



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 11 of 2014

First National Equities Limited

.... Appellant

Versus

Director (MSRD), SECP

.... Respondent

Dates of hearing:

02/04/15

Present:

For the Appellant:

Mr. Jabran Tariq Butt, Advocate

For the Respondent

1. Syed Murtaza Abbas Naqvi, Deputy Director (SMD)

ORDER

1. This Order shall dispose of Appeal No.11 of 2014 filed under section 33 of the Securities and Exchange Commission of Pakistan Commission Act, 1997 by the First National Equities Limited (the Appellant) against the Order dated 04/02/14 (the Impugned Order) passed by the Respondent. The Appellant is a Trading Right Entitlement Certificate (the TREC) holder of the Karachi Stock Exchange Limited (the Exchange) and registered as a broker with the Securities and Exchange Commission of Pakistan (the Commission) under the Brokers and Agents Registration Rules, 2001 (the Rules).
2. The brief facts of the Appeal are that the Respondent received a complaint on 20/06/13 from Abandoned Properties Organization (the Complainant) against the Appellant regarding non-transfer of shares into its CDC Investor Account No. 03277-64371. The Appellant agreed to pay the sale proceeds against disinvestment of Complainant shares



Securities and Exchange Commission of Pakistan

vide facsimile dated 05/04/13 addressed to the Complainant. This fact implicates the Appellant into the alleged violation of mishandling/ use of Complainant shares without due authority. The alleged violations attracts the provisions of Rule 8 and 12 of the Rules and Section 24 of the Central Depositories Act, 1997 (the CDC Act), therefore a Show Cause Notice (the SCN) dated 09/10/13 was issued to the Appellant and the hearing was held on 05/12/13. During the course of hearing Mr. Ali Aslam Malik, Chief Executive Officer (the CEO) of the Appellant, appeared before the Respondent and admitted the facts of the SCN and provided verbal assurance that Complainant claim would be fully settled. He further assured that the copy of undertaking would be provided to the Respondent within one week of the date of hearing. Thereafter, the Exchange vide letter dated 03/01/14 provided a copy of the undertaking dated 30/12/13 whereby the Appellant undertook to clear all liabilities pending towards the Complainant by 31/03/14. However, after considering the facts of the case and admission of alleged violations committed by the Appellant, the Respondent imposed a penalty of Rs. 500,000 under Section 28 (2) of the CDC Act, 1997.

3. The Appellant has preferred the instant appeal against the Impugned Order on the following grounds:
 - i. The SCN was issued in a perfunctory manner. The Appellant was not confronted with the entire material and evidence on the basis of which the charges in the SCN had been leveled against the Appellant. The SCN offended the fundamental principles of natural justice and the Impugned Order is liable to be set aside on this account.
 - ii. The SCN was issued without lawful authority and the Respondent was not competent to issue the same.
 - iii. The SCN was issued solely on the basis of a Complaint, without any independent inquiry. The SCN was issued without there being any cogent material on record.
 - iv. The SCN is bad in law since it is vague and fails to state either the transactions or the dates/occasions when Complainant securities were allegedly handled without



Securities and Exchange Commission of Pakistan

authority by the Appellant. It also fails to state the mode and manner of any such allegedly unauthorized dealing.

- v. The Impugned Order erroneously holds that the CEO of the Appellant Company admitted the facts of the SCN. Indeed no such admission was made by the CEO; therefore the Impugned Order is liable to be set aside.
- vi. The Respondent has incorrectly relied on the Appellant undertaking dated 30/12/13 for proving the guilt of the Appellant. The aforesaid undertaking relates only to the settlement of the outstanding liability of the Appellant towards the Complainant. The aforesaid undertaking does not contain any admission regarding alleged unauthorized handling of the Complainant shares by the Appellant. The Respondent erred in both law and facts by inferring a breach of Section 24 the CDC Act, from the aforesaid undertaking.
- vii. That Respondent misread the undertaking dated 30/12/2013 and drew an erroneous inference from the same without adverting to the plain meaning and purpose of the said undertaking.

4. The Respondent has denied he grounds of appeal as follows:

- i. The SCN hearings were adjourned thrice on the request of the Appellant, however, in order to provide fair opportunity to present the case, the case was, finally heard on 05/12/13 wherein the CEO of the Appellant appeared and presented the case and no such objection was raised at that time.
- ii. The Respondent was fully authorized to adjudicate upon the Complaint lodged by the Complainant against the Appellant.
- iii. Appellant admission to the alleged violations mentioned in the SCN and its undertaking regarding settlement of Complainant claim is sufficient to prove the guilt of the Appellant.
- iv. The SCN is very clear and self-speaking. The Appellant vide facsimile dated 05/04/13 addressed to Complainant agreed to pay the sale proceeds against disinvestment of Complainant shares at the closing value of 05/04/13. The said



Securities and Exchange Commission of Pakistan

- submission made by the Appellant implies that the shares of Complainant were handled without due authority.
- v. The CEO of the Appellant admitted before the Respondent, the alleged violations further the undertaking to settle the outstanding claims is evidence that the violations were committed and accepted by the Appellant.
 - vi. The admission by the Appellant to settle the outstanding liability and the admission of the CEO during the hearing is sufficient enough to establish the violation committed by the Appellant. Why would anyone give the undertaking to settle the liability if there is nothing outstanding against it.
 - vii. The undertaking provided to the Complainant clearly state that the Appellant undertakes to clear all the liabilities by 31/03/14.
5. We have perused the record and heard the Parties i.e. Appellant and Respondent.
6. The facts of the case are quite clear that the Appellant has used Complainant shares without due authority. The Appellants undertaking to the Complainant regarding settlement of claim provides sufficient ground to establish the alleged violations of the Appellant. In our view, the Respondent has rightly exercised the powers under section 28 (2) of the CDC Act against the Appellant.
7. In the above circumstances, we find no reason to interfere with the Impugned Order, therefore Appeal is dismissed. Parties to bear their own cost.

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

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

Announced on: **20 JAN 2016**