP Act, 1997, it has to see whether the adjudicating authority has applied the relevant law in letter and spirit or failed to demonstrate the desired application of law. In the present case, the Appellant had been penalized for the violation, which neither was alleged in the SCN, nor was it a requirement of the law. Accordingly, the entire proceedings against the Appellant, including the Impugned Order are absolute nullity. Therefore, the Bench, hereby set-aside the Impugned Order being passed without any legal sanction. The Appeal is allowed without any order as to cost.


(Shaukat Hussain)
Commissioner (CCD-CLD)
CLD)


(Tahir Mahmood)
Commissioner (CSD-

Announced on: **21 JUN 2018**