



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 06 of 2013

Axis Global Limited

..... Appellant

Versus

Director/HOD (MSCI) Securities Market Division, 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 Limited

#### For the Respondent:

1. Mr. Amir Saleem, Deputy Director (SMD)
2. Ms. Tayyaba Nisar, Assistant Director (SMD)

1. This order is in appeal No. 06 of 2013 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 25/10/12 (the "Impugned Order") passed by the Respondent.
2. The brief facts of the case are that Axis Global Limited (the "Appellant") is registered with the Commission as Broker under the Brokers and Agents Registration Rules, 2001 (the "Rules"). Examination of the KSE trading data of 04/09/12, revealed that the



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SECP

Company's client namely Dulhano Mal ("DM") bought Off Market 50,000 shares of IMCLs Motor Company Limited ("IMCL") from another client of the Company namely State Life Insurance Corporation of Pakistan ("SLIC") at the rate of Rs. 285. Subsequently, within a minute, DM sold 50,000 shares of IMCL at Rs. 300 through the Appellant in Ready Market. DM earned a quick profit of Rs. 750,000 by executing the said transaction. This transaction raises ambiguity regarding the fairness on part of the Appellant.

3. The Commission vide letter dated 12/09/12 sought clarification from the Appellant regarding the aforementioned transactions and the rationale behind the execution of transactions which resulted in significant gain to DM. The Appellant was also advised to submit complete documentation exchanged with DM and SLIC for execution of the abovementioned transaction in the scrip of IMCL. The Appellant vide letter dated 14/09/12, received by the Commission on 25/09/12, submitted its reply. The Appellant informed the Commission that the order of IMCL was executed on behalf of its client who negotiated the deal directly with SLIC at the best possible rate of Rs. 285. The Appellant also submitted that on the particular date the IMCL share was also traded on Rs. 290, hence, no discrepancy was felt especially when negotiation have been on going. The Respondent was dissatisfied with the response given by the Appellant.
4. Show Cause Notice dated 25/10/12, ("SCN") was issued to the Appellant under section 22 of the Securities and Exchange Ordinance, 1969 ("the Ordinance") and the Brokers and Agents Registration Rules, 2001 (the "Rules") which stated that the Appellant has *prima facie* contravened Clauses A (1), A (2), A (5) and B (6) of the code of conduct set forth under the third schedule of the Rules. The Appellant was provided a hearing opportunity on the 12/11/12 in which Mr. Hamad Kehar, Managing Director ("MD") of the Appellant appeared. Having heard all the arguments made by the MD on behalf of the Appellant, the Respondent held that the Appellant was in violation of Clauses A (1), A (2), A (5) and B (6) of the Code of Conduct set forth under the third schedule of the Rules which in turn is a violation of rule 12 of the Rules read with rule 8 of the Rules. The



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Respondent exercising his powers under section 22 of the Ordinance imposed a penalty of Rs. 1,000,000 on the Appellant. The Appellant was directed to ensure that full compliance be made of all rules, regulations and directives of the Commission in the future for avoiding any punitive action under the law.

5. The Appellant has preferred the instant appeal against the Impugned Order. The Appellant argued that:

- a) the transaction was executed on behalf of two clients of the Appellant and the deal was struck by DM. The Appellant was only asked to execute the deal. The Appellant has nothing to do with the transaction. It is pertinent to note that SLIC has an investment committee and it takes several days to decide the sale and purchase of transactions. This demonstrates that the deal was in negotiation. As the deal was privately negotiated that is why it was not executed in Ready Market. Further, being illiquid share it was not possible to sell the same in the Ready Market at the prevailing price unless they are buyers. DM negotiated the deal with the buyer and the same was accordingly executed in the Ready Market; and
- b) the penal provision of the 1969 Ordinance provides that a penalty may be imposed on any person in case of certain refusal or failure or contravention. However, the imposition of penalty on any person is subject to the determination that the refusal, failure or contravention must be willful. The default is willful when an act is done intentionally, deliberately, knowingly, purposely and consciously with bad intent to disregard the law without any justifiable cause with knowledge that the act or omission is unlawful. Willful violation has not been alleged in the SCN and, therefore, the issuance of SCN was without force and unlawful.

6. The department's representatives argued that:



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- a) it was a coordinated scheme on the part of the Appellant wherein the transactions were executed by the Appellant through its clients. In the first leg of these transactions, DM bought 50,000 shares of IMCL at Rs. 285 SLIC through Appellant whereas in the second leg the 50,000 shares of IMCL were bought by Jamna Devi Reena Kumari at Rs 285 through JS Global Capital Limited and the same were sold by SLIC through Appellant. After few seconds, DM and Jamna Devi Reena Kumari sold their respective 50,000 shares of IMCL in Ready Market at Rs.300. The Appellant purchased 100,000 shares of IMCL and SLIC at lower rates and then executed the transactions through two brokerage houses in the accounts of two different clients who were from the same family. The clients sold the shares at higher rates immediately and in the process, a hefty gain of Rs. 1,500,000 was made. SLIC incurred heavy loss due to these transactions which was eventually the loss suffered by small policy holders of SLIC. It was the prime responsibility of the Appellant to execute the transactions of SLIC at best available rate in a transparent and faithful manner. However in the instant case, the Appellant failed to safeguard the interest of its client, SLIC; and
- b) the contention of the Appellant that the default was not willful is not correct. The Appellant failed to act with due skill, care and diligence in the conduct of its business. The Appellant made incongruent statements and submitted wrong and misleading information to the Commission with malafide intentions. The Appellant has failed to abide by the provisions of the Rules and Regulations issued by the Commission and KSE from time to time, thus violated the Clause A (1), A (2), A (5) and B (6) of the Code of Conduct under the third schedule of the Brokers Rules which is in turn a violation of Rule 12 of the Brokers Rules read with Rule 8 of the Brokers Rules. The penalty, therefore, was rightly imposed on the Appellant.

7. We have reviewed the arguments of both the Appellant and the Respondent. Clauses A (1), A (2), A (5) and B (6) of the code of conduct under the third schedule and Rules 8



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and 12 of the Brokers and Agents Registration Rules 2001 and section 22 of Securities and Exchange Ordinance, 1969 are reproduced for ease of reference:

## ***Section 22 of Securities and Exchange Ordinance, 1969***

***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.*

*(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.*

## ***Brokers and Registration Rules, 2001***

***8. Suspension of registration.*** - *Where the Commission is of the opinion that a broker-*

- (i) has failed to remain in compliance with any conditions subject to which certificate of registration was granted under these rules;*
- (ii) has otherwise failed to comply with any requirement of the Act or the Ordinance or of any rules or direction made or given thereunder;*



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- (iii) *has contravened the rules and regulations of the stock exchange;*
- (iv) *has failed to follow any requirement of the code of conduct laid down in the Third Schedule;*
- (v) *has failed to comply with the directives of the Commission in respect of business conduct, dealings with clients and financial prudence;*
- (vi) *has failed to furnish any information related to his transactions in securities as may be required by the Commission;*
- (vii) *has failed to submit periodical returns as required by the Commission;*
- (viii) *has furnished wrong or false information;*
- (ix) *has failed to settle an investor complaint where such complaint had been adjudicated by a stock exchange or a committee of a stock exchange or the Commission;*
- (x) *has not co-operated in any enquiry or inspection conducted by the Commission;*
- (xi) *has indulged in manipulating price rigging or cornering activities in a stock exchange;*
- (xii) *his financial position has deteriorated to such an extent that the Commission is of the opinion that his continuance in securities business shall not be in the interest of investors; and*
- (xiii) *has been suspended by a stock exchange,*
- the Commission may, if it considers necessary in the public interest to do so, by order in writing:-*
- (a) *Suspend the registration of a broker for such period as may be specified in the order; or*
- (b) *impose on a broker a fine not exceeding one hundred thousand rupees;*
- Provided that an appropriate opportunity of being heard shall be provided to the broker to clarify his position with regard to suspension of registration.*



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*12. Brokers to abide by code of conduct. - A broker holding a certificate of registration under these rules shall abide by the code of conduct specified in the Third Schedule.*

## **THE THIRD SCHEDULE**

*[See rules 8 (iv) and 12]*

### **CODE OF CONDUCT**

#### **A. General**

- 1. Integrity - A broker shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.*
- 2. Exercise of due skill and care - A broker shall act with due skill, care and diligence in the conduct of all his business.*
- 5. Compliance with statutory requirements - A broker shall abide by all the provisions of the Act and the rules, regulations issued by the Commission and the stock exchange from time to time as may be applicable to him.*

#### **B. Duty to the Investor**

- 6. Fairness to clients - A broker, when dealing with a client, shall disclose whether he is acting as a principal or as an agent and shall ensure at the same time that no conflict of interest arises between him and the client, In the event of a conflict of interest, he shall inform the client accordingly and shall not seek to gain a direct or indirect personal advantage from the situation and shall not consider clients interest inferior to his own.*

Emphasis Added

- a) there was a settlement executed via the Negotiated Deal Market ("NDM") between SLIC and DM to purchase shares of IMCL in which the Appellant had no role. Being an illiquid stock, it could not have traded in the Ready market. The deal was privately negotiated and the Appellant had executed the transaction through its terminal. The scrip can be sold at lower



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SECP rates due to various reasons and, therefore, the Respondent's contention that it was a coordinated scheme on part of the Appellant does not hold merit; and

- b) the Respondent has argued that the Appellant's conduct was a clear violation of Clause A (1), A (2) and A (5) and B (6) of the Code of Conduct under the third schedule of the Brokers Rules. Moreover, the Appellant acted with malafide intentions and the penalty was rightly imposed. The Appellant has argued that penalty can only be imposed if the act was willful under section 22 of the Ordinance. A penalty under the Ordinance can only be imposed if the person, upon whom such penalty is being imposed, has intended to breach any provision of the law. In the instant case one has to determine whether or not the act had been done intentionally, deliberately and not by accident or inadvertence. In addition, one must also determine whether the Appellant has essentially violated any provisions of the Ordinance or not before imposing a penalty under section 22 of the Ordinance which in our view was not the case.

In view of the foregoing, we set aside the Impugned order with no order as to costs.

**Fida Hussain Samoo**  
(Commissioner Insurance)

**Tahir Mahmood**  
(Commissioner CLD)

Announced on: 22 JAN 2015