



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 63 of 2019

M/s. Abbasi & Company (Pvt.) Ltd

Appellant

Versus

The Commissioner (Securities Market Division) SECP, Islamabad

Respondent

Date of hearing:

April 6, 2023

Present:

For the Appellant:

1. Mr. Abdul Rehman Qureshi
2. Mr. Ehsan Mehmood
3. Mr. Qamar Tariq

For the Respondent:

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

## ORDER

1. This Order shall dispose of Appeal No. 63 of 2019 filed by M/s. Abbasi & Company (Pvt.) Limited (the Appellant) against the Order dated July 17, 2019 (Impugned Order) passed by the Commissioner Securities Market Division, SECP (the Respondent).
2. The brief facts of the case are that the Appellant is a trading rights entitlement certificate holder of the Pakistan Stock Exchange (PSX) and is licensed as a securities broker with the Securities and Exchange Commission of Pakistan (the Commission). The Commission in exercise of the powers



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conferred under section 137 of the Securities Act, 2015 (the Act) vide its order dated February 21, 2019 and in pursuance of the order dated October 29, 2018 conducted a follow-up review (the Review) of the Appellant's compliance status with the regulatory requirements contained in the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (AML Regulations). The follow-up review report (the Report) revealed that the Appellant was inter alia found non-compliant with the following requirements of the AML Regulations:

- i. In violation of Regulation 4(d) of the AML Regulations, the Appellant has no independent audit function because Mr. Imran Ahmad was an internal auditor, however, he was also assigned the charge of a compliance officer, which raises concern about the independence of the internal audit function.
  - ii. In violation of Regulation 18 of the AML Regulations the Appellants had provided only one compliance report for the month of February 2019 and appointed a whole-time compliance office on July 1, 2019.
3. In view of the above violations, the Respondent issued a show-cause notice dated June 17, 2019 (the SCN) to the Appellant. The Appellant filed a written reply to the SCN vide letter dated July 3, 2019 and hearing in the matter was held on July 4, 2019. Mr. The Respondent concluded the SCN proceedings and imposed a penalty of Rs 100,000/- on the Appellant.
4. The Appellant filed this Appeal *inter alia* on the grounds that a separate internal audit department and compliance department were existing at the time of the Review and Mr. Imran Ahmad was assigned additional charge of the compliance department, however, subsequent to the Review, a dedicated professional namely; Mr. Rizwan Sohail was appointed as whole-time compliance officer. Furthermore, the Appellant denied the allegation that only one compliance report for February 2019 had been submitted before the Commission. The Appellant contended that compliance reports are being submitted before the Commission since July 2018. The Appellant stated that, without prejudice to the above, the AML Regulation do not provide that the internal auditor and compliance officer should be separate persons.



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5. The Respondent acceded with the argument of the Appellant that compliance reports were being submitted to the Commission from July 2018, hence, no violation was committed in this regard. The Respondent stated that at the time of the Review, Mr. Imran Ahmad was acting in dual capacity as an internal auditor as well as compliance officer which raises concerns about the independence of the internal audit function. Furthermore, the Appellant appointed a whole-time compliance officer with effect from July 1, 2019, hence, at the time of Review, violation of Regulation 4(d) of the AML Regulations is established.
6. The Bench has heard the parties and perused the record. The Bench is of the view that it is an undisputed fact that at the time of the Review, the internal auditor also held the additional charge of compliance officer. The Bench is of the view that the internal audit and compliance department had conflicting functional attributes, therefore, irrespective of the fact whether any provision related to such segregation exists or not, the Appellant should have appointed separate persons for both departments. The Bench has noted that prior to the hearing of the SCN, the Appellant had appointed a separate compliance officer, therefore, we are of the view that the Appellant is not a delinquent defaulter rather it is willing to comply with the directions and removal of the adverse observations of the Commission. As the Appellant had adequately met the requirements of the AML Regulations before passing of the Impugned Order, therefore, keeping in view the conduct of the Appellant and other mitigating circumstances of the case, the Bench is inclined to take a lenient view in this case.
7. In view of the foregoing, we hereby convert the penalty into a warning. Accordingly, the Appeal is disposed of without any order as to cost.

(Abdul Rehman Warriach)

Commissioner

(Akif Saeed)

Chairman/Commissioner

Announced on: **08 MAY 2023**