



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 29 of 2013

Riaz Ahmed, Saqib, Gohar & Co. Chartered Accountants Appellant

Versus

Director (Marketing Supervision & Registration
Department) Securities and Exchange Commission
of Pakistan Respondent

Date of Hearing 08/01/15

ORDER

Present:

Appellant

1. Mr. Shahid Kamran (Partner Riaz Ahmad, Saqib, Gohar & Co)

Respondent:

1. Mr. Adnan Ahmad, Deputy Director (SMD)
2. Ms. Najia Ubaid, Assistant Director (SMD) through video conferencing

1. This order shall dispose of appeal No. 29 of 2013 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act,



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1997 against the order dated 11/04/13 (the “Impugned Order”) passed by the Respondent.

2. The Commission in exercise of its powers under section 6(1) of Securities and Exchange Ordinance, 1969 (“Ordinance”) read with rule 3 and 4 of Stock Exchange Members (Inspection of Books and Record) Rules, 2001 ordered an inspection of the books and records required to be maintained by Shajar Capital Pakistan (Pvt.) Ltd (“SCPL”), TREC Holder of KSE and a broker registered under the Broker and Agents Registration Rules, 2001. The report dated 06/11/12 submitted by the inspection team highlighted major irregularities in calculation of Net Capital Balance of SCPL as on 30/06/12, the calculation of which were duly verified and certified by the Appellant. It appeared that NCB was not calculated in accordance with the Third Schedule of the Securities and Exchange Rules, 1971 (“SE Rules”) and had been overstated by an amount of Rs. 27,692,776.
3. Show cause notice (“SCN”) was issued to the Appellant under section 22 of the Ordinance. The Appellants filed reply to the SCN and hearing in the matter was held. The Respondent took a lenient view and issued a warning to the Appellant to be vigilant in the future.
4. The Appellant has preferred the instant appeal against the Impugned Order. The Appellant’s representative argued that the aforesaid Third Schedule to the SE Rules did not categorically specify ‘Other Assets’ as line item in the statement of NCB despite the fact that these are ‘current’ in nature according to Generally Acceptable Accounting Principles and are in the ordinary course of business. This is industry practice and keeping in view the fact that the items were of ‘current nature’, the Brokerage houses incorporated ‘Other Assets’ while calculating their NCB which is accepted by the auditors and



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stock exchanges as well. SCPL while calculating its NCB, considered these balances to be of current nature. The Appellant, therefore, has not misstated the report on statement of NCB. An amount of Rs. 27.692 million was included in the calculation of NCB for the reasons stated above. The differences pointed out by the Inspection Team were the result of difference of opinion on interpretation of the law and due to non-availability of any proper clarification/guidelines in this regard. Moreover, such act was not willful.

5. The Respondent argued that the certificate of NCB of SCPL as 30/06/12 certified by the Appellants was not in accordance with the Third Schedule of the 1971 Rules and the Appellants had certified a statement and given information which it had reasonable cause to believe to be false or incorrect in material particular violation of section 18 of the Ordinance. The Third schedule of SE Rules does not allow items under the head "Other Assets" and, therefore, the figure of Rs 8.86 million should not have been included in the NCB.
6. We have heard the arguments. Section 22 of the Ordinance is reproduced for ease of reference:

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



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the issue of such order during which the refusal, failure or contravention continues.

- (2) Any sum directed to be paid under sub-section (1) shall be recoverable as an arrear of land revenue.
- (3) No prosecution for an offence against this Ordinance shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

Emphasis Added

The Appellant has argued that in their opinion the amount of Rs. 27.692 million was included in the calculation of NCB because it was of current nature. However, the act was not willful and there was a difference of opinion on interpretation of the law on the said issue. The Respondent has argued that this was a misstatement on behalf of the Respondent and The Third schedule of SE Rules does not allow items under the head "Other Assets. We are of the view that the Appellant has overstated the NCB and the Respondent has already taken a lenient view and not imposed any penalty under section 22 of the Ordinance but given a warning to strictly comply with applicable Rules and Regulations in future. We see no reason to interfere with the Impugned Order.

In view of the foregoing, the Impugned Order is upheld with no order as to costs.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Tahir Mahmood)
Commissioner (CLD)

Announced on: 22 JAN 2015