



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

### Appeal No. 5 of 2025

Mr. Raj Kumar

...Appellant

versus

Commissioner (SMD), SECP

...Respondent

### Date of hearing:

February 17, 2025 and March 3, 2025

### Present:

#### For the Appellant:

Mr. Raj Kumar

#### For the Respondent:

1. Mr. Mubasher Saeed Saddozai, Executive Director, Adjudication-I, SECP
2. Mr. Sohail Qadri, HOD/Director, Adjudication-I, SECP
3. Mr. Muhammad Faisal, Assistant Director, Adjudication-I, SECP

## ORDER

1. This Order shall dispose of Appeal No. 5 of 2025 filed by Mr. Raj Kumar (the Appellant), against the Order dated November 21, 2024 (Impugned Order) passed by the Commissioner-SMD (the Respondent) under Section 150 and 159 read with Section 75 and 151 of the Securities Act, 2015 (the Act) and Regulation 4(e) and 27 of the Securities Brokers (Licensing and Operations) Regulations, 2016 (the Regulations).



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2. The brief facts of the case are that the Securities and Exchange Commission of Pakistan (the Commission) conducted an investigation under Section 139 of the Act (the Investigation) to look into the affairs of Axis Global Limited (the Company) *inter alia* on the grounds that information was received from the National Accountability Bureau Ordinance (NAB) on May 04, 2018 regarding initiation of an inquiry under Section 19 of the National Accountability Bureau Ordinance, 1999 (NAO). Furthermore, the Investigation proceedings were also triggered on the basis of ten complaints against the Company, received by the Commission in October 2018, whereby it was alleged that the Company and its other representatives were involved in defrauding the public by taking unauthorized deposits amounting to Rs. 20 million. The Commission also forwarded all complaints to NAB on November 02, 2018, under Section 41B of the Securities and Exchange Commission of Pakistan Act, 1997, for consideration in its ongoing inquiry wherein the Appellant was subsequently arrested by NAB in the matter of forty-eight (48) complaints related to illegal deposit-taking amounting to Rs. 40 million.
3. The Investigation culminated into the investigation report dated November 5, 2019 (Investigation Report), which highlighted that an individual named Faisal Kamran, not officially associated with the Company, was actively involved in dealings with the Company's clients and unauthorized trading. The Investigation Report highlighted that Faisal Kamran introduced 52 clients to the Company, conducted trades on their behalf, and manipulated their accounts, resulting in excessive commission charges of Rs. 24.16 million which constitute 57% of the clients' total investments. The Investigation Report further stated that the Company failed to implement appropriate internal controls, did not ensure the segregation of client assets, and engaged in unauthorized trading practices, leading to significant investor losses. The Investigation Report established that the Appellant entered into a plea bargain and paid Rs. 16.731 million to NAB. The Investigation Report disclosed that amount paid through plea bargain was provided by the Company and the same was reflected as a receivable from the Appellant, however, it was later written-off in the Annual Audited Accounts for the year 2021 without justification.
4. In view of the findings of the Investigation, the Commission issued a Show-Cause Notice dated April 19, 2019 (the SCN), to the Company and its Board of Directors, followed by an Addendum dated February 16, 2022, for violations of Section 74 and 151 of the Act, read with Regulation 4(e) and 27 of the Regulations. Hearing opportunities were provided to the Appellant on May 02, 2019, May 13, 2019,



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June 12, 2019, August 7, 2019, June 18, 2020, August 20, 2020, June 27, 2022, February 2, 2023 and June 15, 2023. The written submissions were made by the Appellant on May 7, 2019, September 7, 2020, July 5, 2023, and June 20, 2023. The Respondent concluded the SCN proceedings and held that the Appellant, the Company and its Board of Directors failed to uphold regulatory standards and imposed an aggregate penalty of Rs. 10 million on the Company, its directors as well as the Appellant. The Respondent also cancelled the Company's license as a "Trading & Self-Clearing Broker" and asked the Company to continue as a "Trading Only" broker. The Commission also disqualified the Appellant from serving as a director of any brokerage business for five years and restricted the other directors to the extent of "Trading Only" brokers.

5. The Appellant challenged the Impugned Order, *inter alia*, on the grounds that the Respondent had misapplied Sections 150 and 159 of the Act because these Sections are applicable only to licensed persons. The Appellant submitted that the Appellant neither applied for nor was granted a license by the Commission for any regulated securities activity under Part V of the Act, therefore, the Respondent was not authorized to take any action against the Appellant under the said provisions and could not be subjected to penalties under Section 150(2) or Section 159(5) of the Act.
6. The Appellant submitted that the Appellant had already served a five-year disqualification sentence imposed by the Commission under Section 172 of the Companies Act vide order dated September 15, 2020. The Appellant further submitted that, currently, he is serving the disqualification imposed by the NAB Court's order dated 01 July, 2019. In view thereof, the Appellant submitted that further disqualification and imposition of penalty on the same grounds is unjustifiable because it constitutes an abuse of process and a violation of Article 13 of the Constitution, which prohibits double punishment.
7. The Appellant argued that the First SCN was issued in 2019, followed by an *Addendum* three years later, and the Order was further delayed by over two years, making the entire process arbitrary and unjust.
8. The Respondent vehemently denied the contentions of the Appellant and submitted that the Respondent had duly and correctly exercised the powers conferred upon it under Sections 150(1) and 159(5) of the Act. The Respondent stated that Section 159(5) of the Act explicitly empowers the Commission to impose monetary penalties on "any person" who contravenes or fails to comply with any provision of



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the Act, rules, or regulations. The Respondent contended that the Impugned Order was a speaking order, issued after thoroughly considering the submissions made by the Appellant, the facts of the case, the material on record, and the applicable legal provisions. The Respondent further submitted that, as per Section 159(5) of the Act, the maximum penalty for an individual is Rs. 100 million, and the penalties imposed were proportionate to the nature and severity of the default, factoring in any mitigating circumstances.

9. The Respondent further argued that the legislative intent behind Section 159 is to hold any person responsible for a default or violation of law, regardless of status. The Respondent contended that the Appellant's argument, restricting the applicability of the law solely to corporate bodies or licensed entities, is flawed. The Respondent submitted that, under Section 74 of the Act, the CEO and Board of Directors bear the responsibility to ensure compliance with standards of conduct. The Respondent relied upon *N. Narayanan v. SEBI (2012) 116 SCL 307 (SAT) [Ramaiya Guide to Indian Companies Act 2013]*, wherein it was held that directors cannot plead ignorance of financial matters and must be aware of corporate affairs. Additionally, in *Crown Prosecution Service v. Aquila Advisory Ltd*, the UK Supreme Court held directors personally liable for financial misconduct. The Respondent argued that the obligations of directors, as recognized by these precedents, underscore the accountability of the Appellant in the present matter.
10. The Respondent vehemently denied the Appellant's further contentions and referred to the findings of the Supreme Court of Pakistan in *HRC No. 11827-S of 2018*, dated September 03, 2018, which emphasized the fundamental duty of corporate boards to uphold probity, integrity, and honesty. The Respondent submitted that the Company and its Board of Directors violated Section 74(a), (b), (d), (e), (f), (g), (i), and (k) of the Act, along with Regulation 27 of the Regulations, by failing to maintain high standards of integrity, act with diligence, align services with customer objectives, avoid conflicts of interest, protect customer assets, ensure responsible internal controls, and establish proper complaint-handling mechanisms. The Respondent contended that the Appellant, as a Board member, could not absolve himself of these responsibilities and was equally accountable for the Company's misconduct, including the misappropriation of client funds. The Respondent further submitted that the Impugned Order was passed after due consideration of all relevant facts and legal provisions. The penalties imposed were commensurate with the Appellant's role in the violations and aligned with the statutory framework under Section 159(5) of the Act.



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11. The Bench has carefully examined the arguments advanced by both parties, the provisions of law under consideration, and the material placed on record. It is evident that the crux of the matter revolves around the applicability of Sections 150 and 159 of the Act and whether the Appellant, in an individual capacity, could be subjected to penalties thereunder. The Bench believes that the legislative intent of Section 159(5) is to hold individuals accountable for violations of the Act, irrespective of their status as licensed entities. The reliance placed by the Respondent on judicial precedents, including *N. Narayanan v. SEBI and Crown Prosecution Service v. Aquila Advisory Ltd.*, supports the principle that directors and officers of a company cannot evade liability for non-compliance merely by arguing that regulatory obligations apply solely to corporate bodies. The Bench has noted that it has been emphasized by the Supreme Court of Pakistan, in *HRC No. 11827-S of 2018*, on the fiduciary duties of Board members to ensure integrity and accountability in corporate governance. In light of these authorities, the Bench is of the view that the Appellant, as a member of the Board of Directors, had an obligation to ensure compliance with statutory requirements and cannot be absolved of responsibility.
12. The Bench has noted that the Appellant's stance that imposition of penalty and disqualification under the Impugned Order amounts to 'double jeopardy' is a valid objection because the Appellant had already been disqualified for a period of five years under Section 172 of the Companies Act due to a plea bargain resulting from the same misappropriation of funds that forms the basis of the Impugned Order. The Bench observed that as per the disqualification order under Section 172, the Appellant was barred to hold the office of a director in any company, whereas, the Impugned Order has barred the Appellant directorship in brokerage firms. In view of the fact that both disqualifications orders arose from the same factual matrix, the Bench believes that the Impugned Order effectively penalized the Appellant twice for the same offense. Moreover, the Bench finds that the Impugned Order does not acknowledge prior disqualification under Section 172, failing to consider the legal consequences of an already imposed restriction. The Bench notes that Article 13 of the Constitution of Pakistan, 1973, prohibits multiple punishments for the same offence. The Bench further finds that the Supreme Court of Pakistan in *PLD 2024 SC 795* has categorically held that:



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*“The concept of double jeopardy essentially means that a person cannot be tried multiple times for the same offence on which there is a conviction based on the same set of facts as they should not be put in peril twice.”*

Consequently, the disqualification imposed under the Impugned Order cannot be sustained. As regards the monetary penalty, the Bench is of the view that imposition of penalty on the Appellant does not attract the principle of ‘double jeopardy’, therefore, the Respondent has rightly imposed penalty on the Appellant. The Bench notes that the plea bargain was an admission of guilt and the amount paid thereunder reflected the misappropriation of funds, therefore, the Appellant cannot claim that imposition of penalty after plea bargain amounts to ‘double jeopardy’.

13. In view of the foregoing, we hereby *set aside* the Impugned Order to the extent of the disqualification of the Appellant, however, the Impugned Order is maintained with regard to the imposition of penalty on the Appellant. Accordingly, the Appeal is disposed of, without any order as to cost.

  
(Zeeshan Rehman Khattak)  
Commissioner

  
(Akif Saeed)  
Chairman/ Commissioner

Announced on:

**17 APR 2025**