Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal Nos. 85 of 2024 and 2 of 2025

1. Axis Global Limited (Appeal No. 85 of 2024)
2. Hamad Nazir Kehar (Appeal No. 85 of 2024)
3. Khawaja Adil Razzak (Appeal No. 85 of 2024)
4. Muhammad Akbar Memon (Appeal No. 85 of 2024)
5. Khawaja Aamir Ishaq (Appeal No. 2 of 2025)
6. Sarwat Amir Ishaq (Appeal No. 2 of 2025)

...Appellants

versus

Commissioner (SMD), SECP

...Respondent

Date of hearing: March 10, 2025

Present:

For the Appellants:

1. Mr. Waqar Ahmed
2. Mr. Hamad Nazir Kehar

For the Respondent:

1. Mr. Mubasher Saeed Saddozai, Executive Director, Adjudication-I, SECP
2. Mr. Sohail Qadri, HOD/Director, Adjudication-I, SECP
3. Mr. Muhammad Faisal, Assistant Director, Adjudication-I, SECP

ORDER

1. This consolidated Order shall dispose of Appeal Nos. 85 of 2024 and 2 of 2025 filed by Axis Global Limited and its five directors (the Appellants), against the Order dated November 21, 2024 (Impugned Order) passed by the Commissioner-SMD (the Respondent) under Section 150 and 159 read with Section 75 and 151 of the Securities Act, 2015 (the Act) and Regulation 4(e) and 27 of the Securities Brokers (Licensing and Operations) Regulations, 2016 (the Regulations).

2. The brief facts of the case are that the Securities and Exchange Commission of Pakistan (the Commission) conducted an investigation under Section 139 of the Act (the Investigation) to look into the affairs of Axis Global Limited (the Company) *inter alia* on the grounds that information was received from the National Accountability Bureau Ordinance (NAB) on May 04, 2018 regarding initiation of an inquiry under Section 19 of the National Accountability Bureau Ordinance, 1999 (NAO). Furthermore, the Investigation proceedings were also triggered on the basis of ten complaints against the Company, received by the Commission in October, 2018, whereby it was alleged that the Company and its other representatives were involved in defrauding the public by taking unauthorized deposits amounting to Rs. 20 million. The Commission also forwarded all complaints to NAB on November 02, 2018, under Section 41B of the Securities and Exchange Commission of Pakistan Act, 1997, for consideration in its ongoing inquiry wherein the ex-CEO was subsequently arrested by NAB in the matter of forty-eight (48) complaints related to illegal deposit-taking amounting to Rs. 40 million.

3. The Investigation culminated into the investigation report dated November 5, 2019 (Investigation Report), which highlighted that an individual named Faisal Kamran, not officially associated with the Company, was actively involved in dealings with the Company's clients and unauthorized trading. The Investigation Report highlighted that Faisal Kamran introduced 52 clients to the Company, conducted trades on their behalf, and manipulated their accounts, resulting in excessive commission charges of Rs. 24.16 million which constitute 57% of the clients' total investments. The Investigation Report further stated that the Company failed to implement appropriate internal controls, did not ensure the segregation of client assets, and engaged in unauthorized trading practices, leading to significant investor losses. The Investigation Report also highlighted that the ex-CEO of the Company entered into a plea bargain and paid Rs. 16.731 million to NAB. The Investigation Report disclosed that amount paid through plea

bargain was provided by the Company and the same was reflected as a receivable from the ex-CEO, however, it was later written-off in the Annual Audited Accounts for the year 2021 without justification.

4. In view of the findings of the Investigation, the Commission issued a Show-Cause Notice dated April 19, 2019 (the SCN), to the Company and its Board of Directors, followed by an Addendum dated February 16, 2022, for violations of Sections 74 and 151 of the Act, read with Regulations 4(e) and 27 of the Regulations. Hearing opportunities were provided to the Appellants on May 02, 2019, May 13, 2019, June 12, 2019, August 7, 2019, June 18, 2020, August 20, 2020, June 27, 2022, February 2, 2023 and June 15, 2023. The written submissions were made by the Appellants on May 7, 2019, September 7, 2020, July 5, 2023, and June 20, 2023.The Respondent concluded the SCN proceedings and held that the Company and its Board of Directors failed to uphold regulatory standards and imposed an aggregate penalty of Rs. 10 million on the Company and its directors. The Respondent also cancelled the Company's license as a "Trading & Self-Clearing Broker" and asked the Company to continue as a "Trading Only" broker. The Respondent also disqualified the Appellants from serving as a director of any brokerage business for five years other than "Trading Only" brokers.

5. The Appellants challenged the Impugned Order, *inter alia*, on the grounds that Sections 150 and 159 of the Act permit penalties only against "licensed persons," whereas they, as individual directors, never held separate licences for securities brokerage. The Appellants contended that the legislative scheme draws a clear distinction between regulated entities (brokers and firms) and their officers, and that subjecting unlicensed directors to the same penal provisions undermines this structure. The Appellant further contended that by extending Sections 150 and 159 to individuals without license, the Respondent exceeded the statutory mandate and deprived the Appellants of the protection of due process afforded to licensed intermediaries.

6. The Appellants stated in the Appeal that the SCN was issued on April 19, 2019, whereas the Addendum in the matter was issued on February 16, 2022 after a lapse of almost thirty-two months and the final Order was passed on November 21, 2024, almost two years past the High Court's 60-day deadline issued vide judgement dated September 21, 2022 The Appellants contended that such protracted delays, coupled with repeated adjournments and non-compliance with the Sindh High Court's direction dated September 9, 2022 (the Direction), rendered the proceedings arbitrary and eroded their

ability to present timely rebuttals. The Appellants further submitted that this inordinate lapse violates the principles of fair play and natural justice.

7. The Appellants asserted that the plea-bargain payment of Rs. 16.731 million was made personally by Mr. Raj Kumar or through his relative, Jamna Devi Reena Kumari, via cheques in her name, and not by Axis Global Limited itself. The Appellants submitted that the Company's audited accounts merely recorded a receivable position and that no board resolution authorized advancing company funds for the plea bargain. The Appellants further argued that the conclusion that the Company "loaned" its own earnings to fund the plea bargain is based on a flawed reading of the financial statements.

8. The Appellants further emphasized that they proactively detected irregular trading in January 2016 and immediately alerted the Commission by email dated January 09, 2016, subsequently filing an FIA complaint dated January 14, 2016 against the introducer, Faisal Kamran. The Appellants contended that these actions demonstrate their commitment to market integrity, therefore, penalizing them for uncovering the wrongdoing is tantamount to punishing the whistle-blower rather than the perpetrator. The Appellants further submitted that this conduct should be treated as a mitigating factor and speaks directly against any finding of bad faith or deliberate governance failure. The Appellants further maintained that they fully implemented the Commission's non-binding guidance dated January 13, 2016 by publishing public notices, sending emails and SMS alerts to clients, and advising against cash payments, as evidenced by the Annexure D (a USB containing emails and text messages) of the Appeal. The Appellants further argued that these steps go beyond mere samples and showed concrete efforts to safeguard client assets once alerted to potential scams.

9. The Appellants pointed to a detailed, seven-step complaint-handling protocol – registration, initial review, investigation, resolution, implementation, follow-up, and periodic auditing. The Appellants stressed that this system was functioning before any regulatory involvement and was precisely how they uncovered the fraud. The Appellants further argued that to discredit these established procedures by the Respondent without any evidence is arbitrary and legally untenable.

10. The Appellants submited that the Impugned Order relied on alleged contraventions under Section 74(c), (k) & (m) of the Act and Regulation 4(e) of the Regulations, however, these provisions were not pleaded

in either the SCN or the Addendum. The Appellants contended that application of new legal provisions at the adjudication stage deprived them of fair notice and the opportunity to mount a defence.

11. The Appellants argued that the Impugned Order offered only generalized recitals of misconduct without case-specific analysis or a paragraph-wise rebuttal of their submissions, in breach of Section 24-A of the General Clauses Act, which requires reasoned administrative decisions. The Appellants further argued that the absence of clear reasoning undermines the legitimacy of the findings.

12. The Appellants submitted that the aggregate monetary penalty of Rs. 10 million and the forced transition from a "Trading & Self-Clearing Broker" to a "Trading-Only Broker" will effectively cripple the Company's financing, risk-management, and settlement operations. The Appellants argued that no equitable principle justified imposing such drastic measures for non-violent financial lapses, especially where remedial actions have been taken and no client has reported losses post-2016.

13. The Appellants contended that the Pakistan Stock Exchange already adjudicated the same underlying facts including misuse of client funds and unauthorized introducers under its own rulebook and imposed penalties, meaning the Respondent's parallel enforcement constitutes 'double jeopardy' across separate regulatory regimes.

14. Finally, the Appellants contended that the sweeping restrictions on their ability to conduct brokerage activities violate their constitutional right to engage in lawful trade and business, as envisaged by Article 18, and are disproportionate to any legitimate regulatory aim.

15. The Respondent vehemently denied the contentions of the Appellants and submitted that Section 159(5) of the Act empowers the Commission to impose penalties on "any person" who contravenes the Act, rules, or regulations, regardless of licensure status. The Respondent further submitted that, in this way, directors and officers fall within the statutory definition and may be held personally liable for corporate defaults.

16. The Respondent further pointed to the Company's own audited financial statements (years 2019–2021), which recorded Rs. 16.731 million as receivable from the ex-CEO and then written-off without any

reason mentioned, together with pay-orders issued to Jamna Devi, as incontrovertible proof that the Company financed the plea bargain.

17. The Respondent acknowledged that the Company reported initial irregularities, however, unauthorized trading, failure to segregate client assets, and excessive commissions – demonstrated systemic governance failures for which the Board and the Company remains responsible. The Respondent submitted that the Company furnished only template SMS and email, and failed to publish the week-long quantum notice with bank account details or send individualized written cautions against cash payments, as expressly required by the Commission's guidance dated January 13, 2016. The Respondent further submitted that following the conclusion of the investigation dated November 05, 2019, the Addendum lawfully supplemented the SCN with additional breaches uncovered during the probe, thereby, staying within the Respondent's adjudicative powers.

18. In response to the argument of the Appellants that the impugned order was not a speaking order, the Respondent asserted that paragraphs 8–10 of the Impugned Order meticulously addressed each of the Appellants' contentions, recited relevant findings, and applied statutory provisions, satisfying the requirement under Section 24-A for a reasoned and transparent decision. The Respondent further submitted that given the magnitude of investor harm (misappropriation of over Rs. 40 million) and the Board's dereliction of fiduciary duties, the penalty quantum and conversion to "Trading-Only" status are proportionate and necessary safeguards to restore market confidence.

19. In response to the argument of the Appellants regarding 'double jeopardy', the Respondent emphasized that PSX sanctions under its own regulations do not circumscribe the Commission's separate statutory mandate under the Securities Act and Broker Regulations, and each regulator may independently enforce compliance.

20. The Bench has carefully examined the arguments advanced by both parties, the provisions of law under consideration, and the material placed on record. The Bench finds no merit in the Appellants' contention that Sections 150 and 159 of the Securities Act, 2015 apply only to corporate license-holders. The Bench has no doubt that Section 159(5) expressly empowers the Commission to impose monetary penalties on "any person" who contravenes the Act, its rules or regulations. The Bench notes that the directors and officers are "persons" under the Act, and their fiduciary responsibility to ensure compliance with

statutory standards is well recognized in two famous case laws (*N. Narayanan v. SEBI*; *Crown Prosecution Service v. Aquila Advisory Ltd.*). The Bench further notes that the notion that only the broker-entity, and not its board members, can be penalized undermines the statutory scheme and would permit officers to sidestep accountability.

21. As regards the contention of the Appellant that the Respondent failed to comply with the direction of the High Court to conclude the proceedings within a stipulated period, is a misconceived notion because the Direction was directory in nature and as soon as the procedural requirements were completed, the Respondent had passed the Impugned Order. Moreover, the Appellants had neither enforced it through legal proceedings nor the Appellants have agitated this matter before the Bench during the course of hearing, however, the bench finds it appropriate to address this aspect to demonstrate that the Commission understands and values the binding nature of constitutional courts' decisions, therefore, one may not infer that it has not complied with the order passed by the Sindh High Court. Nevertheless, for the sake of completeness, the Bench further observes that even if the order has been passed after lapse of the Direction, it does not, by itself, vitiate the legality of the adjudication undertaken by the Respondent. The Bench notes that the record reflects that ample opportunities of hearing were afforded to the Appellants, multiple written submissions were entertained, and the principles of natural justice were duly observed.

22. The Bench accepts the Respondent's documentary evidence – specifically, the audited financial statements for FY 2019–21of the Company showing Rs. 16.731 million as "receivable from ex-CEO" and subsequent write-off, coupled with pay-orders issued in the name of Jamna Devi Reena Kumari – as proof that Company funds were advanced to facilitate the plea bargain. The Bench holds that the Appellants' insistence that the payment was purely personal or familial lacks corroboration in accounting records.

23. The Bench acknowledges that the Appellants informed the Commission and FIA in January 2016, however, unauthorized trading, failure to segregate client assets, and excessive commissions highlights serious systemic governance failures over an extended period, therefore, the Appellants are liable to penal consequences. The Bench further notes that whistle-blowing does not absolve the directors of their ongoing duty to supervise and control corporate affairs.

24. The Bench notes that while template emails and text messages were placed on record, no evidence was produced of a week-long public quantum notice containing bank details, nor of individualized letters or emails warning clients against cash payments. The Bench holds that the Commission's guidance dated January 13, 2016 was non-binding in nature but clearly aimed at protecting investors; partial compliance with samples falls short of the proactive, client-specific measures enjoined.

25. The Bench notes that the Appellants' invocation of a six-step complaint-handling process is not borne out by the record, which shows unresolved client grievances persisting well beyond the thirty-day regulatory threshold and only addressed after law-enforcement intervention. The Bench further notes that the mere existence of a documented procedure does not establish its effective operation.

26. The Bench is of the view that following the conclusion of the Section 139 investigation dated November 05, 2019, the Respondent was authorized to issue an Addendum to the SCN dated February 16, 2022, incorporating fresh findings of contraventions discovered during the probe. The Bench holds that this practice is consistent with administrative fairness so long as the Appellants had notice and opportunity to respond, which occurred here through written replies and hearings.

27. The Bench is of the considered view that the penalties imposed by the PSX and the Commission arise under distinct legal frameworks and serve different regulatory purposes. The actions taken by each regulator are independent in nature and are based on separate statutory mandates. In support of this view, the Bench places reliance on the judgment of the Hon'ble Supreme Court reported as *PLD 2024 SC 795*, wherein it was held:

> *"Basically, this means that the case has to be same as the one already resulted in a conviction but if the proceedings are different in substance and law then it will not be a case of double jeopardy."*

Applying this principle, the Bench finds that the regulatory proceedings initiated by the Commission under the Act and the Regulations are materially different in law and substance from the disciplinary measures undertaken by PSX under its own regulations. Accordingly, the doctrine of 'double jeopardy' is not attracted in the present case.

28. In view of the foregoing, we hereby *uphold* the Impugned Order. Accordingly, the Appeals are dismissed, without any order as to cost.

(Zeeshan Rehman Khattak)
Commissioner

(Akif Saeed)
Chairman/ Commissioner

Announced on: 06 MAY 2025