



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 47 of 2019

Summit Capital (Pvt.) Limited

Appellant

Versus

The Commissioner, (SMD), SECP, Islamabad.

Respondent

Date of hearing:

September 3, 2020

Present:

For Appellant:

1. Mr. Muzammil Hussain Merchant, CFO
2. Mr. Muhammad Monis Farid, Head of Operations
3. Syed Muhammad Alay Raza, Compliance Officer


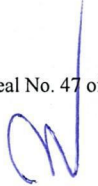
For Respondent:

1. Mr. Osman Syed, Joint Director (Adjudication-I), SECP
2. Mr. Muhammad Faisal, Assistant Director (Adjudication-I), SECP

ORDER

1. This Order shall dispose of Appeal No. 47 of 2019 filed by Sherman Securities (Private) Limited (the Appellant) against the Order dated June 3, 2019 (the Impugned Order) passed by the Commissioner, SMD (the Respondent) under Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (the SECP Act) read with Section 150 the Securities Act, 2015 (the Act).
2. The brief facts of the case are that the Appellant is a Trading Rights Entitlement Certificate holder of the Pakistan Stock Exchange Limited (the PSX) and licensed as a securities broker under the

Appellate Bench

 Appeal No. 47 of 2019


Page 1 of 5



Securities and Exchange Commission of Pakistan

Act. The Joint Inspection Team of PSX, Central Depository Company and National Clearing Company of Pakistan Limited (the JIT) conducted an inspection of the Appellant (Inspection) to assess its compliance with the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the Regulations). The Inspection, *inter alia* revealed the following non-compliances;

- i. The Appellant had no mechanism for ongoing monitoring of its clients therefore, clients related important information was missing such as source of funds, beneficial ownership and correct ratings etc.
 - ii. The Appellant had not conducted customer due diligence (CDD) of nineteen clients before opening their accounts and failed to obtain source of funds, monthly/yearly income proof etc.
 - iii. The Appellant had not established beneficial ownership of eight clients.
 - iv. The Appellant has not assigned any risk profile ratings to nine clients, whereas, incorrect risk profile ratings were assigned to eleven clients. Moreover, risk ratings assigned to eight clients in the Know Your Customer (KYC)/CDD Forms were different from ratings assigned in the back-office record.
3. In view of the above violations, a show-cause notice dated May 2, 2019 (the SCN) was issued to the Appellant. Hearing in the matter was held on May 9, 2019, which was attended by the Appellant's representatives. Being dissatisfied with the response of the Appellant, the Respondent had imposed, a penalty of Rs. 300,000/- (Rupees three hundred fifty thousand).
4. The Appellant *inter alia* filed this Appeal on the grounds that the Respondent was not authorized to take disciplinary action under Joint Inspection Regulations, 2015 (the Regulations) because only respective Self-Regulatory Organizations (SROs) were authorized to take action. The Appellant stated that the JIT report had no observation regarding non-compliance which had compromised investors protection and reputation of securities exchange and capital market, therefore, the OC had illegally forwarded the matter to the Securities and Exchange Commission of Pakistan (the Commission).



Securities and Exchange Commission of Pakistan

5. The Appellant stated that the Respondent had no jurisdiction to establish the OC or to conduct the Review under Section 169 of the Act, as Section 169 of the Act only empowers the Commission to make regulations (referred paragraph 2 of the SCN). The Appellant further stated that any violation of KYC and CDD requirements, which were introduced in 2012 by the Karachi Stock Exchange (presently PSX), does not imply that requirements of the Regulations had been violated and accordingly the Respondent had no authority to take penal action on violation of alleged non-compliances of the regulatory framework of 2012. The Appellant stated that before imposing the penalty, the Respondent should have provided an opportunity to rectify the non-compliances. The Appellant submitted that post Inspection, non-compliances were removed. In this regard, the Appellant had relied upon the Appellant Bench's order passed in Appeal Nos. 26, 27 and 28 of 2014, wherein without imposing penalty, the parties were provided opportunity to rectify non-compliances.
6. The Respondent stated that being apex regulator of capital market, the Commission is empowered to take penal action against the violators. The Respondent stated that by virtue of section 169 of the Act, the Commission is empowered to make Regulations in order to provide a mechanism for conducting inspections and investigation of regulated persons. The Respondent stated that the JI Regulations were made under section 169 (2) (ii) of the Act and the Oversight Committee was formed under the JI Regulations. The Respondent stated that it has been wrongly interpreted by the Appellant that the Inspection was conducted under 169 of the Act.
7. The Respondent stated that the Impugned Order has been passed due to violations of the Regulations, therefore, the Appellant's assertion that the Impugned Order has been passed on the basis of Exchange's Guidelines 2012 is not correct. The Respondent stated that it has been argued in the Impugned Order that the Regulations, are new but the requirements contained therein were introduced in 2012. The Respondent stated that case laws referred by the Appellant are not relevant to the facts of this case.
8. The Appellate Bench (the Bench) has heard the parties and perused the record. The Appellants' representatives and the Respondent's representatives reiterated their grounds of appeal and rebuttal thereof.



Securities and Exchange Commission of Pakistan

9. The Bench is of the view that upon direction of the Commission, the JIT and the OC had assessed violations of the Regulations, therefore, the OC has rightly forwarded the matter to the Commission and accordingly the Impugned Order had been passed.
10. The Bench has carefully gone through the contents of the Impugned Order and other relevant record. We are of the view that the Appellant's assertion with regard to apparent mistakes in the introductory paragraph (Paragraph two) of the SCN and the Impugned Order is immaterial and does not affect the merits of the case. The Bench is of the view that the content of the referred paragraphs lack clarity in terms of procedure adopted in this case. The Bench has examined the relevant record, which revealed that the Commission mandated the Oversight Committee to initiate the Review and thereafter, upon the receipt of the Report, SCN proceedings were initiated by the Respondent. In view of the record, the Bench has not found any anomaly in the procedure adopted in the Review and during the SCN proceedings. We have no doubt that the Commission and the Respondent had duly followed the legal process while initiating the Review, issuing the SCN and passing of the Impugned Order. Therefore, the ambiguity caused by poor drafting of the referred introductory paragraph does not vitiate the Review and SCN proceedings.
11. The Bench is not inclined to accept the Appellant's assertion that reasonable time was not provided to understand and comply with the requirements of the Regulations because the requirements contained under the Regulations were not new, rather these were introduced in 2012 by the Karachi Stock Exchange with the approval of the Commission, through Regulation 4.18 of the Rule Book (current Regulation 4.17). The Bench is of the view that these requirements were made mandatory for the securities brokers to formulate and implement an effective KYC and CDD policy in accordance with the KYC and CDD guidelines issued by the Karachi Stock Exchange in 2012. The Bench has compared the requirements of the regulatory framework of 2012 with the Regulations and AML Guidelines 2018, and observes that they do not reflect any material difference. Therefore, the Bench has no doubt to hold that the Regulations had not introduced new regulatory requirements, rather, prior regulatory requirements had been streamlined.
12. The Bench is of the view that case laws referred by the Appellant are not relevant to this case because these were about rectification of non-compliances of audit reports whereas, the instant case is regarding violation of the Regulations.



Securities and Exchange Commission of Pakistan

13. The Bench has observed that the Appellant was non-compliant at the time of Inspection, therefore, any subsequent compliance would not exonerate it from the consequences of violations committed in implementation of the Regulations. In view of the forgoing, the Bench find no reason to interfere with the merits of the Impugned Order, therefore, we hereby dismiss this Appeal, without any order as to cost.

A handwritten signature in blue ink, appearing to read 'Farrukh Hamid Sabzwari', is written over a faint circular stamp.

(Farrukh Hamid Sabzwari)
Commissioner (SCD-PRDD)

A handwritten signature in blue ink, appearing to read 'Shaukat Hussain', is written over a faint circular stamp.

(Shaukat Hussain)
Commissioner (INS,C&CD)

Announced on: **23 DEC 2020**