



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 61 of 2019

M/s. Axis Global Limited

...Appellant

Versus

The Commissioner (SMD)

...Respondent

Date of hearing:

May 18, 2023

Present:

For the Appellant:

1. Mr. Hammad Kehar, Director
2. Mr. Salman Ahmed

For the Respondent:

1. Mr. Hammad Javed, Additional Director, Adjudication-I, SECP
2. Mr. Muhammad Faisal, Assistant Director, Adjudication-I, SECP

ORDER



## Securities and Exchange Commission of Pakistan

1. This Order shall dispose of Appeal No. 61 of 2019 filed by M/s. Axis Global Limited (the “Appellant”) through its director Mr. Hamad Kehar, under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the “SECP Act”) against the order dated July 17, 2019 (the “Impugned Order”) passed by the Commissioner (SMD), SECP, (the “Respondent”) under Section 40A of the SECP Act read with the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the “Regulations”).
  
2. The brief facts of the case are that the Appellant is a Trading Rights Entitlement Certificate (TREC) holder of the Pakistan Stock Exchange (the “PSX”) and licensed as a securities broker. The Joint inspection team of the PSX, Central Depository Company, and National Clearing Company of Pakistan Limited (the “JIT”) conducted an inspection of the Appellant to assess its compliance with the regulatory requirements contained in the Regulations. The following non-compliances with the Regulations were observed during the inspection;
  - i. Violation of Regulation 3 of the Regulations occurred when the Appellant failed to take appropriate steps to identify, assess, and understand its money laundering and terrorism financing risks in relation to its customers, document its risk assessments, and keep them updated. Specifically, the Appellant did not assign a risk rating to twenty-eight clients.
  - ii. Violation of Regulation 4 (a) of the Regulations occurred when the Appellant had not updated the Anti-money Laundering/Know Your Customer (AML/KYC) policy.
  - iii. Violation of Regulation 4(d) of the Regulations occurred when the Appellant had not developed an independent audit function.
  - iv. Violation of Regulation 13 of the Regulations occurred when the Appellant failed to establish a mechanism for ongoing monitoring of its clients to ensure that the transactions align with the regulated person's knowledge of the customer.
  - v. Violation of Regulation 6(2) of the Regulations occurred when the Appellant failed to perform Customer Due Diligence (CDD) for eighteen customers.
  - vi. Violation of Regulation 9(3) occurred when the Appellant failed to perform appropriate Enhanced Due Diligence (EDD) measures with the customers that are identified as high risk by the regulated person.



## Securities and Exchange Commission of Pakistan

- vii. Violation of Regulation 11(2) of the Regulations occurred when the Appellant failed to provide a written justification for the EDD performed while making the decision to rate a customer as low risk.
  - viii. Violation of regulation 18(c) of the Regulations occurred when the Appellant failed to design a job description for the compliance officer.
3. In light of the aforementioned violations, the Show Cause Notice (SCN) dated June 17, 2019, was issued to the Appellant. The Appellant responded to the SCN on June 21, 2019, and hearing was scheduled for June 26, 2019, which was attended by the authorized representatives of the Appellant. During the hearing, the arguments presented in response to the SCN were reiterated. After examining the submissions and considering the facts, the Respondent in exercise of powers conferred under Section 40A of the SECP Act, imposed a penalty of Rs. 300,000/- on the Appellant on account of aforementioned contraventions of the Regulations.
  4. The Appellant have preferred this appeal *inter alia* on the grounds that the Respondent wrongly stated that the Appellant has made non-compliance with the provisions of the Regulations. It was contended by the Appellant that the utmost priority has always been to ensure full compliance with the Regulations. The Appellant has asserted that the Regulations were recently promulgated, however, they ensured full compliance and conducted awareness sessions regarding the Regulations. The Appellant further contended that the Respondent did not take into account the replies and contentions provided by the Appellant while passing the Impugned Order. Additionally, the Appellant stated that the Respondent failed to explain how the Regulations were violated, especially considering that they were still in the implementation process. The Appellant further stated that they had an ongoing monitoring system in place to ensure the continuous monitoring of their clients. The Appellant argued that the Respondent while passing the Impugned Order merely reproduced extracts from its reply to the SCN. The Appellant also highlighted that most of the observations were rectified by the Appellant prior to the hearing date and, therefore, by considering these circumstances a lenient view may be taken by waiving the penalty.
  5. The Respondent rebutted the grounds of Appeal and put forth the arguments that during the inspection, violations of the Regulations have been observed. The Respondent stated that the Appellant, during the SCN proceedings, in regard to the violation of Regulation 3 of the Regulations stated that risk ratings



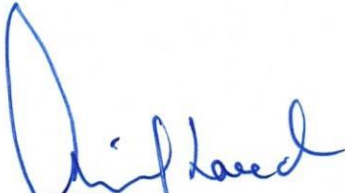
## Securities and Exchange Commission of Pakistan


were assigned to its customers in its back office, which is against the requirements as the Appellant was required to maintain the record at its registered office. The Respondent also highlighted that though the Appellant provided information for six out of eighteen clients in regard to CDD, prior to the Impugned Order, however, obtaining such information after the inspection does not exonerate the Appellant from default. The Respondent also stated that such information should have been obtained at the time of establishing a business relationship with clients. The Respondent further emphasized that practical implementation of ongoing monitoring requires a proper mechanism, as having a policy alone does not fulfill the requirement. The Respondent also stated that the Appellant established an independent audit function after the inspection. However, the Respondent pointed out that the audit function requirement is not new, as it already exists in the Securities Broker (Licensing & Operations) Regulations, 2016. The Respondent concluded, that the Appellant has indeed violated the Regulations at the time of inspection.

6. The Appellate Bench (the "Bench") has heard the arguments of both the parties and perused the record. The Bench is of the opinion that the Appellant had an obligation to adhere to the relevant requirements of the Regulations which should have been followed by the Appellant in their true letter and spirit. The argument put forth by the Appellant, stating that some of violations have been rectified prior to the hearing date, at the first place is an admission on part of the Appellant, and may serve as a mitigating factor only where the violation has been corrected and necessary actions have been taken to comply with the Regulations prior to the issuance of the Impugned Order. The said factum is apparent from the Impugned Order and it can be safely deduced that Respondent, while passing the Impugned Order did take into account the level of compliance by the Appellant and thus imposed the penalty accordingly. Nevertheless, it cannot be disregarded that the outcome of the case always depends on specific circumstances and the severity of the violations committed. In this particular case, the Appellant failed to comply with mandatory requirements and neglected to implement mandatory policies that have been in effect since 2016. Money laundering is a serious crime, and its severity cannot be underestimated. Regulated individuals are expected to be highly vigilant in adhering to AML laws and should not offer excuses to avoid compliance.
7. In view of the foregoing, we find no reason to interfere with the merits of 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: 23 AUG 2023