



# Securities and Exchange Commission of Pakistan

## APPELLATE BENCH NO. 1

In the matter of

### Appeal No. 47 of 2017

Z M Capital (Private) Limited

...Appellant

Versus

i. Asif Jalal Bhatti, Executive Director, (PRPD)

ii. Tahir Mehmood Kiani, Joint Director (PRPD)

...Respondents

Date of Hearing: 20/04/18

Present:

For the Appellants:

(i) Mr. Muhammad Javed, M/s Z.M Capital (Pvt.) Ltd

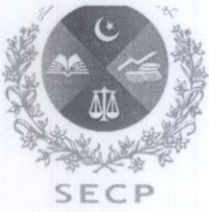
For the Respondent:

(i) Mr. Asif Khan, Deputy Director (SMD)

(ii) Mr. Salman Arshad, Deputy Director (SMD)

## ORDER

1. This Order is in the matter of Appeal No.47 of 2017 filed under section 33 of the Securities and Exchange Commission of Pakistan (Commission) Act, 1997 (SECP Act) against the Order (Impugned Order) dated 21/04/17 passed by the Respondent No.1.
2. Brief facts of the case are that the Commission vide Circular No. 4/2013 dated 16/04/13, in exercise of powers conferred under section 6(3) of the Securities and Exchange Ordinance, 1969 (Ordinance) read with Third Schedule of the Brokers



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and Agents Registration, Rules 2001 (Brokers Rules) directed all the Trading Right Entitlement Certificate (TREC) holders/brokers to submit their financial information through the online Financial Reporting System (FRS), within 30 days of the close of each quarter. Pursuant to aforesaid directive, the TREC holders were required to submit their financial information online through FRS since the quarter ended on 30/09/16. The Commission also arranged the awareness and training sessions in June-July 2015 and March 2016 for the TREC holders on FRS in Islamabad, Lahore and Karachi. The basic purpose of sessions was to give awareness to the TREC holders on FRS and provide them guidance for filing of their returns. The Commission vide letters dated 30/01/14, 10/06/15 and 03/11/15 directed the stock exchanges to ensure that all TREC holders must submit their financial returns to the Commission through the online reporting system within the stipulated time limit and the stock exchanges disseminated the said direction of the Commission on their websites for information and compliance by the TREC holders. Despite all efforts, ZM Capital (Private) Limited (Appellant) failed to file the financial information, detail of which is as under:

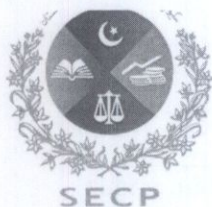
Quarter Detail	Due Date	Status
September -2013	October 30, 2013	Not Filed
December -2013	January 30, 2014	Not Filed
March-2014	April 30, 2014	Not Filed
June-2014	July 30, 2014	Not Filed
September 2014	October 30, 2014	Not Filed
December 2014	January 30, 2015	Not Filed
March 2015	April 30, 2015	Not Filed
June 2015	July 30, 2015	Not Filed
September 2015	October 30, 2015	Not Filed
December 2015	January 30, 2016	Not Filed
March 2016	April 30, 2016	Not Filed



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June 2016	July 30, 2016	Not Filed
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3. The Show Cause Notice (SCN) dated 30/12/16 was served to the Appellant under Section 22 of the Ordinance and Rule 8 of the Brokers Rules. The Appellant was directed to file a written reply to the SCN by 08/01/17 and attend the hearing scheduled on 12/01/17. As per returned courier envelope received in the Commission, the Appellant refused to receive the SCN. The SCN was served again to the Appellant and the matter was re-scheduled for hearing on 08/02/17. The Appellant vide letter dated 07/02/17 authorized Mr. Mohammad Javed to attend the said hearing. On the given date, the Representative attended the hearing and sought further time for filing of financial information through FRS, and gave a commitment for filing the financial information within the extended time. In view of the Appellant's commitment, the Commission vide letter dated 09/02/17, accorded a final deadline for submission of financial information through FRS and asked the Appellant to submit a compliance report on or before 28/02/17. The Appellant was also intimated that no further hearing opportunities would be provided and in case the Appellant failed to submit the financial information, the Commission would decide the matter on the basis of available record.
4. In view of the above, Respondent No.1 held that it was evident that the Appellant had failed to discharge its regulatory obligations and violation of the directive given through Circular No. 4/2013 dated 16/04/13, issued in exercise of powers conferred under Section 6(3) of the Ordinance read with the Third Schedule of the Brokers Rules was established. Therefore, in exercise of the powers under Section 22 of the Ordinance, a penalty of Rs 300,000/-was imposed on the Appellant by Respondent No.1. The Appellant was further directed by Respondent No.1 to file all overdue financial returns through FRS within 30 days



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from the date of the Impugned Order and to ensure strict compliance with the regulatory framework in letter and spirit, in future.

5. The Appellant preferred the instant appeal on the grounds that, the Brokerage House is inactive and the Company has no KATS Terminal workstation. The Appellant argued that the old FRS password had expired due to inactivation of the account and subsequently in this regard had written emails to the help desk of the Commission, but did not receive a proper reply. The Appellant further argued that they have submitted all previous as well as current FRS on the website of the Commission, when the password was renewed and the penalty, therefore, is exorbitant in nature and needs to be revised.
6. The Respondents rebutted the arguments of the Appellant on the grounds that, the Commission's IT system/server was in order and working effectively as almost 300 brokers had filed 4300 returns to the Commission from 2013 until 2017 and they were not facing any issue of a server error. Moreover, the Respondents argued that the Commission had given necessary awareness/guidance to TREC holders for filing of their returns and online sessions were held in June-July 2015 and March 2016 and the Appellant was required to sort out technical issues if any. Furthermore, the Respondent argued that they had given ample opportunities to the Appellant even after issuance of SCN dated 30/12/16 but the Appellant did not file the requisite returns. Therefore, the Respondent argued that violation of the said direction was established and in exercise of the powers conferred under Section 22 of the Ordinance, penalty was imposed on the Appellant through the Impugned Order.
7. We have heard the parties i.e. the Appellant and Respondents at length and perused the relevant record. The Appellant has argued that due to inactivation of account their FRS password had expired and subsequently there was no way for



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them to submit their financial information online and they received no assistance from the help desk of the Commission. The Appellant, however, submitted all previous as well as current FRS on the website of the Commission when the password was renewed. The Appellant further argued, that the penalty imposed on the Appellant is exorbitant in nature and needs to be revised. The Respondents have argued that the Commission's IT system/server was in order and working effectively. Furthermore, the Respondents argued that the Appellant had been given ample opportunities and time to sort out any technical issue even after issuance of the SCN dated 30/12/16, however, the Appellant failed to discharge its regulatory requirements. We are of the view that despite providing ample opportunities, there is no justification for failure to comply with regulatory requirements on behalf of the Appellant.

8. In view of the above, the Impugned Order is upheld as the violation of Brokers Rules has been established. We have also noted, however, that the Appellant has subsequently complied and submitted all previous and current FRS. Taking a lenient view, therefore, we hereby reduce the penalty to 150,000/- and in case of similar non-compliance in future, strict action shall be taken against the Appellant, in accordance with the law.

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

**(Tahir Mahmood)**  
Commissioner (CSD-CLD)

Announced on: **15 MAY 2018**