



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 27 of 2013

Axis Global Limited

...Appellant

Versus

Director (MSRD) Securities and Exchange
Commission of Pakistan

...Respondent

Date of Hearing

08/01/15

ORDER

Present:

For the Appellant

1. Mr. Hamad Kehar, Managing Director Axis Global Ltd

For the Respondent:

1. Mr. Najia Ubaid, Deputy Director (SMD)
2. Mr. Adnan Ahmed, Deputy Director (SMD)



Securities and Exchange Commission of Pakistan

1. This order is in appeal No. 27 of 2013 filed under section 33 of the Securities and Exchange Commission of Pakistan Act (the "Commission"), 1997 against the order (the "Impugned Order") dated 11/04/13 passed by the Respondent.

2. The facts leading to this case are that the Commission in exercise of its powers under section 6(1) of the Securities and Exchange Ordinance, 1969 ("the Ordinance") read with Rule 3 and Rule 4 of the Stock Exchange Members (Inspection of Books and Record) Rules, 2001 (the "Inspection Rules") ordered an inspection of the books and records required to be maintained by M/s. Axis Global Limited (the "AGL"), TREC Holder of Karachi Stock Exchange Ltd, and registered with the Commission as a broker under the Brokers and Agents Registration Rules, 2001 ("Broker Rules"). The report dated 24/04/12 submitted by the Inspection Team disclosed that the Appellant was mishandling the securities of its clients and was involved in imposing late payment charges to the clients. Moreover, major irregularities in calculation of Net Capital Balance ("NCB") as on 30/06/11 was also observed and it appeared that NCB was not in accordance with the Third Schedule of Securities and Exchange Rules, 1971 (the "SE Rules"). On review of the inspection report, it appeared that AGL was mishandling the securities of its clients. The detail of such mishandling is as follows:
 - a) The Audited Financial Statements of AGL for the year ended 30/06/11 disclosed "Nil" investments. CDC statements balance of AGL's house account reflected 5.242 million shares of various companies amounting to Rs. 70.124 million as at 30/06/11. On query by the Commission, AGL responded that the said shares were inherited and when the new management took over AGL, they were opening sub accounts to transfer the shares. The said response implied that aforesaid shares belonged to the clients and were transferred without client's authorization.



Securities and Exchange Commission of Pakistan

- b) Shares of certain clients were pledged, directly from their respective sub accounts, in favour of Bank Alfalah Limited in respect of running finance facility availed by AGL. AGL was advised by the Inspection Team to provide specific authority for pledging the said shares, however, AGL failed to provide authority from 30 clients, and only few authorities were provided in this regard.
- c) Few instances of CDS Intra Account Transfers were observed, wherein clients' securities were routed from AGL's House Account in favour of Bank Alfalah Limited while being pledged against running finance facility availed by AGL. Details of the instances, as reported by the Inspection Team, are as follows:

Shares	Shares Movement			Remarks
	Reflects in			
	CDC recor d	Off Market Record of KSE	Back Office Record	
42,000 shares of AKBL	Yes	Yes	No	8,000 shares from Ratan Kumar while 34,000 shares from Hamayoon Siddiq's sub-accounts were moved into main account on 24/03/11 and on the same date these shares were transferred to House Account and then pledged with the bank.
90,000 shares of	Yes	Yes	No	90,000 shares moved into Main-



Securities and Exchange Commission of Pakistan

AKBL				Account on 07/07/11 from sub account of Nizamuddin and then transferred to House Account and pledged with the bank.
48,000 shares of ATRL	Yes	Yes	No	48,000 shares were transferred into Main-Account on 09/02/11 from Sub-Account of Highlink, then moved into House account and pledged with the bank.
275,000 shares of BOP	Yes	No	No	275,000 shares were first moved into Main Account/House Account on 24/02/11 from Sub Account of Nizamuddin and ultimately pledged with the bank.
800,000 shares of PIAA	Yes	No	No	On 24/02/11, 800,000 shares of PIAA were transferred to Main Account from Sub Account of Nayab Tariq from where these shares were transferred to House Account and pledged with the bank.
325,000 shares of NML	Yes	Yes	No	Shares were found in client sub-account on 18/10/11 which were transferred to Main Account/House Account on the same date and pledged with the bank.



Securities and Exchange Commission of Pakistan

75,000 shares of PTC	Yes	No	No	5,000 shares first moved into Main Account/House Account from Sub-Account of Khawaja Adil Razzaq and ultimately pledged with the bank.
----------------------	-----	----	----	----------------------------------------------------------------------------------------------------------------------------------------

3. It appeared, therefore, that AGL moved and/or pledged the shares with the banks/others without authorization in sheer violation of section 24 of the Central Depositories Act, 1997 (the 'CDC Act'). During the course of inspection, it was observed that AGL had been imposing late payment charges ranging from 18% to 22% p.a. to its clients, who do not clear their dues in time, and resultantly had earned Rs.10.545 million as per audited financial statements of AGL for the year ended 30/06/11 in contravention of section 16 of the Ordinance. Moreover, the NCB as calculated by AGL was not in accordance with the Third Schedule of the 1971 Rules and AGL by submission of overstated NCB had given information which it had reasonable cause to believe to be false or incorrect in material particular in violation of section 18 of the Ordinance.
4. Show cause notice dated 13/11/12 ("SCN") was issued to the Appellant to show cause in writing as to why action as provided under section 22 of the Ordinance and section 28 of the CDC Act may not be initiated against the Appellant and was further directed to appear in person or through an authorized representative on 27/11/12. The hearing fixed on 27/11/12 was adjourned on the request of the Appellant. The Appellant submitted its written response and hearing in the matter was held on 19/12/12.
5. The Respondent dissatisfied with the response of the Appellant held that it was established that in many instances the Appellant had moved/pledged the shares without proper authority of the sub-account holders. Moreover, although group accounts were abolished in 2005, the Appellant did not take serious measures to transfer the securities to the respective sub-



Securities and Exchange Commission of Pakistan

accounts. Such mishandling of clients' securities was a clear violation of section 24 of the CDC Act, which was punishable under section 28 of the CDC Act. It was also evident that NCB as calculated by the Appellant was not in accordance with the Third Schedule of the SE Rules and the Respondent by submission of overstated NCB had submitted a statement and given information which it had reasonable cause to believe to be false or incorrect in material particular in violation of section 18 of the Ordinance. The Appellant was directed to deposit a sum of Rs.100,000/- under section 22 of the Ordinance and a further sum of Rs.300,000/- under section 28 of the CDC Act to the Commission by way of penalty and ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

6. The Appellant has preferred to file the instant appeal against the Impugned Order. The Appellant argued that the penalty has been imposed twice for the same violation which is a case of double jeopardy. The Appellant was directed to deposit a sum of Rs 100,000 under section 22 of the Ordinance and a further sum of Rs. 300,000 under section 28 of the CDC Act. Penalty of Rs. 55,000 had also been imposed on the Appellant by CDC vide letter dated 27/08/13 which has been deposited by the Appellant via bank cheque dated 26/09/13 of JS Bank Limited bearing cheque No.12919691. The Commission, therefore, must not impose any penalty under the CDC Act which has been deposited by the Appellant.
7. The department's representatives argued that the Appellant had violated section 24 of the CDC Act as well as violated section 22 of the Ordinance both for which separate penalties are prescribed. There was, therefore, no question of double jeopardy.
8. We have heard the arguments. The Appellant admitted their default by depositing the penalty of Rs.55,000 imposed by the CDC. The Appellant cannot be reprimanded for the same offence twice, therefore, we set aside the penalty of Rs. 300,000 imposed under section 28 of



Securities and Exchange Commission of Pakistan

the CDC Act. However, the Appellant being in breach of the Broker Rules and SE Rules, must pay the penalty of Rs. 100,000 imposed under section 22 of the Ordinance.

(**Fida Hussain Samoo**)
Commissioner (Insurance)

(**Tahir Mahmood**)
Commissioner (CLD)

Announced on: 22 JAN 2015