



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 49 of 2020

Agahe Pakistan & others

...Appellants

Versus

The Executive Director Adjudication-I

...Respondent

Date of hearings:

January 16, 2025

Present:

For the Appellant:

Mr. Saad Nasarullah

For the Respondent:

1. Mr. Sohail Qadri, Director, Adjudication-I, SECP
2. Ms. Asma Wajid, Additional Joint Director, Adjudication-I, SECP
3. Mr. Naveed Iqbal, Deputy Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 49 of 2020 filed by Agahe Pakistan (the "Company") and its Board of Directors (the "Appellants") under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "SECP Act") against the Order dated March 30, 2020 (the "Impugned Order") passed by the Executive Director/Head of Department Adjudication-I (the "Respondent") under the

3. ML.



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Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the “AML Regulations”), Companies Ordinance, 1984 (the “Ordinance”) and NBFCs and Notified Entities Regulations, 2008 (the “NBFC Regulations”).

2. The brief facts of the case are that the Company is a non-profit organization set up under Section 42 of the Ordinance. The Company subsequently obtained a license to undertake financial investment services as a non-banking microfinance company with effect from October 04, 2016. In order to examine and verify compliance with the Anti Money Laundering and Countering Financing of Terrorism (AML/CFT) Regulatory framework, certain information regarding the names and CNIC numbers of borrowers, spouse, beneficial owners and nominees of the clients was sought by the Securities and Exchange Commission of Pakistan (the “Commission”) vide letter/email dated January 10, 2020. The Company provided the information vide email dated January 31, 2020. A Thematic Review (Review) of the Company was conducted by the Commission to ascertain compliance with requirements contained in the AML Regulations. The Review revealed that, while sanctioning loans, the Company and the Appellants did not carry out due diligence and loans were advanced to clients whose spouses and nominee were proscribed persons as per the National Counter Terrorism Authority (NACTA) list. It was also noted that the Company’s AML/CFT policies and procedures did not require screening of nominees, co-borrowers and ultimate beneficial owners although the same was required as per AML/CFT policy of the Company. Accordingly, lapses in screening also led to non-filing of Suspicious Transaction Reports (STRs) in a timely manner, which constituted violations of Regulations 6(5a), 6(3)(a) and 13(7) of the AML Regulations and Regulations 9(1) and 9(2)(d) of the NBFC Regulations. In light of the aforementioned violations, the Respondent issued a Show-Cause Notice dated March 18, 2020 (the SCN) and addendum dated March 25, 2020 to the Company and the Appellants, to which they submitted a written reply dated March 24, 2020. Hearing in the matter was held on March 26, 2020. The Respondent, vide powers conferred under Section 40A of the SECP Act, imposed a penalty of Rs. 1,000,000/- (Rupees One million only) on the Company and Rs. 125,000/- (Rupees One Hundred and Twenty-Five Thousand only) on each of the 8 Directors for violation of the AML Regulations (Aggregate amount of penalty on directors was Rs. 2,000,000/-).
3. The Appellants have preferred this Appeal, *inter alia*, on the grounds that the Appellants have contended that the Company has taken serious measures for compliance with the AML Regulations and has consistently endeavoured to adhere to the AML and CFT guidelines issued by the Commission.



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The Appellants argued that all necessary steps were taken to update the Company's system in line with regulatory guidelines, ensuring ongoing improvements in compliance measures. Furthermore, the Appellants have asserted that the Commission conducted inquiries and proceedings during the COVID-19 lockdown when offices were closed, depriving the Company of a fair opportunity for correspondence and consultation. The Appellants further argued that the SCN was received on 19th March 2020, the order was passed on 30th March 2020, and the hearing was conducted in a hasty manner via Skype without due consideration for the absence of staff and legal counsel. Consequently, the Appellants have submitted that the lack of proper opportunity to be heard constitutes a violation of the principles of natural justice and Article 10-A of the Constitution of Pakistan, which guarantees the right to a fair trial. The Appellants have contended that the penalty was imposed on the basis that legal requirements of the AML Regulations were not met, whereas the Company had no record of beneficial owners appearing on the NACTA list at the time of screening. The Appellants have maintained that only two out of more than 28,000 clients were identified as potential compliance issues, demonstrating the Company's robust compliance system. Additionally, the Appellants have argued that in cases involving female clients, the husband's or father's name appears on forms, but such individuals may not necessarily be beneficial owners, making the allegations unreasonable. The Appellants further asserted that all borrower and beneficial owner records were properly collected and maintained, and compliance verification procedures were followed. Furthermore, the Appellants argued that SECP's assertion that the Company lacks an AML screening system is incorrect, as records from the Company confirm the existence of compliance procedures. The Appellants have submitted that the NACTA list is regularly updated, and it is uncertain whether the individuals in question were listed at the time of the Company's screening. The Appellants have maintained that the Commission's requirement to manually screen over 100,000 individuals within six days in November, 2019 was an unreasonably short deadline, leading to potential inadvertent human errors. Despite this, the Appellants have argued, the Company complied with the Commission's demands and provided the required data in 'MSEExcel' format on multiple occasions, including in July, 2019, November, 2019, and January, 2020. The Appellants have asserted that when the Commission identified two cases involving beneficial owners in February, 2020, the Company immediately recalled the loans, filed Suspicious Transaction Reports (STRs), and reported the matter to the relevant authorities. The Appellants have contended that the Impugned Order incorrectly states that the Company failed to report the names appearing in the NACTA list, whereas all necessary actions were taken as soon as the issue came to light. The Appellants have maintained that discrepancies in reporting arose due to a transition from manual to computerized record-keeping,

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which was still undergoing verification and reconciliation at the time of submission. The Appellants have argued that the penalties imposed on them are unjustified because four of the penalized directors were not appointed at the time of the alleged non-compliance, deeming the penalty a violation of Article 12 of the Constitution of Pakistan, which prohibits retrospective punishment. The Appellants have submitted that the directors of the Company, being part of a Non-Profit Organization (NPO), do not receive remuneration and cannot be held responsible for minor errors that were promptly rectified. Furthermore, the Appellants have contended that the penalties are excessively harsh, particularly in light of the financial challenges faced by the microfinance sector due to the COVID-19 pandemic. The Appellants have asserted that penalties should only be imposed in cases of wilful default with an intent to gain an unfair advantage, whereas in this instance, no direct or indirect benefit was obtained by the Company or the Appellants. The Appellants have maintained that since the Company voluntarily provided all beneficial owner information to the Commission and took corrective actions as required, the imposition of penalties is unjust and unwarranted, therefore, a lenient view may be taken.

4. The Respondent countered the grounds of the Appeal and proffered arguments, delineating that the Company did not adequately screen the beneficial owners, spouses, and nominees of borrowers against the list of proscribed persons, leading to loans being granted to individuals associated with proscribed persons. The Respondent further argued that the Company failed to comply with the AML Regulations, which required proper screening and due diligence before forming financial relationships. The Respondent further argued that the Company did not promptly report the identified loans to the Financial Monitoring Unit (FMU) and only acted after the issue was flagged by the Commission. The Respondent contended that the Company's AML/CFT policies were found inadequate as they did not include necessary checks for nominees, co-borrowers, and ultimate beneficial owners. The Respondent further argued that the Company was also found in violation of the NBFC Regulations, which require companies to prevent money laundering and abide by compliance directives. The Respondent further argued that the Appellants failed to ensure effective implementation of AML/CFT Regulations, leading to non-compliance where it was their duty to ensure the compliance in its true letter and spirit. The Respondent prayed for dismissal of the instant appeal.
5. The Bench has heard the arguments of both the parties and perused the record. After reviewing the circumstances of the case, while the Company did commit regulatory lapses, the fact that the Company is a non-profit organization and the directors neither receive any remuneration nor derive any personal

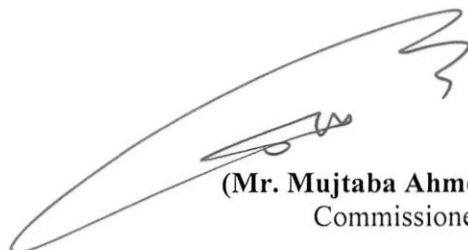


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benefit from the alleged non-compliance warrants reconsideration of the penalty imposed upon the directors. Additionally, in light of the financial challenges faced by the microfinance sector and the corrective measures already undertaken by the Company, the Bench is inclined to take a lenient view. The Bench emphasizes that while the penalty is being reduced, the Company must exercise greater vigilance in the future to ensure full compliance with AML/CFT regulations. The Bench also considers that as a financial entity, even as a non-profit organization, the Company should strictly adhere to the AML Regulations and implement robust internal controls to prevent any association with proscribed persons. The Bench has further highlighted that compliance with AML Regulations and NBFC Regulations is not merely a procedural formality but a critical safeguard against financial crimes, including money laundering and terrorist financing. Therefore, the Company is directed to strengthen its compliance mechanisms, enhance due diligence procedures, and ensure that such lapses do not recur. The Bench has cautioned that any future violations will be met with stricter regulatory action, as adherence to legal obligations is a fundamental duty of all regulated entities.

6. Considering the facts and circumstances of the case, the imposition of penalty on the board of directors of the Company is not justified, therefore, the penalty imposed on the directors is annulled. However, the Bench also considers it justified to reduce the penalty imposed upon the Company, therefore, the penalty amount imposed upon the Company is reduced from Rs. 1,000,000/- to Rs. 500,000/- with a direction for strict compliance in the future.
7. The instant Appeal is disposed of in the above terms without any order as to costs.


(Abdul Rehman Warraich)
Commissioner


(Mr. Mujtaba Ahmed Lodhi)
Commissioner

Announced on:

02 JUL 2025