



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I  
Adjudication Division

Through Courier

Before the Executive Director

In the matter of Show Cause Notice issued to M/s. Ilyas Saeed Associated (Pvt.) Ltd.

Date of Hearing

February 17, 2020

Present at the Hearing

Representing Ilyas Saeed Associated (Pvt.) i. Mr. Imran Ilyas  
Limited (Chief Executive Officer)

## ORDER

This Order shall dispose of the proceedings initiated pursuant to Show Cause Notice (the "SCN") No. 2(189)SMD/ADJ-1/2019/83 dated January 27, 2020, issued to M/s Ilyas Saeed Associated (Pvt.) Limited (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was registered as Balloter and Transfer agent under the Balloters and Transfer Agents Rules, 2015 (the "Rules") (now repealed).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 (the "Act") and the Regulations till the time its existing certificate of registration remains valid. The existing certificate of registration of Respondent expired on April 7, 2019. The Respondent applied for renewal of license on September 30, 2019 i.e. after lapse of almost 5 months. 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 initiated the requisite formalities for increasing the paid up capital in June 30, 2019, thereby, failed to comply with regulation 4 of the Regulations by June 30, 2018 attracting provisions of section 150 of the Act.





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4. 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 February 17, 2020.

5. In response to the SCN, the Respondent vide its letter dated January 28, 2020 submitted reply to the SCN, which is reproduced below:

*"1. With respect to your statement that our License to act as Share Registrar and Balloters expired on April 07, 2019, we may humbly state that Regulation 3 of the Share Registrar & Balloters Regulations, 2017 provides as follows:*

*"Provided that a person registered as share registrar and balloter under the Balloters and Transfer Agents Rules, 2015, prior to coming into force of these regulations, shall be deemed to be licensed as a share registrar and balloter under the Act and these Regulations till the time its existing certificate of registration remains valid. "*

*A mere reading of the above suggests that the license granted under the Repealed Regulations shall be deemed to have been issued under the New Regulations. As the license was issued for a period of three years thus, we were under the impression that the same shall hold good and is required to be renewed after completion of three years from the date of the now Share Registrar and Balloters Regulations, 2017 being came into force. That is to say that, we were under the impression that the License was due to be renewed by January 10, 2020.*

*However, as soon as the expiry of the same was pointed out by the SMD, SECP, we realized that it was merely an oversight/ misinterpretation on our part and we initiated the process of renewal as suggested by the SMD, SECP, forthwith. It is just an oversight I misunderstanding on our part and the same may kindly be condoned.*

*2. With respect to your statement that we applied for renewal of license on September 30, 2019, we may inform you that we initiated the process of renewal as soon as we came to know of the expiry of the license. In this regard, certain approval from SECP was required which took a long time. Correspondence with the concerned officials of SMD, SECP is available on record which shows that we kept the concerned quarters well informed of the reasons for delay which were beyond our reasonable control.*

*At the end, we applied for renewal of license on August 30, 2019. Subsequently, we were again asked to initiate the process of license afresh. In response thereto, we again initiated the process afresh to obtain license under the Regulations and the same was then submitted.*

*As the process was initiated forthwith but was delayed due to circumstances beyond our control thus, the delay in submission of application for renewal may kindly be condoned.*

*3. As for increase in capital by June 30, 2018, we may respectfully state that Proviso to Regulation 4 of the Regulations clearly states 'if required'. We understand that as the increase in capital was not required in our case thus, the said Regulation shall come into force at the*





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time of renewal of license. The process of increase in capital was initiated forthwith when the mistake was pointed out by SMD, SECP. Again, it may be misinterpretation on our part and the same is also regretted.

4. As for imposition of penalty under section 150(2) of the Act, we may humbly submit that the penalty may be imposed in case of 'misconduct' and not for 'inadvertent mistake'. It is an established principle of law that to impose penalty, mensria and actusria both need to be present. That is to say that, in order to impose penalty, intention to do wrong and willfully doing wrong both need to be there. However, in our case, none of the two prerequisites are present. It was an inadvertent mistake which is deeply regretted.

5. As for penal action under section 159(3) of the Act, we may inform you that in order to impose penalty, default under all the three sections i.e. section 3 and section 22 and subsection (1) of section 64 needs to be there. The word used in between the sections is 'AND' and not 'OR'. Thus, default under all the three sections may attract penalty under section 159(3). That, again, is dependent on intention to do wrong and willfully doing wrong. Without prejudice to the legal position as aforesaid, as the act was committed inadvertently and the same is deeply regretted thus, the penal provisions may kindly not be invoked.

6. Section 153 of the Act permits continuation of the operations even in case of suspension and / or cancellation of license where the arrangement has been entered into before such cancellation and / or suspension. As the arrangement to provide such services was entered into long before, thus, the same were kept on being provided.

7. Furthermore, we are providing services to only one Listed Company on a very small remuneration and did not enter into any new agreement since the expiry of our License. No material services have been provided to the client such as declaration of dividend, closure of books, right issue, bonus issue and / or transfer of major shares during this period. No new client has been solicited during this period as well.

In the end, we would like to put on record that the delay is deeply regretted yet the same is inadvertent and is not a willful act on our part. Furthermore, this delay has not caused any loss to anybody nor has earned any benefit for us. We, hereby, undertake that we shall comply with the statutory requirements within the stipulated period of time in future. You are, therefore, requested to kindly condon the inadvertent mistake and withdraw your show cause notice without any adverse inference."

6. The Respondent was accorded an opportunity of personal hearing on February 17, 2020. The hearing was attended by Mr. Imran Ilyas (Chief Executive Officer) as Authorized Representative. During the hearing proceedings, the Authorized Representatives reiterated the argument as submitted in response to the SCN. Furthermore, the Authorized Representative requested to take lenient view of





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the matter. Respondent was asked to provide the detail of income derived by providing services of SRB after the expiry of certificate of registration granted under repealed Rules.

6. The Authorized Representatives informed that Respondent is charging a fee of Rs 150,000 per annum from its client.

7. I have examined the written as well as oral submissions of the Respondent and its Authorized Representative. I observed as under:

- i. The Respondent was registered as SRB under the repealed Rules. The certificate of renewal of registration was issued to the Respondent under the repealed Rules on April 8, 2016 and was valid till April 7, 2019.
- ii. The Regulation 3 of Regulations states as follows:

*"3. Prohibition. — No person shall act or perform the functions of a share registrar and balloter unless such person is licensed as a share registrar and balloter by the Commission under these regulations:*

*Provided that a person registered as a share registrar and balloter under the Balloters and Transfer Agents Rules, 2015, prior to coming into force of these regulations, shall be deemed to be licensed as a share registrar and balloter under the Act and these Regulations till the time its existing certificate of registration remains valid. The share registrar and balloter shall obtain license under the Act and these Regulations upon expiry of its certificate of registrations granted under the Balloters and Transfer Agents Rules, 2015.*

*Provided further that existing share registrar and balloter shall comply with the requirements of these regulations within a period of one year from the date of coming into force of these regulations.*

*(Underlined for emphasis)*

- iii. The Share Registrar and Balloters are regulated activities under the Section 63(a) of the Act. Section 64 of the Act deals with licensing requirement for regulated securities activities which states as follows:

*"64. Licensing Requirement.- (1) No person shall carry on a regulated securities activity or purport to do so, unless such person is licensed by the Commission under this Act and operates in accordance with such licence."*

*(Underlined for emphasis)*





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- iv. Subsequent to promulgation of Act, the Regulations were made under the Act to regulate the activity of SRB.
- v. In view of above mentioned provisions of regulatory framework, I am of the considered view that in terms of Regulation 3 of the Regulations Respondent was deemed licensed as SRB under the Act and the Regulations till April 7, 2019 i.e the time till the validity of certification of registration issued under repealed Rules. Since, the Respondent was providing a services as SRB, a regulated activity, therefore it was required to adhere the regulatory framework framed under the Act and comply with the requirements of Regulations 3 of the Regulations.
- vi. It is evident from the available record that Respondent has failed to comply the requirement of Regulations 3 of the Regulations immediately after April 7, 2019 i.e date of expiry of certificate of renewal of registration issued to the Respondent under the repealed Rules. In view of aforesaid Respondent has contravened Regulations 3 of the Regulations.
- vii. As per the record, the Commission vide its letter dated July 1, 2019 draw the attention of Respondent towards Regulation 3 of the Regulations promulgated on January 11, 2017 and ask Respondent to apply for the fresh grant of license as per new Regulatory framework. Furthermore, Respondent was also asked to furnish the compliance status with regard to Regulation 4(c) of the Regulations i.e meeting paid up capital requirement of Rupees 3 million. Here, following needs to be noticed that
- a. after April 7, 2019 i.e date of expiry of certificate of renewal of registration issued to the Respondent under the repealed Rules, Respondent continued to provide services as SRB in violation of Section 64 of the Act and Regulation 3 of the Regulations.
- b. the Regulations were promulgated on January 11, 2017 and as per the proviso of Regulation 3, existing share registrar and balloter were required to comply with the requirements of these regulations within a period of one year from the date of coming into force of these regulations. The Respondent was under statutory obligation to comply Regulation 4(c) of the Regulations i.e meeting paid up capital requirement of Rupees 3 million by June 30, 2018 as stipulated in the Regulations.
- viii. In response to the Commission's letter referred above, Respondent vide its letter dated July 08, 2019 submitted that the application for renewal shall be submitted after the increase in capital. Moreover, the Respondent also admitted in the same letter that it is providing services one listed company. Subsequently, Respondent applied for license to act as SRB vide its application dated September 30, 2019 under the Regulations.







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- ix. The contention of the Respondent that the previous certificate of registration issued under repealed Rules was issued for a period of three years and on account of deemed licensed status under the Act and the Regulation made thereunder, Respondent was of the impression that the existing certificate of registration will be required to be renewed after completion of three years (by January 10, 2020) from the date of the notification of Regulations, is not tenable as proviso of the Regulation 3 & Regulation 6(4) of the Regulations provides clarity on that issue. The relevant provision of the law are reproduced hereunder for reference :

*"3. Prohibition. — No person shall act or perform the functions of a share registrar and balloter unless such person is licensed as a share registrar and balloter by the Commission under these regulations:*

*... ..*

*... ..*

*... ..*

*The share registrar and balloter shall obtain license under the Act and these Regulations upon expiry of its certificate of registrations granted under the Balloters and Transfer Agents Rules, 2015."*

*6. Grant of license. —*

*(4) The license shall remain valid for a period of one year from the date of its grant.*

*(Underlined for emphasis)*

- x. It needs to be understand that Commission is not under any obligation to send reminder(s) to Respondent for its expired registration and it is in fact statutory obligation of Respondent to adhere the applicable regulatory framework and the timeline provided in the regulatory statute.
- xi. With regard to compliance of Regulation 4(c) of the Regulation, the Respondent contented that Respondent was of the view that the compliance to that provision is need specific as proviso to the Regulation 4 of the Regulation is qualified by a phrase of "if required". Respondent further submitted that the process of increase was only initiated after Commission pointed out the default. The argument is not defensible at all as the proviso of Regulation 4(c) is meant for SRB registered under the repealed Rules and having paid capital less than 3 million. The phrase "if required" is also reflecting the same.
- xii. As per Section 150(5)(a) of the Act "misconduct" means a contravention of any provision of this Act, the rules, regulations made by the Commission or regulations made under this Act.
- xiii. It is evident that from above that there was a negligence on the part of Respondent with regard to understanding of applicable regulatory framework. A regulated entity is expected to be a





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more disciplined and compliant to the applicable regulatory framework. However, the casual approach and negligence towards a regulated role was depicted by the Respondent in the instant case which also reflects that Respondent lacks in compliance culture.

8. In view of the foregoing, contraventions of the provisions of law are evident and in my opinion,

- a) Respondent has contravened the Section 64 of the Act and Regulation 3 of the Regulation, by providing services of SRB without a valid license and therefore, liable to penalty as provided in Section 159(3).
- b) Respondent has contravened the Regulation 4(c) of the Regulation, consequently is guilty of "misconduct" as defined in Section 150(5)(a) of the Act and therefore, liable to penalty as provided in Section 150(2).

9. Based on the aforesaid, I hereby impose the following penalties on the Respondent:

- a) a penalty of Rs 400,000/- (Rupees four hundred thousand only) under Section 159(3) of the Act for contravention of Section 64 of the Act;
- b) a penalty of Rs 100,000/- (Rupees one hundred thousand only) under Section 150(2) of the Act for guilty of misconduct.

10. The Respondent is directed to deposit the aforesaid penalties in the account of the Commission being maintained in the designated branches of MCB Bank Limited within 30 days of date this Order and furnish the original deposit challan to this Office.

11. 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.



(Ali Azeem Ikram)

Executive Director (Adjudication Department-1)

**Announced on** February, 19, 2020  
Islamabad