Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 45 of 2019

Trust Securities & Brokerage Limited

Appellant

Versus

The Commissioner, (SMD), SECP, Islamabad.

Respondent

Date of hearing: September 3, 2020

Present:

For Appellant:

1. Mr. Muhammad Umair Ansari, Sr. Manager Audit
2. Mr. Muhammad Ashraf, Compliance Manager
3. Mr. Kabir Sachanand Lakhwani, Head of Finance & Compliance

For Respondent:

1. Mr. Osman Syed, Joint Director (Adjudication-I), SECP
2. Mr. Muhammad Faisal, Assistant Director (Adjudication-I), SECP

ORDER

1. This Order shall dispose of Appeal No. 45 of 2019 filed by M/s. Trust Securities & Brokerage Limited (the Appellant) against the Order dated June 10, 2019 (the Impugned Order) passed by the Commissioner, SMD (the Respondent) under Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (the SECP Act) read with Section 150 the Securities Act, 2015 (the Act).

2. The brief facts of the case are that the Securities and Exchange Commission of Pakistan (the Commission) ordered a review (the Review) of the Appellant's compliance with the regulatory

requirements of the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the Regulations). The Review was carried out by the Oversight Committee, constituted under Regulation 18 of the Joint Inspection Regulation, 2015 (the Inspection Regulations) made under Section 169 of the Act. The Review Report (the Report), *inter alia*, revealed the following non-compliances committed by the Appellant;

a. The AML/KYC policy was neither updated nor approved by the Appellant's board of directors;
b. The Appellant did not have a mechanism for ongoing monitoring/risk assessment of its clients;
c. The Appellant had not conducted Enhanced Due Diligence (EDD) of eleven clients;
d. The Appellant had assigned incorrect risk ratings to its clients;
e. The Appellant, in contravention of Regulation 16 of Securities Brokers (Licensing and Operations) Regulations, 2016 had opened trading account of:
    - Son of chief executive of another brokerage house;
    - Employee of another brokerage;
    - Another brokerage house;

3. In view of the above violations, a show-cause notice dated May 2, 2019 (the SCN) was issued to the Appellant. The Appellant submitted a written reply to the SCN vide letters dated May 9 and 10 of 2019. Hearing in the matter was held on May 9, 2019, which was attended by the Appellant's representatives. In terms of powers conferred under section 40A of the Act, the Respondent imposed a penalty of Rs. 250,000/- (Rupees two hundred fifty thousand) on the Appellant.

4. The Appellant *inter alia* filed this Appeal on the grounds that the Respondent had no jurisdiction to conduct the Review under Section 169 of the Act, because Section 169 of the Act, empowers the Commission to make regulations rather than to conduct the Review (referred paragraph 2 of the SCN). The Appellant stated that after the Review, the Oversight Committee and the Commission was informed vide letters dated March 21, May 9 & May 10, 2019 respectively, about rectification of non-compliances of the Regulations, however, the Respondent had ignored this fact and imposed a penalty. The Appellant stated that the Respondent should have provided an opportunity to rectify the non-compliances. In this regard, the Appellant had relied upon the Appellant Bench's order passed in

Appeal Nos. 26, 27 & 28 of 2014, wherein without imposing penalty, the parties were provided an opportunity to rectify non-compliances. The Appellant stated that the Regulations were promulgated on June 13, 2018, however, guidelines on the Regulations were issued on September 11, 2018, therefore, the Respondent unlawfully conducted review of the compliances of Regulations for the period starting from September 1, 2018, which was 10 days before the issuance of the SECP's Guidelines. The Appellant stated that KYC and CCD requirements implemented by the Karachi Stock Exchange (presently PSX) in 2012 under clause 4.18 of PSX Rulebook cannot be treated as requirements of the Regulations, therefore, the Respondent was not authorized to penalize the Appellant on the basis of alleged violations of KYC and CDD requirements introduced under regulatory framework of 2012.

5. The Respondent had denied the Appellant's assertion regarding Section 169 of the Act and stated that the Appellant is trying to defeat the purpose of law by raising a technical issue, which has no implication on the merits of the case. The Respondent submitted that Review has not been conducted under Section 169 of the Act rather Joint Inspection Regulations, 2015 (the JIT Regulations) were issued under section 169 of the Act. Therefore, mere omission in the Impugned Order does not defeat the merit of the case. The Respondent stated subsequent rectification of the Regulations' non-compliances are sufficient to prove that the Appellant had violated the requirements of the Regulation. The Respondent stated that the referred case laws (Appeal nos. 26, 27 & 28) are not relevant in the instant case since the scope of the Review was to determine whether the securities brokers are compliant with the Regulations, whereas, Regulation 5.2 of the System Audit Regulations provides that the Broker has to rectify any non-compliance identified in the audit report.

6. The Respondent contended that the arguments put forth by the Appellate are not tenable as Regulations were promulgated on June 13, 2018 and the Appellant's policies were not updated in consonance with the Regulations till the Review. The Respondent stated that irrespective of issuance of the AML Guidelines on September 11, 2018, the Appellant was required to comply with the Regulations after promulgation. The Respondent stated that the Appellant had not been penalized for the violation of the AML Guidelines 2012, rather the Impugned Order had been passed for violation of the Regulations. The Respondent clarified that in the Impugned Order it had been stated for clarity that the Regulations are new but the

requirements contained therein were also a part of the regulatory framework of 2012. The Respondent stated that as per preliminary findings of the Review, the Appellant was found non-compliant with the Regulations, therefore, an SCN was issued and consequently, the Impugned Order was passed after following the due legal process

7. The Appellate Bench (the Bench) has heard the parties and perused the record. The Appellant's representatives and the Respondent's representatives reiterated their grounds of the appeal and rebuttal thereof.

8. We are of the view that the Appellant's assertion with regard to apparent mistakes in the introductory paragraph (Paragraph two) of the SCN and the Impugned Order is immaterial and does not affect the merits of the case. The Bench is of the view that the content of the referred paragraphs lack clarity in terms of procedure adopted in this case. The Bench has examined the relevant record, which revealed that the Commission mandated the Oversight Committee to initiate the Review and thereafter, upon the receipt of the Report, SCN proceedings were initiated by the Respondent. In view of the record, the Bench has not found any anomaly in the procedure adopted in the Review and during the SCN proceedings. We have no doubt that the Commission and the Respondent had duly followed the legal process while initiating the Review, issuing the SCN and passing of the Impugned Order. Therefore, ambiguity caused by poor drafting of the referred introductory paragraph does not vitiate the Review and SCN proceedings.

9. The Bench has also examined the arguments of the parties and found that the Appellant's assertions are insignificant to distort the findings of the Impugned Order because the requirements contained under the Regulations were not new. Rather these were introduced in 2012 by the Karachi Stock Exchange (presently PSX), with the approval of the Commission, through regulation 4.18 of the Rule Book (current Regulation 4.17). The Bench is of the view that these requirements were made mandatory for the securities brokers to formulate and implement an effective KYC and CDD policy in accordance with the KYC and CDD guidelines issued by the Karachi Stock Exchange in 2012. The Bench has compared the requirements of the regulatory framework of 2012 with the Regulations and SECP's AML guidelines 2018, and observed that they do not reflect any material difference. Therefore, the Bench is of the view that the Regulations had not introduced new regulatory requirements, rather prior regulatory requirements had been streamlined. The Bench also endorses the Respondent's comments that case laws referred by the Appellant are not relevant, to the facts of

this case, therefore, we are not inclined to accept it. The Bench is of the view that subsequent compliance or rectification of violations does not exonerate the Appellant from the consequences of such violations, therefore, the Respondent had rightly rejected this plea. The Bench is also of the view that the Regulations were implemented from June 13, 2018, therefore, issuance of guidelines on September 11, 2018 does not justify non-compliances because guidelines were not a pre-condition for implementing the Regulations.

10. In view of the forgoing, the Bench finds no reason to interfere with the merits of the Impugned Order, therefore, we hereby dismiss the Appeal, without any order as to cost.

(Farrukh Hamid Sabzwari)
Commissioner (SCD-PRDD)

(Shaukat Hussain)
Commissioner (INS,C&CD)

Announced on: 06 JAN 2021