



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 22 of 2013

Nasir Javaid Maqsood Imran, Chartered Accountants ...Appellant

Versus

Hasnat Ahmed- Director (MSCID), SECP ...Respondent

Date of Hearing 08/01/15

ORDER

Present:

For the Appellant:

1. Mohammad Javaid Qasim, Partner, Nasir Javaid Maqsood Imran Chartered Accountants
2. M. Hanif, Manager, Nasir Javaid Maqsood Imran Chartered Accountants

For the Respondent:

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



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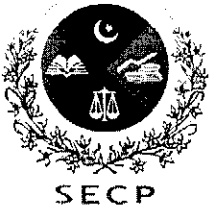
1. This order is in appeal No. 22 of 2013 filed under section 33 of the Securities and Exchange Commission of Pakistan Act (the "Commission"), 1997 against the order (the "Impugned Order") dated 11/04/13 passed by the Respondent.
2. The facts leading to this case are that the Commission in exercise of its powers under section 6(1) of the Securities and Exchange Ordinance, 1969 ("the Ordinance") read 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. Al-Hoqani Securities & Investment Corporation (Private) Limited (the "AHSICL"), TREC Holder of Karachi Stock Exchange Ltd, and registered with the Commission as a broker under the Brokers and Agents Registration Rules, 2001 ("Brokers Rules"). The report dated 06/11/12 submitted by the Inspection Team highlighted major irregularities in calculation of Net Capital Balance ('NCB') of AHSICL on 30/06/12, the calculation of which was duly verified and certified by the Appellant. It appeared that NCB was not in accordance with Third Schedule of Securities and Exchange Rules, 1971 (the "SE Rules").
3. The Respondent, thereafter, served a show cause notice dated 23/01/13 ("SCN") on M/s Nasir Javaid Maqsood Imran Ashfaq Chartered Accountants (the "Appellant") under section 22 of the Ordinance as to why action may not be initiated against them for violation as indicated above. The Appellant was further directed to appear in person or through an authorized representative on 07/02/13 but the hearing was adjourned on the request of the Appellant. The Appellant submitted a written response to the SCN dated 14/02/13 and hearing was held on 13/03/13.
4. The Respondent dissatisfied with the response of the Appellant held that the Appellant failed to perform its professional duty with due care and showed negligence in verifying the calculation and certifying the NCB. The amount of securities purchased for clients appearing in NCB was required to be verified with



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sufficient appropriate evidence such as verification of respective CDC Balance Statements of relevant period. The NCB, as certified by the Appellant was, therefore, not in accordance with the third schedule of SE Rules and the Appellant had provided a statement which it had reasonable cause to believe to be false or incorrect in material particular in violation of section 18 of the Ordinance. The Respondent, therefore, in exercise of the powers under section 22 of the Ordinance directed the Appellant to deposit a sum of Rs.50,000 to the Commission by way of penalty and directed to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission.

5. The Appellant has preferred to file the instant appeal against the Impugned Order. The Appellant's representatives argued that it is the primary responsibility of the statutory auditors to raise observations regarding the said violation and to exclude the amount from trade debts and consequently from financial statements. The audited financial statements show amount of trade receivable from Mr. Suleman Hoqani and that includes markup of Rs.102,114,352/- which was taken by the Appellant as part of total outstanding amount receivable for the purpose of calculation net capital balance. The Respondent erred in fixing the responsibility and instead of obtaining explanation from external auditors put all blame on the Appellant who only issued review report on such balances. The amount of Rs. 21.437 million have been classified by statutory auditors as secured in note 12.1 to the financial statements and the Appellant have relied and accepted written confirmation issued by Mr. Suleman Hoqani in favour of his son offering his securities against above balances. The confirmation to this security have been accepted in financial statements audited by the statutory auditors but when the Appellant accepted the same evidence for the purpose of calculation of NCB it has been penalized instead of making an enquiry from the statutory auditors. Furthermore, Mr. Suleman Al Hoqani holds more than 99% shareholding of the Company mostly doing family investments and being the single largest debtor having trade receivables of Rs 306,933,880/- owning shares having market value of Rs



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1,033,551,351/- which exceeds more than 3 times the outstanding amount, there was no question of any systematic market risk as alleged by the Appellant. Furthermore, the system of Karachi Stock Exchange for calculating receivables was not functioning properly, however, the system has now been corrected and the appropriate changes have been made.; and

- b) the Respondent erred in imposing penalty of Rs 50,000 which was discriminatory treatment when compared with similar orders issued on the same date against other firms of Chartered Accountants having more serious violations.

6. The department's representatives argued that:

- a) there were two major miscalculations; "Securities Purchased for clients" and "Understatement of other liabilities". It was apparent that Account No.1025 was basically used by AHSICL to record the personal expenses of Mr. Al-Hoqani and his family members. Since charging of late payment charges are prohibited under section 16 of the Ordinance, therefore, the amount appearing in the said account cannot be considered for calculation of NCB. Therefore, the question of allocation of value of securities against said account does not arise. It is also apparent that such late payment charges are in violation of section 16 of the Ordinance. From the perusal of the record it is evident that AHSICL included full amount of receivables amounting to Rs. 21.437 million from Mr. Ahmed Sulaiman Ahmed Saeed. However, as per the record, the said amount was overdue for more than 14 days and no shares were available in sub account of Mr. Ahmad Sulaiman Ahmed Saeed; therefore, the value of the securities against overdue balance should have been treated as Nil. Further, the shares appearing in one's sub-account cannot be treated as owned by another person merely on the basis of a confirmation. The Respondent failed to highlight this fact while issuing the certificate of NCB and thus found to be professionally guilty in performing its obligations. Moreover, even if the system of Karachi Stock Exchange



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for calculating receivables was not working properly, this could have been done manually; and

- b) it is evident from perusal of the record that if NCB was calculated in strict compliance with the requirements of SE Rules; the NCB verified by the Appellant would have been in negative. The Appellant had not applied the necessary prudence in certifying the NCB and, therefore, the penalty was rightly imposed on the Appellant.

7. 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 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.

Emphasis Added

- a) the Appellant has argued that it is the primary responsibility of the external auditors for said violations. Further, the system of Karachi Stock Exchange for calculating receivables was not functioning properly and, therefore, the receivables could not be calculated properly but have subsequently been calculated correctly. The Respondent has argued that



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the NCB was overstated which was a result of the professional negligence of the Appellants. Moreover, the receivables could have been calculated manually even if the system of Karachi Stock Exchange for calculating receivables was not working properly. We are of the view that it has been established by the Respondent that NCB as certified by the Appellant was not in accordance with the Third Schedule of SE Rules which also involves a systematic risk as a result of overstatement; and

- b) the Appellant has argued that penalty should not have been imposed on them as it has not been imposed on other chartered accountant firms with similar violations. We are of the view that the facts and circumstances of each case are different and this cannot be used as a defense in respect of the aforesaid violations. The Appellant has committed violations of the Rules and Regulations; however, taking a lenient view we set aside the Impugned Order to the extent of penalty and strictly warn the Appellant to ensure compliance of the Rules and Regulations in the future.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Tahir Mahmood)
Commissioner (CLD)

Announced on: **06 FEB 2015**