Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. 1

In the matter of

Appeal No. 59 of 2017

M/s. Jawed Zakarai Gulabi Securities (Private) Limited ...Appellant

Versus

The Commissioner (Securities Market Division),
Securities and Exchange Commission of Pakistan, Islamabad ...Respondent

Date of hearing: 20/04/18

Present:

For Appellant:

i. Mr. Jawed Zakaria, Chief Executive Officer

For Respondent:

i. Mr. Asif Khan, Deputy Director (SMD)
ii. Mr. Salman Arshad, Deputy Director (SMD)

ORDER

1. This Order shall dispose of Appeal No.59 of 2017, filed against the Order dated 26/05/17 (the Impugned Order) passed by the Commissioner SMD-SECP (the Respondent) under the Securities Brokers (Licensing and Operations) Regulations, 2016 (the Regulations) read with the Securities Act, 2015 (the Act) whereby, M/s Jawed Zakaria Gulabi Securities (Private) Limited (the Appellant) application for renewal of licence/registration as broker (the Application) was refused.

2. The proceedings against the Appellant were initiated through a Notice dated March 20, 2017 (the Notice) issued by Mr. Faisal Nawaz, Joint Director (the JD). Thereafter, the JD also issued a hearing notice dated April 7, 2017 in furtherance to the Notice and advised the Appellant to attend hearing before the Respondent on April 13, 2017.

3. The Appellate Bench (the Bench) has noted an anomaly during the proceedings of the case conducted by the Respondent. Regulation no. 10 of the Regulations empower the Securities and Exchange Commission of Pakistan (the Commission) to grant or refuse the licence to a

broker. The Commission has delegated its powers to the Respondent vide S.R.O.123 (I)/2017 dated February 27, 2017 (the SRO). As Per the SRO, the Respondent was the only competent person to issue a show-cause notice and to conclude the proceedings through formal adjudication.

4. The Respondent has claimed that the Notice is not a show cause notice, however, the Bench has perused the contents of the Notice and decided to treat it as a show cause notice, a condition precedent to passing the Impugned Order. Therefore, instead of the JD it should have been issued by Respondent, who had the delegated jurisdiction and authority of the Commission to adjudicate the matter. The JD was not competent to issue Notice or show cause notice therefore, the Bench is of the view that issuance of Notice by the JD had made the whole proceedings and the Impugned Order void *ab initio*.

5. Therefore, without going into the merits of the case we hereby set aside the Impugned Order and direct the Respondent to provide another opportunity to the Appellant with a reasonable time (not more than three months) to remove the non-compliances hindering licensing/ registration as broker. During the course of hearing, the Appellant's representative has requested to appoint a focal person to address the licensing issues of the brokers therefore, as per information provided by the Respondents' representatives. In this regard, the Appellant may contact the following officer, on given contact details for resolution of queries;

   Mr. Muhammad Asif Jalal Bhatti (Executive Director)
   Email: Asif.jalal@secp.gov.pk
   Phone: 051- 9100472

6. The Appeal is disposed of accordingly, without any order as to cost.

(Shaukat Hussain)
Commissioner (CCD-CLD)

(Tahir Mahmood)
Commissioner (CSD-CLD)

Announced on: 26 APR 2018