

Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 3 of 2018

Najeeb Consultants (Pvt.) Ltd

...Appellant

Versus

Commissioner (Securities Market Division),
Securities and Exchange Commission of Pakistan

...Respondent

Date of Hearing: 23/01/2020

Present:

For the Appellant:

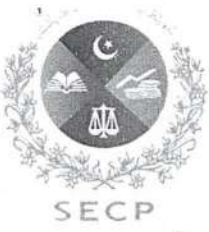
- i. Mr. Mohammad Nabeel, CEO Najeeb Consultants (Pvt.) Ltd
- ii. Mr. Zahid Hussain, Partner Mushtaq & Company Chartered Accountants

For the Respondent:

- i. Mr. Osman Syed, Joint Director (Adjudication-1)
- ii. Mr. M. Faisal, Management Executive (Adjudication-1)
- iii. Ms. Mehwish Naveed, Management Executive (Adjudication-1)

ORDER

1. This Order is passed in Appeal No.03 of 2018 filed under section 33 of the Securities and Exchange Commission of Pakistan Commission Act, 1997 (SECP Act) against the Order dated 28/11/17 (the Impugned Order) passed by Commissioner, Securities Market Division (the Respondent).



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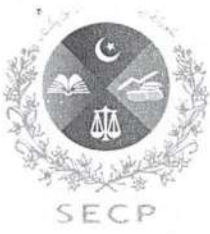
2. The brief facts of the case are that M/s Najeeb Consultants (Pvt.) Limited (the Appellant) had applied for registration to act as a Balloter and Transfer Agent (the BTA) vide their letter dated 28/09/15 (the Application for registration as BTA) under the Balloters and Transfer Agents Rules, 2015 (the Rules). The said Application was signed by Mr. Syed Zahoor Hussain, Director of the Appellant (the Director) and in this regard, a copy of board resolution dated 23/09/15 (the Board Resolution) duly signed by Mr. Manzoor Ahmed, Chief Executive Officer (the ex-CEO) of the Appellant was provided. As per the Board Resolution, the Director was authorized to sign all the documents on behalf of the Appellant for registration as BTA. While processing the Application, certain deficiencies were observed for which the ex-CEO was contacted. On contacting the ex-CEO, it had come to the notice of the Securities and Exchange Commission of Pakistan (the Commission) that; (i) the ex-CEO had left the Appellant approximately seven years ago i.e. before the date of signing of the Board Resolution; (ii) the ex-CEO had no knowledge of the said Application; and (iii) the Director was also out of the country and there were doubts if the said Application was genuine or made under fake signatures. Therefore, in order to ascertain the existence of the Appellant as a company and genuineness of its sponsors and management, the matter was referred to the Company Registration Office, Karachi (the CRO) where the Appellant is registered. Subsequently, the CRO took up the matter with the Appellant vide letter dated 01/01/16. In response, the Appellant vide letter dated 19/01/16 informed the CRO that the ex-CEO was out of the city to look after his ill father and the Director and Mr. Nabeel Shahzad (the new CEO) are running the affairs of the Appellant. Furthermore, the Director and the new CEO visited CRO along with their original CNICs and confirmed that they in fact are running the affairs of the Appellant. The Appellant vide email dated 29/03/16 was asked to provide the Certified True Copy (CTC) of Form 29 showing the appointment of the new CEO along with other documents including audited accounts of the Appellant for the previous three years as required under Annexure A of Rule 5 of the Rules. In response, the Appellant vide email dated 29/03/16 agreed to provide the requisite information/documents, however,



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despite repeated requests failed to provide the same. Thereafter, the Appellant vide letter dated 29/06/16 was called for hearing before the Respondent in terms of Rule 8(1) of the Rules.

3. The hearing was held on 28/07/16, which was attended, by the Director and Mr. M. Sarfaraz (the Authorised Representatives) through video link facility from the CRO. During the hearing, the Authorised Representatives informed that the returns with regard to appointment of the new CEO was being filed with the CRO. Subsequently, the CTC of Form 29 was received by the Respondent on 16/08/16. In the meantime, the Share Registrar and Ballotters Regulations, 2017 (the SRB Regulations) were promulgated on 11/01/17. Thereafter, the Appellant vide email dated 01/02/17 was advised to submit a fresh application under the SRB Regulations without any additional fee. The application of the Appellant for grant of licence as Share Registrar and Balloter (the SRB) under the SRB Regulations was received on 30/03/17 (the Application under SRB Regulations). The Application under SRB Regulations was duly signed by the Director and further scrutiny revealed that the ex-CEO vide his letter dated 08/08/16 confirmed his resignation to the CRO, however, it was observed that the signatures of the ex-CEO on his resignation confirmation letter dated 08/08/16 (the Resignation Letter) was not in accordance with his signatures on his CNIC. It was further observed by the Respondent that the signatures of the ex-CEO appearing on the Board Resolution were also not in accordance with the signatures appearing on his CNIC. Therefore, in order to ascertain the genuineness of the Application under SRB Regulations, the ex-CEO was once again contacted on telephone to confirm his signatures on the Resignation Letter and the Board Resolution. However, no satisfactory response was received from the ex-CEO. Thereafter, the directors of the Appellant along with ex-CEO of the Appellant were called for a meeting on 12/09/17, through video conferencing at the CRO Office. The new CEO and the Director of the Appellant attended the said meeting held on 12/09/17 and submitted that the ex-CEO was out of city and, therefore, could not attend the meeting. In the said meeting, the issue

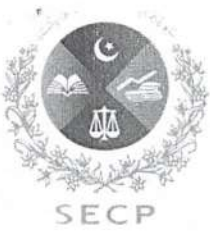


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regarding difference in the signatures of the ex-CEO on his Resignation Letter and CNIC was discussed, however, the response of the Appellant was not found satisfactory. Keeping the foregoing in view, another opportunity of hearing was provided to the Appellant vide letter dated 21/09/17 before the Respondent in terms of Regulation 8(1) of the SRB Regulations on 04/10/17 at the Commission's Office in Islamabad. On the date of hearing, the new CEO and Mr. Afzal Awan (the Counsel) appeared on behalf of the Appellant through video link from the CRO and made the same submission that the ex-CEO was no more part of the Appellant and requested to consider the Application made under SRB Regulations.

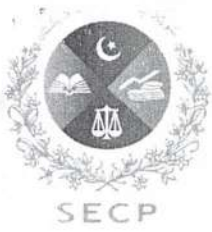
4. The Respondent dissatisfied with the response held that the Appellant had made misstatements relating to the position of ex-CEO of the Appellant in both applications i.e. Application for registration as BTA and the Application made under SRB Regulations. Therefore, the Respondent was of the opinion that it is not in the public interest and in the interest of capital market to grant license to the Appellant to act as SRB. Therefore, the Appellant's Application to act as SRB could not be processed further and it was refused by the Respondent in terms of Regulation 8 of the SRB Regulations. The Appellant was further directed to:
 - a. Immediately initiate the process for change in the Memorandum of Association;
 - b. From the date of receipt of the decision of the Commission, not to act as SRB for any new issue;
 - c. Intimate to all its customers and the securities exchange in case it is providing share registrar and balloter services to any listed companies or listed securities; about its inability to act as a share registrar and balloter; and
 - d. Continue to provide SRB services to all existing customers till the appointment of any other SRB by its customers;

Provided that the appointment of any other share registrar and the balloter should be made within the time period but not exceeding 60 days from the date of the Impugned Order.



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5. The Appellant preferred the appeal on the grounds that the Impugned Order is a nullity in the eyes of the law as it is framed on a misconceived telephone call. The Respondent erred to understand that there is no application on record by the ex-CEO about any dispute with the Appellant or its management. The ex-CEO had confirmed in writing to CRO Office Karachi on their enquiry that he had resigned from the Appellant. The Respondent erred to understand that all legal formalities for resignation of the ex-CEO and appointment of the new CEO were complied in accordance with the law. Furthermore, the Appellant argued that the CRO office had also acknowledged and issued certified copies of Form 29 for resignation and appointment of the new CEO. At the time of filing of Application under SRB Regulations, there was a newly constituted board of directors and there was no controversy about the new board of directors. The Respondent failed to consider the facts, circumstances of the Appellant and evidence on record.
6. The Respondent rebutted the arguments of the Appellant on the grounds that the Impugned Order is passed in accordance with the law. While passing the Impugned Order all the relevant facts and laws had been considered and the Appellant was afforded adequate hearing opportunities to plead its case in the matter. The Respondent further argued that after the scrutiny of documents, the ex-CEO was contacted and he informed that he had left the Appellant even before the Board Resolution was passed and he did not seem to have any knowledge of the earlier Application made to the Commission for Registration under BTA. Furthermore, the Respondent argued that the ex-CEO could not confirm the signatures on the Board Resolution and Resignation letter when contacted through telephone for a second time by the Respondent. Furthermore, when the ex-CEO along with the Director and the new CEO were asked to attend a hearing, the ex-CEO failed to appear and present his stance. The Respondent further argued that he is empowered to consider whether the director of the applicant is involved in any fraudulent activity or breach of trust before deciding to grant license to the applicant to



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act as SRB. In the circumstances, the Respondent argued that it seems the Director had made a misstatement and the Respondent had no option but to invoke Regulation 6(1)(e) of the SRB Regulations and declined to register the Appellant to act as SRB.

7. We have heard the parties i.e. the Appellant and the Respondent. We are of the view that the Respondent while deciding whether to grant license to act as SRB had to consider whether there was any involvement of the Appellant, its sponsors, directors, chief executive in an offence involving fraud or breach of trust in terms of Regulation 6(e) of the SRB Regulations. In the instant case, the Appellant has failed to convince that the Application under SRB Regulations was genuine as the statements of the ex-CEO contradict the stance of the Appellant. The Appellant could not give any satisfactory explanation on why the signatures of the ex-CEO on the Resignation Letter and the Board Resolution were not in accordance with the signatures on the CNIC. Furthermore, the ex-CEO when contacted by the Commission could not confirm if the Director was even authorized to file the Application to register as BTA on his behalf and could also not confirm his signatures on the aforementioned documents. We are therefore of the view that in the circumstances license to the Appellant could not have been granted to act as SRB in terms of Regulation 8 of the SRB Regulations as it was not in the public interest to do so.

8. In view of the foregoing, we see no reason to interfere with the Impugned Order. The Impugned Order is upheld with no order as to cost.

Shaukat Hussain
Commissioner (CCD, Insurance)

Farrukh H. Sabzwari
Commissioner (SCD, AML)

Announced on **08 MAY 2020**