



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 54 of 2013

AKD Securities Limited

...Appellant

Versus

Director (HOD), MSRD

Securities and Exchange Commission of Pakistan

...Respondent

Date of Hearing

24/08/15

Present:

For the Appellant (through video conferencing):

- (i) Mr. Muhammad Farid Alam, CEO (AKD Securities Ltd)
- (ii) Mr. Taweer Hussain, CFO (AKD Securities Ltd)
- (iii) Mr. Naveed Anjum, Head of Compliance (AKD Securities Ltd)

For the Respondent:

- (i) Mr. Abid Hussain, Executive Director (SMD)
- (ii) Mr. Abid Saleem, Joint Director (SMD)
- (iii) Mr. Hafiz M. Wajid Wahidi, Deputy Director (SMD)

ORDER

1. This order is in appeal No. 54 of 2013 filed under section 33 of the Securities and Exchange Commission of Pakistan Commission Act, 1997 against the order (Impugned Order) dated 10/07/13 passed by the Respondent.



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2. The brief facts of the case are that AKD Securities Limited (Appellant) is Trading Right Entitlement Certificate Holder of Karachi Stock Exchange Limited (KSE) and is registered with the Commission as a broker under the Brokers and Agents Registration Rules, 2001 (Brokers Rules). On perusal of the trading data of KSE from 22/03/10 to 15/04/10 (Period), abnormal trading activity and heavy volumes were observed in the scrip of Chenab Limited (CHBL) wherein the share price of the CHBL increased from Rs.472 to Rs.8.99 translating into 179% increase in share price. For six months i.e. 01/09/09 to 21/03/10 average daily traded volume in the scrip of CHBL was 102,674 shares whereas during the Period average daily traded volume increased to 2,232,914 shares.
3. The Respondent in exercise of its power conferred under section 21 of the Securities and Exchange Ordinance (Ordinance) read with section 29(2) of the SECP Act appointed two Investigating Officers (IOs), vide Order dated 03/05/10 to enquire into the dealings, business or other transactions pertaining to the shares of CHBL.
4. On examination of trading data by IOs, it was observed that the Appellant's clients Chen One Store Limited (CSL), Sohail Badar (SB) and Muhammad Irfan Maqbool (MI) traded heavily in the scrip of CHBL during the Period. The details of trading by the clients during the Period through the Appellant are as follows:

Sr. No.	Name	Bought Qty (Shares)	Bought Rate (Rs.)	Sold Qty (Shares)	Sold Rate (Rs.)	Net Qty (Shares)
1.	Chen One Stores Limited	665,200	8.59	8,356,235	8.46	(7,691,035)
2.	Sohail Badar	3,106,099	8.59	1,542,851	6.03	1,563,248



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3.	Muhammad Irfan Maqbool	6,417,700	8.55	1,639,482	6.13	4,778,218
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5. To further probe the matter, IOs vide letter dated 05/05/10, requested the Appellant to provide the copies of Account Opening Forms (AOF), Ledger Statements and Trading Statements of CSL, SB and MI for the period from 01/03/10 to 04/05/10. The Appellant vide letter dated 07/05/10 provided the requisite information. Scrutiny of the documents in detail revealed that information received from the Appellant was incomplete. The Chief Executive Officer (CEO) of the Appellant vide letter dated 13/05/10 was asked to provide the missing/remaining information and the same was provided to the Respondent vide letter dated 17/05/10. A Notice dated 21/06/10 for examination under section 32 of the Act was served to the CEO of the Appellant wherein he was directed to appear in person before the IOs on 24/06/10 for recording of his statement in the matter. On the given date, the CEO appeared before the IOs and recorded his statement regarding the trading activities by above-mentioned clients of the Appellant. After the scrutiny of the documents provided by the Appellant and statement recorded by CEO, various anomalies were found. The examination of AOFs of SB and MI revealed that the Appellant had failed to properly maintain the Standardized Account Opening Form (SAOF) of MI and SB. The following deficiencies were observed in SAOFs:

- The date of opening of account was not found on SAOFS.
- There were no nominations on SAOFs.
- The signatures appearing on SAOF of SB were different from his National Identity Card of Overseas Pakistanis (NICOP).
- Attested copy of CNIC of MI was not attached with the SAOF.

6. Show Cause Notice dated 12/03/13 (SCN) was issued to the Appellant under section 22 of the Ordinance and the Brokers Rules stating that the Appellant has prima facie contravened Clause A(1), Clause A(2), Clause A(4), and Clause B(4)(1) of the Code of Conduct set forth under the third schedule of the Brokers Rules. The Appellant submitted



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its response to the SCN vide letter dated 22/03/13 and hearing in the matter was held on 26/03/13. Mr. Muhammad Farid Alam (CEO) and Mr. Naveed Anjum, Head of Compliance (HOC) appeared on behalf of the Appellant. They reiterated the arguments submitted in the written reply and requested the Respondent to discharge the SCN as the Appellant acted with the best professional ethics and all the applicable rules and regulations were followed according to the spirit of the law.

7. The Respondent dissatisfied with the response of the Appellant held that the Appellant failed to act with due skill, care and diligence in the conduct of its business. Further, the Appellant failed to abide by the provisions of the Brokers Rules, thus violated Clause A(2), A(5) and B(4)(1) of the Code of Conduct set forth under the third schedule of the Brokers Rules which in turn is a violation of Rule 12 read with Rule 8 of the Brokers Rules. The Respondent in exercise of the powers conferred under section 22 of the Ordinance imposed a penalty of Rs.500,000 on the Appellant and further directed the Appellant to fully comply with all the rules, regulations and directives of the Commission in the future for avoiding any punitive action under the law.
8. The Appellant has preferred to file the instant appeal against the Impugned Order. The Appellant's representatives argued that the Respondent has stated in Para 4 of the Impugned Order that the shares of CHBL were bought at the rate of Rs.8.59 by SB and Rs.8.55 by MI and sold at a loss for Rs.6.03 by SB and Rs.6.13 by MI. However, despite clearly stating this in the Impugned Order, the Respondent has failed to take this into account. The Respondent failed to take into account that the scrip of CHBL was already at its peak, therefore, there was no question of creating false market by the Appellant. The scrip of CHBL was already trading at Rs.8.43 per share when the accounts were opened with the Appellant. The contention of the Respondent that if the Know Your Customer (KYC) was properly followed by the Appellant, MI and SB would not have been successful in creating the false market is misconceived. There were no rules/regulations and guidelines issued by KSE and the Commission at the time the trading accounts of the clients were opened in April 2010 and no specific deviation from



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KYC has been pointed out in the Impugned Order. Further, after the introduction of the concept of Unique Identification Number (UIN) by the National Clearing Company of Pakistan Limited (NCCPL), the date mentioned on SAOF is irrelevant since the trading account is only deemed to have been opened, when the UIN created by the Appellant is approved by NCCPL. It is pertinent to mention that in case of fake identity or any other discrepancy, NCCPL will not approve the UIN. The contention that nominee has not been stated in the account opening form does not have any force since mentioning the nominee is only optional as evident from sub-account form by Central Depository Company (CDC). The Appellant could not have known at the time of account opening that there may be an alleged scheme of price manipulation being engineered by clients. The Respondent failed to appreciate the bona fide of the Appellant, therefore, the Impugned Order is liable to be set aside.

9. The Respondent has rebutted the grounds of appeal by stating that buying the shares at higher rate and subsequently selling the same at a lower rate does not prove that the said clients of Appellant did not create false market in the shares of CHBL. The Impugned Order states that Appellant did not exercise due care, skill and diligence in conduct of its business which would have prevented the said clients from operating in the market in an illegal manner. All the facts indicate that the Appellant should have been immediately suspicious of the trading by the clients. In the instant case the Appellant took on a new Client without their physical presence in the house at the time of opening of account and the clients suddenly got involved in heavy buying of illiquid scrip against partial payment to the Appellant. Further, standardized AOF and the date column is required to be mentioned compulsory. The Appellants were not involved in price manipulation but failed to follow the proper due diligence procedures before opening the client's accounts and maintain proper margins while the clients were trading which would have discouraged the clients' to trade heavily in the scrip or to create a 'False Market'. The penalties, therefore, were rightly imposed for the violations.


10. We have heard the parties.



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11. The Appellant has argued that there were no violations of any rules and regulations and no specific deviation from KYC has been pointed out in the Impugned Order. Further the date mentioned on SAOF is irrelevant since the trading account is only deemed to have been opened, when the UIN created by the Appellant is approved by the NCCPL. Moreover, the Respondent failed to appreciate the bona fide of the Appellant; therefore, the Impugned Order is liable to be set aside.
12. The Respondent has rebutted the grounds of appeal by stating that the Appellant was not engaged in price manipulation but failed to exercise due care and skill in conduct of its business which enabled its clients to create false market in the scrip of CHBL.
13. We are of the view that the documentation requirements for clients of the Appellant i.e. MI and SB were not complete. The Appellant was responsible to ensure that the SAOFs of its clients are properly maintained, which it failed to do so. Further, the Appellant was also required to conduct KYC of its two new clients who traded heavily in the illiquid scrip of CHBL. Moreover, the Appellant failed to verify and ensure identity of the clients through CNIC and physical appearance and thorough scrutiny of clients was not carried out that included verification by third party. The Appellant, therefore, failed to follow the proper diligence procedures expected of them as brokers and violated Clause A(1), Clause A(2), Clause A(4), and Clause B(4)(1) of the Code of Conduct set forth under the third schedule of the Brokers Rules. The penalty, therefore, was rightly imposed on the Appellant.
11. In view of the foregoing, we see no reason to interfere with the Impugned Order. The Impugned Order is upheld with no order as to costs.


(Zafar Abdullah)
Commissioner (SCD)


(Tahir Mahmood)
Commissioner (CLD)

Announced on: 13 OCT 2015