



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 56 of 2019

M/s. Amanah Investments Limited

Appellant

Versus

1. The Commissioner (SMD), SECP.
2. M/s. Pakistan Mercantile Exchange (PMEX)

Respondents

Date of hearing:

February 4, 2021

Present:

For Appellant:

1. Mr. Abdul Wahab Omar (CEO)
2. Mr. Muhammad Irfan (Company Secretary)
3. Mr. Tanzeel Kamdar (Finance Officer)

For Respondents:

1. Mr. Osman Syed, Joint Director (Adjudication-I), SECP
2. Mr. Muhammad Akram, Assistant Director (Adjudication-I), SECP
3. Ms. Mehwish Naveed, Assistant Director (Adjudication-III), SECP
4. Mr. Farhan Tahir, CFO & Company Secretary, PMEX

ORDER

1. This Order shall dispose of Appeal No. 56 of 2019 M/s. Amanah Investments Limited (the Appellant) against the Order dated May 29, 2019 (the Impugned Order) passed by the Commissioner, SMD (the Respondent No.1) under Section 96 of the Futures Market Act, 2016 (the Act) read with Regulation 11 of the Futures Brokers (Licensing and Operations) Regulations, 2018 (the Regulations).



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2. The brief facts of the case are that the Appellant was a registered futures broker of M/s. Pakistan Mercantile Exchange Limited (the Respondent No.2) licensed by the Securities and Exchange Commission of Pakistan (the Commission). The Appellant had a valid certificate of registration under the Commodity and Futures Contracts Rules, 2005 (Rules). However, after promulgation of Part IV of the Act on November 15, 2017, in terms of sub-section (8) of the section 123 of the Act, the Appellant was “deemed licensed” as a futures broker under the Act for a period of one year i.e. November 15, 2017 to November 14, 2018. The Regulations were issued on September 25, 2018, therefore, as per the requirements of the Act and the Regulations, the Appellant was required to apply for licenses before November 14, 2018 through the Respondent No.2. The Appellant failed to apply for license within stipulated time, therefore, a show-cause notice dated January 14, 2019 (SCN) was issued to the Appellant. The Appellant submitted its reply to the SCN vide letter dated January 18, 2019. Respondent No.1 concluded the SCN proceedings and passed the Impugned Order while declaring that the Appellant “is not interested to act as a futures broker” and had also failed to apply for grant of license before expiry of the period allowed under “deemed licensed” status i.e. November 14, 2018. Respondent No.1 also directed the Appellant and Respondent No.2 to do the needful, including amendments in the memorandum of association and settlement of accounts and claim, removal of the Appellant’s name from its list of futures brokers and termination of trading terminal and dissemination of information to public regarding expiration of the Appellant’s license.

3. The Appellant *inter alia* filed this Appeal on the grounds that Respondent No.1 has made an incorrect observation in the Impugned Order that the Appellate is not interested to continue as a futures broker. The Appellant further stated that in the SCN the Appellant was asked to appear before Respondent No.1 on February 11, 2019, however, the hearing was adjourned by Respondent No.1 at the eleventh hour and thereafter, without providing any hearing opportunity to the Appellant, the Impugned Order was passed. The Appellant submitted that it already applied for renewal of the license on January 29, 2018 and submitted all required documents to Respondent No.2. for renewal of the license w.e.f. March 29, 2018 (Exhibit “A” page 21 of Appeal and paragraph 5 at page 5 of Appeal¹). The Appellant

¹ **Paragraph No.5 of Appeal:** “That for the renewal of our Broker Registration No. BRC 120 for the period effective from March 29, 2018 we had already applied for the renewal of our Brokers Registration No. BRC 120



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stated that Respondent No.2's representative vide email dated January 14, 2019 communicated process of applying for a license as per the Regulations (Exhibit "C" page 33 of Appeal) and accordingly on January 29, 2019 an application for renewal of the license was submitted with Respondent No.2 (Paragraph vi of the Appellant's rebuttal arguments)². The Appellant further submitted that, vide email dated February 11, 2019 (Exhibit "D" page 37 of Appeal), the Respondent No.2's representative asked the Appellant to submit further documents including additional licensing fee, and therefore, on February 20, 2019, all required documents and additional licensing fee was submitted to Respondent No.2 (Exhibit "E" page 41 of Appeal). The Appellant denied Respondent No.1's assertion contained in the written arguments that Respondent No.2 suspended the trading terminal of the Appellant because it neither had a trading terminal nor any trading software.

4. Respondent No.1 stated that the Appellant has not applied for renewal of the license before November 14, 2018, therefore, in view of clause (f) of the Regulation 11(3) of the Regulations, the Appellant's license was cancelled. Respondent No. 1 stated that the Appellant was also not interested to continue as a futures broker. Respondent No.1 further stated that the trading terminal of the Appellant was also suspended due to non-renewal of futures broker license within the stipulated time i.e. November 14, 2018.
5. Respondent No.2 stated in the written comments dated August 31, 2020 that the Appellant's last license was renewed on March 29, 2018 under the Rules. Respondent No.2 further stated that after coming into force of Part IV of the Act, on November 15, 2017, the Appellant was "deemed licensed for one year i.e. till November 14, 2018, therefore, the Appellant's application for renewal of license was of no effect. Respondent No.2 stated that after issuance of the Regulations on September 25, 2018, the Appellant was required to apply for grant/renewal of a license before November 14, 2018, however, it failed to do so. Respondent No.2 stated that after issuance of the SCN, the Appellant applied for renewal of the license in February 2019, which was subsequently forwarded by Respondent No.2 to the Commission vide letter dated July 4, 2019 (Exhibit "K" page 69 of Appeal), however,

on January 29, 2018 for a period of ONE YEAR by completing all necessary requirements essential for the renewal."

² **Paragraph No.vi:** That it is submitted that on 29th January, 2019 we had again submitted our Application to Pakistan Mercantile Exchange ("PMEX") (Respondent No.2) on given format for the Futures Brokers License in accordance with the direction as intimated, via email dated January 14, 2019.



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decision on the application is pending due to filing of the instant Appeal. Respondent No.2 stated that on May 29, 2019, Respondent No.1 has also passed another order wherein 22 futures brokers were allowed to apply for renewal of license because they were interested to continue as futures' brokers and they have taken the plea that delay in renewal of license was unintentional (Second Order). Respondent No.2 stated that in view of the Second Order, the Appellant's application for license was forwarded to the Commission because the Appellant was interested to continue as a futures broker.

6. The Appellate Bench (the Bench) has heard the parties and perused the record. The Appellant's representatives and the Respondents' representatives reiterated their grounds of the appeal and rebuttal thereof.
7. The Bench has noted that commencement of Part VI of the Act was notified by the Federal Government on November 15, 2017, therefore, under Section 123(8) of the Act all futures' brokers registered under the Rules were declared "deemed licensed" under the Act for one year i.e. till November 14, 2017 and were required to renew their respective licenses w.e.f. November 15, 2018.
8. The Bench is of the view that after coming into force of Part VI of the Act on November 15, 2017, the Respondent No.2 should not have processed the Appellant's license renewal application dated January 26, 2018 because under Section 123(8) of the Act, the Appellant was "deemed licensed" from November 15, 2017 to November 14, 2018. The Bench is of the view that being a front-line regulator, the Respondent No.2 had the responsibility to intimate the Appellant that under Section 123(8) it is "deemed licensed" till November 14, 2018, however, the Respondent No.2 has not acted in a responsible and prudent manner.
9. The Bench has observed that Respondent No.2 stated in the written comments dated August 31, 2020 that the Appellant's last license was renewed on March 29, 2018, however, this statement does not correspond with the record. The Bench has reviewed the Commission's email dated February 20, 2018 (email) whereby Respondent No.2 was expressly advised that in view of "deemed licensed" status of the Appellant, renewal of licenses is not required until November 14, 2018. The Bench has also observed that through email, Respondent No.2 was asked to communicate this fact to all futures' brokers. The Bench has further observed that Respondent No.2 was also informed that "*The future*



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broker may apply for renewal of the license for next year i.e. November 15, 2018 to November 14, 2019, latest by October 15, 2018, through PMEX.” The Bench is of the view that Respondent No.2 had failed to effectively communicate requirements of the new licensing regime under the Act and the Regulations, to futures’ brokers, including the Appellant.

10. The Bench has noted that after issuance of the SCN the Appellant has applied for renewal of license under the Act and the Regulations, therefore, the Respondent No.1’s assertion that the Appellant was not interested to continue as a futures’ broker is without any legal or factual substance. The Bench has also noted that by February 20, 2019 the Appellant had fulfilled all procedural requirements for futures’ broker license, therefore, it is evident that the Appellant was interested to remain in the business of futures’ broker.
11. The Bench has carefully gone through the contents of the Impugned Order and other relevant record, which revealed that no hearing opportunity was provided to the Appellant before passing the Impugned Order. Therefore, it appears that the Appellant was condemned unheard, which is against the principles of fair trial and legal principle of “*Audi alteram partem*”. In view of record, the Bench has observed that the Appellant’s license was already expired, therefore, issuance of SCN was unwarranted, however, as the Respondent No.1 had issued the SCN, therefore, hearing opportunity to respective parties should have been provided.
12. The Bench has observed that as per Regulation 9(1) of the Regulations, every futures’ broker is required to apply to the Commission through the Exchange, for renewal of license 45 days prior to expiry of the license. The Bench has also observed that as per clause “f” of Regulation 11(3) of the Regulations, if a futures’ broker fails to apply for renewal of the license within the stipulated time then the licence of a futures’ broker shall cease to be valid. In our view, the Appellant has not applied for renewal of license within time and limitations allowed under Section 123(8) of the Act and Regulation 9(1) and Regulation 11(3)(f) of the Regulations, therefore, the Appellant has no case of renewal of license, however, it may apply for fresh license under the Act and Regulations.
13. In view of the foregoing, we hereby set aside the SCN and Impugned Order, because in this case issuance of SCN was not required, however, this order shall not *ipso facto* entitle the Appellant to be



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treated as a futures' broker. The Bench is of the view that subject to fulfilment of the relevant legal and procedural requirements, Respondent No. 1 and Respondent No.2 may consider the Appellant's pending application, as a valid application for issuance of a fresh futures' broker license under the Act and the Regulations. Accordingly, the Appeal is disposed of without any order as to cost.

A handwritten signature in black ink, appearing to read 'Farrukh Hamid Sabzwari', is written over a horizontal line.

(Farrukh Hamid Sabzwari)

Commissioner (SCD-PRDD)

A handwritten signature in black ink, appearing to read 'Shaukat Hussain', is written over a horizontal line.

(Shaukat Hussain)

Commissioner (INS,C&CD)

Announced on:

10 MAR 2021