

Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 17 of 2012

1. Khalid Javed Securities Private Limited
2. Mr. Javed Gulzar, Chief Executive Officer
3. Mrs. Samina Javed
4. Mr. Khushnood Ahmed Gulzar

(Serial No. 3,4, directors of Khalid Javed Securities Pvt. Ltd) ...Appellants

Versus

1. Mr. Akif Saeed
2. Commissioner, SECP
3. Ms. Saima Shafi Rana
4. Mr. Tahir Mehmood Kiyani
5. Mr. Muhammad Ali
6. Mr. Hasnat Ahmad
7. Ms. Najia Ubaid

...Respondents

8. Syed Mumtaz Hussain Bukhari
9. Mujahid Nadeem

.... Performa Respondents

(Serial No.1, 3 to 7, officers of the Securities and Exchange Commission of Pakistan)

Date of hearing

06/11/13

ORDER

Present:

For the Appellants:

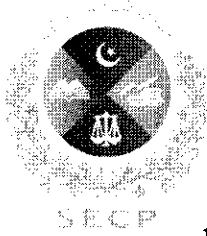
Mr. Javed Gulzar

Mr. Khushnood Ahmed

For the Respondent:

Mr. Hasnat Ahmad, Director (ICW)

Mr. Tahir Mehmood Kayani, Deputy Director (ICW)



Securities and Exchange Commission of Pakistan

1. This order is in appeal No. 17 of 2012 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 29/03/12 (the "Impugned Order") passed by Respondent No 6.
2. M/s Khalid Javed Securities (Pvt.) Ltd (the "Company") was a member of the Lahore Stock Exchange (Guarantee) Limited ("LSE") and was registered with the Commission as a broker under the Brokers and Registration Rules, 2001 ("the Rules"). Mr Javed Gulzar, ("Chief Executive Officer"), Mrs. Khushnood Ahmed Gulzar and Mrs. Samina Javed were directors of the Company.
3. Brief facts of the case are that vide their letter dated 25/03/11 and 29/03/11, LSE informed the Commission that the Company has filed a winding up petition (Civil Original No.20 of 2011) before the Honourable Lahore High Court, Lahore (the "Court") and has closed its offices registered with the LSE without any prior intimation in violation of regulation 10 of the Regulation governing LSE Members' Offices/Branch Offices for conducting the business and trading of shares and securities within/outside the exchange. In view thereof, the LSE switched off all trading terminals of the Company. The LSE through said letters also informed the Commission regarding receipt of investor complaints/claims against the Company.
4. The Commission took necessary steps vide letters dated 29/03/12, 31/03/12 and 01/04/12 and sought necessary information from the Central Depository Company of Pakistan Limited ("CDC") and LSE. Further, the Company vide letter dated 30/03/11 was advised to settle all outstanding complaints before winding up of the company and was further advised to attend a meeting on 05/04/11 through video conferencing at the Company Registration Office ("CRO") of the Commission at Lahore. The said meeting was held as per



Securities and Exchange Commission of Pakistan

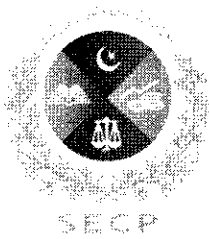
schedule but the Company failed to provide any concrete arrangement for the settlement of claims/complaints. On 12/04/11, the Commission directed the CDC to withhold movement of shares from the sub-accounts maintained under the Participant ID of the Company. The LSE vide letter dated 19/04/11 informed that the Company has been expelled from the membership of the exchange with immediate effect. Subsequently, CDC also suspended admission of the Company to the Central Depository System.

5. In view of the above, the Commission conducted initial scrutiny of the documents, record and the contents of the winding up petition filed by the Company which revealed several discrepancies, violations, non-compliances and pending investor claims against the Company. The Commission ordered an enquiry under section 21 of the Securities and Exchange Ordinance 1969 (the "Ordinance") vide order dated 22/04/11.
6. The Commission appointed Ms. Saima Shafi Rana, Deputy Director (Respondent No. 3), Mr. Tahir Mehmood Kiani, Deputy Director (Respondent No. 4) and Mr. Muhammad Ali, Deputy Director (Respondent No. 5) ("Enquiry Officers") of the Commission to enquire into the matter relating to outstanding investor claims against the Company; to inspect books and record and to investigate the trading activity and practices of the Company. The Company and the directors were directed to fully cooperate with and assist the Enquiry Officers in conducting and completing the enquiry. The Company and directors were also directed to provide any information and documents as required by the Enquiry Officers from time to time and were advised that in case of their failure to provide the information, appropriate action would be initiated against them under the law.



Securities and Exchange Commission of Pakistan

7. The Enquiry Officers submitted their interim report on 13/02/12 to the Commission which revealed that the Company and the directors submitted false and incorrect information/statements during the course of the enquiry and also failed to provide the relevant record and information as directed by the Enquiry Officers despite repeated directions.
8. Show cause notice dated 17/02/12 (“SCN”) was issued to the Company and the directors including the Chief Executive Officer under section 22 read with section 18 of the Ordinance on the basis of the interim report of the Enquiry Officers. The Company or its authorized representative were afforded an opportunity to appear before Respondent No.6 on 27/02/12 but on the said date no one appeared on their behalf. However, a brief reply to the observations raised in the SCN was received on 27/02/12 through letter dated 22/02/12 from the Chief Executive Officer along with a request for adjournment. The request for adjournment was accepted and hearing was fixed on 08/03/12 in which the Chief Executive Officer and one of the directors, Mr. Khushnood Gulzar appeared before Respondent No.6 and denied the allegations in the SCN.
9. The Respondent No. 6, after scrutiny of the facts of the case, held that the Company failed to comply with the requirements of section 21 of the Ordinance, the Rules and Regulations made thereunder. The Company failed to furnish the requisite record and information which it was required to furnish under the Ordinance. The Respondent No.6, in exercise of the powers conferred by section 22 of the Ordinance, imposed a penalty of Rs 2 million, payable jointly or severally by the Company and its directors. In addition, a penalty of Rs 1 million was imposed on the Chief Executive Officer of the Company in view of the false and incorrect statements made by the Chief



Securities and Exchange Commission of Pakistan

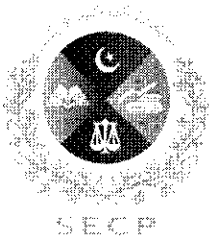
Executive Officer on behalf of the Company during the enquiry proceedings and failure to comply with the provisions of the Ordinance.

10. The Appellants have preferred the instant appeal against the Impugned Order. The Appellants' representative argued that:

- a) after passage of board resolution by the Company and institution of winding up petition under supervision of the Court, a parallel initiative for enquiry into outstanding investor claims was unwarranted by law; and
- b) all the documents/information i.e. computers, back office record, Standardized Account Opening Forms of the clients ("SAOFs") etc. were in the custody of the court auctioneer as per the order dated 10/05/11 of the Court in C.O 20 of 2011. The Appellants provided all the relevant documents/information to the Respondents through the court auctioneer on 04/10/11, as such; no default was made for non-provision of the documents. It was further pleaded that a lenient view be taken by the Appellate Bench as the Appellants undertake to settle the claims of the investors as soon as claims are finalized by the Court.

11. The department's representative argued that:

- a) there is no provision of law which bar the Respondents from conducting an enquiry in cases where winding up proceedings are pending before the Court. Moreover, the rights of investors have to be protected at all costs and an enquiry into outstanding investor claims was essential to determine the outstanding claims after the suspension of the Company from LSE. The Appellants defaulted and the LSE received a large number of investors' claims against the Company after closure of its operations and branch



Securities and Exchange Commission of Pakistan

office. As per the statement made on behalf of the Company in the winding up petition, an amount of Rs. 39.84 million was payable to 174 investors of the Company; and

- b) certain information/record was provided by the Appellants on 04/10/11 through the court auctioneer, however, complete original documents (SAOFs, loan agreements, pledge reports and trial balance etc.) were not provided. The details of the documents which were not provided were communicated to the court auctioneer vide letter dated 21/12/11. In response, the court auctioneer vide letter dated 16/01/12 informed the Enquiry Officers that the Company had failed to submit the record in original despite the explicit direction of the Enquiry Officers during their visit of LSE. The said matter was reported to the Commission in the final enquiry report dated 13/02/12. Furthermore, until such time the winding up process is complete, the Company remains a legal entity and must provide all the documents/information as required by the Respondents for purposes of the enquiry.

12. We have heard the parties. Section 21(1)(2) and 22(1) of the Ordinance are reproduced for ease of reference:

21. Enquiry. - (1) The [Commission] may, on its own motion or on representation of not less than [one-tenth] in number of the members of the Exchange or, in the case of the business or any transaction mentioned in clause (b), on the representation of the Exchange or any person interested in or affected by such business or transaction, at any time by order in writing, cause an enquiry to be made by any person appointed in this behalf into-

(a) the affairs of, or dealings in, any Exchange; or

(b) the dealings, business or any transaction in securities by any [person or]broker, member, director or officer of an Exchange.



Securities and Exchange Commission of Pakistan

(2) Where any enquiry under sub-section (1) has been undertaken every past or present member, director, manager or other officer of the Exchange [or any other person] to which the enquiry relates, and every other person who has had any dealing in the course of his business with such [person or] Exchange or with the director, manager or officer thereof, shall furnish such information and documents in his custody or power or within his knowledge relating to or having been conducting the enquiry may require.

22. Penalty for certain refusal or failure. *-(1) If any person-*

(a) refuses or fails to furnish any document, paper or information which he is required to furnish by or under this Ordinance; or

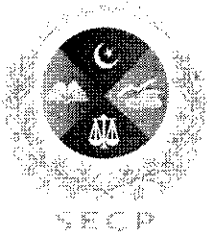
(b) refuses or fails to comply with any order or direction of the [Commission] made or issued under this Ordinance; or

(c) contravenes or otherwise fails to comply with the provisions of this Ordinance or any rules or regulations made thereunder;

the [Commission] may, if it is satisfied after giving the person an opportunity of being heard that the refusal, failure or contravention was willful, by order direct that such person shall pay to the [Commission] by way of penalty such sum not exceeding [fifty million] rupees as may be specified in the order and, in the case of a continuing default, a further sum calculated at the rate of [two hundred] thousand rupees for every day after the issue of such order during which the refusal, failure or contravention continues.

Emphasis Added

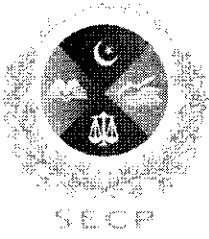
- a) the contention of the Appellants that after institution of winding up petition in the Court, an enquiry into investor claims could not be held, holds no merit. Reliance is placed on section 21 of the Ordinance above which states that the Commission "...at any time..." may cause an enquiry to be made into "... (b) the dealings, business or any transaction in securities by any [person or] broker, member, director or officer of an Exchange..." Section 21 of the Ordinance does not bar the Commission from conducting an enquiry during pendency of winding up petition before the court; and



Securities and Exchange Commission of Pakistan

b) the Appellants ought to have fully cooperated with the Enquiry Officers. The Enquiry Officers vide letter dated 04/05/11 asked the Appellants for the complete record. The Appellants submitted vide letter dated 19/05/11 that all the complete record was in the custody of the court auctioneer as per the order dated 10/05/11 of the Court in C.O. 20 of 2011. The Court vide order dated 25/07/11 directed the court auctioneer to provide the Commission due access to the record of the Company. The Company vide letter dated 23/09/11 was directed by the Enquiry Officers to ensure the presence of their authorised representative on 04/10/11 at the Company's office in the LSE building. On the said date, the Chief Executive Officer provided partial record through his personal USB which was available with him but did not provide the SAOFs, loan agreements and pledge reports in original. The Enquiry Officers vide letter dated 21/12/11 requested the court auctioneer to provide copies of SAOFs of 23 major accounts holders. The court auctioneer vide letter dated 16/01/12 informed the Enquiry Officers that the Company had failed to submit the record in original. We do not see any reason why the Appellants failed to cooperate with the Enquiry Officers. The facts prove it beyond any doubt that the afore-mentioned record is in the custody of the Appellants, who in order to delay the processing of claims did not cooperate with the Enquiry Officers.

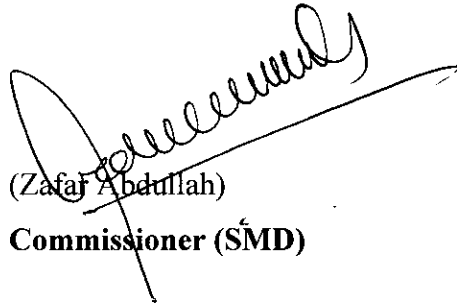
So far as the contention of the Appellants regarding leniency on the ground that the Appellants are fully co-operating with the Court in order to pay back the claim of the investors is concerned, we are of the view that the Appellants ought to have settled the claims of the investors before initiation of winding up and should have fully cooperated with LSE being the front line regulator and the SECP being its apex regulator. The investors have suffered an inordinate delay for settlement of their claims due to the actions of the Appellants. Moreover, the Chief Executive Officer admitted in the




Securities and Exchange Commission of Pakistan

proceedings before the Respondent No.6 that the original SAOFs are available with him. The Chief Executive Officer has been rightly proceeded against for making false and incorrect statements before the Enquiry Officers.

In view of the above, we see no reason to take a lenient view and the appeal is dismissed with no order as to cost.


(Zafar Abdullah)
Commissioner (SMD)


(Tahir Mahmood)
Chairman

Announced on: 29/11/13