

Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 10 of 2012

1. Wasi Securities (SMC-Private) Ltd
 2. Mr. Wasi Ullah Khan, Chief Executive Officer,
Wasi Securities(SMC-Private) Ltd
- ...Appellants

Versus

1. Chairman, SECP
 2. Commissioner, SECP
 3. Ms.Asima Wajid
 4. Mr. Tahir Mehmood Kiyani
 5. Mr. Hasnat Ahmad
 6. Ms. Najia Ubaid
- (Serial No. 3-6, officers of the Securities and Exchange Commission of Pakistan)
- ...Respondents

Date of hearing

06/11/13

ORDER

Present:

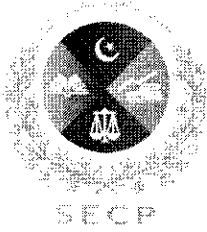
For the Appellants:

Mr.Wasi Ullah

For the Respondents:

Mr. Hasnat Ahmad, Director (ICW)

Mr. Tahir Mehmood Kayani, Deputy Director (ICW)



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1. This order is in appeal No. 10 of 2012 filed under section 33 of the Securities and Exchange Commission of Pakistan (the “Commission”) Act, 1997 against the order (the “Impugned Order”) dated 07/03/12 passed by Respondent No. 5
2. M/s Wasi Securities (SMC-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”) and its board is constituted of one director/Chief Executive, Mr. Wasi Ullah Khan (the “Chief Executive Officer”)
3. Brief facts of the case are that the Commission received numerous complaints against the Company regarding unlawful withdrawal of shares from the sub-accounts of its clients and disposing of the shares without permission of the account holders. Further, as per available record, the Company failed to honour the award of the panel of arbitrators of LSE announced on 01/09/09 and upheld by the Appellate Bench of LSE vide award dated 11/05/11. In view of the Company’s failure to deposit award money with LSE as required under regulation 36(c) of the General Regulations, the LSE issued an expulsion notice to the Company on 18/05/11. On 01/06/11, LSE informed the Commission that instead of payment of award money to the complainant, the Company filed a winding up petition (Civil Original No. 29/2011) before the Lahore High Court (the “Court”) under section 305 and 309 of the Companies Ordinance 1984. In consequence, LSE switched off terminals of the Company on 01/06/11 on account of violation of Regulations 2(A)(1)(d) and 2(A)(1)(i) of the General Regulations. Subsequently, the governing Board of Directors of the LSE, expelled membership of Company with effect from 03/06/11. The Central Depository Company vide notification dated 04/06/11 also terminated admission of the Company to the Central Depository System.



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4. 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 violations, miststatements, non-compliances and pending investor claims. The Commission ordered an enquiry under section 21 of the Securities and Exchange Ordinance, 1969 (“the Ordinance”) vide order dated 08/06/11.
5. The Commission appointed Ms. Asima Wajid, Deputy Director (“Respondent No. 3”) and Mr. Tahir Mahmood Kayani, Deputy Director (“Respondent No. 4”) (“Enquiry Officers”) to enquire into the matter relating to outstanding investor claims against the Company, inspect the books and record and to investigate the trading activity and practices of the Company and do all such things as were necessary or incidental thereto. The Company was directed to fully co-operate and assist the Enquiry Officers in conducting and completing the enquiry. The Company was also directed to provide any information and documents as required by the Enquiry Officers from time to time and was warned that in case of failure to provide the required information, appropriate action would be initiated against it under the law. On 17/01/12, the Enquiry Officers submitted their interim report to the Commission and highlighted that the Company failed to provide the relevant record and information as directed by the Enquiry Officers despite repeated directions.
5. Show Cause Notice (“SCN”) under section 22 of the Ordinance was issued to the Company and the Chief Executive Officer by Mr. Hasnat Ahmad, Director (“Respondent No. 5”) for non-compliance of the directions and non-provision of information/documents to the Enquiry Officers. The authorized representatives of the Company were afforded an opportunity to appear before



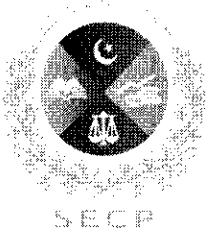
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Respondent No.5 on 21/02/12 but no one appeared on their behalf nor was any request for adjournment made, however, the Chief Executive Officer provided a written response dated 20/02/12.

6. The Respondent No. 5, 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 Appellants failed to furnish the requisite record and information which it was required to furnish under the Ordinance. The Respondent No.5, in exercise of the powers conferred by section 22 of the Ordinance, imposed a penalty of Rs 3 million each on the Company and Rs 2 million on the Chief Executive Officer.

8. 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) the Appellants could not provide any documents/information to the Respondents as they did not have access to their office due to the suspension of their membership from LSE. 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.

9. The department's representative argued that:
 - a) there is no provision of law which bars the Respondent from conducting an enquiry in cases where winding up proceedings are pending before the



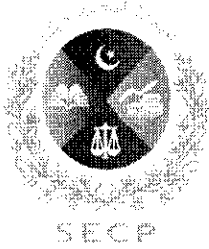
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Court. Moreover, the rights of investors have to be protected at all costs and an enquiry into outstanding investor claims was essential to determine the outstanding claims after the suspension of the Company from LSE. The Appellants defaulted and the LSE and the Commission had received a large number of investors' claims against the Company before and after closure of its operations and branch office. As per the statement made on behalf of the Company in the winding up petition, an amount of Rs. 53.341 million were payable to 105 investors of the Company; and

- b) the Respondent No.1 through the enquiry order, directed the Appellants to fully cooperate and provide any information and documents as required by the Enquiry Officers, however, the Appellants failed to provide the relevant record and information as directed by the enquiry officers. The Appellants through letter dated 20/08/11 stated that the record is in control of the LSE. The LSE fully cooperated with the Enquiry Officers, however, the Appellants failed to provide the record from their office at LSE. The said matter was reported to the Commission by the Enquiry Officers on 17/01/12. 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 the purposes of the enquiry.

10. 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*



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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.

(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 bearing on the subject-matter or the enquiry as the person 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

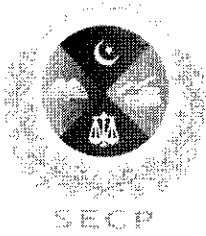
(b) refuses or fails to comply with any order or direction of the [Commission] made or issued under this Ordinance; or

(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

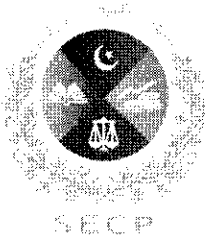
- a) the contention of the Appellants that after institution of winding up petition in the Court, an enquiry into investor claims could not be held, holds no merit. Reliance is placed on section 21 of the Ordinance above which states that the Commission "...at any time..." may cause an enquiry to be made into "... (b) the dealings, business or any transaction in securities by any [person



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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

- b) the Appellants ought to have fully cooperated with the Enquiry Officers. The Enquiry Officers vide letter dated 22/06/11 and 11/08/11 asked the Appellants for the complete record. The Appellants submitted vide letter dated 20/08/11 that they could not provide the complete record as they did not have access to their office after suspension of their membership from LSE. The documents/information not provided to the Enquiry Officers included: a) account opening forms of clients, with the house as well with the CDC; b) complete general ledgers and subsidiary ledgers (party-wise ledgers) for the period 01/07/09 to 04/06/11; c) client-wise transaction details for the period from 01/07/09 to 04/06/11; d) party-wise receipts and payment details for the period 01/07/09 to 04/06/11 e) trial balance as on 04/06/11; f) details of pending/unsettled claims as on 04/06/11; g) clients' securities balance report and equity/exposure report of clients as on 04/06/11; h) UIN wise and scrip wise break up relating to balance of final loss payable to NCCPL as on 04/06/11 and its subsequent position; i) list of employees and the directors holding designation, current address and job description (in case of employees only); j) copies of minutes of meetings of shareholders and directors of the company; k) risk management policy including margin requirements; l) list of bank accounts maintained by the brokerage house with their address, and details of available assets of the brokerage house; m) bank statements of all the banks for the period from 01/07/09 to 04/07/11; n) defaults of loan/finance facilities obtained from the banks and details of financial dues outstanding against the company; o) list of authorised signatories for banks/CDC/NCCPL/LSE including copies of board resolutions and signatories cards; p) net capital balance certificate for the last



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two years; q) audited accounts of the brokerage house for the last two years; r) correspondence with complainants as well as with LSE relating to complaints; s) documentary evidence regarding actions by the management of the brokerage house for resolution of complaints; t) copies of existing charge registered on any assets of the company; u) pattern of shareholding; v) pledge reports of house/sub-accounts and details of pledge (Add/Release/Call) by LSE banks; and w) CDC audit/inspection report issued by CDC.

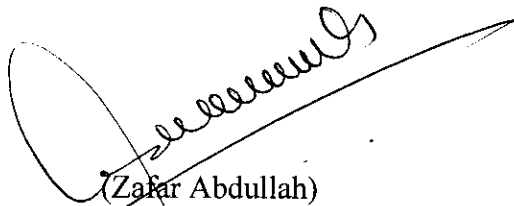
The perusal of the record shows that the Enquiry Officers vide notice dated 22/09/11 directed the Appellants to ensure presence of an authorised representative of the Company at the Company's office at the LSE building in Lahore to inspect the record of the Company, however, no one appeared on behalf of the Company as directed. The Chief Executive Officer responded vide letter dated 28/09/11 stating that a winding up petition of the Company is pending before the Court and the Company cannot be compelled to produce any record or statement that can be used against the Company. The Enquiry Officers vide letter dated 12/10/11 afforded another opportunity to the Company to provide the record on or before 21/10/11, however, the Appellants vide letter dated 14/10/11 reiterated the same stance taken earlier and failed to provide the record. The Enquiry Officers vide letter dated 11/11/11 while responding to the averments of the Company advised the Company to provide the relevant record on or before 23/11/11. The Company, however, still failed to provide any information and record. We do not see any reason why the Appellants failed to cooperate with the Enquiry Officers. The afore-mentioned facts prove it beyond any doubt that the entire record is in the custody of the Appellants, who in order to delay the processing of claims did not cooperate with the Enquiry Officers.




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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.

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