



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 95 of 2016

H.A.M.D. & CO. Chartered Accountants

Appellant

Versus

Executive Director, (PRPD), SECP, Islamabad.

Respondent

Date of hearing: 20/04/18

Present:

For Appellant:

- i. Mr. Waseem Ashfaq (Partner H.A.M.D. & CO. Chartered Accountants)

For Respondent:

- i. Mr. Asif Khan- Deputy Director (SMD)
- ii. Salman Arshad- Deputy Director (SMD)

ORDER

1. This Order is in the matter of Appeal No. 95 of 2016, filed by H.A.M.D & Company, Chartered Accountants (the Appellant) against the Order dated 03/10/16 (the Impugned Order) passed by the Executive Director (the Respondent) under Section 22 of the Securities and Exchange Ordinance, 1969 (the Ordinance).
2. Brief facts of the case are that the Securities and Exchange Commission of Pakistan (the Commission) appointed an inspection team to inspect the books and record of FM Securities



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(Pvt.) Limited (the Company). The observations of the inspection team and the Respondent, with respect to the overstatement of Net Capital Balance (the NCB) are as follows;

- a. the NCB of the Company as on 30/06/15 was Rs. 4,208,081/-;
- b. cash in hand on 30/06/15 was Rs. 4,280,931/- and out of this Rs. 25,00,000/- had been provided by the CEO as loan to the Company (loan was consist of cash and gold);
- c. the Appellant has not provided the documentary evidence for remaining Rs. 17,80,931/- as cash in hand on 30/06/15. $(4,280,931 - 25,00,000 = 1,780,931/-)$;
- d. Instead of a stamp paper, loan agreement between CEO and the Company was executed on Company's letterhead;
- e. possession and title of loan amounted Rs. 25,00,000/- cash and gold was not transferred to the Company, therefore, it was not eligible to be included for calculation of NCB;

3. In view of the above, the Respondent issued a Show Cause Notice to the Appellant and hearing in the matter was held on 22/07/16. The Appellant's representative argued that the NCB as on 30/06/15 was calculated in accordance with the Third Schedule of the Rules, and guidelines issued by the Commission. He further stated that the figures of NCB were also duly reconciled with the audited financial statements of the Company for the year ended 30/06/15. The representative also provided cash equivalent certificate dated 29/06/15, of gold provided by the CEO as loan to the Company; copy of Board Resolution dated 30/04/15 (the Resolution); copy of loan Agreement (the Agreement). Lastly, the representative stated that cash in hand and gold were physically verified, however, at the time of audit and verification of NCB, cash and gold were in the personal custody of the CEO.

4. The Respondent observed in the Impugned Order that instead of a stamp paper, the loan agreement between the CEO and the Company has been executed on the letterhead of the Company, therefore, it cannot be accepted. Furthermore, title and possession of cash / gold were not transferred to the Company, thus, the same were not eligible for inclusion in the



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NCB. In view of the above facts, the Respondent had imposed a penalty of Rs. 100,000/- (Rupees one hundred thousand) on the Appellant.

5. The Appellant has challenged the Impugned Order, *inter alia* on the grounds, that NCB of the Company is not overstated and it has been calculated and verified by the Appellant in accordance with law. The Appellant prayed to set aside the Impugned Order and accept the Appeal. Whereas, the Respondent has denied and rebutted the grounds of Appeal.
6. The Appellate Bench (the Bench) has heard the parties and perused the record. The audited accounts of the Company shows that on 30/06/15 cash in hand was Rs. 4,280,931/- out of which Rs. 25,00,000/- had been provided by the CEO, as a loan to the Company and remaining amount of Rs. 1,780,931/- was the opening balance of cash in hand, brought forward from the previous year accounts. Therefore, the record is clear and the Bench has no doubt to believe that Rs. 4,280,931/- do exist as cash in hand as on 30/06/15.
7. The Respondent had primarily one objection that the possession and title of cash and gold were not transferred in the name of Company, therefore these cannot be used in calculation of the NCB. The Bench has pursued the contents of the Resolution and the Agreement, these documents reveal that cash (Rs. 15,00,000/-) and gold (Rs. 10,00,000/- cash equivalent value) were provided to the Company as unconditional and interest-free loan by the CEO. The Resolution and the Agreement also state that cash and cash equivalent shall remain in the custody of CEO and be utilized in case of extreme need.
8. The Bench is of the view that the Agreement and the Resolution are sufficient to prove that the Company has undisputed legal title of cash and gold therefore, the Respondent's objection is not cogent. The other objection of the Respondent pertaining to the possession of cash and gold that was not transferred to the Company, has also failed to draw the attention of the Bench. Admittedly, cash and gold were in possession of CEO, during inspection and proceedings before the Respondent, however, for all practical purposes, the CEO is the most relevant person to hold the properties and assets of a Company in his possession as a trust for



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safe custody. Furthermore, the Board of the Company has authorized the CEO to hold cash and gold; therefore, we find no anomaly in this regard. The audited accounts for the year ended 30/06/15 also contain the figure of directors loan Rs. 25,00,000/- under the heading of long term liabilities, therefore, we have no doubt that amount of loan belongs to the Company and the CEO has been duly authorized by the Company to hold cash and gold in his possession.

9. The Bench has also examined the Respondent's objection with regard to non-execution of the Agreement on a Stamp Paper. In Bench's view, execution of the Agreement on a letterhead of the Company does not render it invalid because the Respondent has failed to substantiate this requirement through any provision of law.

10. In view of the above discussion and observations contained in para eight and nine above, the Bench is of the view that the Appellant has calculated the NCB in accordance with the third schedule of the Rules, and guidelines issued by the Commission. Therefore, we hereby set aside the Impugned Order and accept the Appeal without any order as to cost.


(Shaukat Hussain)

Commissioner (CCD-CLD)


(Tahir Mahmood)

Commissioner (CSD-CLD)

Announced on: **28 JUN 2018**