



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 80 of 2020

M/s. NI Associates (Private) Limited

Versus

...Appellant

Executive Director (Adjudication-I)

...Respondent

Date of hearing:

March 28, 2024

Present:

For the Appellant:

Mr. Abdul Rehman Qureshi (Authorized Representative)

For the Respondent:

1. Mr. Raja Farukh Ahmad, Additional Joint Director, Adjudication Department-I, Adjudication Division, SECP
2. Mr. Muhammad Faisal, Assistant Director, Adjudication Department-I, Adjudication Division, SECP
3. Mr. Hammad Ahmed, Management Executive, Adjudication Department-I, Adjudication Division, SECP

ORDER

1. This Order shall dispose of Appeal No. 80 of 2020 filed by M/s. NI Associates (Private) Limited (the "Appellant") under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated February 25, 2020 (the "Impugned Order") passed by the Executive Director, Adjudication Department – I (the "Respondent").
2. The brief facts of the case are that the Appellant was registered as a balloter and transfer agent under the Balloters and Transfer Agents Rules, 2015 (the "Rules"). The Rules were subsequently repealed by the Share Registrar & Balloters, Regulations, 2017 (the "Regulations"), promulgated



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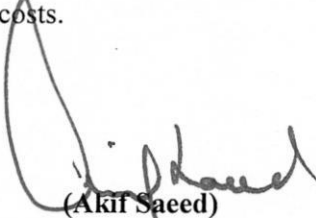
on January 11, 2017. As per Regulation 3 of the Regulations a person registered as a share registrar and balloters' agent ("SRB") under the Rules, prior to coming into force of the Regulations, shall be deemed to be a licensed SRB under the Securities Act, 2015 (the "Act") and the Regulations till the time its existing certificate of registration remains valid. The existing certificate of registration of the Appellant expired on November 25, 2018, however, no application for grant of license under the Regulations was received until August 06, 2019. The Appellant continued to perform the functions of SRB after the expiry of its license in contravention of section 64 of the Act and Regulation 3 of the Regulations attracting provisions of section 159 of the Act. In addition to that, the Appellant, in contravention of Regulation 4 of the Regulations, failed to enhance its paid-up capital to three million rupees by June 30, 2018. Subsequently, with a delay of one year, the Appellant reported that it had increased its paid-up capital in July, 2019 thereby, attracting provisions of section 150 of the Act. Accordingly, the Show-Cause Notice dated September 20, 2019 (the "SCN") was issued to the Appellant. The Appellant submitted its written response to the SCN vide its letter dated November 12, 2019. The matter was heard by the Respondent on February 19, 2020 which was attended by the Appellant's representatives. Being dissatisfied with the arguments of the Appellant, the Respondent imposed penalties of Rs. 400,000/- under Section 159(3) of the Act for contravention of Section 64 of the Act and Rs. 100,000/- under Section 150(2) of the Act for guilty of misconduct.

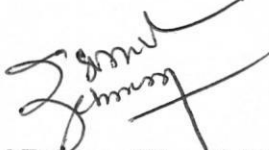
3. The Appellant filed this appeal before the Appellate Bench (the Bench) *inter alia*, on the grounds that the Impugned Order passed by the Respondent is against the law, legal practices, record and facts, therefore prayed to *set aside* the Impugned Order. The Appellant has taken a plea that it has only two clients and it has not carried out any substantial activity as a share registrar, therefore, it was not capable to enhance its paid-up-capital. The Appellant further argued that no reply has been given to the application submitted by the Appellant for the grant of license and there was also no reply by the Respondent to the application for withdrawal. The Authorized Representative argued that, in this matter, a hearing was held before the Commissioner (SMD) wherein, a lenient view was taken and a minor penalty of Rs. 20,000/- was verbally announced, however, in a subsequent hearing before the Respondent major penalties were illegally imposed by the Respondent through the Impugned Order. The Authorized Representative submitted that given the Appellant's intention to discontinue the licensed activities as a share registrar, the Appellate Bench may take a lenient view with regard to the penalties imposed vide the Impugned Order.



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4. The Respondent denied all the grounds of the Appeal and stated that the Appellant failed to get a license under the Regulations and failed to enhance its paid-up-capital within the stipulated time. Furthermore, the Respondent has categorically denied the Appellant's assertion that during the hearing before the Commissioner (SMD) a minor penalty was imposed because the claim had not been substantiated through any evidence. The Respondent further stated that due to a change in authority, the matter was finally disposed of by the Executive Director, Adjudication-I. The Respondent contended that, to deliberate on the Appellant's license withdrawal application is not relevant to the Adjudication-I Department and that the license withdrawal application has no bearing on the merits of the case as those pertain to the default that occurred before the filing of the application.
5. The Bench has heard the arguments of both parties and perused the record. The Bench is of the view, that although the Appellant has committed a default under the Regulations, however, as it is not interested in continuing as share registrar, and it has also filed for withdrawal of the grant of license application, the penalty imposed vide the Impugned Order seems disproportionate. Furthermore, the relevant department has neither decided the fate of the application for the grant of license nor has the Respondent responded to the Appellant's application for withdrawal of such application, therefore, in the circumstances, imposition of excessive penalty may not serve the purpose because now, the Appellant is a dormant company and is not conducting any relevant activity regulated under the Act and the Regulations.
6. In view thereof, the Bench is inclined to take a lenient view with regard to the quantum of penalty imposed through the Impugned Order, therefore, we hereby reduce the amount of penalty to Rs. 20,000/-. Accordingly, the instant Appeal is **disposed of** on the above terms with no order as to costs.


(Akif Saeed)
Chairman/Commissioner


(Abdul Rehman Warraich)
Commissioner

Announced on: 29 APR 2024