



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 09 of 2023

M/s. Xpert Securities Limited

...Appellant

Versus

Director/HOD (Adjudication – I), Adjudication Division

...Respondent

Date of hearing:

January 18, 2024

Present:

For the Appellant:

Mr. Shaheer Bin Tahir, Chief Executive Officer

For the Respondent:

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

ORDER

1. This Order shall dispose of Appeal No. 09 of 2023 filed by M/s. Xpert Securities Limited (the “Appellant”) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the “SECP Act”) against the order dated June 28, 2022 (the “Impugned Order”) passed by the Director/Head of Department, Adjudication-I (the “Respondent”) under the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism)



Securities and Exchange Commission of Pakistan

Regulations, 2018 (the “Regulations”) read with Section 6(A)(2)(h) of the Anti-Money Laundering Act 2010(the “Act”).

2. The brief facts of the case are that the Appellant is a Trading Rights Entitlement Certificate (TREC) holder of the Pakistan Stock Exchange Limited (PSX) and licensed as a securities broker with the Securities and Exchange Commission of Pakistan (the “Commission”). Inspection of the Appellant was conducted by the Joint Inspection Team (JIT) covering a review period of 03 months from May 01, 2021 to July 31, 2021, to assess the compliance of the Appellant with the Regulations. During inspection it was observed that the Appellant has failed to comply with regulations 5(a) and 27(2)(c) of the Regulations which stipulates that a regulated person shall have policies, controls and procedures which are approved by its board of directors, to enable it to manage and mitigate the risks that have been identified in its own risk assessment and any other risk assessment publicly available or provided by the Commission and the compliance officer is required to ensure that all internal policies, procedures and controls for prevention of money laundering and terrorist financing are approved and implemented. In light of these violations, a Show-Cause Notice dated January 06, 2022 (the “SCN”), was issued to the Appellant. The Appellant responded on January 17, 2022, and a hearing was scheduled for June 17, 2022. After examining the submissions and considering the facts, the Respondent, in exercise of powers conferred under Section 6(A)(2)(h) of the Act, imposed a penalty of Rs. 60,000/- on the Appellant for the aforementioned contravention of the Regulations.
3. The Appellant has preferred this Appeal, *inter alia*, on the grounds that the Appellant Company has never engaged in any business or transaction nor had any clients. The authorized representative of the Appellant contended that all non-compliances identified during the inspection were rectified before issuance of the SCN and thus imposition of penalty vide Impugned Order is not justified. Additionally, the authorized representative of the Appellant contended that the Appellant Company was never operational and now intends to surrender its license, and argued that although they submitted a compliance report before the hearing in the SCN proceedings, the Respondent failed to consider this fact and imposed a penalty. The Appellant contended that the Respondent’s oversight stems from their inability to recognize the Appellant’s sincere efforts to comply with regulations, despite their limited portfolio. Given these circumstances, the Appellant prayed for a lenient view to be taken and setting aside of the Impugned Order .



Securities and Exchange Commission of Pakistan

4. The Respondent countered the grounds of the Appeal and proffered arguments, delineating that violation of the Regulations were manifestly discernible during the course of the inspection. Specifically, the Respondent highlighted that the Appellant Company continues to be in existence, hence, it is bound to comply with the law. The Respondent further argued that the Appellant submitted the compliance report later in time which shows that at the time of inspection the violations were established. Conclusively, the Respondent re-emphasized the veracity of the observed violations of the Regulations by the Appellant during the course of the inspection, thereby substantiating the Appellant's susceptibility to pecuniary penalties in accordance with the established legal framework.
5. The Bench has heard the arguments of the parties and perused the record, the Bench's opinion is that despite that the Appellant did not have any transactions or clients, it was still obligated to adhere to the law as per the requirements at the time of registration as TREC. However, the Bench acknowledges that the Appellant addressed the non-compliance issues and submitted a compliance report to the Respondent prior to the hearing. This step by the Appellant should be seen as a mitigating factor. It appears that the Respondent did not appropriately weigh these circumstances before imposing the penalty.
6. In view of the foregoing, the Bench convinced that considering the mitigating circumstances, the Impugned Order is *set-aside* and the instant Appeal is accepted.

(Abdul Rehman Warraich)

Commissioner

(Akif Saeed)

Chairman/Commissioner

Announced on: 13 FEB 2024