



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Before

Shahzad Afzal Khan, Director - Director/ Head of Department

In the matter of

Mr. Jordan Scot Olivas, Director and Syed Saad Ahmed, Director

Qisstpay BNPL Private Limited

Show Cause Notice No. & Issue Date:	No. SCD/ADJ-I/Qisstpay/58/2022-180 February 28, 2024
Date of Hearing:	May 13, 2024; May 28, 2024
Present at the Hearing Representing Respondent	the Mr. Jordan Scott Olivas Syed Saad Ahmad, Director

ORDER

UNDER SECTION 172 OF THE COMPANIES ACT, 2017

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (**the Commission**) through the Show Cause Notice dated February 28, 2024 (**the SCN**) against Mr. Jordan Scot Olivas (**Respondent No. 1**); and Syed Saad Ahmed (**Respondent No. 2**), directors of Qisstpay BNPL Private Limited (**the Company**) hereinafter collectively referred as the **Respondents**, issued under Section 172 of the Companies Act, 2017 (**the Act**).

2. Brief facts leading to this case are that:

- i. the Company was incorporated on November 16, 2021, as a private limited company under the Act, and licensed by the Commission in December 2021, to undertake Investment Finance business as a Non-Banking Finance Company (NBFC) under the Non-Banking Finance Company (Establishment and Regulations) Rules, 2003 (**the NBFC Rules**) and the Non-Banking Finance Companies and Notified Entities Regulations, 2008 (**the NBFC Regulations**);
- ii. An Onsite Inspection (**the Inspection**) of the Company and its business was initiated in terms of powers conferred under section 282 I of the Companies Ordinance, 1984 (**the Ordinance**) and section 6A(2)(f) of Anti Money Laundering Act, 2010 (**the AML Act**) vide inspection order no. OD(NBFC)/SD/QPL/2023/152 dated March 13, 2023, 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;
- iii. Letter of finding (**LOF**) dated June 20, 2023 was shared with the management of the Company vide email dated June 21, 2023 and comments received from the management vide email dated July 06, 2023 were incorporated at the relevant sections of the Inspection Report dated January 23, 2024;



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- iv. During the Inspection, it was revealed that an individual named Mr. Jawad Kirmani has transferred Rs. 7.5 million in the Company's UBL Bank Account No. 1255-000280109208 on June 06, 2023 who, as per the available records, has no association with the Company;
- v. The inspection team vide email dated November 20, 2023, required the Company to submit the details pertaining to aforesaid transaction. The Company vide email dated November 23, 2023 submitted as under:

"for the transaction by Jawad Kirmani was treated as the "Loan from director" documentation of which will be provided with the proofs before 7th December 2023."

- vi. Later the Company, vide email dated December 06, 2023, submitted receipt of banking transaction and stated that this is the money received by Mr. Jawad Kirmani on behalf of the Respondent No. 1 and so it was treated as loan from the director;
- vii. The Company vide email dated December 14, 2023, was requested to provide any underlying agreement in place for the aforesaid transaction. However, the Company only provided copy of receipt showing aforesaid payment made by Mr. Jawad. The said copy is not sufficient to establish the Company's assertion that it was a director's loan rather it was illegal deposit taking activity under Rule 7(2)(k) read with Rule 2(xvii)(b) of Non-Banking Finance Companies (Establishment and Regulations) Rules, 2003 (the NBFC Rules), which are reproduced as under:

Rule 2(xvii)(b) of the NBFC Rules, 2003

"(xvii)(b) "deposit" means any deposit of money with, or any money borrowed or raised by an NBFC, but shall not include,-

- (a) redeemable capital issued under section 120 of the Ordinance;*
(b) finance obtained from a financial institution;
(c) advance, application or subscription money for shares in the NBFC;
(d) cash margin or security deposit received in respect of finance provided by NBFC;
(e) subordinated loans; and
(f) finance obtained from major shareholders, sponsors, and associated companies:

Provided that the Commission shall be the final authority to determine, by an order in writing, whether any money deposited, raised or borrowed falls under the definition of deposit or otherwise;"

Rule 7(2)(k) of the NBFC Rules 2003

"(2) A NBFC shall not,

- (k) raise deposits in any form by whatever name called except as specified by the Commission in the Non-Banking Finance Companies and Notified Entities Regulations, 2008;"*

3. In view of the aforesaid, it is evident that the Respondents, *prima facie*, are involved in the act of illegal deposit taking, which attracts proceedings under sections 172 (1)(h) and



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172(1)(o) of the Act in order to disqualify the Company's director from holding the position in any other Company for a period up to five years beginning from the date of order. Therefore, taking cognizance of the alleged non-compliance, proceedings under section 172 of the Act were initiated against the Respondents through serving the SCN requiring them to show cause in writing within fourteen (14) days, as to why action, as provided, should not be initiated against them.

4. The Respondents vide email dated March 15, 2024 submitted written response to the SCN wherein it was *inter-alia* stated that:

"Qisstpays BNPL Private Limited as being one of the pioneers of the BNPL market in Pakistan has played a significant role in developing the NBFC market in Pakistan by attracting millions of dollars of foreign investment from throughout the world. The company during all the stages regardless of being a startup and the hurdles faced during the past always tried to comply with all the regulations from time to time introduced by the Commission. The Company during the time of in-house inception went through a thorough and lengthy procedure of inspection and assisted the inspection team to the best of its knowledge. The Company has produced all kinds of evidence to the inspection team in order to confirm that all kinds of inward remittance was done through using the proper legal channel. Company further denies the allegation of doing illegal deposit taking through that time period.

In reference to the deposit taking from the unrelated person, the Company humbly submits that Qisstpays BNPL Private Limited has always opted the legal path to get the inward remittance into the country and Form-R of transaction made by Jawad Kirmani was dealt as the loan from the director and to support our argument the "Auditors' Certificate" is hereby annexed with this response which can further be verified in order to confirm the stance of the Company. The subject matter transaction has been received by the Company on behalf of its CEO and shareholder, Mr. Jordan Scott Olivas, on account of subordinated loan as per banking transactions from 1st July 2022-30th June 2023."

5. In order to afford the Respondents an opportunity of personal representation, hearing in the matter were fixed for May 13, 2024 which was adjourned. Later hearing was re-fixed for May 28, 2024 wherein the Respondents appeared and reiterated the stance taken in reply to SCN submitted vide email dated March 15, 2024 and stated that the amount transferred by Mr. Jawad Kirmani is the consideration payable by Mr. Kirmani to Respondent No. 1 on account of sale of shares and hence should be treated as loan from director in the books of the Company. Further legal banking channel was used to transfer said amount from UAE and auditor of the Company i.e. Parker Russell-A.J.S., Chartered Accountant (the Auditor) has also certified receipt of Rs. 7.5 million into bank account of the Company on behalf of Respondent No. 1 as loan to the Company. Subsequently the Respondents submitted the agreement between Respondent No. 1 and Mr. Kirmani as evidence of sale of shares.

6. Subsequently, the Respondents vide email dated June 11, 2024, submitted the required documents and *inter-alia*, stated that:



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"This statement appears to be a confirmation of a significant transaction related to QisstPay BNPL Private Limited, a total amount of PKR 7,500,000 (approximately USD 40,000) was received by the company on June 06, 2023. The funds were received on behalf of the CEO and shareholder, implying that the CEO has a personal stake in the company.

The amount was received as a SAFE note initiated subordinated loan, which means it has a lower priority than other loans or debts in case of liquidation. The transaction was made through a banking channel, ensuring a paper trail and legitimacy. External auditors have verified the transaction and issued an "Auditor's Certificate", confirming its authenticity. All relevant documents related to the transaction have been shared with the Securities and Exchange Commission of Pakistan (SECP), indicating transparency and compliance.

Furthermore this payment was received on behalf of the CEO and shareholder, as Jawad Kermani directly transferred the funds into QP's UBL bank account upon the instructions of CEO Jordan Olivas, as confirmed by Jawad Kermani in an email.

This statement suggests that the company has received a significant injection of funds, which has been properly documented, verified and reported to the relevant authorities."

7. Relevant provisions of Section 172 of the Act provide that:

Section 172 of the Act:

"172. Disqualification orders. — (1) In any of the circumstances stated hereunder, the Commission may pass a disqualification order against a person to hold the office of a director of a company for a period up to five years beginning from the date of order –

(h) the person is involved in illegal deposit taking;"

8. 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 Respondents and their Representatives. The question placed before me on the basis of submissions of Respondents is as under:

(a) Whether the transfer of funds of Rs. 7.5 million made on the basis of underlying agreement?

The supporting documents submitted by the Respondents depicts that a SAFE agreement dated May 17, 2023 had been executed for prescribing means for sale, offer, transfer, pledged or hypothecation of securities between the transferor of funds, Mr. Jawad Kermani and Qisstpay Inc. owned by Respondent No.1. It is however noted that the said agreement does not substantiate the stance of Respondents that the funds transferred are proceeds of sale of shares by Respondent No. 1 to Mr. Jawad Kermani. The said agreement is general and neither provides for sale of shares of any specific company nor any evidence to actual sale transaction executed between Respondent No. 1 and Mr. Kermani depicting the number and price of shares sold, name of the company whose shares were sold and the total consideration thereof has been



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submitted by the Respondents. The transfer of funds by Mr. Jawad in the bank account of the Company, certification of receipt of funds from Mr. Jawad by the Auditor and a direct confirmation in this respect from Mr. Kermai stating that the funds were transferred on directions of Respondent No. 1 neither establishes the relationship of Mr. Jawad with the Company or Respondents nor provide any evidence as to the purpose and nature of the transaction.

In view thereof and without any proven association of Mr. Jawad Kermani with the Respondents, the transfer of Rs. 7.5 million in the bank account of the Company establishes illegal deposit taking activity by the Company.

(b) The association of Mr. Jawad Kermani with the Respondents/ Company:

The aforesaid SAFE agreement between Qisstpay Inc. owned by the Respondent No. 1 and the transferor Mr. Jawad Kermani is general and does not provide for sale of shares of any specific company and consideration thereof. The Respondents have failed to provide specific details of transactions with Mr. Jawad Kermani nor have they been able to submit evidences to support existence of his relationship with the Company. Mere transfer of funds by Mr. Jawad in the bank account of the Company, certification of receipt of funds from Mr. Jawad by the Auditor and a direct confirmation in this respect from Mr. Jawad Kermai stating that the funds were transferred on directions of Respondent No. 1 neither establishes the relationship of Mr. Jawad with the Company or Respondents nor provide any evidence as to the purpose and nature of the transaction, hence established illegal deposit taking activity by the Company.

(c) Whether the Auditor's Certificate confirms the association of Mr. Jawad Kermani with the Respondents:

No, the certificate of Auditor only certifies the receipt of Rs. 7.5 million by the Company as subordinated loan on behalf of Respondent No.1. It neither comments on the source of funds nor on the relationship between the Respondents and Mr. Jawad Kermani. Thus the Auditor's certificate does not establish any association between the Respondents and Mr. Jawad Kermani and, therefore, the stance of the Respondents that the proceeds do not constitute illegal deposit taking activity is not substantiated.

(d) Direct Confirmation of transfer of funds by the transferor:

Mr. Jawad Kermani, vide email dated February 06, 2024, in response to the auditor's direct confirmation vide email dated January 19, 2024, only confirmed that that Rs. 7.5 million were transferred by him to the Company on instructions by the Respondent No. 1 however did not comment on the purpose and justification of remitting the funds to the Company's bank account. Therefore, the said direct confirmation without stating the purpose of the remittance does not substantiate the stance of the Respondents that the proceeds do not constitute illegal deposit taking activity.



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(e) Whether the proceeds received through banking channel?

Yes, the proceeds were received into the bank account of the Company from UAE through banking channels and the same has also been certified by the Auditor through their certificate dated February 06, 2024. However mere receipt of funds through banking channel neither establishes the association of the remitter with the Respondents nor provides an evidence to substantiate that the proceeds are not illegal deposit taking by the Respondents.

(f) Whether section 172(1)(h); Illegal Deposit Taking relevant?

Yes. The Company has received in its bank account funds of Rs. 7.5 million from Mr. Jawad Kermani for which neither any association of Mr. Jawad Kermani with the Company nor any basis for its treatment by the Company as a director's loan rather than an illegal deposit taking activity under rule 7(2)(k) of the NBFC Rules could be established.

In view thereof, circumstances as mentioned in para 2 above did exit as highlighted during the inspection, evidencing that the Respondents were involved in the act of illegal deposit taking.

9. In view of the above-stated facts, circumstances, and submissions made by the Respondents and their Representatives, it is stated that circumstances relating to illegal deposit taking by the Respondents, at the relevant point of time, have been established. Therefore, keeping in view the gravity of the situation; I, in terms of clause (h) of section 172 (1) of the Act, hereby, disqualify the Respondents i.e. Mr. Jordan Scott Olivas and Syed Saad Ahmed with immediate effect to hold office of director in any company for a period **two (02) years starting from the date of this Order.**

10. This Order is issued without prejudice to any other action that the Commission may initiate against the Company and/or its CEO in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

(Shahzad Afzal Khan)
Director/ HOD
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Announced:

Dated: October 10, 2024
Islamabad