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**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN**

**Adjudication Department- I**  
**Adjudication Division**

ORDER	
Name of Company:	M/s. Sarmaya Microfinance (Pvt.) Limited
Show Cause Notice No. & Date:	No. SECP/SCD/ADJ-I/Sarmaya/68/2022-109 dated February 22, 2024
Respondents:	(i) M/s. Sarmaya Microfinance (Pvt.) Limited
Date(s) of Hearing(s):	(i) May 13, 2024; and (ii) May 2, 2025
Case represented by:	(i) Mr. Muhammad Sohaib; (ii) Ms. Nazish Fattah (as the <i>Authorized Representatives</i> )
Provision of law involved:	Section 246(6) read with Section 252 of the Companies Act, 2017
Date of Order	May 23, 2025

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the "Commission") through the Show Cause Notice No. SECP/SCD/ADJ-I/Sarmaya /68/2022-109 dated February 22, 2024 ("SCN") against the M/s. Sarmaya Microfinance (Pvt.) Limited (the "Company/Respondent"), under Section 246(6) read with Section 252 of the Companies Act, 2017 (the "Act").

2. The Company was incorporated on November 29, 2021 as a private limited company under the Act and licensed by the Commission to undertake Non-Banking Microfinance business under the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003 (the "NBFC Rules") on February 01, 2022. The principal line of business of the Company is providing microfinance to individuals for small businesses who lack access to banking services.

3. Sub-section (6) of Section 246 of the Act provides that any casual vacancy of an auditor must be filled by the board within 30 days and the auditor appointed to fill the casual vacancy shall hold the office until the conclusion of the next AGM. Moreover, in case the auditor is removed during their tenure, the board must obtain prior approval from the Commission for the new appointment. In terms of Section 252 of the Act, any contraventions or default in complying with the requirement of Section 246 is liable to a penalty of level 3 on the standard scale. The said provision of laws is reproduced as under:

**Section 246 of the Act - Appointment, removal and fee of auditors.**

*"(6) Any casual vacancy of an auditor shall be filled by the board within thirty days from the date thereof. Any auditor appointed to fill in any casual vacancy shall hold office until the conclusion of the next annual general meeting:*

*Provided that where the auditors are removed during their tenure, the board shall appoint the auditors with prior approval of the Commission."*

**Section 252 of the Act**

*"Penalty for non-compliance with provisions by companies – Any contravention or default in complying with requirements of sections 246, 247, 248 and 250 shall be an offence liable to a penalty of level 3 on the standard scale"*

4. Brief facts leading to this case are that an Enquiry of the Company was ordered under Section 282 I of the Companies Ordinance, 1984 (the "Ordinance") vide Enquiry Order bearing number OD(NBFC)/SD/SMPL/2023/33 dated August 16, 2023. Scope of the Enquiry included 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 said Enquiry covered the period started from the dated of incorporation of the Company till July 31, 2023 (review period). The Enquiry Team (the Team) submitted the Enquiry Report dated January 25, 2024.

*Handwritten signature and date: 23-05-2025*

5. A review of minutes of the meeting of Board of Directors of the Company (**the BOD**) dated June 21, 2023, by the Team revealed that the Company removed M/s. Noman Tahir & Co. Chartered Accountants from the position of the auditor of the Company in the said meeting with immediate effect. The BOD further resolved to appoint M/s Kreston Hyder Bhimji & Co. Chartered Accountants as the auditor of the Company where such appointment was without the prior approval of the Commission. In terms of proviso to Section 246(6) of the Act if the auditors are removed during their tenure; the board is to appoint the new auditors with prior approval of the Commission. Therefore, the Company prima facie contravened the provisions of Section 246 of the Act.

6. While taking cognizance of the alleged violations, proceedings under Section 252 of the Act was initiated against the Company through SCN dated February 22, 2024 requiring it to show cause in writing within fourteen (14) days, as to why an action, should not be taken against it. In response to SCN, the Company vide its letter dated March 6, 2024 requested to provide a copy of Enquiry Report. In response to which the Commission via letter dated March 29, 2024 was informed the Respondent that the relevant portion of the Enquiry Report regarding the alleged violations is appropriately and comprehensively incorporated in the SCN. Accordingly, the Respondent was advised to submit the written response to SCN, despite which Respondent did not submit the written reply to the SCN.

7. In order to provide an opportunity for personal representation, hearing in the matter was fixed for May 13, 2024; where Mr. Muhammad Sohaib appeared as an Authorized Representative of the Respondent and submitted a copy of Honorable Islamabad High Court (**Court**) Order dated May 7, 2024 wherein the Court stayed the SCN proceedings and issued the notice for May 27, 2024 in respect of Writ Petition filed by the Respondent for provision of the Enquiry Report. Subsequently the copy of Enquiry Report was provided to the Respondent on May 27, 2024 in the Court and the Court vide its Order dated May 27, 2024 disposed of the said Writ Petition and subsequently there was no further reservation upon continuing with the proceedings.

8. Thereafter, a written reply to the SCN was submitted on August 21, 2024, wherein the Respondent inter alia submitted the following:

- (i) *Noman Tahir and Co. were initially appointed as auditors of the Company. However, it transpired to the Respondent Company that the Auditors were not listed in the Institute of Chartered of Pakistan, Quality Control Review- rated audit list (hereinafter "ICAP QCR rated audit list"). Recognizing the importance of compliance and quality assurance, Respondent promptly began negotiations with Peter and Co. Unfortunately, the audit process with Peter and Co. was taking longer than expected. As a result, considering the urgency and importance of having a qualified auditor, the Auditors were removed while following the due course of law.*
- (ii) *Section 246(5) of the Act allows that the auditor or auditors appointed by the board or the members in an AGM may be removed through a special resolution. Thus, there was no illegality committed by the Respondent Company by removal of the Auditors since the same is permissible under the law.*
- (iii) *Section 246(6) of the Act provides that any casual vacancy of an auditor shall be filled by the board within thirty days from the date thereof and any auditor appointed to fill in any casual vacancy shall hold office until the conclusion of the next AGM. Thus, the Board of the Respondent Company was legally obligated under the Act to fill the casual vacancy within 30 days from the removal of the previous Auditors. Thus, the Respondent, in order to meet the station timeline and to get its accounts audited in time, decided to engage on urgent basis the Kreston Hyder Bhimji & Co. Chartered Accountants (hereinafter the "audit firm") as the Auditor of the Respondent Company.*
- (iv) *The Respondent filed 'form 29' under Section 197 of Act and regulations 4 and 20 of the Companies (General Provisions and Forms) Regulations, 2018 with the Commission, wherein the appointment of audit firm was reported to the CRO of the Commission. This action further demonstrates the Respondent's intention to comply with the regulatory requirement.*

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(v) *The proviso of Section 246(6) of the 2017 Acts which directs to seek prior approval for appointment of Auditors on casual vacancy cannot be read in isolation. Section 246(5) clearly establishes that an Auditor can be removed from the position during the tenure and no permission of the Commission is required in this regard. Section 246(6) further specifies that the sole authority to appoint the new auditor on casual vacancy lies with the Board of the Respondent Company. Section 246(6) further specifies that such appointment must be made within 30 days of removal of the auditors. Therefore, the proviso to the said Section must be read in juxtaposition to all the above referred Sections. Therefore, the Board of the Respondent Company was required to a) appoint the new auditor within 30 days from the removal of the previous auditor as provided under Section 246(6); and b) seek the Commission's approval for the said appointment. The Respondent Company met both the said obligations and therefore the substantial compliance of the Section 246 was made.*

9. In order to meet the end of justice another hearing opportunity was provided to the Company and the hearing into the matter was fixed for May 02, 2025. The hearing was attended by Mr. Muhammad Sohaib and Ms. Nazish Fattah as the Authorized Representatives of the Respondent, where the Authorized Representative submitted that the auditor was not removed but had in fact resigned, and the Board of Directors mistakenly recorded the action as "removal" instead of "resignation." They clarified that M/s. Noman Tahir and Co was initially appointed as the auditor of the Company, but since he was not included in ICAP's QCR-rated list, he stood disqualified under Section 247, and was consequently asked by the Board to resign. The Authorized Representatives were asked to clarify that whether the auditor had resigned or was removed, as the wants of law in both cases are different, thereby demanding a different course of action. The Representatives shared that the auditor was actually forced to resign and emphasized that there was no willful default on the part of the directors. The Authorized Representative was advised to submit by May 9, 2025; (i) the timeline of events, (ii) date of resignation of M/s Noman Tahir and Co, and (iii) a copy of Form-29 for substantiating that the Auditor actually resigned and was not removed. However, none of the submissions have been made till the date of this Order.

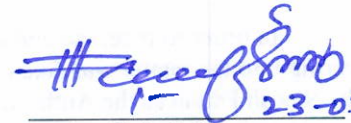
10. I have examined the facts of the case in light of the applicable provisions of the law and have given due consideration to the written as well as verbal submissions and arguments of the Respondent and its Authorized Representatives. It is important to discuss the following legal and factual elements:

- (i) Although the Respondent contested that the auditor resigned from their appointment as Auditors but it is clearly evident from the board resolution ( Copy available in the Enquiry Report) and initial response submitted by the Respondent that it was unanimously decided that services of M/s. Noman Tahir and Co. were no more required and the Respondent had removed / terminated their services with immediate effect from June 21, 2023 i.e. before the end of its tenure. It was therefore the Company's statutory responsibility under section 246 (6) of the Act to obtain prior approval from the Commission for appointment of its new auditor, where, it failed to get the same.
- (ii) Section 246(6) of the Act lays down a mandatory timeline and procedure for filling any casual vacancy in the office of the auditor. It requires that such a vacancy must be filled by the Board of Directors within thirty (30) days from the date it arises. Furthermore, in cases where auditors are removed during their tenure, the provisio mandates that the Board must seek prior approval of the Commission before appointing a replacement. These requirements are not procedural formalities—they are essential safeguards to ensure uninterrupted oversight of a Company's financial affairs and to prevent any manipulation or delay in the statutory audit process. In the present case, however, the Company failed to comply with the requirements of Section 246(6) following the cessation of Mr. Noman Tahir's appointment. There is no record of the casual vacancy being filled within the prescribed timeframe, nor any evidence of the Commission's prior approval in case of removal. This constitutes a violation of the Act and reflects a serious lapse in governance. Timely and lawful appointment of auditors is fundamental for maintaining audit continuity, financial integrity, and regulatory confidence.
- (iii) Although it is not within the scope of the subject proceedings but it is observed that the Company was forced to remove/terminate the services of the Auditor which failed to be on the ICAP's QCR list. Therefore, the initial process of nominating such audit firm for appointment was faulty all by in itself and showed lack of due diligence by the Company.

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11. In view of the foregoing facts, circumstances, and the submissions made by the Respondent and its Authorized Representatives, it is evident that the Respondent failed to obtain the prior approval of the Commission before effecting the appointment of the new auditor as a result of removal of earlier appointed auditor, as explicitly required under the proviso to Section 246(6) of the Act. This constitutes a clear contravention of the said provision. Accordingly, in exercise of the powers conferred upon me under Section 252 of the Act, read with S.R.O. 1545(I)/2019 dated December 06, 2019, I hereby impose a penalty of **Rs. 25,000/- (Rupees Twenty-Five Thousand only)** on the Respondent on account of the established default.

12. The Company is hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited or United Bank Limited within thirty (30) days from the date of this Order and furnish receipted voucher issued in the name of the Commission for information and record. In case of failure to deposit the penalty, the proceedings under Section 485 of the Act will be initiated for recovery of the fines as arrears of land revenue pursuant to provisions of Section 42B of the Securities and Exchange Commission of Pakistan Act, 1997.

  
1-23-05-2025

(Sohail Qadri)

Director/ Head of Department  
Adjudication-1

**Announced:**  
May 23, 2025  
Islamabad.