



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Abdul Rehman Warraich, Commissioner (SMD)

In the matter of

Arsh Commodities (Pvt.) Limited

Show Cause Notice No. & Issue Date:	No. 2(188)SMD/Adj/2019 Dated November 11, 2020
Date(s) of Hearing:	June 30, 2022, February 02, 2023, April 13, 2023, July 12, 2023, January 24, 2024 and January 31, 2024
Present at the Hearings:	Mr. Imtiaz Haider (Authorized Representative)

ORDER

UNDER SECTION 94 OF THE FUTURES MARKET ACT, 2016

This Order shall dispose of the proceedings initiated against the Arsh Commodities (Pvt.) Limited (**the Company and/or the Respondent**) through Show Cause Notice No. 2(188)SMD/Adj/2019 dated November 11, 2020 (**the SCN**) for its alleged failure to comply with the requirements of Sections 47(2), 48(4), 57(a), (b) and (c), 59 of the Future Market Act, 2016 (**the Act**) and Regulations 11(3)(c), 16(2)(j) and 16(2)(k) of the Futures Brokers (Licensing and Operations) Regulations, 2018 (**the Regulations**) read with Section 94(5) of the Act under the penal provisions contained in sub-section (1)(a) and (2) of Section 94 of the Act.

2. The Respondent was a Trading Right Entitlement Certificate (**TRE certificate**) holder of the Pakistan Mercantile Exchange Limited (**PMEX**) and was also licensed as a futures broker with the Securities and Exchange Commission of Pakistan (**the Commission**).

3. Brief facts of the case are as under:

(i) The relevant department of the Commission received a complaint dated April 22, 2019 from Ms. Rubina Kausar (**the Complainant**) against the Respondent. The Complainant alleged that she had given deposit of Rs. 5 million as an investment with the security/assurance from the Respondent of keeping the principal amount intact for 6th months starting from September 10, 2018. The copy of the agreement dated September 04, 2018 (**the Agreement**) provided by the Complainant revealed as under:

“.....

That the ARSH Commodities (Pvt.) Limited assure the security on any losses due to trading of more than 10% and will rebate the trade loss amount of the particular period to account holder.



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That the ARSH Commodities (Pvt) Ltd is liable to pay Rs. 5.0 million immediately to Ms. Rubina Kausar at expiration of this agreement.

..... ”

(ii) Subsequently, the Complainant had withdrawn her complaint and settled the matter with the Respondent as revealed from the PMEX email dated September 30, 2019. PMEX has further submitted that the trading rights of the Respondent have been suspended since March 13, 2019.

4. In view of above, the Respondent, *prima facie*, was non-compliant with the regulatory framework, detailed as under:

- (a) **Section 47(2) of the Act** states that a licence granted under this Act shall specify the regulated activity or activities that the regulated person is permitted to undertake and such person shall be restricted to such regulated activity or activities as so specified. **Section 48(4) of the Act** states that a regulated person that is licensed to indulge in a regulated activity shall be restricted to undertake only that activity exclusively. However, it has been observed that the account of Complainant was never opened with PMEX and Respondent was, *prima facie*, involved in other business activity i.e. deposit taking from the Complainant. Furthermore, Respondent was offering monthly fixed return by assuring the security of any losses due to trading of more than 10% and will rebate the trade loss amount of the particular period to account holder, as revealed from the Agreement.
- (b) **Section 59 of the Act** requires that no futures broker shall open a futures trading account for a customer, unless the Respondent furnishes to the customer a separate written risk disclosure statement and receives from the customer an acknowledgement. However, the Respondent has, *prima facie*, not complied with the above requirement.
- (c) **Regulation 16(2)(j) of the Regulations** states that a futures broker shall not accept any money from a customer on a promise of predetermined or guaranteed return. However, it has been revealed from the said agreement that the Respondent was, *prima facie*, involved in accepting money amounting to Rs. 5 million from Complainant on a guaranteed return.
- (d) **Regulation 16(2)(k) of the Regulations** states that a futures broker shall not accept any money or deposit or borrowing by whatsoever name called and in whatsoever manner from any person including an individual or any segment of public or directors and sponsors of a futures broker except in the manner stipulated in clause (i), (ii), (iii) or (iv). However, the said Regulation do not allow the Respondent to accept the said deposit of the Complainant.
- (e) **Clause (a), (b) and (c) of Section 57 of the Act** requires a futures broker to observe high standard of integrity and fair dealing, to act with due care, skill and diligence and to observe high standard of market conduct. However, it has been observed that the Respondent was, *prima facie*, in violation of above provisions of the law along with Regulation 16(1)(g) of the Regulations.



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- (f) TRE certificate was suspended by the PMEX on March 13, 2019 and the reason for such default and/or suspension has not been removed despite lapse of period of six months from declaration of such default and/or suspension. Therefore, Respondent is, *prima facie*, subject to disciplinary action in terms of Regulation 11(3)(c) read with enabling provisions of the Act.

5. In view of the above, the Respondent, *prima facie*, has violated the requirements of Sections 47(2), 48(4), 57(a), (b) and (c), 59 of the Act and Regulations 11(3)(c), 16(2)(j) and 16(2)(k) of the Regulations read with Section 94(5) of the Act under the penal provisions contained in sub-section (1)(a) and (2) of Section 94 of the Act. Therefore, SCN was served on the Respondent calling upon it to show cause in writing as to why penalty may not be imposed on it for contravening the aforesaid provisions of the law. Mr. Nazir Ahmed Shaheen, on behalf of the Respondent, submitted a response to the SCN via a letter dated January 07, 2021. The relevant submissions are as follows:

“..... That the ACPL was incorporated as a private limited company under the Companies Act and the following were the subscribers and first directors of the Company: -

- | | |
|----------------------------------|---------------------|
| (i) Mr. Abdul Rehman Siddique | Subscriber/director |
| (ii) Mr. Muhammad Masoom Shahzad | Subscriber/director |

- (2) *At the time of incorporation, Mr. Abdul Rehman owned 8,500 shares while Mr. Muhammad Masoom Shahzad owned 1,500 shares out of total 10,000 shares issued as paid up capital of Rs. 1,000,000/- at par value of Rs.10 for each share issued. Therefore, Mr. Abdul Rehman as shareholder director and Mr. Muhammad Masoom Shahzad as shareholder director & Chief Executive Officer owned 85% and 15% stake in the company respectively.*
- (3) *That just after two months of incorporation of ACPL, Mr. Abdul Rehman replaced Mr. Muhammad Masoom Shahzad as Chief Executive Officer of the ACPL. Later paid up capital of ACPL was enhanced to Rs. 20,000,000 /- whereby Mr. Abdul Rehman and Mr. Muhammad Masoom Shahzad had 170,000 and 30,000 shares of Rs. 100 each thus maintaining their earlier stated shareholding position, i.e. 85% and 15% respectively. However, Mr. Abdul Rehman remained in control for all operational, administrative and financial affairs of the ACPL till 07/05/2018.*
- (4) *That on 07/05/2018, Mr. Abdul Rehman transferred his entire shareholding, except ONE share, as a gift (169,999 shares) to his sister Ms. Shamaila Mubahser whereas ONE was gifted to his brother in law Mr. Mubahser Islam (husband of Ms. Shumaila Mubahser). Mr. Mubahser Islam was appointed as director and Chief Executive Officer of the ACPL on the 07/05/2018 and 08/05/2018 respectively. To give effect to transfer of shareholding and appointment of Mr. Mubahser Islam as director and Chief Executive Officer, requisite formalities stipulated under the Company Law provisions were complied with. Copies of Transfer Deeds, Form 29 & Form — 3A are attached as Annexure A B & C. Despite change of directorship and resignation as CEO, Mr. Abdul Rehman continued controlling the affairs of ACPL and remained the authorized signatory to the ACPL Bank Accounts and till to-date, Mr. Abdul Rehman continues to be the signatory of the ACPL Bank Accounts.*



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- (5) That having resigned as Chief Executive Officer & Director and having no shareholding, Mr. Abdul Rehman had no role to play and no relation with ACPL affairs, but he orchestrated the whole scheme to show himself as a person having no connection formally with the ACPL but he was working as shadow director, Chief Executive Officer and managing control of ACPL, especially banking operations, by appointing and making his two relatives as scapegoats who never qualified, academically and professionally, to handle the ACPL affairs as Futures Market Brokerage House. Mr. Abdul Rehman took advantage by wielding, manipulating and exploiting social pressure and simplicity of the persons especially Mr. Mubasher Islam.
- (6) That the subject SCN alleges that ACPL accepted, from the Complainant Ms. Rubina Kausar, a deposit of Rs. 5 Million as an investment with security/assurance of keeping the principal amount intact and any loss due to trading of more than 10% and rebate the trade loss amount. In this regard, following is submitted to put the facts straight:
- (i) The Memorandum of Understanding was entered into between the Mr. Abdul Rehman & Ms. Rubina Kausar on 04/09/2019, (copy of which is attached as Annexure-D) whereas Mr. Abdul Rehman had resigned as director of ACPL on 07/05/2018 and Chief Executive Officer on 08/05/2018. Copies of his resignation and Form 29 are attached as Annexure -E and Annexure—B. Under the law, Mr. Abdul Rehman was vested with no authority to enter into any business deals and operations on behalf of ACPL, therefore, all acts done on behalf of ACPL after 08/05/2018 by Mr. Abdul Rehman had no legal status in the eyes of the law and not enforceable and binding upon ACPL. All acts done and commitments made after the said date are his personal acts and he is personally held responsible for the same.
- (ii) Mr. Abdul Rehman actually deceived and defrauded the public and ripped them off their hard earned money with the promise of hefty returns and people got entrapped as lured by greed. Mr. Abdul Rehman under the garb of his previous position with ACPL and without ACPL knowledge, induced the public for investment & deposit taking. The agreement Mr. Abdul Rehman entered into on 04/09/2018 with Ms. Rubina Kausar had no relationship with ACPL. He deceptively used ACPL letter-head unfairly. ACPL had no agency arrangement with Mr. Abdul Rehman and hence ACPL cannot be held liable for any acts of Mr. Abdul Rehman.
- (iii) The Settlement agreement entered into between Abdul Rehman and the complainant Ms. Rubina Kausar dated 08/08/2019, copy of which is attached as Annexure — F clearly reflects that it was a personal transaction between Mr. Abdul Rehman and Ms. Rubina Kausar — the Complainant.
- (iv) Although ACPL is mentioned in the Settlement Agreement, but it provides in second Para that Second Party Mr. Abdul Rehman includes the ACPL clearly reflecting that Mr. Abdul Rehman is the principal Party to the Settlement Agreement. The



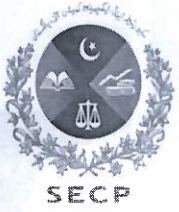
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matter surfaced when ACPL received complaint from Pakistan Mercantile Exchange (PMEX) and ACPL came to know about the complaint of Ms. Rubina Kausar. Mr. Mubasher Islam as being CEO of ACPL then exerted all kinds of social pressure to get Mr. Abdul Rehman settle this complaint as reputation and business relations of ACPL with its clients and the regulator were at stake. It was due to efforts of Mr. Mubasher Islam that the complainant got settled.

- (v) A mere perusal of the Settlement agreement clearly shows that Mr. Abdul Rehman took the deposit in his personal capacity and misused the letter head and other documents of ACPL to pose himself as representative of ACPL whereas he had no relationship with ACPL as his connection came to an end on 08/05/2018.
- (vi) The Schedule —B of the Settlement Agreement reinforces our submission that Mr. Abdul Rehman was acting in personal capacity to take investment from Ms. Rubina which he received in cash. Had ACPL taken any deposit / initial margin from the Complainant Ms. Rubina Kausar, her account would have opened with PMEX whereas ACPL had no record of the Complainant's account opening with PMEX. It reflects that ACPL was completely ignorant about the deposit in cash taken by Mr. Abdul Rehman using ACPL name and it only came to ACPL knowledge upon receipt of complaint from PMEX. The Schedule contains that cheques for return were mostly issued from his personal accounts and other businesses (AR Enterprise) maintained with different banks. Only this fact makes it abundantly clear that it was a transaction between Mr. Abdul Rehman and Ms. Rubina Kausar the Complainant. It was not only the Complainant but ACPL was being tricked and duped.
- (vii) The Settlement amount of Rs. 2,500,000/- was paid by Mr. Abdul Rehman from his personal bank account maintained at Meezan Bank, Gulberg Branch, Lahore through Account# 0201-0100649162. In the presence of this fact, no other evidence to prove that Mr. Abdul Rehman took deposit from the Complainant and later settled using his personal amount and ACPL had no relationship with this transaction.
- (viii) It merits mentioning here that Mr. Abdul Rehman has not only misused ACPL funds but brought disrepute to ACPL and ACPL is pursuing for rendition of account and return of ACPL funds at appropriate forums.

- (7) ACPL management made efforts to resolve the Complaint by pressurizing and using personal network in terms of Section 57(n) when the complaint was brought to its notice.
- (8) The ACPL TREC was suspended pursuant to the PMEX letter dated 05/03/2019 and 13/03/2019. The Complaint of Ms. Rubina Kausar stands resolved and ACPL understands that cause of suspension was removed and havoc played to ACPL by Mr. Abdul Rehman has been brought to an end. Now, the Sponsors have decided to close down all ACPL operations and wind up the entity as required under the law, therefore, ACPL expects that lenient view may be taken by the regulator and no further proceedings would take place



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against ACPL.

3. Keeping the aforementioned in view, ACPL understands that the SCN issued by SECP is adequately responded along with documentary evidences and ACPL being having no responsibility, be absolved from allegations contained in the SCN and Mr. Mubahser Islam and other director have no role in the said complaint except making efforts to settle the same to save ACPL from any reputational loss. Accordingly, the SCN under reference may kindly be filed and withdrawn. Moreover, Ms. Shamaila Mubahser is a shareholder and no role to play in the management of entity. Hence, the said SCN is requested to be withdrawn to her extent only.

4. We trust, the above suffice the purpose and clarifications submitted merit consideration and submissions are accepted. However, if you still need any further clarifications, please let us know so that we file the same with you for a favorable response at your end. However, we further request that, before initiating any further proceedings for / against ACPL, an opportunity in person may please be afforded to ACPL to clarify further our position to meet the ends of natural justice and fulfilling the parameters of due process and fair trial as envisaged under the legal framework and in accordance with the Constitution of Islamic Republic of Pakistan.”

6. In order to provide the Respondent an opportunity of personal representation in the matter, hearing notices for June 15, 2022, January 25, 2023, April 03, 2023, June 23, 2023, January 10, 2024 were issued, which were duly received at the registered address of the Company. Simultaneously, efforts were also made to contact through telephone yet neither the Respondent appeared in any of the given hearing opportunities nor responded to the telephone calls (made at the given landline numbers on the letterhead of the Company). Finally, the matter was re-fixed for hearing on January 31, 2024. The hearing was attended by Mr. Imtiaz Haider as Authorized Representative (the Representative) of the Respondent. During the hearing proceedings, the Representative reiterated the aforesaid written submissions and also admitted that the Respondent had accepted deposit of Rs. 5 Million as an investment from the Complainant via aforesaid agreement. Further, he submitted that the said matter has been settled with the Complainant amicably.

7. I have gone through the facts of the case, relevant provisions of the law and considered the written as well as verbal submissions of the Respondent and its Representative in the instant case and the documents available on record and my observations in this regard as under:

a) Involvement of the Respondent in deposit taking activity and Settlement Agreement dated between the Respondent and the Complainant:

The Respondent is mentioned as a First Party in the Settlement Agreement dated August 8, 2019 (the Settlement Agreement), including Mr. Abdul Rehman Siddique. Wherein it is mentioned that on the base of certain unavoidable circumstances, the First Party suffered huge losses on the one side and the Second Party (the Complainant) on the other side whereupon the First Party stopped making payment to the Second Party and subsequently the Second Party requested to return the investments along with all other dues including profits and moreover, mentioned under the heading “NOW THIS AGREEMENT WITNESS AND IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES”, as follows:



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“.....

2. That the First Party hereby confirms that he owes a sum of Rs.5,000,000/- (Rupees Five Million only) (the “Outstanding Investment”) to the Second Party for investment in the business.

3. That the First Party acknowledges the claim of the Second Party (the Complainant) and agrees to pay an amount of Rs. 2,500,000/- (Rupees Two Million and Five Hundred Thousand Only) (the “Agreed Amount”) to the Second Party as full and final settlement payable by the First Party to the Second Party in accordance with this agreement, which offer is acceptable by the First Party to the Second Party as full and final settlement of all his dues towards the First Party as well as its past, present and future managements.

.....

6. That in lieu of all the document(s) and cheque(s) received by the First Party from the Second Party, the First Party has paid on amount of Rs. 2,500,000/- (Rupees Two Million and Five Hundred Thousand Only) (detailed as, through Pay order/Demand Draft bearing P.O No.0416,4624841, Meezan Bank Limited, dated: 07-08-2019, as full and final settlement amount at the time of execution of this Agreement which is also duly acknowledged by the Second Party and is also considered as a receipt of Agreed Amount by the Second Party... ..”

The agreement dated September 04, 2018 reflects that the Respondent was involved in the deposit taking from the Complainant whose account was never opened with PMEX. Further, the settlement agreement was also executed between the Complainant and the Respondent. Moreover, these agreements have not been challenged by the Respondent in any court of law. The facts indicate that the Respondent was involved in illegal deposit taking and accepted an amount of Rs. 5 million from the Complainant on guaranteed return.

The Respondent stance is not cogent in the matter of Mr. Abdul Rehman. The Representative of the Respondent submitted in its written response dated January 07, 2021 against the SCN that the deposit taking was the personal dealing of Mr. Abdul Rehman and he had resigned as a director of the Respondent on May 7, 2018, and as Chief Executive Officer on May 08, 2018. This submission was accompanied by enclosed copies of his resignation letter and Form 29, provided as Annexures E and B, respectively. However, the initial agreement between the Complainant and the Respondent reflects the name of the Respondent and furthermore, settlement Agreement was reached between the Respondent and the Complainant which has not been challenged in any court of law. Notably, the Agreement did not mention the personal name 'Mr. Abdul Rehman.', it is noted that Mr. Abdul Rehman's signature is absent from the Settlement Agreement and that "Arsh Commodities Settlement" is shown on the back side of the document. Therefore, it does not absolve the Respondent from involvement in this deposit taking activity.

b) Deposit taking, fixed/ guaranteed return, standard of integrity and fair dealing and observing high standard of market conduct:

The account of Complainant was never opened with PMEX and Respondent was involved in other business activity i.e. deposit taking from the Complainant. Furthermore, Respondent was offering monthly fixed return by assuring the security of any losses due to trading of more than 10% and will



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rebate the trade loss amount of the particular period to account holder, as revealed from the Agreement. Further, the Respondent also failed to provide evidence of separate written risk disclosure statement and acknowledgement of the client. The Respondent, being a regulated person, was only authorized to carry out regulated securities activity as permitted under the Act and the Regulations. However, the Respondent has gone beyond the law and accepted money from the Complainant amounting to Rs. 5 million and has been involved in illegal deposit taking, providing fixed/ guaranteed return and failed to observe standards of integrity and fair dealing in its business operations.

Moreover, TRE certificate was also suspended by the PMEX on March 13, 2019 and the reason for such default and/or suspension had not been removed despite lapse of period of six months from declaration of such default and/or suspension. Therefore, the license of the Respondent stood cancelled in terms of Regulation 11(3)(c) of the Regulations.

In light of the foregoing, it is established that the Respondent contravened Sections 47(2), 48(4), 57(a), (b), and (c), and 59 of the Act, as well as Regulations 16(2)(j), and 16(2)(k) of the Regulations. This reveals that the Respondent is guilty of misconduct as per Section 94(1)(a) and (2) of the Act, read with Section 94(5) of the Act, reproduced below:

“94. Disciplinary action in respect of licensed persons.—(1) Subject to section 98, where—

(a) a licensed person is, or was at any time, guilty of misconduct;

(2) Subject to section 98, 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 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;

(c) appropriate to reimburse the Commission for the costs and expenses it has reasonably incurred in relation to the investigation of his conduct.

(5) In this section “misconduct” means—

(a) a contravention of any of the provisions of this Act, the rules or regulations made under this Act;

(b) a contravention of any of the terms or conditions of a license granted under this Act; or

(c) failure to comply with any direction of the Commission made under this Act; or

(d) an act or omission by a licensed person in relation to his activity which, in opinion of the Commission, is or is likely to be prejudicial to the public interest, and “guilty of misconduct” shall be construed accordingly.”

8. In view of the aforementioned established and admitted contraventions, pursuant to the powers conferred upon me, I hereby, in terms of powers conferred upon me under Section 94(2) of the Act, impose an aggregate penalty of **Rs.1,000,000/- (Pak Rupees One Million Only)** on the Respondent.

9. The Respondent is advised to meticulously adhere to all applicable Laws, Rules, Regulations and Directions etc. notified/issued from time to time in true letter and spirit at all times.



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10. The Respondent 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.

11. This Order is issued without prejudice to any other action that the Commission may initiate against the Respondent or its Shareholder(s) / Director(s) in accordance with the law(s) on matter subsequently investigated or otherwise brought to the knowledge of the Commission.

(Abdul Rehman Warraich)
Commissioner (SMD)

Announced:
June 06, 2024
Islamabad

