



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan, Director/Head of Department (Adjudication-I)

In the matter of

VIS Credit Rating Company Limited

Show Cause Notice No. & Issue Date:	No.1(05)SMD/Adj-1/VIS/2019-1026 June 20, 2023
Date of Hearing:	August 09, 2023
Present at the Hearing: Representing the Respondent	(i) Mr. Ijaz Ahmed (ii) Mr. Sarfraz Ahmed (Authorized Representatives)

ORDER

UNDER SECTION 150(2) & (5) OF THE SECURITIES ACT, 2015 READ WITH REGULATION 10(1)(a) OF THE CREDIT RATING COMPANIES REGULATIONS, 2016

This Order shall dispose of the proceedings initiated against VIS Credit Rating Company Limited **(the Company and/or the Respondent)** through Show Cause Notice No.1(05)SMD/Adj-1/VIS/2019-1026 dated June 20, 2023 **(the SCN)** for its alleged failure to comply with the requirements of Section 150(2) & (5) of the Securities Act, 2015 **(the Act)** read with Regulation 10(1)a of the Credit Rating Companies Regulations, 2016 **(the Regulations)**.

2. The Company was incorporated as an unlisted company on March 31, 1997. On February 15, 2019 the name of the Company was changed from JCR-VIS Credit Rating Company Limited to the Company.

3. The principal activity of the Company is to provide credit rating services. M/s. Vital Information Services (Pvt.) Limited (VISPL) is the parent company, which owns 82.50% of the Company's shareholding, however, the VISPL does not fall under the list of eligible companies or institutions to acquire or hold shareholding of a credit rating company, which, *prima facie*, constitutes a violation of Regulation 10(1)(a) of the Regulations.

4. In response to a query in the aforesaid matter, the Company has submitted that VISPL is qualified under Regulation 10(1)(a) of the Regulations because it has shareholding in the Company since inception and in past the Commission has not only issued the license of credit rating but also



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renewed it multiple times without any objection about non-compliance of Regulation 10(1)(a) of the Regulations.

5. The Company apparently failed to bring its shareholding structure in line with the requirements of Regulation 10(1)(a) of the Regulations, therefore, the abovementioned alleged violations attract the applicability of Regulation 10(1)(a) of the Regulations read with Section 150(2) & (5) of the Act. Keeping in view the aforesaid alleged violation, the SCN dated June 20, 2023 was issued to the Company.

6. In response to the SCN, Ijaz Ahmed & Associates submitted a response on behalf of the Client i.e. the Company vide letter dated July 18, 2023, which is reproduced as under:

“

Preliminary Submissions

1. *At the very outset it must be clarified that regulation of the Credit Rating Companies Regulations, 2016 ("2016 Regulations") has no application to the Respondent until any case the period specified in the aforesaid regulation has already expired. The Respondent has neither committed nor ever intended to commit any breach of regulation 10(1)(a) of 2016 Regulations or section 150(2) of the Securities Act, 2015 ("2015 Act").*

Background of the Respondent:

2. *The Respondent was incorporated in 1997 and was initially registered under the Credit Rating Companies Rules, 1995 ("1995 Rules") framed under the Securities & Exchange Ordinance, 1969. In the 1995 Rules, no specific shareholding structure was provided. The Respondent since its inception as a credit rating agency has remained licensed based on its majority shareholding by its parent company namely Vital Information Services (Private Limited) ("VISPL").*
3. *Copy of certificate of registration dated May 20, 1997 is enclosed as Annex A.*
4. *The Respondent continues to remain licensed under section 69 of the 2015 Act to carry out credit rating services which constitute "regulated securities activities" as provided in section 63(e) of the 2015 Act.*
5. *As submitted above, the Respondent was originally registered as a credit rating company under the 1995 Rules and was therefore providing such services when the 2015 Act and 2016 Regulations were promulgated.*
Regulation 3 of the 2016 Regulations recognised the existing credit rating agencies registered under 1995 Rules as licensed entities and required them to obtain a license by paying renewal fee. Regulation 3 provides as follows:

***"3. Prohibitions.-** (1) No person shall act as or perform the functions of a credit rating company unless such person is licensed by the Commission under these regulations and the credit rating company licensed under these regulations shall not carry out any other regulated activities as defined in section 65 of the Act:*

Provided that a credit rating company already registered under the Credit Rating Companies



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Rules, 1995 shall be required to obtain license under the Act within three months of coming into force of these regulation subject to payment of renewal fee as prescribed under these regulations: However, during the said three months existing credit rating company shall be deemed to be licensed as a credit rating company under these regulations.

Provided further that credit rating company registered under the Credit Rating Companies Rules, 1995 shall comply with all the requirements of these regulations within a period of one year from the date of coming into force of these regulations."

(emphasis added)

A bare perusal of the abovesaid regulation shows that for existing credit rating companies like the Respondent, there was no fresh licensing process and they were only required to pay the renewal fee. Accordingly, the Respondent was issued a license as a credit rating company December 31, 2016.

No contravention of Regulation 10(1)(a) of the 2016 Regulations.

6.

7. As submitted above, the Respondent was initially registered under the 1995 Rules and thereafter was deemed to be licensed under Regulation 3 of 2016 Regulations and the license issued to the Respondent on December 31, 2016 was in essence a renewal.

Without prejudice to the aforesaid, even if it is assumed that the Respondent had obtained its licence under 2016 Regulations on December 31, 2016, the period of three years ended on December 31, 2019. It is important to mention that the 25% shareholding requirement for three years that is being made the basis of the Show Cause Notice was introduced by SRO 1755(1)/2022 dated September 19, 2022, when the three-year period in respect of the Respondent had already lapsed. Therefore, it is submitted that the requirement under regulation 10(1)(a) is not applicable to the Respondent since such only applies for a period of three (3) years from the date of obtaining its license. In case of the Respondent, the period of three (3) years has already passed much before the year under inspection i.e. 2023. After three (3) years, credit rating company is not bound by the requirements under regulation 10(1)(a), and any entity or person can hold shareholding in a credit rating company, without any restrictions.

8. It is also important to mention that the 25% shareholding requirement that is being made the basis of the show cause notice was introduced in 2022 when the three-year period in respect of the Respondent had already lapsed. This requirement therefore cannot be applied retrospectively in order to penalise the Respondent breach of a requirement which did not exist at the relevant time.

9. The language of amended Regulation 10(1)(a) with 25% shareholding requirement is only prospective in nature as this does not contain any requirement for compliance by the existing companies and could not possibly have done so since both credit rating companies working in Pakistan have existed much before these Regulations came into effect.

10. Admittedly, VISPL has remained a major shareholder of the Respondent since its incorporation. All subsequent acquisition of shares has been with the approval of the Commission and the shareholding information has been submitted to the Commission on every renewal of the license.



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11. *Without prejudice the submission that the aforesaid requirement is not applicable to the Respondent as submitted above, regulation 10(1)(a) has at all material times allowed holding of shares by an individual determined to be fit and proper by the Commission. Mr Faheem Ahmed has been held to be fit and proper as a promoter of the Respondent as well as director and chief executive since its inception. He holds 96% shares of VISPL and even on this basis VISPL is a qualified shareholder.*
Commission's approval of shareholding of VISPL
12. *At the time of the original registration under 1995 Rules as well issuance of license dated December 31, 2016 to the Respondent, VISPL was the majority shareholder and this information have been repeatedly submitted to the Commission. Thus, it is submitted that granting of licence the Respondent, while being aware of the shareholding of VISPL shows that there was approval and satisfaction of the law, in view of the Commission.*
13. *As per regulation 6(4) of the 2016 Regulations, a credit rating company license is valid for a period of one (1) year, after which it is required to be renewed. The Respondent has regularly obtained renewal of its licence on an annual basis as provided under the 2016 Regulations. There has never been any objection from the Commission at the time of such annual renewals of the Respondent's license.*
Copies of renewed licenses for the years 2016 to 2023 are enclosed as Annexure B to B/7 Purposive Interpretation
14. *The right to do business is a fundamental right guaranteed under Article 18 and accordingly any regulation of such right has to have reasonable purpose and a rational nexus with such purpose.*
15. *The purpose and intention of shareholding requirements under regulation 10(1)(a) of the 2016 Regulations is to ensure that a credit rating agency has institutional support for an initial period of 3 years, which generally a formative period of any organization. The Respondent has been in the credit rating business for more than two decades and during this time has amply demonstrated that it has developed all the necessary expertise.....*
16. *The 2015 Act and the 2016 Regulations being of a regulatory nature, a purposive interpretation shall be adopted in interpreting the provisions of the same. A purposive interpretation is a method of statutory interpretation that requires going beyond the words of the legislation and giving effect to the intended purpose and objective of the legislators.*
17. *Reliance in this respect has been placed on the following cases*
i. JS Bank Limited Province of Punjab, (reported as 2021 SCMR 1617). The Honourable Supreme Court observed as follows:
"14. A purposive rather than a literal approach to interpretation was to be adopted while interpreting statutes. Any interpretation which advanced the purpose of the Act was to be preferred rather than an interpretation which defeated its objects"
(emphasis added)
- ii. Amin Fabrics Ltd, Kotri vs Commissioner, Aiwan-e-Mehmatkash, (reported as 1998 PLC(CS) 694). The Hon'ble High Court observed as follows:*
"16. A judge must impute to the parliament, an intention not to impose prohibition inconsistent with objects which the statute was designed to achieve though draftsmen might have mitted to



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incorporate in express words any reference to such intention. As such a title or preamble cannot override clear meaning of an enactment".

(emphasis added)

18. *Without prejudice to the submission that Regulation 10(1)(a) has no applicability to the Respondent, any requirement, restriction or condition will not be given effect, if it appears from the purposive interpretation of a statute, that the legislators did not intend to impose such restriction, requirement or condition. Regulation 10(1)(a) of the 2016 Regulations therefore, needs to be interpreted in light of the purpose i.e. that institutional support is available to a credit rating company in the initial formative years. VISPL as well as the Respondent have more than 25 years of experience in their respective fields of research and development and credit rating. This has been internationally recognised by the following:*
- (i) Respondent's Technical Affiliation Agreement with the International Islamic Rating Agency, which has been promoted by the Islamic Development Bank and is recognized by the Commission as an international credit rating agency;*
 - (ii) Respondent's equity participation in Credit Rating and Information Services Limited, a premier rating agency of Bangladesh licensed by the Bangladesh Securities and Exchange Commission;*
 - (iii) China's largest rating agency namely China Chengxin International Credit Rating Company Limited ("CCXI") has agreed to collaborate with the Respondent.*
19. *The amendments introduced in Regulation 10(1)(a) of 2016 Regulations by S.R.O. 1755(1)/2022 dated September 19, 2022 are curative in nature and meant to relax the more stringent requirements that were earlier imposed by this Regulation, which were not in line with the global norms. It would be disingenuous to assert that the Respondent's shareholding was compliant with the original Regulation 10(1)(a) and is non-compliant with the amended Regulation 10(1)(a). Subordinate legislation i.e. the 2016 Regulations, cannot go beyond the scope of the primary legislation i.e. the 2015 Act.*
20. *A license for a credit rating company, being a 'regulated securities activity' is granted under the provisions of sections 6 and of the 2015 Act. Sections 68 and 69 state all the requirements and conditions in respect of a license for a credit rating company. The requirements and conditions under sections 68 and 69 however, do not provide any requirement or condition with regard to any specific shareholding structure to be maintained by a credit rating company. It is therefore, submitted that, by imposing a condition as to the shareholding structure of a credit rating company under the 2016 Regulations, the 2016 Regulations, being subordinate legislation, have gone beyond the scope and ambit of the primary legislation i.e. the 2015 Act.*
21. *In the Act, with regard to licenses of clearing houses and depository companies, clear conditions have been laid out in relation to shareholding requirements. For clearing houses, the Act provides a certain percentage of shareholding must, be held by a list of institutions stated in the relevant section. Similarly, for depository companies, there a restriction on collective shareholding of the securities exchanges. Thus, it is submitted by the Respondent that if the legislators intended to impose any conditions on the shareholding structures of credit rating*



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companies, the same would have been provided by the provisions regarding regulated securities activities.

22. It is an established principle of law that subordinate legislation cannot go beyond the scope of primary legislation. Reliance in this regard is placed on the following cases:

i *Pakistan Telecommunications Company Ltd vs Pakistan Telecommunications Authority*, (reported as PLD 2015 Islamabad 184), it was held by the court that:

"9. Rules or regulations fall in the category known as delegated or subordinate legislation, and the authority empowered to make rules or regulations cannot go beyond the scope of the statute. No rule or regulation can be made inconsistent with the parent statute, and any such delegated legislation is void and inoperative to the extent of the inconsistency."

ii *Attock Petroleum Limited vs Notional Highway Authority* (reported as 2022 PTD 222), where it was held that:

"14. It is settled law that rules and regulations, being subordinate legislation cannot go beyond the ambit and scope of the parent statute. The mere fact that power has been conferred on the authority to make rules and regulations does not authorize framing of delegated legislation that is inconsistent with or repugnant to the parent act".

(emphasis added)

iii *Messrs Asio African Co (Pvt) Ltd and others vs Federation of Pakistan* (reported as 2019 PTD 1368), where it was held by the Sindh High Court that:

"14. Equally important is the contention of the learned counsel for the Petitioner that no subordinate legislation could take away powers granted by a substantive legislation could impose conditions if the same were not envisaged by the latter".

(emphasis added)

iv *Ghondhara Nissan Diesel Ltd vs Collector Large tax payers unit, Government of Pakistan* (reported as 2006 PTD 2066), where it was held that:

"No subordinate legislation can expand or restrict substantive provisions contained in the act. Any such attempt in this behalf shall be termed as conflicting to substantive provisions and shall, to such extent, have to give way to substantive provisions contained in the act."

(emphasis added)

23. In view of the abovementioned case law, it is submitted that the requirement imposed by the 2016 Regulations as to the shareholding structure, when no such requirement is present in the 2015 Act is going beyond the scope of the 2015 Act, which is not permissible.

PARA WISE REPLY

In view of the aforesaid background facts and preliminary submissions, para-wise reply on behalf of the Respondent is as follows:

24. The contents of paragraph 1 (i) of the Show Cause Notice are a matter of record and therefore, do not require any comments. The contents of paragraph 1(ii) are denied being based on misinterpretation of the legal provisions, except the shareholding of VISPL in the Respondent. As regards the contents of paragraph 1(iii) it is submitted that the Respondent has clarified that since the Commission has continually recognized the VISPL's shareholding by repeatedly renewing the Respondent's license as well as otherwise, therefore VISPL's shareholding is not a violation of regulation of 10(1)(a). In any case, the requirements of regulation 10(1)(a) are only



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applicable for a period three years of granting of licence. The Respondent was initially registered under the 1995 Rules and a renewed license was issued under 2016 Regulations in the year 2016. The period of three years had lapsed long before the year under inspection. The contents of the Preliminary Submission above are reiterated. Any adverse assertion is specifically denied.

25. *The contents of paragraph 2 of the Show Cause Notice are a reproduction of the statutory provisions and therefore, do not require any comments. It is, however, clarified that the Respondent had complied with all applicable provisions of the law. Any adverse assertion is specifically denied being based on misinterpretation of statutory provisions.*
26. *The contents of the paragraphs 3 and 4 of the Show Cause Notice are denied. The Respondent has not contravened the provisions of regulation 10(1)(a) of the Regulations and therefore, does not attract the penal provisions contained in Section 150(2) of the 2015 Act.*
27. *The contents of the paragraphs 5 to 11 of the Show Cause Notice are a matter of procedure and therefore, do not require any comments.
We trust that the aforesaid clarifies the matter and accordingly, the Show Cause Notice will be withdrawn against the Respondent. Otherwise, an opportunity hearing may very kindly be granted to the Respondent."*

7. In order to provide the Company an opportunity for personal representation, a hearing in the matter was fixed for August 09, 2023. The hearing was attended by Mr. Ijaz Ahmed and Mr. Sarfraz Ahmed as authorized representatives of the Company (the Representatives). During the hearing proceedings, the Representatives reiterated the arguments earlier submitted in the written response dated July 18, 2023.

8. Before I proceed with the merits of this case, it is appropriate to revert back to the following provisions of law which are applicable in this case:

Regulation 10(1)(a) of the Regulations

10. Restrictions on Credit Rating Companies. - (1) Shareholding requirement. - (a) At least twenty-five per cent (25%) shares of a credit rating company shall directly be held for a period of 3 years, from the date of obtaining the license under these regulations by:

(i) a financial institution as defined under clause 31 of sub-section (1) of section 2 of the Companies Act; or

(ii) an insurance company; or

(iii) a licensed securities exchange; or

(iv) a company licensed by the Commission to provide depository, clearing or settlement services in the securities market; or

(v) a foreign credit rating agency recognized by or under any law for the time being in force in the country of its incorporation; or

(vi) an institution as may be notified by the Commission from time to time; or



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- (vii) an individual, subject to approval of the Commission and meeting such fit and proper criteria as may be specified in these regulations; or
- (viii) university accredited/recognized by Higher Education Commission.
- (b) [Omitted] 2

Clause (31) of the Section (2) of the Companies Act, 2017

(31) "financial institution includes—

- (a) any company whether incorporated within or outside Pakistan which transacts the business of banking or any associated or ancillary business in Pakistan through its branches within or outside Pakistan and includes a government savings bank, but excludes the State Bank of Pakistan;
- (b) a modaraba or modaraba management company, leasing company, investment bank, venture capital company, financing company, asset management company and credit or investment institution, corporation or company; and
- (c) any company authorised by law to carry on any similar business, as the concerned Minister-in-Charge of the Federal Government may by notification in the official Gazette, specify;

Section 150(2) & (5) of the Act

(2) Subject to section 151, where a licensed person is or was at any time, guilty of misconduct, the Commission may make one or more of the following orders, separately or in addition to any power exercisable under clause (i), (ii) or (iii) of sub-section (1) that the licensed person shall pay to the Commission by way of penalty such sum,—

- (a) not exceeding fifty million rupees;
- (b) not exceeding the amount of any profit gained or loss avoided by the licensed person as a result of the misconduct in question;

(5) In this section "misconduct" means—

- (a) a contravention of any of the provisions of this Act, the rules, regulations made by the Commission or regulations made under this Act;
- (b) a contravention of any of the terms or conditions of a licence granted under this Act;
- (c) failure to comply with a direction of the Commission; or
- (d) an act or omission by a licensed person in relation to his activity which, in the opinion of the Commission, is or is likely to be prejudicial to the public interest, and the expression "guilty of misconduct" shall be construed accordingly.

9. I have gone through the facts of the case and considered the written as well as verbal submissions of the Representatives in the light of applicable law and available record, I have noted that:



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(a) After the promulgation of the Regulations on August 5, 2016, the Commission's Licensing Department granted the license to the Respondent with the following shareholders on December 31, 2016:

S#	Name	Shareholding
1	Japan credit rating agency (JCR)	15 %
2	Vital Information Services Private Limited (VISPL)	67.5%
3	PSX Limited	12.5%
4	ISE Tower REIT Management Co. Ltd	5%

In view of the above, at that time, in terms of Regulation 10(1)(b) of the Regulations, the existing credit rating companies were required to comply with Regulation 10(1)(a) and (b) of the Regulations if they wish to dispose-off their shareholding. The proviso of the relevant Regulation is reproduced below for reference: -

“Provided that the shareholders of existing credit rating company shall have to immediately comply with the requirements mentioned in sub clause (a) and (b) above if they wish to dispose-off their shareholding.”

The Commission's Licensing Department vide its letter dated December 26, 2017 had granted relaxation in the said matter for four years from November 23, 2017 to November 23, 2021. Moreover, the Commission's relevant Department granted relaxation to the Respondent under Regulation 25A of Regulations and allowed VISPL to continue holding its shareholding along with attached entitlements and the last relaxation was granted vide letter dated February 1, 2022 for six months reckoned from the date of the letter. The said relaxation expired on July 31, 2022.

(b) The Respondent's stance is that it had obtained its license under the Regulations on December 31, 2016 for three years ended on December 31, 2019. It is important to mention that the requirement to keep 25% shareholding for three years was made the part of the Regulations by SRO 1755(1)/2022 dated September 19, 2022, the aforesaid requirement was made the basis of the SCN, however, three-year period requirement with respect to the Respondent had already lapsed. In view thereof, the requirement under regulation 10(1)(a) is not applicable to the Respondent since it was applicable for three years from the date of obtaining its license and this period has expired much before the initiation of the proceedings against the Respondent, *i.e.* inspection 2023. Thereby it is evident from the perusal of relevant provisions and record that after three (3) years, a credit rating company is not bound by the requirements under Regulation 10(1)(a) of the Regulations, and any entity or person can hold shareholding in a credit rating company, without any restrictions.



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10. In view thereof, the proceedings initiated against the Respondent through the issuance of the SCN dated June 20, 2023 are hereby dropped and concluded without any adverse order.

11. This order is being issued without prejudice to any other action(s) that may be initiated/taken against the Respondent or its directors/officers responsible for the violations of the aforesaid provisions of the law, accordingly.

(Shahzad Afzal Khan)
Director\ Head of Department
(Adjudication Department-I)

Announced:

January 16, 2024
Islamabad