



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 53 of 2013

M. Yousuf Adil Saleem & Co

..... Appellant

Versus

Director (MSRD)

Securities and Exchange Commission of Pakistan

..... Respondent

ORDER

Date of hearing

09/03/15

Present:

For the Appellant:

Mr. Muhammad Akram Swaleh, Advocate

Mr. Nadeem Yousuf Adil, Senior Partner

Mr. Shoaib Ghazi

For the Respondent:

Mr. Hasnat Ahmad, Director

Mr. Murtaza Abbas, Deputy Director



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1. This order shall dispose of appeal No. 53 of 2013 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 ("SECP Act") against the order (the "Impugned Order") dated 16/07/13 passed by the Respondent.
2. The brief facts of the case are that the Commission in exercise of its powers under section 6(1) of the Securities and Exchange Ordinance, 1969 (the "SEO") read with rule 3 and 4 of Stock Exchange Members (Inspection of Books and Record) Rules, 2001 (the "Inspection Rules") ordered an inspection of books and record of IGI Finex Securities Limited (the "Company"), TREC holders of Karachi Stock Exchange Limited (the "Exchange"). The inspection team submitted its report to the Commission and on review of the inspection report it was noted that the Net Capital Balance (the "NCB") of the Company as of 30/06/11 as verified and certified by the Appellant was not in accordance with the Third schedule of the Securities and Exchange Rules, 1971 (the "S&E Rules") and was overstated by Rs. 491.69 million. In terms of Rule 2 (d) of the S&E Rules read with clause 2.1 of the Regulations Governing Risk Management of the Exchange (the "Regulations"), the NCB is required to be calculated in accordance with the Third schedule of S&E Rules.
3. A Show-cause notice dated 24/04/13 (the "SCN") was issued to Appellant to explain as to why action as provided under section 22 of the SEO may not be taken against it. The written comments on the SCN were submitted and hearing in the matter was held. The Respondent, dissatisfied with the response of the Appellants, passed the Impugned Order and imposed a penalty of Rs. 20,000/- on the Appellants with a direction to comply with the relevant laws and rules in future.



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4. Being aggrieved of the Impugned Order, the Appellant preferred the instant appeal against the Impugned Order on the following among other grounds:
- a. The entire proceedings carried out by the Respondent right from issuance of SCN till the Impugned Order is unwarranted under the facts and law applicable to the case and is nothing but a colorable exercise of power in utter wrong application of law and abuse of jurisdiction.
 - b. The public functionaries are bound to act within parameters of law any act carried out by such functionaries beyond their statutory authority is deemed illegal.
 - c. It is settled jurisprudence that if an act is required to be carried out in a particular manner, it is mandatory that the act should be done in that particular manner only and in essence any structure built upon any wrong order is liable to fall.
 - d. The provision of section 18 of the SEO are not applicable to the Appellant as the Respondent has completely misinterpreted and wrongfully applied section 18 of the SEO, as by virtue of clause 2.2 of the Regulations, the certificate of NCB is to be provided by the Appellant to the Company for onward submission to the KSE and not the Respondent.
 - e. The Appellant even otherwise did not submit any wrong or incorrect information to the Respondent under section 18 of the SEO, as the submission of certificate confirming NCB was a requirement of KSE.
 - f. The Respondent also unlawfully and without just cause penalized the Appellant under section 22 of the SEO as subject to clause 2.2 of the Regulations, the NCB certificate was required to be submitted by company within the time prescribed By KSE, failing which penalty



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was to be imposed as provided in the schedule 6 attached to the Regulations.

- g. The review was conducted in accordance with the International Accounting Standard on review engagements. The engagement consisted of procedures such as making inquiries, primarily of persons responsible for financial and accounting matters, and applying analytical and other review procedures. The scope of a review is substantially less in scope than an audit and consequently does not entail any liability under law.
- h. The Respondent ignored and misinterpreted the balance confirmations received from Darson and AKD. In paragraph 8 of the Impugned Order, the Respondent has concluded that the reverse repurchase and NDM transactions are not specifically covered in the Third Schedule of the S & E Rules, therefore the decision to include or exclude these items in the calculation is open to interpretation. The Respondent, in absence of any clear judgment on such issues concluded that the benefit of doubt goes in favor of the Appellant. However, without any just and cogent reason under paragraph 12 of the Respondent has taken altogether a different view on the issue of interpretation of NDM and reverse Repurchase Agreement in the calculation of NCB, which is contrary to the statement made in paragraph 8 of the Impugned Order.
- i. The Respondent observed in the Impugned Order regarding debtor's confirmation of Darson and AKD Securities, that Darson has confirmed only Rs. 6,872,742 and in case of AKD, the party has confirmed Nil balance. The Respondent has misinterpreted the confirmations as the confirmations were designed in such a way that the amount was required to be included in the second part of the confirmation only if there was disagreement from the amount reported in the first part of the confirmation. The confirmation from Darson



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does not report any amount in the second part and instead it specifically states "*NDM trade of SNGP6872742/- reported to KSE on 11/02/11. But it was UNSETTLE as of 30/06/11*". The Appellant considered that Darson is agreeing to the amount of Rs. 168,382,089/- as stated in the first part of the confirmation and further stating that the balance pertains to NDM transaction/trade for 6,872,742 shares of SNGP entered into on 11/02/11 that remain unsettled as of 30/06/11. Similarly, the confirmation from AKD does not report any amount in the second part and instead it specifically states "*NDM TRADE IF SSGC REPORTED TO KSE ON MAY 10, 2011, BUT IT WAS UNSETTLED AS OF JUNE 30, 2011*". The Appellant considered that AKD is agreeing to the amount of Rs. 117,465,351/- as stated in the first part of the confirmation and further stating that the balance pertains to NDM transaction entered into on 10/05/11 related to SSGC shares that remained unsettled as of 30/06/11. For both transactions, the Appellant further corroborated the transactions from the Off Market Transactions Reports dated 11/02/11 and 10/05/11 available on KSE website.

- j. The Respondent has misstated the fact by stating that the trade debts pertained to Institutional Delivery System (IDS), whereas in fact these were Negotiated Deals Market (NDM) transactions.
- k. That the Respondent has made a misleading and unfounded statement in paragraph 10 of the Impugned Order that the Appellant did not carry out further necessary and appropriate assurance procedures. Whereas facts of the case substantiate beyond any doubt that the Appellant did carry out further necessary and appropriate assurance procedures as both Darson and AKD Securities have acknowledged their respective amounts and further elaborated that the amounts pertaining to NDM



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transactions have been corroborated from an independent source i.e. Off Market Transactions Reports available on KSE website.

5. During the hearing, the Appellant reiterated its argument and submitted that the Respondent has misread and misinterpreted the debtor's confirmation of Darson and AKD Securities, and in support of the contention placed before the Bench the confirmations and the record of Exchange. The Appellant prayed that the Impugned Order may be set aside in favor of the Appellant.
6. On perusal of the record presented by the Appellant, it prima facie appeared that the Respondent had misread the debtor confirmations which materially affect the allegation of miscalculation of NCB. Therefore, without going into other arguments of the Appellant and grounds of Appeal, the Departmental Representatives were confronted with the evidence placed on record by the Appellant. Departmental Representative after reviewing the evidence and its own record, conceded to have misread the confirmations.
7. We have heard the parties and perused the record. It is evident from perusal of the record that the Respondent has misread the debtor's confirmation which materially effects the calculation of NCB. The confirmation from Darson specifically states that "*NDM trade of SNGP6872742/- reported to KSE on 11/02/11. But it was UNSETTLE as of 30/06/11*". The Respondent misread that Darson is agreeing to the amount of Rs. 168,382,089/- as stated in the first part of the confirmation.
8. The confirmation from AKD specifically states that "*NDM TRADE OF SSGC REPORTED TO KSE ON MAY 10, 2011, BUT IT WAS UNSETTLED AS OF JUNE 30, 2011*". The Respondent misread that the party has confirmed Nil balance. This fact was also conceded to by the Respondent during the hearing.



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9. The perusal of the Off Market Transactions Reports dated 11/02/11 and 10/05/11 available on Exchange website also supports the version of the Appellant.

10. In view thereof, this Bench is of the view that the Impugned Order is based on misreading of relevant record and the Appellant has substantiated its arguments with supporting evidence. Therefore, the Appeal is accepted and the Impugned Order is set aside with no order as to costs.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Tahir Mahmood)
Commissioner (CLD)

Announced on: **16 MAR 2015**