



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH

In the matter of

Appeal No. 82 of 2019

National Clearing Company of Pakistan Limited

Appellant

Versus

The Commissioner (SMD), SECP.

Respondent

Date of hearing:

April 10, 2025

Present:

For the Appellant:

Mr. Salman Iqbal Bawany (Authorized Representative)

For the Respondent:

1. Mr. Mubashar Saeed Saddozai, Executive Director, Adjudication-I, SECP
2. Mr. Furqan-Uddin Faisal, Joint Director, Information Technology, SECP
3. Mr. Muhammad Faisal, Assistant Director, Adjudication-I, SECP

## ORDER

1. This Order shall dispose of the Appeal No. 82 of 2019 filed by National Clearing Company of Pakistan Limited (the Appellant) against the Order dated October 3, 2019 (Impugned Order) passed by the Commissioner, SMD (the Respondent) under Section 25(1)(b) of the Securities Act, 2015 (the Act) and Regulation 5(i) of the Clearing Houses (Licensing & Operations) Regulations, 2016 (the Regulations).
2. The brief facts of the case are that in exercise of powers conferred under Section 139 of the Act and Section 258 of the Companies Act, 2017 (the Companies Act) read along with all the enabling provisions of Securities and Exchange Commission of Pakistan Act, 1997 (the SECP Act), the Securities and Exchange Commission of Pakistan (the Commission) ordered an investigation into the affairs of the Respondent on November 21, 2017, to ascertain the allegation of leakage of non-public



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market sensitive information. The final investigation report (the Report) identified significant deficiencies with respect to protection of market sensitive information existing in the IT environment of the Appellant. The Report further revealed that sensitive market trading data could be extracted from the Appellant's production database, business reports and data transmission infrastructure. The Report, concluded that the Appellant was non-compliant with Regulation 5(i) of the Regulations read with Section 25 (1) (b) of the Act.

3. In view of the above violations, a Show Cause Notice dated December 21, 2018 (the SCN) was issued to the Appellant. The Appellant vide its letter dated January 1, 2019 submitted reply to the SCN and hearing in the matter was held on January 8, 2019, which was attended by the Appellant's representatives. The Respondent concluded the SCN proceedings and imposed a penalty of Rs. 2,000,000/- (Rupees two million) and issued directions to put in place the required IT governance system as required by the Commission.
4. The Appellant has preferred this appeal *inter alia* on the grounds that there was no evidence whatsoever of any actual leakage or pilferage of confidential, non-public, market-sensitive data. The investigation and the findings were based merely on a possibility of leakage, which is insufficient to establish misconduct under Section 150 of the Securities Act, 2015. The Appellant argued that the existence of a possibility does not constitute a contravention, and therefore the proceedings initiated were without lawful basis.
5. The Appellant further contended that it operates with high international standards of information security and business continuity, including certifications of ISO 27001:2013 and ISO 22301, and has deployed a robust IT infrastructure involving cutting-edge cybersecurity solutions. Consequently, it was practically impossible for any unauthorized data leakage to occur through its systems. It was emphasized by the Appellant that immediately upon the observations made by the investigation team, corrective actions were proactively undertaken even before the issuance of the Show Cause Notice. The Company addressed all vulnerabilities and significantly enhanced its internal controls, which demonstrated its commitment to full regulatory compliance. The Appellant asserted that the findings of the Joint Investigation Team (JIT) themselves referred only to possible non-compliance and did not conclude any specific violation of the Securities Act, the Companies Act, or the Regulations. As such, initiating punitive action based on mere possibilities was contrary to settled legal principles. The

Appellate Bench

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Appellant highlighted that the adjudicating authority failed to consider in detail the comprehensive written replies and oral submissions made during the proceedings. Moreover, the Appellant submitted that an independent and specialized IT expert should have been consulted before reaching conclusions on highly technical IT matters, which was not done, thus violating the principles of natural justice. The Appellant argued that their willingness to accept recommendations and implement improvements during the investigation was wrongly treated as an admission of wrongdoing. While concluding the arguments, the Appellant contended that the imposition of a blanket penalty of Rs. 2 million was highly disproportionate and unjustified in the absence of any proven damage or actual violation. The Appellant prayed that the Impugned Order be set aside in the interest of justice.

6. The Respondent countered the grounds of appeal and proffered arguments and submitted that the investigation revealed significant deficiencies in the IT security environment of the Appellant, thereby exposing critical market-sensitive information to potential unauthorized access and extraction without audit traceability. The Respondent stated that the vulnerabilities, compromised the integrity of the market systems. The Respondent argued that under Section 150(5) of the Securities Act, 2015, a mere contravention of any applicable law, rule, regulation, or license condition constitutes misconduct, and actual damage or leakage need not occur to establish guilt.
7. The Respondent further argued that the Appellant's failure to manage information security risks prudently was sufficient to warrant regulatory action. The Respondent emphasized that the Appellant had admitted various shortcomings during the hearing and had implemented corrective actions only after the investigation identified the weaknesses and that such admissions and corrective steps, according to the Respondent, corroborated the findings of non-compliance. It was further submitted that given the Appellant's pivotal role in the national capital market as a licensed clearing house, any lapse, even if not resulting in actual data leakage, seriously jeopardized public confidence in the capital markets. Therefore, strict regulatory enforcement was justified to maintain the sanctity of the market. The Respondent asserted that the Impugned Order is a well-reasoned and speaking order, addressing all the relevant factual and legal aspects of the matter. The Appellant was provided ample opportunities to present its defense, and due process was fully adhered to during the proceedings. In conclusion, the Respondent prayed that the Appeal be dismissed and the Impugned Order, including the penalty of Rs. 2 million, be upheld in the interest of maintaining market integrity and investor confidence.



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8. The Appellate Bench (the Bench) has heard the arguments of the parties and perused the record. Upon careful consideration of the submissions made by both parties and the applicable legal framework, the Bench notes that the findings of non-compliance under Section 25(1)(b) of the Act and Regulation 5(i) of the Regulations are substantiated in light of the arguments put forth by the Respondent. However, it is observed that while the investigation team rightly identified vulnerabilities in the IT governance framework of the Appellant, there is no conclusive evidence of any actual leakage or unauthorized access to confidential market-sensitive data. The Appellant has demonstrated a responsible and cooperative approach by taking prompt corrective measures even prior to the issuance of the SCN, and has since significantly strengthened its information security controls.
9. The Bench acknowledges that, as a licensed clearing house, the Appellant bears a heightened duty to maintain robust information security standards. However, considering the absence of actual harm, the technical nature of the deficiencies, the Appellant's adherence to international standards (including ISO certifications), and its proactive and remedial conduct throughout the proceedings, the imposition of the penalty does not appear proportionate in the present circumstances. Accordingly, while the findings of non-compliance with Regulation 5(i) of the Regulations read with Section 25(1)(b) of the Act are sustained as a matter of record, however, the penalty imposed through the Impugned order is hereby set aside with a direction to the Appellant for strengthening and maintaining a robust IT governance and information security framework in accordance with the applicable regulatory standards.
10. In the view of the above discussion, the instant Appeal is disposed of with no order as to cost.

(Abdul Rehman Warraich)  
Commissioner

(Akif Saeed)  
Chairman/Commissioner

Announced on:

**08 JUL 2025**