



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 56 of 2020

Al Baraka Bank (Pakistan) Limited

Versus

...Appellant

Executive Director (Adjudication-I) SECP

...Respondent

Date of hearing:

August 22, 2024

Present:

For the Appellant:

Mr. Ammar Suria (Authorized Representative)

For the Respondent:

Mr. Muhammad Akram Farooka, Assistant Director, Adjudication Department-I, Adjudication Division, SECP

ORDER

1. This Order shall dispose of Appeal No. 56 of 2020 filed by Al Baraka Bank Pakistan Limited (the "Appellant") under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "SECP Act") against the order dated May 12, 2020 (the "Impugned Order") passed by the Executive Director, Adjudication Department-I (the "Respondent").
2. The brief facts of the instant appeal are that on June 22, 2021, the Securities and Exchange Commission of Pakistan (the "SECP") issued a Show-Cause Notice No. 2(228) SMD/ADJ-I/2020 (the "SCN") to the Appellant under Sections 211, 502, and 479 of the Securities Act, 2015 (the



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"Act"). The SCN addressed the Appellant's operations as a "banker-to-the-issue" without holding a valid license, as mandated by the Public Offering (Regulated Securities Activities Licensing) Regulations, 2017 (the "Regulations"). The Regulations, notified by the Federal Government on April 26, 2017, required entities performing such functions to obtain a license within six months of the notification. However, the Appellant continued to provide these services for over two years without the necessary license. In response to the SCN, the Appellant acknowledged the oversight, attributing it to internal restructuring and resource constraints. Despite their explanations and request for leniency, the Respondent determined that the Appellant's conduct constituted a violation of the regulatory framework, leading to the imposition of a penalty of Rs. 1,000,000 for non-compliance with the licensing requirements.

3. The Appellant has filed this appeal, *inter alia*, on the grounds that the oversight in obtaining the required license occurred during a reorganization phase of the Appellant following its acquisition of Burj Bank, which led to temporary resource constraints and a delay in obtaining the license. This restructuring inadvertently led to a failure to apply for the necessary license within the stipulated timeframe. The Appellant argued that the lapse was inadvertent and not indicative of malafide intent, emphasizing that once aware of the Regulations, it promptly applied for the license and voluntarily disclosed its prior transactions. The Appellant asserted that the penalty was unjust given its proactive efforts to rectify the situation and its commitment to regulatory compliance. The Appellant requested that the Impugned Order may kindly be set aside, arguing that it has demonstrated bona fides and transparency throughout the process. The Appellant relied upon (2016 CLD 1179), (2018 CLD 1002), (2015 CLD 345) to support its argument for a lenient approach.
4. The Respondent refuted the Appellant's claims, asserting that they did not introduce any new legal grounds but rather reiterated previously addressed factual issues. He further argued that the argument that ignorance of the Regulations excuses non-compliance is untenable, as regulatory obligations must be met regardless of an entity's awareness. The Respondent acknowledged the Appellant's voluntary disclosure of its non-compliance but maintained that this did not negate the need for a penalty. The Respondent further emphasized that the decision to impose a token penalty, rather than the maximum allowed, reflected the Respondent's consideration of the Appellant's corrective actions but did not equate to absolution of the breach. Furthermore, the Respondent submitted that the law did not require proof of deliberate intent to justify a penalty and the



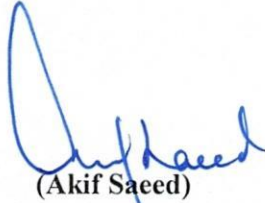
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Appellant's admission of non-compliance alone sufficed. Lastly, the Respondent reiterated that no new legal ground was introduced in the Appeal reinforcing the need to conclude the matter based on the current arguments and evidence.

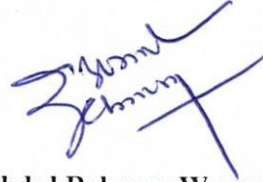
5. After reviewing the arguments presented by both parties, the Appellate Bench (the "Bench") finds no merit in the Appeal filed by the Appellant. The Appellant's reliance on the case law (2016 CLD 1179, 2018 CLD 1002, 2015 CLD 345) to argue for leniency is misplaced and unjustified in the context of the current matter. The aforementioned case law cited by the Appellant primarily address issues of procedural and substantive regulatory breaches within a specific factual matrix that do not align with the facts and circumstances of the subject appeal. In 2016 CLD 1179, the relief was granted based on significant procedural flaws and a broader context of regulatory practices that differ markedly from the licensing issues at hand here. Similarly, 2018 CLD 1002 dealt with unique aspects of regulatory compliance not directly applicable to licensing requirements, while 2015 CLD 345 is not relevant to the Appellant's case because it pertains to leniency based on procedural issues and impacts on shareholders, whereas the current case specifically involves non-compliance with licensing requirements under the Act and Regulations.
6. The Bench is of the view that the Appellant's claim that their provision of information was reflective of bona fide intent is not entirely accurate. According to the Bench, while it is noted that the Appellant disclosed its non-compliance, this action alone does not absolve the breach and the law required the Appellant to obtain the necessary license and make the required disclosures as a matter of regulatory compliance, not merely as an act of goodwill so the fact that the Appellant eventually complied with the requirements does not negate the initial lapse or the need for regulatory enforcement. Therefore, the penalty imposed is deemed appropriate and proportionate to the breach. The Bench agrees with the Respondent's decision to impose this penalty, reflecting the seriousness of the non-compliance and the need to uphold regulatory standards.
7. In view of the foregoing, the Bench finds no reason to interfere with the Impugned order, therefore, by maintaining the Impugned Order, we hereby **dismiss** this Appeal without any order as to costs.



Securities and Exchange Commission of Pakistan


(Akif Saeed)

Chairman/Commissioner



(Abdul Rehman Warraich)

Commissioner

Announced on: **25 SEP 2024**