



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
Adjudication Department

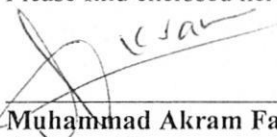
No. 2(139)SMD/ADJ/2019

October 18, 2019

C&K Management Associates (Pvt.) Ltd
Through its Chief Executive Officer,
Room# 404, Trade Tower,
Abdullah Haroon Road,
Near New Metropole Hotel,
Karachi

SUBJECT: Order in Respect of Show Cause Notice dated September 06,2019 Bearing Number No. 2(139)SMD/ADJ/2019

Please find enclosed herewith a copy of order in the title matter for your record and necessary action.



Muhammad Akram Farooka
Assistant Director



Securities and Exchange Commission of Pakistan
Securities Market Division

Through Courier

Before the Commissioner (SMD)

In the matter of Show Cause Notice issued to C&K Management Associates (Pvt.) Ltd

Date of Hearing

September 17, 2019

Present at the Hearing

Representing C&K Management Associates
(Pvt.) Ltd

i. Mr. Muhammad Ali
ii. Mr. S.Ahsan Ali Shah (Authorized
Representatives)

ORDER

This Order shall dispose of the proceedings initiated pursuant to Show Cause Notice (the "SCN") No. 2(139)SMD/ADJ/2019 dated September 6, 2019, issued to M/s C&K Management Associates (Pvt.) Ltd (the "Respondent") by the Securities and Exchange Commission of Pakistan (the "Commission").

2. Brief facts of the case are that the Respondent was registered as Balloter and Transfer agent under the Balloters and Transfer Agents Rules, 2015 ("Rules") (now repealed). Share Registrar & Balloters, Regulations, 2017 (the "Regulations") were promulgated on January 11, 2017. Regulation 3 of the Regulations requires that a person registered as share registrar & balloters agent (the "SRB") under the Rules, prior to coming into force of the Regulations shall be deemed to be licensed as SRB under the Securities Act, 2015 ("Act") and the Regulations till the time its existing certificate of registration remains valid. The existing certificate of registration of Respondent expired on November 15, 2018. However, no application for grant of license was received until August 5, 2019. The Respondent prima facie, performed the functions of SRB after expiry of its license in contravention of section 64 of the Act and regulation 3 of the Regulations attracting provisions of section 159 of the Act.

3. Further, the Respondent was required to enhance its paid up capital to three million rupees by June 30, 2018 as per the requirement of regulation 4 of the Regulations. However, the Respondent completed the requisite formalities for increasing the paid up capital by July 31, 2019, thereby, failed to comply with regulation 4 of the Regulations by June 30, 2018 attracting provisions of section 150 of the Act.

4. It appeared from the preceding that the Respondent prima facie acted in contravention of the Act and regulations. Accordingly, the Commission took cognizance of the aforementioned facts and served the SCN requiring the Respondent to explain its stance in person on September 17, 2019. The Respondent submitted its response through its Authorized Representatives vide letter dated September 16, 2019 reproduced hereunder:

"It is a matter of record that our client has a good track record and is a law abiding company. Our client was issued the certificate of Registration to act as a Balloter and Transfer Agent on 16th of November 2015.





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- ii. *It is clarified that our client has not willfully, deliberately and/or intentionally delayed the application for license renewal or the enhancement of paid up capital. As such, not a single element of mens rea is applicable to our client. Further, our client received the first and only reminder from the concerned department of SECP vide letter dated July 1st, 2019 with regards to license renewal application and enhancement of paid-up capital (collectively referred to as the "Application"). Our client duly responded vide letter dated July 4th, 2019 and took the requisite steps to fulfill the requirements of the application.*
- iii. *We would like to bring to your knowledge that the learned Deputy Director (PRDD) through a letter dated July 29th, 2019 provided time to our client till August 6th, 2019 to furnish the application. That it is pertinent to mention here that our client duly furnished the application on August 5th, 2019 which was well within the stipulated time. Therefore, there is no basis for any penal action against our client.*
- iv. *The SCN refers to section 64 read with section 150(2) and 159(3) of the Act stating that there was delay of 240 days on the part of our client, however, as per the reported judgment, (2015 CLD 649), a delay of 583 days was condoned by SECP. In light of the said judgment it is requested that our client be condoned for delay in filing for renewal of license and enhancement of paid-up capital.*
- v. *It is fundamental conception of Company Law that where a warning is enough to warn a legal and/or natural person (the "entity"), then the warning is given, whereas, in our client's case there may have been a delay but there is not an iota of a doubt that our client is law abiding and as expressed in plethora of citations of Company Law, that the track record of the entity in question is always considered and given strong weightage. As such, it is requested that due leniency be shown to our client (reliance is placed upon 2017 CLD 1728). Further, it is also stated that if the company has satisfactory compliance history, the same shall be taken as mitigating factor (reliance is placed upon 2018 CLD 1031).*
- vi. *As stated in aforementioned paragraph (ii), the concerned department of SECP issued only a single reminder to our client with regards to the application. It is a principal of law and justice that at least a couple of reminders shall be sent in good faith so that the deliberation and willfulness is proved which is absent in our client's case. As such, it is humbly prayed that our client shall be given a stern warning without any penalty.*
- vii. *That it is also stated based on stare decises as given in various judgments involving the SECP, that when a company is ready to comply with all the procedures subsequently, then this should be taken as a ground for leniency. In one of the judgments, the imposed penalty was converted to warning on this very aspect. (2017 CLD 1715). Further, in another case (2018 CLD 1211) penalty of PKR 100,000/- was condoned and a lenient view was taken based on assurance given by the company to be compliant in future.*
- viii. *It is also pertinent to mention that subsequent compliance was duly made by our client and as such lenient view shall be taken. This is further supported by the case (2018 CLD 44).*
- ix. *Last but not the least in another case paid up capital was enhanced through fictitious transactions, which is a serious offence. SECP could have imposed a penalty, however, SECP raking into consideration that the company followed and complied with the requirements, issued a stern warning that the company should not conduct such act in the future (2014 CLD 686)."*





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5. The Respondent appeared before the undersigned on the given date and time through Mr. Muhammad Ali and Mr. S. Ahsan Ali Shah, hereinafter, (the “**Authorized Representatives**”) and reiterated the written submissions and requested to take lenient view of the matter.

6. I have examined the written as well as oral submissions of the Respondent and its Authorized Representatives. It is an established and admitted fact that neither application for grant of license nor increase in paid up capital was made within the stipulated period. The Respondent, however, has placed reliance on a letter of Deputy Director (PRDD-SECP) dated July 29, 2019, claiming it was provided time till August 6, 2019 to furnish the application for grant of license. The said letter is part of the correspondence initiated by SECP regarding status of its license. In this context, list of clients to whom the Respondent had provided services during the period it did not have a license was also sought. Given that the Respondent informed that the list of client has remained unchanged established that the Respondent continued to provide SRB services during the period in which it did not have a license. The said letter was written to caution the Respondent from continued default on its part and therefore, same cannot be used as a shield against the statutory requirement.

7. In view of the foregoing, contraventions of the provisions of law are established. Therefore, in terms of powers conferred under section 150 and 159 of the Act, a penalty of **Rs. 25,000/- (Rupees twenty five thousand)** is hereby imposed on the Respondent.

8. This order is issued without prejudice to any other action that the Commission may initiate against the Respondent in accordance with the law on the matter subsequently investigated or otherwise brought to the knowledge of the Commission.




Shauzab Ali
Commissioner (SMD)

Announced on: October 16, 2019
Islamabad