



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 49 of 2019

Bawa Securities (Pvt.) Ltd

...Appellant

versus

Commissioner, Securities Market Division

...Respondent

Date of hearing: 03/09/20

### Present:

#### For the Appellant

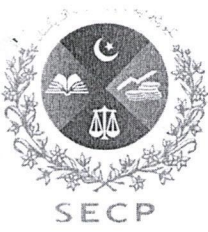
- i. Mr. Muhammad Hanif Bawa, Director & CEO
- ii. Mr. Fouzal Azim, Compliance Officer
- iii. Mr. Shafqat Ali, AFRAS & Company

#### For the Respondent:

- i. Mr. Osman Syed, Joint Director (Adjudication-1)
- ii. Mr. Muhammad Akram, Assistant Director (Adjudication-1)

### ORDER

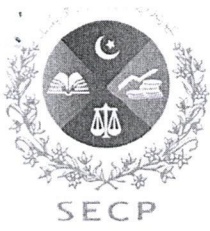
1. This Order is passed in the matter of Appeal No. 49 of 2019 filed under section 33 of the Securities and Exchange Commission of Pakistan Commission Act, 1997 (the SECP Act) against the order dated 14/06/19 (the Impugned Order) passed by Commissioner, Securities Market Division (the Respondent).
2. The brief facts of the case are that Bawa Securities (Private) Limited (the Appellant) is a trading rights entitlement certificate holder of the Pakistan Stock Exchange (the PSX) and is licensed as a securities broker under the Securities Act, 2015 (the Securities Act). The Joint Inspection Team (the JIT) of PSX, Central Depository Company (the CDC) and National Clearing Company of



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Pakistan Limited (the NCCPL) conducted an inspection of the Appellant to assess its compliance with the regulatory requirements contained in the Securities and Exchange Commission of Pakistan (Anti-Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the AML Regulations). The Inspection, inter alia, revealed the following:

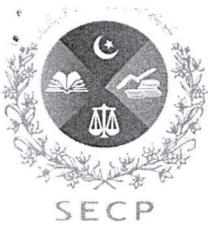
- i. The Anti Money Laundering/Know Your Customer (the AML/KYC) policy of the Appellant was not updated to meet the requirements of the AML Regulations in contravention of Regulation 4(a) of the AML Regulations which requires that a regulated person shall develop and implement policies, procedures and controls which are approved by its board of directors to enable the regulated person to effectively manage and mitigate the risks that are identified in the risk assessment of Money Laundering/Terrorism Financing (the ML/TF) or notified to it by the Securities and Exchange Commission of Pakistan (the Commission).
- ii. The Appellant did not have a mechanism for ongoing monitoring of its clients in contravention of Regulation 13 of the AML Regulations which requires that all business relations with customers shall be monitored on an ongoing basis to ensure that the transactions are consistent with the regulated person's knowledge of the customer.
- iii. The Appellant had not performed Customer Due Diligence (the CDD) of thirteen of its clients and information such as source of income, monthly/yearly income etc. was not obtained at the time of opening of the account in violation of Regulation 6(2) of the AML Regulations which requires that a regulated person shall apply CDD measures when establishing business relationship with a customer. Furthermore, the Appellant had not established beneficial owner of such clients in violation of Regulation 6(3)(a) of the AML Regulations.
- iv. The Appellant had not justified its decision in writing to rate its nineteen (19) customers as low risk in contravention of Regulation 11(2) of the AML Regulations which requires that the decision to rate a customer as low risk shall be justified in writing by the regulated person.
- v. The risk rating assigned to one of the customers of the Appellant in the KYC/CDD form differed from that assigned in the back office transpiring that the Appellant had not documented the change in risk assessment in violation of Regulation 3(2)(a) of the AML Regulations which requires a regulated person to document its risk assessments.
- vi. The Appellant had not designed job description of its compliance officer in accordance with the requirements of Regulation 18(c) of the AML Regulations.
- vii. Regulation 14 of the AML Regulations requires a regulated person to pay special attention to all complex and all unusual patterns of transactions, which have no apparent economic or



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visible lawful purpose. The transactions, which are out of character and inconsistent with the history, pattern or normal operation of the account or are not commensurate with the level of income of a customer are to be viewed with suspicion, be properly investigated and referred to Compliance Officer for possible reporting to Financial Monitoring Unit (the FMU) under the Anti Money Laundering Act 2010 (the AML Act). The basis of whether Suspicious Transaction Report (the STR) is being filed or not has to be documented and kept on record together with all internal findings and analysis done in relation to a suspicion irrespective of the fact that transaction is subsequently reported or not. In the instant case, the Appellant had not documented the reason of its decision to file STR or not in case of three of its clients.

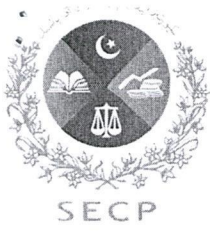
3. The Show Cause Notice (the SCN) was served to the Appellant and hearing in the matter was held on 24/05/19. Mr. Hanif Bawa, Chief Executive attended the hearing as authorized representative on behalf of the Appellant and made his submissions.
4. The Respondent dissatisfied with the response of the Appellant held that contraventions of the provisions of AML Regulations had been established. Therefore, in terms of powers conferred under section 40A of SECP Act, 1997, a penalty of Rs 250,000 was imposed on the Appellant by the Respondent. The Appellant was further advised to examine its AML/CFT policy & procedures and the accounts of its clients to ensure that the requirements contained in the AML Regulations are complied in letter and spirit. Furthermore, the Appellant was directed that a report in this regard shall be submitted to the Commission within sixty (60) days of the date of the Impugned Order.
5. The Appellant preferred the instant appeal *inter alia* on the following grounds:
  - a) The Respondent was not authorized to take disciplinary action under Joint Inspection Regulations (the JI Regulations). The Respondent unlawfully constituted Oversight Committee (the OC) under section 169 of the Securities Act to conduct thematic review (the Thematic Review). In pursuance to section 169 of the Securities Act, the Commission has powers to make regulations and not to constitute OC to conduct Thematic Review of compliances of the Appellant pertaining to requirements contained in the AML Regulations. Furthermore, the Appellant is of the considered view that the Respondent directly took cognizance of the alleged non-compliances highlighted in the JIT Report, initiated



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disciplinary action under section 40A of the SECP Act and fined the Appellant Rs 250,000/- without following the JI Regulations.

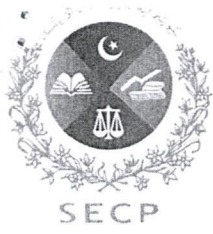
- b) The Respondent had imposed penalty on the Appellant under the SECP Act on non-compliances of PSX's KYC/CDD Guidelines notified under regulation 4.18 of PSX Rulebook issued in 2012 (the PSX Regulations) based on prima facie non-compliances of the AML Regulations issued in June 2018 under the AML Act 2010. The Respondent was not authorized to penalize the Appellant based on non-compliances of the PSX Regulations issued in 2012.
  - c) The Appellant had rectified all non-compliances before the date of hearing on 24/05/19, therefore, as per the decision of Appellate Bench No.1 in the matter of Appeal Nos. 26, 27 & 28 of 2014 titled Karachi Stock Exchange & others versus Director and Head of Department, Market Supervision and Registration Department, SECP, the Respondent should not have imposed penalty without allowing the Appellant an opportunity to rectify such non-compliances and could only take action if it was reported that the non-compliances were not rectified in the limited scope inspection by JIT.
6. The Respondent rebutted the arguments of the Appellant *inter alia* on the following grounds:
- a) A clear reading of section 169 of the Securities Act illustrates that the Commission is fully empowered to make regulations in order to provide mechanism for conducting inspections and investigations of regulated persons. The JI Regulations were made under section 169(2)(ii) of the Securities Act and the OC was formed under the JI Regulations in order to conduct a Thematic Review of the Appellant. The main scope of these Regulations is to conduct inspection and Regulation 3 of the JI Regulations provides that the JI will be carried out by JIT as per the requirements of these regulations. The inspection was initiated vide inspection order notice No. TO15 dated 06/03/19 and was conducted based on the Terms of Reference (the TOR) communicated by the Commission vide email dated 31/08/18. The Thematic Review was carried out by JIT which comprised of staffs representing PSX, CDC and NCCPL.
  - b) The Appellant's policies were not updated in consonance with the AML Regulations until the inspection period. It is pertinent to note that the AML Regulations were promulgated on 13/06/18, however, the regulatory requirements relating to KYC/CDD and AML have been



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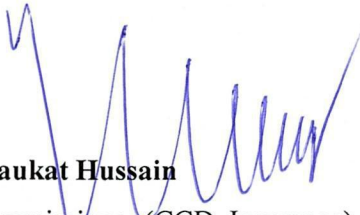
implemented since 2012 considering the public interest, the integrity of the Pakistani capital market and the country's international commitments. Therefore, AML Regulations cannot be termed as a new set of requirements.

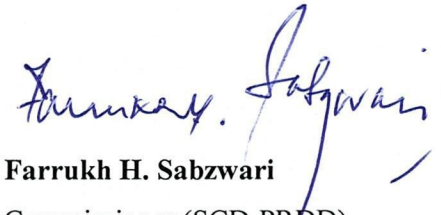
- c) The judgment cited by the Appellant is not relevant in the instant case since the scope of Thematic Review was to determine whether the Appellant was compliant with the AML Regulations during the review period. Regulation 5.2 of the System Audit Regulations provides that a broker should rectify any non-compliances identified in the audit report, however, such rectification was required to be confirmed by a limited scope audit after a period of three months to ensure that a broker remains compliant during such period. Disciplinary action, therefore, can only be initiated if any non-compliances are reported in the limited scope audit report (the Limited Scope Audit Report). Furthermore, it is important to note that the Appellant was provided opportunity to make their submissions and their statements were duly recorded as per procedure. Therefore, the contention shared by the Appellant that the Respondent has not followed the due process by providing them an opportunity to rectify such non-compliances is strongly denied.
7. We have heard the parties i.e. the Appellant and the Respondent. The Appellant's argument that the Respondent took action without adhering to JI Regulations is without any merit. The Commission had issued JI Regulations through its inherent power under section 169 of the Securities Act and Regulation 3 of the JI Regulations which provides that joint inspection will be carried out by JIT in accordance with the said regulations. Furthermore, we concur with the Respondent that rectification of any non-compliances was required to be confirmed by a limited scope audit after a period of three months and the Respondent only initiated disciplinary action when non-compliances were reported in the Limited Scope Audit Report. Furthermore, we are of the view that the regulatory requirements prescribed in the AML Regulations were not new as all securities brokers since 2012 had to comply with PSX Regulations to formulate and implement an effective KYC and CDD policy in accordance with PSX's KYC and CDD Guidelines and put in place requisite policies and procedures to curtail activities relating to money laundering and financing of terrorism. In the instant case, we have observed that the Appellant's policies and procedures were not updated in accordance with AML Regulations until the inspection period and even post inspection, the Appellant was not fully compliant. The Appellant should have ensured full compliance with the AML Regulations at all times.



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8. In view of the foregoing, we see no reason to interfere with the Impugned Order. The Impugned Order is, therefore, upheld with no order as to costs.

  
**Shaukat Hussain**  
Commissioner (CCD, Insurance)

  
**Farrukh H. Sabzwari**  
Commissioner (SCD-PRDD)

Announced on: **23 DEC 2020**