



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH

In the matter of

Appeal No. 95 of 2017

Syed Muhammad Ali alias Mir Muhammad Ali Khan

Appellant

Versus

The Commissioner (SMD), SECP, Islamabad.

Respondent

Date of hearing:

December 19, 2019

Present:

For Appellant:

Mr. Abdul Karim Khan, Advocate

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. 95 of 2017 filed by Syed Muhammad Ali alias Mir Muhammad Ali Khan (the Appellant) against the Order dated August 18, 2017 (the Impugned Order) passed by the Commissioner (SMD) under Section 159(5) of the Securities Act, 2015 (the Act).
2. Brief facts of the case are that the Appellant is an Independent Research Analyst (the IRA) in terms of Regulation 2(d) of the Research Analyst Regulations, 2015 (the Regulations) and he was providing calls in writing for Buy/Sell/Hold (B/S/H) or projecting a Target Price (TP) of certain scrips listed on the Pakistan Stock Exchange (the PSX) through his online portal named "Mind and Markets". The written calls were Research Reports in terms of the Regulation 2(h) of the Regulations. The Securities and Exchange Commission of Pakistan (the Commission) examined some Research Reports issued by the Respondent. The review of the following Research Reports revealed that the Appellant had contravened Sub-Regulations (2), (3) and (4) of Regulation 7 of the Regulations.



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- Pakistan National Shipping Corporation Limited
- PSX 100 target.
- Dewan Farooque Motors Limited.
- Bank of Punjab.
- Dost Steel Mills Limited.
- International Steels Limited.
- Sui Northern Gas Pipelines Limited.

3. In view of the above, a Show Cause Notice (the SCN) dated May 31, 2017 was served on the Appellant under Section 159 of the Act. The written reply of the SCN was received on June 29, 2017, whereas, hearing in the matter was held on July 27, 2017. The Respondent, being dissatisfied with the response of the Appellant, imposed a penalty of Rs. 1,000,000/-.
4. The Appellant has challenged the Impugned Order *Inter alia* on the grounds that the Respondent erred in law because instead of Regulation 2(h) of the Regulations, the Appellant's calls fall under the exceptions of proviso of the Regulation 2(h) of the Regulations. Therefore, requirements of the Regulations were not applicable on the Appellant. The Appellant further stated that the Regulation does not provide or require that the written calls have to be exclusively mentioned exceptions to fall outside the definition of Research Report, therefore, inclusion of TP and B/S/H in written call does not make it Research Report. The Appellant denied that he is an IRA but a teacher offering specialized training to those interested in the stock market. The Appellant claimed that his written calls do not fall under the definition of Research Reports, hence, the non-compliance of sub-Regulations (2), (3) and (4) of Regulation 7 of the Regulations does not arise. The Appellant further stated that in the written calls, he provided reasoning behind his recommendations to buy or sell which include the general market trend, economic and political market conditions as well as historic valuation of the stock.
5. The Appellant stated that compliance of the Regulations was not binding on him because he was neither an IRA nor his written calls were Research Reports therefore, by incorporating a disclaimer in written calls, the Appellant had discharged his duty adequately. The Appellant stated that the Respondent erred by misstating facts that the portal is open to the public at large and anyone can become a student by paying a fees regardless of age and sex, who is willing to





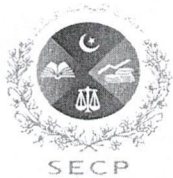
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avail the knowledge and expertise of the Appellant. The Appellant further submitted that the Act or the Regulation do not require the Appellant to incorporate a Company to provide written calls through his online portal.

6. The Appellant contended that the Respondent has erred in law by imposing a penalty for a violation which has never been committed by the Appellant and even otherwise the said penalty is grossly disproportionate to the alleged violations. The Appellant lastly submitted that in view of Section 2(1), clause (pb)<sup>1</sup> of the Securities and Exchange Commission of Pakistan Act, 1997 (the SECP Act) the Appellant is not a regulated person. Furthermore, according to Section 29 of the SECP Act, the Commission does not have power to investigate the Appellant as he is not a regulated person, registered or licensed under the Act.
7. The Respondent has rebutted the grounds of Appeal and stated that as per Regulation 2(h) of the Regulations, written communication in any form, which includes a TP or B/S/H recommendation is termed as a Research Report. The contention of the Appellant that his written calls fall under the exception given in the proviso of Regulation 2(h) of the Regulations is not tenable as the calls referred in the SCN does not exclusively include contents referred in clause I to VIII of clause 2(h) of the Regulations. The Respondent clarified that the Research Reports generated by the Appellant and referred in the SCN had been thoroughly examined, which revealed that the Appellant had either provided a TP or B/S/H or both in the mentioned scrip.
8. The Respondent further stated that the Appellant is not engaged in any other regulated securities activity and has been performing the functions of the research analyst by issuing the Research Reports, therefore, the Appellant is undoubtedly functioning as an IRA. The Respondent stated that a 'call report' commonly means B/S/H and is considered as a Research Report. The Respondent stated that the Appellant cannot be let 'scot-free' by merely pretending to be a teacher while offering the services of a Research Analyst.
9. The Respondent contended that the Appellant, while determining a TP and B/S/H recommendation, had failed to provide the source of information in a Research Report on Pakistan National Shipping Corporation. Furthermore, the text of the said Research Report also

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<sup>1</sup> "regulated person" means a person or entity licensed or registered under this Act or any administered legislation to carry on or engage in a regulated activity not being an institution exclusively regulated by the State Bank of Pakistan;



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did not contain valuation methods used to determine TP and risks that may impede achievement of the TP. The Respondent submitted that the Appellant had also failed to provide time horizon and benchmarks on which a rating was based. In view of the preceding, the Respondent stated that the Appellant was not in compliance with Regulation 7 Sub-Regulation (2) (3) and (4) of the Regulations, therefore, existence of a disclaimer in the Research Report would not exonerate the Appellant from compliance of the Regulations. The Respondent stated that the Appellant was providing a regulated service through his online portal, which was accessible to the users through specific login, acquired by them upon payment of a fee.

10. The Appellate Bench (the Bench) has heard the parties and perused the record. The Appellant's representative reiterated the grounds of Appeal whereas, the Respondent's representative rebutted grounds of Appeal and prayed to dismiss the Appeal.
11. The Bench is of the view that before proceeding with the case it is most important to determine whether in terms of Regulation 2(d) of the Regulations, the Appellant is an IRA or not. As per record, the Appellant was not involved in any other regulated activity except research analysis through written calls, therefore, he is an IRA in terms of the Regulation 2(d) of the Regulations. The Bench has also carefully gone through the contents of the Appellant's written calls whereby, he rendered B/S/H or projected TP of certain securities listed at the PSX through online portal and, therefore, his calls were Research Reports in terms of Regulation 2(h) of the Regulations. The Bench has no reason to accept the Appellant's assertion that his written calls fall under the scope of exceptions provided under the Proviso of Regulation 2(h) of the Regulations because, in all written calls he either suggested B/S/H or projected TP of certain securities. Therefore, the Appellant's assertion do no hold any merit. Furthermore, due to suggested B/S/H or TP instances in the written calls, the Bench is not inclined to accept that Research Reports were merely a comment on general trends in the securities market or on economic, political or market conditions.
12. The Bench has pursued the record and noted that the Appellant had used social media online applications/websites to promote and advertise his online portal namely; "Mind and Markets", thereby, attracting people at large to use his online portal for B/S/H calls or TP of securities. Furthermore, the Appellant's claim that he is a teacher and uses his online portal to educate the persons interested in acquiring knowledge of stocks, market and economy is not plausible because in the Research Reports the Appellant had provided B/S/H calls or TP of the securities listed at PSX. The Bench has no doubt that B/S/H calls or TP of certain securities was not merely for education





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purposes, rather it was a Research Report to determine and influence the investment decisions of the investors/users of the Appellant's online portal.

13. The Bench has observed that in view of Regulation 10(3) of the Regulations, the Appellant was required to inform the Commission before the commencement of activities as an IRA, but Appellant had not acted in the required manner. Furthermore, we are of the view that incorporation of a disclaimer in the Research Reports does not exonerate the Appellant from compliance of the Regulations and consequences of the violations thereof.
14. The Bench endorses the Appellant's assertion that the Regulations do not require the Appellant to incorporate a Company to provide written calls. The Bench accepts the Appellant's argument that he is not registered or licensed under the Act, however, it does not exempt the Appellant from compliance of the Regulations. In view of the aforesaid, the Bench believes that the Appellant was a regulated person who was carrying out a regulated activity as an IRA under the Regulations. Therefore, in our view, while acting as an IRA, the Appellant was bound to follow the procedure and requirements of the Regulations. Furthermore, the Appellant was also required to issue its Research Reports as per the requirements of the Regulations but failed to do so. In the circumstances, we are of the view that the Appellant had not only violated sub-Regulations (2), (3) and (4) of Regulation 7 of the Regulations but also violated the requirement of Regulation 10(3) of the Regulations.
15. In the circumstances, we find no reason to interfere with the merits and imposed penalty 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 (CLD-C&CD, Insurance)

Announced on: **21 JAN 2020**