



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 82 of 2017

MSD Capital Equities (Pvt.) Limited

Appellant

Versus

The Commissioner, (SMD), SECP, Islamabad.

Respondent

Date of hearing:

December 19, 2019

Present:

For Appellant:

Mr. Ghulam Farid-Ud-Din, Advocate High Court

For Respondent:

- i. Mr. Osman Syed, Joint Director (Adjudication-I), SECP
- ii. Mr. Sabeel Ahmed, Assistant Director (SMD), SECP
- iii. Ms. Mehwish Naveed, Management Executive (Adjudication-III), SECP

ORDER

1. This Order shall dispose of Appeal No. 82 of 2017 filed by the M/s. MSD Capital Equities (Pvt.) Limited (the Appellant) against the Order dated May 30, 2017 (the Impugned Order) passed by the Commissioner (SMD) under Section 150 of the Securities Act, 2015 (the Act).
2. The Brief facts of the case are that the Appellant in contravention of Securities and Exchange Commission of Pakistan (the Commission) Circular No. 4 of 2013, dated April 16, 2013 (the Circular) failed to file quarterly financial return through online Financial Reporting System (the FRS) for the quarters ended June 30, 2016, September 30, 2016 and December 31, 2016. The Appellant also not complied with the requirements of the Pakistan Stock Exchange Notice no. PSX/N-798, dated February 8, 2017 (the PSX Notice) whereby, it was required to send details



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of all its bank accounts and hard copy of its half yearly accounts for the period ended December 31, 2016 to the Commission. Therefore, a Show Cause Notice dated April 12, 2017 (the SCN) was issued to the Appellant. The Appellant filed its reply vide letter dated April 19, 2017. Hearing in the matter was held on April 26, 2017. The Respondent, being dissatisfied with the response of the Appellant, imposed a penalty of Rs. 400,000/-.

3. The Appellant had challenged the Impugned Order *inter alia* on the grounds that the alleged default was not willful and first quarter financial return was uploaded, however, due to error in FRS, it failed to upload financial returns of subsequent three quarters. The Appellant stated that it required help from IT Wing of CRO, Lahore and MIS Wing of CCD, Islamabad, however, no substantial assistance was provided. The Appellant submitted that it had already provided the details of bank accounts to the PSX on February 24, 2017. The Appellant further stated that the Appellant had not gained any profit or avoided any loss whereas, Section 150 of the Act, empower the Respondent to impose a penalty not greater than the amount of any profit gained or loss avoided by the licensed person. The Appellant contended that the Impugned Order is time-barred because it has been passed after a lapse of 45 days from the dated of final hearing, which is in violation of the apex court judgment reported as 2015 SCMR 1550. The Appellant stated that the circular was issued in violation of the parameters contained in section 169 of the Act and it was neither published for seeking public opinion nor issued by the competent authority. The Appellant further stated that the Impugned Order has been passed in violation of the Article 4 of the Constitution of the Islamic Republic of Pakistan (the Constitution).
4. The Respondent had rebutted the grounds of the Appeal and stated that the Appellant had not complied with the requirements of regulatory framework, therefore, Impugned Order had been passed. The Respondent apprised that the Appellant had not filed quarterly financial returns through the FRS although, the Commission arranged awareness and training sessions for the TREC holders on FRS. The Respondent further stated that no subsequent compliance was made by the Appellant and the required returns were not filed even till the date of the Impugned Order. The Respondent stated that as per the PSX notice, the Appellant was required to provide bank details and hard copies of its half yearly accounts to the PSX as well as to the Commission, however, it failed to provide the requisite information to the Commission. The Respondent contended that the penalty was imposed in accordance with the law and the



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Impugned Order was passed within reasonable time. The Respondent stated that the Circular was issued under section 6(3) of the Securities and Exchange Ordinance, 1969 (the Ordinance) and not under Section 169 of the Securities Act. It is further submitted that sub-Section (14) of section 177 of the Securities Act, 2015 provides saving to the circulars made under the Ordinance. The Respondent submitted that the Impugned Order is in accordance with Article 4 of the Constitution.

5. The Appellate Bench (the Bench) has observed that this Appeal has been filed after lapse of the limitation period provided under Section 33 of the SECP Act, 1997 (the SECP Act). The Bench has perused the contents of the application for condonation of delay, however, the Appellant had failed to demonstrate any plausible reason to justify the delay. We are of the view that as per apex courts judgements, the Appellant was required to explain each and every movement to justify delay. The Bench cannot accept the Appellant's plea that delay was caused due to filing of application before wrong forum, as a valid reason to condone the delay. The Bench is of the view that *"delay of each day had to be satisfactorily explained, as after the expiry of limitation period, a vested right was created in favour of the other party; which could not be easily brushed aside as the law always helped the vigilant and not the indolent"*.¹ *"Furthermore, filing of appeal mistakenly before a different/wrong forum, cannot extend period of limitation"*.² The Supreme Court has held that *"Prosecution of a wrong remedy in a wrong Court is not sufficient ground for Condonation of delay"*.³ The Appellant had failed to provide any cogent reason to address the issue of delay, therefore, the Bench is empowered to dismiss this Appeal without considering the merits. However, instead of adjudication on technicalities, the Bench prefer to decide cases on merits, hence, we condone the delay and admit this Appeal for hearing.
6. The Bench has examined the record and arguments of the parties. The Bench is of the view that the Appellant's plea with regard to the Respondent's failure to prove willful default is neither tenable nor relevant, because Section 150 of the Act does not require to establish willful default prior to imposition of penalty. Furthermore, we are of the view that willful default cannot be attributed to the Appellant because it is a juristic/legal person. The Bench has no doubt that the

¹ United Bank Limited Versus Muhammad Afzal Solangi, 2018 PLC 287

² Muhammad Amir Versus Muhammad Sarfraz, 2019 CLD 523

³ Furqan Habib Versus Government Of Pakistan, 2006 SCMR 460



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Appellant had failed to comply with the regulatory requirements imposed on brokers by the Commissions and the PSX.

7. The Bench has observed that filing of quarterly financial returns was made mandatory through the Circular in 2013 and since then the Appellant had filed only three quarters financial return i.e. December 1, 2013, March 1, 2014 and June 1, 2014. In view of record, after June 2014 the Appellant had not filed quarterly financial returns through FRS, therefore, the Bench has no doubt to hold that the Appellant has persistently violated FRS requirement and as of today it is noncompliant. The Bench has noted with great concern that the Appellant had made a false claim that it had filed first quarter financial returns i.e. March 31, 2016 through FRS, because the record does not support the Appellant's assertion. Furthermore, we are also not inclined to accept that there was any error in FRS because the Appellant had not provided any written evidence that prior to issuance of the SCN, error in FRS was agitated before relevant department.
8. The Bench has perused the record, which revealed that prior to the issuance of the SCN and during the SCN proceedings, the Appellant has neither provided bank details nor submitted half-yearly accounts to the Commission and, therefore, violated the requirement of the PSX Notice. The Appellant's representative submitted a copy of the half-yearly accounts before the Bench, however, at this stage correctness or authenticity of said accounts cannot be examined and adjudged. The Bench is of the view that the Appellant's argument about imposition of penalty not greater than the gain earned or loss avoided, does not hold merit because under Section 150(2) (a) of the Act, the Respondent was empowered to impose penalty up to fifty million rupees.
9. The Bench has reviewed the contents of the referred case law (2015 SCMR 1550), however, it does not support the Appellant's assertion that the Impugned Order is time-barred. The Bench has examined the record, which revealed that the hearing of the SCN proceedings was held on April 26, 2017 whereas, the Impugned Order was passed after 33 day, on May 30, 2017, therefore, we see no delay in passing of the Impugned Order. After reviewing the referred case law, we can firmly state that the Impugned Order is in line with judicial norms and principles. The Bench also reject the Appellant's assertion with regard to non-publication of the Circular prior to its implementation because, it was issued under Section 6(3) of the Ordinance,



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therefore, under Section 169 of the Act, publication of the Circular was not required. We have no doubt that the Impugned Order has been passed with reasonable care and keeping in view fundamental rights, therefore, the Appellant's assertion with regard to violation of Article 4 of the Constitution is not tenable.

10. In view of the facts stated hereinabove, it has been established that the Appellant had failed to comply with the requirements of the Circular and the PSX Notice. In the circumstances, we find no reason to interfere with the merits of the Impugned Order, therefore, we hereby dismiss this Appeal without any order as to cost.

(Farrukh Hamid Sabzwari)

Commissioner (SCD,AML)

(Shaukat Hussain)

Commissioner (Insurance, C&CD)

Announced on: **28 FEB 2020**