

Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 59 of 2019

M/s. Din Capital Limited

...Appellant

Versus

Commissioner (Securities Market Division),
Securities and Exchange Commission of Pakistan

...Respondent

Date of Hearing: 02/01/2020

Present:

For the Appellant:

- i. Mr. Ali Nanji, CEO, Din Capital Limited
- ii. Mr. Muhammad Ghayasuddin. Director, Din Capital Limited

For the Respondent:

- i. Mr. Osman Syed, Joint Director (Adjudication-1)
- ii. Mr. Muhammad Faisal, Management Executive (Adjudication-I)
- iii. Ms. Mehwish Naveed, Management Executive (Adjudication-III)

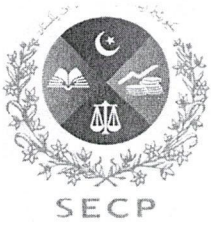
ORDER

1. This Order is passed in the matter of Appeal No. 59 of 2019 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (SECP Act) against the Order dated 19/06/19 (the Impugned Order) passed by Commissioner, Securities Market Division (the Respondent).

Appellate Bench

Appeal No. 59 of 2019

Page 1 of 9



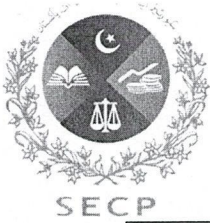
Securities and Exchange Commission of Pakistan

2. The brief facts of the case are that Din Capital Limited (the Appellant) is a Trading Rights Entitlement Certificate holder of the Pakistan Stock Exchange Limited (the PSX) and licensed as a securities broker under the Securities Act, 2015 (the Securities Act). The Commission vide its Order dated 17/11/17 (Order of the Commission) suspended the license of the Appellant as a securities broker until the Appellant achieved full compliance of the regulatory violations highlighted in the show cause notice dated 05/10/17 issued by the Securities and Exchange Commission of Pakistan (the Commission). Subsequently, investigation of the Appellant was conducted under section 139 of the Securities Act to reassess the compliance status of the Appellant. The said investigation, *inter alia*, revealed the following:

- i. The funds received from the National Clearing Company of Pakistan (the NCCPL) on account of customer trades were not credited to the bank account held for maintaining client funds. The same is evident from the table below:

Date	Funds received/(paid) on account of settlement from/to NCCPL (Amount in Rupees)	Funds (transferred)/received to/from client bank account (Amount in Rupees)	Funds not transferred to client bank account (Amount in Rupees)	Cumulative balance of funds not transferred to client bank account (Amount in Rupees)
22-Nov-17	8, 139,417	(3,000,000)	5,139,417	5,139,417
23-Nov-17	(1,795,708)	10,000,000	8,204,292	13,343,709
24-Nov-17	(160,695)	1,600,000	1,439,305	14,783,014
27-Nov-17	(201,263)	-	201,263	14, 581,751
28- Nov-17	17, 251, 745	(7,000,000)	10, 251,745	24,833,496
29-Nov-17	5,193,700	(20,000,000)	(14,806,300)	10,027,196
30-Nov-17	20,069,425	14,000,000	34,069,425	44,096,621
4-Dec 17	3,106,445	(19,000,000)	(15,893,555)	28,203,066
5-Dec 17	(1,021,190)	(23,000,000)	(24,021,190)	4,181,876
6-Dec 17	2,950,073	18,000,000	20,950,073	25,131,949

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Securities and Exchange Commission of Pakistan

7-Dec 17	1,997,300	1,400,000	3,397,300	28,529,249
Total	55, 529,249	(27,000,000)	28,529,249	

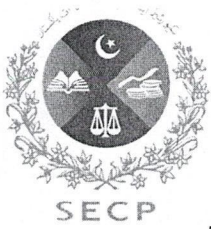
ii. The Appellant had obtained loans from its sponsors/directors and companies in which sponsors had majority stake. Details of the loans as on 30/04/18 is tabulated below:

Name	Amount in Rupees
Paramount Commodities (Private) Limited	63,000,000
MG Media (Private) Limited	50,000,000
Directors/Sponsors	36,761,505
Total	149,761,505

Furthermore, with respect to Circular No. 20 of 2017 dated 31/08/17 (the Circular) which provides that, “a Securities Broker including their representatives and agents shall not accept any money or deposit or borrowing from any person”, the following non-compliances were observed as under:

- Clause 3 of the Circular provides that any Securities Broker who is in non-compliance with the aforementioned requirements at the time of issuance of the Circular immediately report the non-compliance in writing to the Commission within 60 days from the date of issuance of the Circular. The Appellant failed to comply with the requirements in writing to the Commission within 60 days from the date of issuance of the Circular.
 - Clause 1(a)(v) of the Circular provides that the Securities Broker should provide certificate from the auditor of Broker evidencing injection of funds as sub-ordinated loan. The Appellant did not provide certificate from auditor evidencing injection of funds as sub-ordinated loan.
- iii. SAOFs of 3 clients of the Appellant were found deficient with the regulatory requirements as mentioned below:

S. No.	Deficiency
1.	• Certified true copy of Board Resolution was not attached;



Securities and Exchange Commission of Pakistan

	List of nominated persons allowed placing orders was not attached.
2.	- Detail of nominee was not filled; - Supporting evidence of business was not attached;
3.	- Name of Authorized persons to operate the account is different from the name of Authorized persons attached; - Certified true copy of Memorandum of Association was not attached

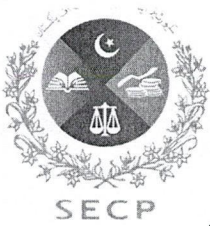
- iv. The PSX Regulations require securities brokers to ensure their approved Know Your Customer (the KYC) and Customer Due Diligence (the CDD) policies are effectively disseminated to relevant personnel(s). The Appellant did not provide any evidence of dissemination of KYC/CDD policies to its employees.
- v. The Appellant was involved in providing unlawful financing to client A, B & C. It had settled trades on behalf of its clients and made payments to clients despite outstanding debit balances in their accounts detailed as under:

Client A (004025)

Date	Remarks	Amount in Rupees
	Opening balance	2, 208,371 Dr.
04-12-2017	BL005487 DATED 29-11-2017- BO	150,113
04-12-2017	Closing balance at the end of the day	2, 358,485 Dr.

Client B (022001)

Date	Remarks	Amount in Rupees
	Opening balance	4,551, 728 Dr.



Securities and Exchange Commission of Pakistan

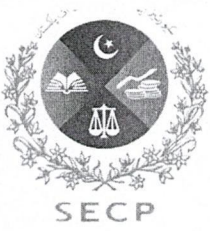
23-11-2017	BL005378 DATED 21-11-2017 - BO	3,064,894
23-11-2017	REC CHQ # 21585951 BY KASHIF BASHEER	(700,000)
23-11-2017	Closing balance at the end of the day	6,916,623 Dr.

Client C (162007)

Date	Remarks	Amount in Rupees
	Opening balance as per ledger before payment	1,846,174.30 Dr.
14-02-2017	Payment to Memon Ali Raza	4,500,000
14-02-2017	Closing balance as per ledger after payment	6,346,174.30 Dr.

vi. On 29/12/17, the Appellant sold shares of its Client C (162007) without his consent and overall 764,100 shares of 17 different scrips were sold on 29/12/17 through 167 orders or through transaction of Rs. 8,184,828. It appeared the Appellant failed to resolve the dispute with the Client as required under section 74(n) of the Securities Act relating to standard of conduct.

3. A Show Cause Notice dated 22/10/18 (the SCN) was served to the Appellant under section 150 of the Securities Act. The reply of the aforesaid notice was received on 29/10/18. Hearing in the matter was held on 20/02/19. Mr. Muhammad Ghayasuddin (Director), Mr. Ali Nanji (Chief Executive Officer) and Mr. Umair Ansari (Compliance Officer) appeared on behalf of the Appellant and made their submissions.
4. The Respondent, dissatisfied with the response of the Appellant, held that the Appellant is guilty of misconduct in terms of section 150(5) of the Securities Act due to the aforementioned violations of the relevant provisions of the law. Therefore, in exercise of powers conferred under section 150 of the Securities

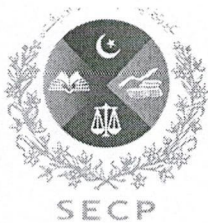


Securities and Exchange Commission of Pakistan

Act, a penalty of Rs 500,000 was imposed on the Appellant. The Appellant was also advised to ensure compliance with the applicable laws in letter and spirit.

5. The Appellant preferred the instant appeal on the following grounds:

- a) The Respondent took punitive measures by imposing a penalty of Rs 500,000 contrary to the Honourable Sindh High Court Order dated 22/11/17 (the High Court Order) which only required the Commission to provide compliance status report to the Honourable Sindh High Court (the High Court) on the obligations imposed on the Appellant pursuant to the Order of the Commission and prevented them from taking any further action against the Appellant. Furthermore, this is a case of double jeopardy as the fundamental rights of the Appellant were violated. Article 13 of the Constitution of the Islamic Republic of Pakistan provides that, “No person –a) shall be prosecuted or punished for the same offence more than once... ”.
- b) All funds of each individual client are segregated and no intermingling of the same has been allowed by the Appellant. Furthermore, the loans in question were all subordinated loans from Mr Ghayasuddin, Appellant’s director and his companies and all funds were injected into the Appellant through proper channels with agreements prepared as laid down in the guidelines. Moreover, the receipts of these loans were promptly communicated to the Commission and the subordinated loans taken by the Appellant are also reflected in the balance sheet which was duly communicated to the Commission. Furthermore, the Appellant had already approached the Commission with reference to Circular vide letter dated 06/06/18 to grant prior approval for repayment of the subordinated loan. The Appellant has been fully complying with the rules and regulations and there were no discrepancies in SAOFs as supporting evidence of certified copy of board resolution as well as supporting evidence of business and evidence showing name of authorized person to operate the account had been provided. The Appellant has formulated KYC/CDD policy in accordance with the guidelines as specified by the Commission/PSX which has been approved and distributed to all the employees of the Appellant and the said employees have been sufficiently trained in this regard. The Appellant unfortunately could not retain the evidence of dissemination of the same, however, it does not constitute non-compliance. Furthermore, before such non-compliance was assumed by the Respondent, employees could have been interviewed on the spot and asked about the same. As far as



Securities and Exchange Commission of Pakistan

unlawful financing to Client 004025 and Client 022001 is concerned, the transactions had taken place immediately after the Appellant's license was suspended. Moreover, on the instructions of the PSX, the Appellant released Margin Trading (the MT) and Margin Financing (the MF) positions of the aforementioned clients, thereby, creating a debit to their account, however, their account was covered by exposure maintained with the Appellant. Furthermore, payment to Client 162007 was also made from the exposure amount available with the Appellant and the matter was referred to the Arbitrator as per the PSX Regulations and after thorough inquiry from both sides, the learned Arbitrator dismissed the complaint against the Appellant.

6. The Respondent rebutted the arguments of the Appellant on the following grounds:

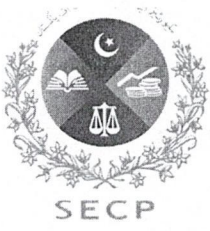
- a) The High Court Order did not bar the Respondent from investigation under section 139 of the Securities Act to reassess the compliance status of the Appellant. On the contrary, the High Court Order puts the Appellant on notice that in case of non-compliance reported by the Commission, the stay on the Order of the Commission would be recalled. The Respondent reviewed the compliance report submitted by the Appellant and found it unsatisfactory as they had failed to make full compliance and a detailed response was submitted in the High Court. This was not a case of double jeopardy as the Appellant was penalized for violations other than the violations which were mentioned in the Order of the Commission and which were discovered after a fresh investigation under section 139 of the Securities Act. The scope of the investigation included ascertaining the compliance status of misuse of clients' funds/shares, deposit taking and benami trading in particular and also check the compliance of the Appellant. Furthermore, the Investigation Order extended its investigation to any violation under section 135 of the Securities Act, SECP Act and Central Depositories Act, 1997 along with rules and regulations to inspect the books and records of the Appellant and all such things as were necessary or incidental thereto.
- b) The Appellant, in regard to the discrepancies in SAOFs, submitted documents after the shortcomings were highlighted in the investigation, however, such rectifications post investigation does not undo the default of the Appellant. Furthermore, there were discrepancies in account opening forms and CDC Sub Account Opening Form and there was non-implementation of KYC and CDD policies. The investigation team



Securities and Exchange Commission of Pakistan

selected clients to reconfirm its compliance status and the Appellant only provided three account opening forms out of six. The Appellant was also involved in unauthorized deposit taking and the evidence shows that the loan obtained from Mr. Ghayasuddin, director is not a subordinated loan as the loan agreement is titled "*Agreement of Subordinated Loan*" (the Agreement), however, Clause 3 of the Agreement negates the spirit of the regulatory requirement which states, "*That the loan is un-secured, interest free and subordinate to all other future indebtedness.*" The requirements of the Circular are applicable on all types of borrowing i.e. existing as well as future and not just future as the wording of the Agreement suggests. Furthermore, the Appellant only submitted auditor's certificate certifying the injection of Rs 37 million received from its director, however, auditor's certificate for two other loans taken from Paramount Commodities (Pvt.) Ltd and MG Media (Pvt.) Ltd was not submitted. The Appellant also failed to intimate its non-compliance status to the Commission in contravention of the requirements of the Circular.

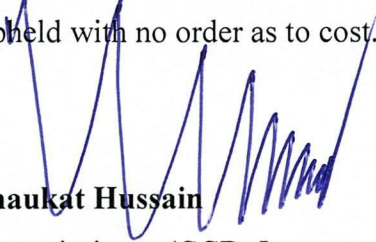
7. We have heard the parties i.e. the Appellant and the Respondent and perused the documents provided to us. We are of the view that the High Court Order did not prevent the Respondent from taking any further action, in fact, it only put the Appellant on notice that the High Court Order would be recalled forthwith if the Commission took a stand that the Appellant was non-compliant with its obligations imposed on it pursuant to the Order of the Commission. Furthermore, we are of the view that this is not a case of double jeopardy. The Respondent reviewed the compliance report on the direction of the High Court and found that the Appellant had not fully rectified the violations mentioned in the Order of the Commission and also found additional discrepancies for which fresh proceedings were initiated. Furthermore, we are of the view that the Appellant has not satisfied us on how they have effectively implemented KYC and CDD policies and why they failed to provide the account opening forms which had been requested by the investigation team. The Appellant has admitted that they have no evidence to back their claim that they provided training to their employees in KYC and CDD policies. The Appellant also provided unlawful financing to clients which cannot be justified under any circumstances and they could not give a cogent reason why they had done so. Furthermore, Clause 3 of the Circular provides that, "*...However any broker who is in non-compliance with the aforementioned requirements at the time of issuance of this Circular shall immediately report the non-compliances in writing and make compliance within 60 days from the date of issuance of the Circular...*". We are of the view that the

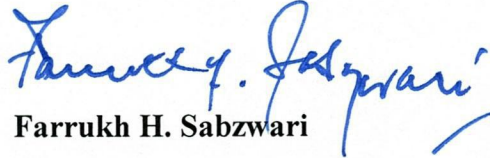


Securities and Exchange Commission of Pakistan

Appellant was not under any obligation to immediately report any non-compliances to the Commission as Clause 3 only applied to non-compliances at the time of issuance of the Circular i.e. on 30/08/17 and not thereafter. The Appellant, however, still had to comply with the requirements of the Circular vis-a-vis subordinated loan obtained in October 2017. Clause 1(d)(i) of the Circular provides that, “*subordinated loan shall be documented by a formal subordination agreement between the provider of the loan and the Broker...*”, and Clause 1(d)(iii) of the Circular requires that the, “*subordinated loan shall be un-secured and sub-ordinate to all other indebtedness*”. The Agreement provided by the Appellant only mentions future indebtedness and not existing which is in contravention of the requirements of the above-mentioned clause of the Circular. Furthermore, the Appellant has not provided the auditor’s certificate for two other loans taken from Paramount Commodities (Pvt.) Ltd and MG Media (Pvt.) Ltd in contravention of Clause 1(a)(v) of the Circular. The Appellant, therefore, has failed to convince us that they have addressed the concerns of the Respondent and fully complied with the requirements of the law.

8. 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 cost.


Shaukat Hussain
Commissioner (CCD, Insurance)


Farrukh H. Sabzwari
Commissioner (SCD, AML)

Announced on: **03 FEB 2020**