



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department- I

### Adjudication Division

ORDER	
Name of Company	Microcred Financial Services Limited
Show Cause Notice No. & Date:	No. SCD/ADJ-I/MFSL/147/2023-318 dated June 25, 2024
Respondents:	(i) Microcred Financial Services Limited (Respondent No. 1); (ii) Mr. Aqeel Hayat, Director/ CEO (Respondent No. 2); (iii) Ms. Liu Xiaorong, Director (Respondent No. 3); and (iv) Mr. Wu Wensheng, Director (Respondent No. 4)
Date(s) of Hearing(s):	(i) November 25, 2024; (ii) December 18, 2024; and (iii) January 06, 2025.
Case represented by:	(i) Mr. Aqeel Hayat, CEO; and (ii) Mr. Haroon Jan Baryalay, Advocate
Provision of law involved:	Section 282J(1) of the Companies Ordinance, 1984 for contravention of Section 282I(2), Section 282B(3) thereof, Rule 7(1)(da), Rule 7(1)(cd) of the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003 and Clause 3(3) of Circular 15 of 2022 dated December 27, 2022

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the “Commission”) through the Show Cause Notice dated June 25, 2024 (the SCN) against Microcred Financial Services Limited (the “Company”) and its Directors/ CEO, hereinafter collectively referred to as the “Respondents”, issued under Section 282 J (1) of the Companies Ordinance, 1984 (the “Ordinance”) for contravention of Sections 282I (2) and 282B (3) thereof, rules 7(1)(da) and rule 7(1)(cd) of the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003 (the “NBFC Rules”) and clause 3(3) of Circular 15 of 2022 dated December 27, 2022 (the “Circular”).

2. The brief facts of the case are that the Company was incorporated as a public unlisted company on July 07, 2022 under the Companies Act, 2017 (the “Act”) and licensed by the Commission on September 30, 2022, to undertake Investment Finance Services (“IFS”) as a Non-Banking Finance Company (“NBFC”) under the NBFC Rules and Non-Banking Finance Companies and Notified Entities Regulations, 2008 (the “NBFC Regulations”).

3. The Commission vide Inspection Order dated November 28, 2023 initiated onsite inspection under section 282I of the Companies Ordinance, 1984 (the “Ordinance”) and section 6A(2)(f) of Anti-Money Laundering Act, 2010 with a scope to check the status of compliance with the applicable regulatory framework, along with review of operational activities, governance, internal control environment, AML-CFT compliance. The following facts were revealed from the Inspection Report dated March 28, 2024:

- The Company did not provide the information requested by the Inspection Team vide email dated January 22, 2024, till the date of inspection report, contrary to the requirements prescribed under Section 282I (2) of the Ordinance;
- The Company failed to submit the required compliance status and accordingly its App. was removed from the white list and a ban was placed on further extension of loans vide email of the Commission dated August 02, 2023, directing the Company as under:

*“With reference to clause 6(6) of the Circular No. 15 of 2022 (the Circular), it is to inform you that Microcred Financial Services app namely Udharpaisa has failed to acquire App approval. Udharpaisa shall no longer be listed in under-evaluation category of the SECP app whitelist as the deadline for the app approval i.e. 31<sup>st</sup> July 2023 has expired”.*

- (iii) Further the Chief Executive Officer ("CEO") of the Company, in the instant case Respondent No. 2, while recording his statement before the inspection team on December 29, 2023, submitted that the lending operation of the Company was closed in July 2023, as NOC for app was revoked.
- (iv) It is however observed that disbursement of Rs. 5.7 million was made in October 2023 from Jazz cash account of the Company. This is also evident from the Jazz cash account statement of the Company that Rs. 5.68 million was disbursed from Company's Jazz cash account during the period from October 20, 2023 to October 23, 2023. This indicates that the Company disbursed loans to general public against the directions of the Commission and without approval by the Commission, contrary to the requirements prescribed under section 282B(3) of the Ordinance.
- (v) The Company neither maintains any website nor does it provide any updated information to the borrowers contrary to the requirements of clause 3(3) of the Circular;
- (vi) The Company, in terms of rule 7(1)(da) read with schedule 1 of the Rules, is required to furnish to the Commission its annual financial statements in accordance with the Ordinance (now the Act). Section 223(3) of the Act states that subject to the provision of sub-section (2), the first financial statement must be laid at some date not later than sixteen months from the date of incorporation of the company and subsequently once at least in every calendar year. The timeframe for submission of annual financial statements, in the case of the Company, expired on March 17, 2023.

The Inspection Team requested the Company vide IRM dated January 22, 2024 to provide the latest audited financial statements, however the Company failed to submit any response till the date of Inspection Report. Further, the record available with the Commission transpired that the said financial statements have not been filed by the Company, contrary to the requirements prescribed under rule 7(1) (da) of the NBFC Rules.

- (vii) The Company, being an entity established to undertake licensed activity, was required to appoint independent directors equal to one or one-third of its directors, whichever is higher, on its board. It was observed from Form 29 dated September 19, 2022 and September 12, 2023 that the Company has not appointed any independent director on its board contrary to the requirements prescribed under rule 7(1)(cd) of the NBFC Rules.

4. The aforesaid contraventions indicated that the Respondents, *prima facie*, contravened the provisions of Sections 282I(2) and 282B(3) of the Ordinance, rules 7(1)(da) and 7(1)(cd) of the NBFC Rules and clause 3(3) of the Circular, which attracts penal action as provided under Section 282J (1) of the Ordinance. For the sake of clear understanding, the same are reproduced as under:

**"The Ordinance:**

**282I. Inquiry by the Commission.-** (2) Notwithstanding anything contained in any other law for the time being in force where an enquiry or inspection under sub-section (1) has been ordered, every director, manager or other officer of the NBFC or the notified entity to which or to whose director, manager or other officer the enquiry or inspection relates and every other person who has had any dealing with such NBFC or the notified entity, its director, partner, manager or officer shall furnish such information in his custody or power or within his knowledge relating to, or having bearing on the subject-matter of the enquiry or inspection as the person conducting the enquiry or inspection may by notice in writing require.

**282B. Power to make Rules and regulations and issue directives, circulars, codes, guidelines, etc.-** (3) The Commission may issue such directives, circulars, codes, notifications, and guidelines as are necessary to carry out the purposes of Part VIIIA and the rules and regulations made thereunder.

**The NBFC Rules:**

**7. Conditions applicable to a NBFC.**(1) A NBFC shall,

(cd) appoint the directors in accordance with Schedule I, provided that the Commission shall be the final authority to determine the status of a director as independent or otherwise;

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(da) furnish to the Commission its quarterly and annual financial statements in accordance with Schedule I;

**Circular 15 of 2022 dated December 27, 2022:**

**3. Pricing, Policy, Credit Risk, Advertisements/ Publications.** – (3) A Digital Lender shall make available on its website, updated information regarding its lending products including complete terms and conditions. Any advertisement and publication, whether in textual, digital audio or visual form, in relation to the digital lending business of a Digital Lender, directly or through any other person, shall:

- a. be fair and reasonable and not contain misleading information;
- b. not use official logo of the Commission or any other government agency;
- c. contain full disclosure regarding loans on offer and applicable APR; and
- d. contains the Digital Lender's full corporate name and licensing status (including license no.) on its App, documentation, advertisement materials, and
- e. ensure to include its App name, web address, telephone hotline for handling complaints and a risk warning statement, prominently and easily legible in the written or visual part of the advertisement."

**Section 282 J of the Ordinance:**

**282 J: Penalty for failure, refusal to comply with, or contravention of any provision of this Part.**– (1) Notwithstanding anything contained in any other provision of this Ordinance, if a NBFC [or the notified entity] or its officers (including auditors) fails or refuses to comply with, or contravenes any provision contained in this Part or of any of the provisions of the rules [or regulations] made under section 282 B [or regulation, circular or directive or] any direction or order passed by the Commission under the provisions contained in this Part or knowingly and willfully authorizes or permits such failure, refusal or contravention, shall, in addition to any other liability under this Ordinance, be also punishable with fine the amount of which shall not exceed [fifty] million rupees:

Provided that if the failure, refusal, default, contravention is committed by NBFC [or the notified entity], every director, manager, or other officer [or person responsible for the conduct of its affairs] shall, unless he proves that the failure or contravention or default took place or committed without his knowledge, or that he exercised all diligence to prevent its commission, be deemed to be guilty of the offence.

5. Taking cognizance of the aforementioned non-compliance, a SCN was served upon the Respondents, requiring them to submit their written reply, as to why penal action as provided under sub-section (1) of Section 282J of the Ordinance, may not be taken against them for the aforementioned contraventions of the law.

6. In response to the SCN, Respondent No. 2 vide letter dated July 09, 2024, *inter-alia*, submitted as under:

- (i) The alleged violations relating to involvement in illegal disbursement of loans and failure to furnish the annual financial statements have already been adjudicated by the Commission through earlier orders dated March 27, 2024 and April 24, 2024, respectively. Accordingly the Commission may not initiate proceedings in the already adjudicated/ decided matters under the principle of double jeopardy, therefore the SCN is *mala fide* and erroneous, therefore, should be withdrawn.
- (ii) Legal provisions alleged in the SCN are not applicable as the Company is no longer a NBFC pursuant to the Order of the Commission dated March 27, 2024 whereby its IFS license was cancelled.
- (iii) Respondent No. 2 is not the CEO of the Company since November 30, 2023 pursuant to his resignation dated October 31, 2023, therefore, has no legal responsibility to furnish any information following the date of effectiveness of his resignation. However Respondent No. 2 cooperated with the Inspection Team and furnished all the information sought by it vide letter dated December 29, 2023 and emails dated January 02, 2024 and March 25, 2024.

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- (iv) Issuance of SCN to Respondent No. 2 following the date of effectiveness of his resignation as CEO is violation of his legal rights, *mala fide* and should be ceased with immediate effect.

7. In order to afford the Respondents an opportunity of personal representation, a hearing in the matter was fixed for November 25, 2024. The Respondent No. 1, 3 and 4 did not appear for the scheduled hearing. However Respondent No. 2 along with his legal representative Mr. Haroon Jan Baryalay, Advocate appeared, reiterated reply to SCN dated July 09, 2024 and, *inter-alia*, stated that:

- (i) Respondent No. 2 resigned as CEO/ directors on October 31, 2023 due to non-cooperation of sponsors/ major shareholders and after getting the information about illegal lending by the Company without its App enlisted as Whitelist. He also emailed the sponsors on such wrong doing.
- (ii) During the notice period, Respondent No. 2 issued a 500 pager compliance report of the Company.
- (iii) Khan Mustafa Saleemi was appointed by the Board through resolution made on July 25, 2022 and he also attended subsequent board meetings. It is the responsibility of the sponsors/ BoD, as a whole, to appoint independent directors and CEO alone cannot be made responsible for the non-compliance.
- (iv) Website was maintained and functional till Respondent No. 2 held the office of CEO. Further focus should be on significant issues rather than petty matters like website maintenance, specifically when post delisting of App, there is no lending activity.
- (v) Respondent No. 2 is not in receipt of letter of findings and Inspection Report.

8. In order to provide opportunity of personal representation and to meet the ends of justice, another opportunity was provided to remaining Respondents i.e. Respondent No. 1, 3 & 4 and hearing in the matter was fixed for December 18, 2024 through the hearing notice served at the registered office address of the Company. However, none of the said Respondents appeared at the scheduled hearings.

9. In order to conclude the matter, a final hearing was scheduled on January 06, 2025 with a clear advice that no further requests for adjournments will be allowed and in the case of non-appearance an ex-parte order shall be passed. However, unfortunately, once again no one joined the proceedings.

10. I have examined the facts of the case in light of applicable provisions of law and have given due consideration to written as well as verbal submissions and arguments of the Respondent No. 2 and his representative. At this point it is important to note the history of other adjudication proceedings against the Respondents whereby the Commission vide Orders dated:

- (i) March 26, 2024 established the default of, amongst others, Section 282B (3) of the Ordinance and concluded the matter by imposing an aggregate fine of Rs. 4.5 million on the Company and its BoD and also cancelled the license of the Company with immediate effect.
- (ii) April 24, 2024 established the default of rule 7(1)(da) of the NBFC Rules, 2003 and imposed a fine of Rs. 1 million on the Company.

11. In view thereof, I am of the considered view that the Respondents were required to comply with the requirements of aforesaid provisions of law and observe that:

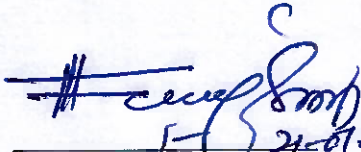
- (i) The argument that Respondent No. 2 should not have been issued with the SCN as he had resigned from the position of CEO/ director before initiation of the inspection is not plausible on the grounds that the Inspection of the Company was conducted for the period prior to the effective date of resignation of Respondent No. 2.
- (ii) The Respondents were obligated to furnish the information required by the Inspection Team. However the failed to submit the information/ documents sought by the Inspection Team through Information Request Memorandum ("IRM") dated January 22, 2024, contrary to the provisions of Section 282I (2) of the Ordinance. The Respondent No. 2 though stated that he provided all the information but could submit any evidence to substantiate his claim in respect of information sought through the aforesaid IRM.

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- (iii) The Company disbursed Rs. 5.7 million during October 2023 from its Jazz Cash Account to general public against the directions and without due approval as the Commission had removed the App of the Company from the white list and a ban was placed on further extension of loans vide email dated August 02, 2023. The Respondent No. 2 has admitted the illegal disbursement of loan by the Company in his written reply dated July 09, 2024 and also in his verbal submissions during the hearing held on November 25, 2024 and also stated that the same was one of the reasons for his resignation from the position of CEO/ director. Hence non-compliance of provisions of Section 282B(3) of the Ordinance by the Company is established. However it is observed that the Commission vide Order dated March 26, 2024 had already adjudged/ penalized the Respondents for similar violation of disbursement of loan to public during October 2023 without approval, therefore, the proceedings for violation of Section 282B(3) of the Ordinance are concluded without any adverse action in the instant matter.
- (iv) The stance of Respondent 2 that the website of the Company was functional till the date of his resignation as CEO/ director could not be substantiated through any evidence. Further the search of website by the Inspection Team revealed no results which reflects that the Company failed not only to maintain its website but also to provide updated information of its borrowers. Hence the non-compliance of clause 3(3) of the Circular is established.
- (v) The Respondents were required to furnish the first audited financial statements within sixteen months from the date of incorporation of the Company and subsequently once in every calendar year. However, the Respondents failed to file the annual financial statements within the stipulated timeframe of March 17, 2023. Further the Respondents also failed to provide the same to the Inspection Team despite requisition through IRM dated January 22, 2024, which established non-compliance of rule 7(1)(da) of the NBFC Rules. However it is observed that the Commission vide Order dated April 24, 2024 had already judged/ penalized the Respondents the said non-compliance, therefore, the proceedings for violation of rule 7(1)(da) of the Rules are concluded without any adverse action.
- (vi) The Respondent No. 2 failed to provide any evidence to substantiate his stance that Mr. Khan Mustafa Saleemi was appointed as independent director on the board of the Company w.e.f. July 25, 2022. Moreover the same was neither proved from the Form 29 dated September 19, 2022 and September 12, 2023 submitted by the Company with the Commission nor any application for fit & proper approval of any independent was filed by the Company with the Commission.

12. The aforesaid contravention with the requirements of Sections 282I(2) and 282B(3) of the Ordinance, rules 7(1)(da) & 7(1)(cd) of the NBFC Rules and clause 3(3) of the Circular have been established beyond doubt which attracts penal action in terms of Section 282J(1) of the Ordinance. I have also given due attention to the grounds presented by the Respondent No. 2 and his representative to the said non-compliance, Orders dated March 26, 2024 and April 24, 2024 passed by the Commission and noted that the Company ceases to be a NBFC as IFS license of the Company has already been revoked by the Commission through Order dated March 26, 2024. I, therefore, in exercise of the powers conferred upon me under Section 512(2) of the Act read with SRO 1545(I)/2019 dated December 06, 2019, hereby conclude the proceedings initiated through the SCN and Warn the Respondents to remain careful in compliance of law in future.

  
 15-01-2025  
 Sohail Qadri  
 Director/ HOD  
 Adjudication Department-I

**Announced:**  
 January 21, 2025  
 Islamabad.