



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. 1

In the matter of

### Appeal No. 09 of 2012

1. H.S.Z Securities Private Limited

2. Dr. Naghmana Hameed, Director

3. Mr. Hameed Ghani, Director

(Serial Nos. 2, 3 directors of HSZ Securities Private Limited)

.....Appellants

Versus

1. Mr. Akif Saeed

2. Mr. Muhammad Tanveer Alam

3. Mr. Shaukat Hameed

4. Mr. Ghulam Mustafa

5. Mr. Saima Shafi Rana

6. Mr. Hasnat Ahmed

7. Ms. Asima Wajid

8. Mr. Shaukat Hussain

(All officers of the Securities Exchange Commission of Pakistan)

.....Respondent

Date of hearing

06/11/13

### ORDER

Present:

For the Appellants:

Mr. Hameed Ghani

For the Respondent:

Mr. Hasnat Ahmad, Director (ICW)

Ms. Asima Wajid, Deputy Director (ICW)

Appellate Bench No. 1

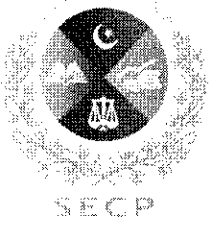
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1. This order is in appeal No. 09 of 2012 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 05/03/12, (the "Impugned Order"), passed by the Respondent No. 6.
2. The facts leading to the case are that H.S.Z. Securities (Pvt.) Limited (the "Company") was a member of Lahore Stock Exchange (the "LSE") and registered with the Commission as a broker under the Brokers and Agents Registration Rules, 2001 (the "Rules"). On 07/09/10, a notice was published in a newspaper that the Company has filed winding-up petition (Civil Original No. 37 of 2010) in the Honourable Lahore High Court, Lahore (the "Court"). The Company closed its office with the LSE without any prior intimation in violation of regulation 10 of the *Regulation Governing LSE Members' Office(s)/Branch Office(s)* for conducting the business and trading of securities within/outside the Exchange. The LSE, therefore, vide notice No. 5261 dated 09/09/10 suspended and subsequently expelled the Company from membership of the LSE on 09/04/11. Central Depository Company of Pakistan Limited also suspended admission of the Company on Central Depository System vide notice dated 09/09/10.
3. The Commission was informed by the LSE, through letter dated 17/09/10, regarding receipt of 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 08/10/10. The Company was directed in the enquiry order to fully cooperate with the enquiry committee in conducting and completing the enquiry. The Company was also warned that in case of failure to provide the required information, appropriate action would be initiated against it under the law. The enquiry committee vide letter dated 14/10/10, advised the Company to provide the following information pertaining to its operations on or before 28/10/10:



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1. Complete General Ledgers and subsidiary ledgers (party-wise ledger) for the period from 1/06/09 to 09/09/10.
  2. Bank statements of the banks from the period from 01/06/09 to 09/09/10.
  3. Party-wise receipts and payments details for the period from 01/06/09 to 09/09/10.
  4. Client-wise transaction details for the period from 01/06/09 to 09/09/10.
  5. Risk management policy including margin requirements.
  6. Audited Accounts of the Brokerage House for the last two years.
  7. Net Capital Balance Certificate for the last two years.
  8. List of authorized signatories for Banks/CDC/NCCP/LSE including copies of Board Resolutions and signatories cards.
  9. Copies of the minutes of the meetings of the shareholders and directors of the company.
  10. List of employees and the directors including designation, current address and job description (in case of employees only).
  11. Trial balance as on 09/09/10.
  12. Clients' Securities Balance report and equity/exposure report of clients as on 09/09/10.
  13. Correspondence with complainants as well as with LSE relating to complaints.
  14. Documentary evidence regarding actions taken by the management of the Brokerage House for resolution of complaints.
  15. Account Opening forms of clients, with the house as well as with CDC.
  16. Pledge Reports of House/ Sub-accounts and details of pledge (ADD/RELEASE/CALL) by LSE/ Bank.
  17. Agreements/Correspondence with Bank/LSE relating to financing facility obtained, if any.
  18. CDC audit/inspection report issued by CDC.
  19. List of Bank Accounts Maintained by the Brokerage House with their address, and details of available assets of the Brokerage House.
  20. Details of pending/unsettled claims as of 14/10/10.
  21. Details of loans/financial facilities obtained from the banks and details of financial dues outstanding against the company.
  22. Clients Delivery Statements for the period from 01/06/09 to 09/09/10.
  23. Pattern of shareholding.
  24. Copies of existing charge registered on any assets of the company.
  25. UIN wise scrip wise break up relating to balance of final loss payable to NCCPL as on 09/09/10 and its subsequent position.
4. The Company failed to provide the above mentioned documents/information. The enquiry committee through letters dated 29/10/10 and 10/12/10 advised the



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Company to provide the requisite information. The Company on the contrary vide letters received by the enquiry committee on 15/11/10 and 28/12/10 refused to provide the required information and record on the pretext that the winding-up petition is pending before the Court in respect of the Company and also questioned the validity of the enquiry. The enquiry committee through its preliminary report dated 25/02/11 informed the Commission that despite persistent efforts through various letters and repeated reminders, the Company has failed to provide the required information as directed by the enquiry committee.

5. Show Cause Notice dated 20/04/11 (“SCN”) was issued to the Company and its directors under section 22 of the Ordinance. Hearing in the matter was held on 29/04/11. The directors of the Company personally appeared before the Respondent No.6 and committed to provide the information as requested by the enquiry committee. The matter was adjourned *sin die* to afford an opportunity to the Company to cooperate with the enquiry committee and provide the requisite information. Despite the assurance given by the directors of the Company, the Company failed to provide the necessary information required by the enquiry committee. The Respondent No. 6, dissatisfied with the actions of the Appellants passed the Impugned Order and imposed a penalty of Rs 2 Million on the Company and Rs 1 million on each of the directors of the Company.
6. 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



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b) the Appellants, provided the Respondents as many documents as possible but could not provide the complete documents as they did not have access to their office due to the suspension of their membership from LSE. The record weighing 11 kg 500 grams was furnished to the Respondents on 12/05/11 containing all the required documents, 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.

7. 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 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 office. At the time of passing of the Impugned Order, LSE had received 125 investors' claims against the Company amounting to Rs. 50.06 million; and

b) certain information/record was provided by the Appellants on 16/05/11, however, complete information was not provided. Some documents were mentioned in the cover letter but were not enclosed as annexures. The details of the documents which were not provided were communicated to the Appellants vide letter dated 24/05/11 by the enquiry committee. The Appellants through letter dated 20/06/11 stated that the remaining record is in custody of the LSE. The LSE fully



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cooperated with the enquiry committee, however, the Appellants failed to provide the record from their office at LSE. The said matter was reported to the Commission by the enquiry committee on 11/10/11. 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.

8. 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.*

*(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*



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*(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
- b) the Appellants ought to have fully cooperated with the enquiry committee. The enquiry committee vide letter dated 24/05/11 asked the Appellants for the complete record. The Appellants submitted vide letter dated 20/06/11 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 committee included: (a) complete general ledgers and subsidiary ledgers (party ledgers) for the period from 01/07/09 to 09/10/10 (soft copies and duly attested hard copies); (b) party-wise receipts and payment details for the period from 01/07/09 to 09/10/10; d) copies of minutes of meetings of shareholders and directors of the Company; e) list of employees and the directors including designation, current address and job description (in case of employees only); f) trial balance as on



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09/10/10; g) clients' securities balance report and equity/exposure report of clients as on 09/10/10; h) details of loan/finance facilities obtained from the banks and details of financial dues outstanding against the Company and correspondence in this regard; i) clients delivery statement for the period 01/07/09 to 09/10/10; and j) account opening forms of clients, with the house as well as with CDC. The perusal of the record shows that the enquiry committee took up the matter with LSE and the LSE directed the Appellants vide their letter dated 19/07/13 to ensure their presence at their office premises for the purpose of handing over their complete record to the enquiry committee. The Appellants, however, failed to show up at its premises on 25/07/11 and submit the complete record as was expected of them. The enquiry committee through notice dated 21/09/11 under section 21(3) of the Ordinance again directed the Appellants to ensure presence of the authorised representative of the Company at the LSE premises on 03/10/11. On the said date, Mr. Hameed Ghani, director of the Company appeared before the enquiry committee but refused to hand over the complete record stating the matter is status quo before the Court. No such order of the Court or evidence was provided to the effect. We do not see any reason why the Appellants failed to cooperate with the enquiry committee. The aforementioned facts prove it beyond any doubt that the entire record is in custody of the Appellants, who in order to delay the processing of claims did not cooperate with the enquiry committee.

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

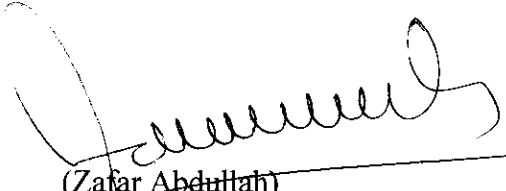





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regulator. The investors have suffered an inordinate delay for settlement of their claims due to the actions of the Appellants.

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