

Before the Director (Market Supervision & Registration Department)
Securities Market Division
Securities and Exchange Commission of Pakistan

In the matter of Show Cause Notice Dated January 23, 2013 issued to
Riaz Ahmad, Saqib, Gohar & Co. Chartered Accountants

Date of Hearing: March 13, 2013

Present at the Hearing: 1. Mr. Shahid Kamran (Partner)
2. Mr. Kamal Gohar (Supervisor)

Representing SECP(SMD): Ms. Saima Shafi Rana (Deputy Director-MSRD)

ORDER

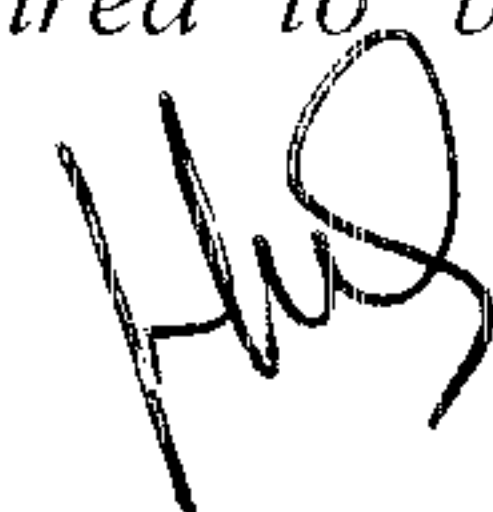
1. This Order shall dispose of the proceedings initiated through Show Cause Notice No. 4(BRK-229) SE/SMD/2010 dated January 23, 2013 (“**the SCN**”) under Section 22 of the Securities and Exchange Ordinance, 1969 (“**the Ordinance**”) issued to Riaz Ahmad, Saqib, Gohar & Co. Chartered Accountants (“**the Respondent**”)

2. Brief facts of the case are that the Securities & Exchange Commission of Pakistan (“**the Commission**”) in exercise of its powers under Sub-section (1) of Section 6 of 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 Shajar Capital Pakistan (Private) Limited (“**SCPL**”), TREC Holder of Karachi Stock Exchange Limited (the “**KSE**”) and a broker registered under the Brokers and Agents Registration Rules, 2001 (“**Brokers Rules**”).

3. The report dated November 06, 2012 submitted by the Inspection Team highlighted major irregularities in calculation of Net Capital Balance (‘**NCB**’) of SCPL as on June 30, 2012, the calculation of which were duly verified and certified by the Respondent. It appeared that NCB was not calculated in accordance with Third Schedule of the Securities and Exchange Rules, 1971 (the “**SE Rules**”) Thereafter, the Commission served a SCN to the Respondent, the contents of which are reproduced below:-

SUBJECT: SHOW CAUSE NOTICE UNDER SECTION 22 OF THE SECURITIES AND EXCHANGE ORDINANCE, 1969 IN THE MATTER OF SHAJAR CAPITAL PAKISTAN (PRIVATE) LIMITED

*WHEREAS, the Securities and Exchange Commission of Pakistan (“**Commission**”) in exercise of its powers under sub-section (1) of Section 6 of the Securities and Exchange Ordinance, 1969 (“**Ordinance**”) read with Rule 3 and Rule 4 of the Stock Exchange Members (Inspection of Books and Record) Rules, 2001 (“**Inspection Rules**”) ordered an inspection vide order No. SMD/MS&CID-C&IW/10-1(144)/2012 dated September 4, 2012 of the books and record required to be*



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maintained by Shajar Capital Pakistan (Private) Limited ("SCPL") a TREC Holder of Karachi Stock Exchange Limited ("Exchange").

2. *AND WHEREAS, on review of the inspection report submitted by the Inspection Team it has come to the notice of the Commission that Net Capital Balance ("NCB") of SCPL as on June 30, 2012 as verified and certified by Riaz Ahmad, Saqib, Gohar & Company, Chartered Accountants ("Auditors") is not in accordance with the Third Schedule of the Securities and Exchange Rules, 1971 ("1971 Rules") and has been overstated by an amount of Rs.27,692,776.*

3. *AND WHEREAS, in terms of Rule 2(d) of the 1971 Rules read with Clause 2.1 of the Regulations Governing Risk Management of the Exchange ("the Regulations") the NCB are required to be calculated in accordance with the Third Schedule to the 1971 Rules. AND WHEREAS, the TREC Holders of the Exchange are required to submit bi-annually a certificate from an auditor as specified in Clause 2.1 (b) of the said Regulations confirming their NCB on the format prescribed by the Exchange. The NCB is also required to be duly audited/verified in terms of Clause 2.1 (c) of the said Regulations which provides that*

"the certificate shall specify that the Net Capital Balance calculated have been duly audited/verified by the auditor"

4. *AND WHEREAS, prima facie it appears that the certificate of NCB of SCPL as on June 30, 2012 certified by the auditors is not in accordance with the Third Schedule of the 1971 Rules and that the auditors have prima facie certified 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.*

5. *AND WHEREAS, in the light of the facts mentioned above, prima facie, it appears that the auditors are in contravention of Section 18 of the Ordinance, the contravention of which invokes penalty under Section 22 of the Ordinance.*

6. *AND WHEREAS, section 18 of the Ordinance provides:-*

"No person shall, in any document, paper, accounts, information or explanation which he is, by or under this Ordinance, required to furnish, or in any application made under this Ordinance, make any statement or give any information which he knows or has reasonable cause to believe to be false or incorrect in any material particular."

7. *AND WHEREAS, Section 22 of the Ordinance provides that:*

" If any person refuses or fails to furnish any document, paper or information which he is required to furnish by or under this Ordinance; or refuses or fails to comply with any order or direction of the Commission made or issued under this Ordinance; or 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 continuing default, a further sum calculated at the rate of two



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hundred thousand rupees for every day after the issue of such order during which the refusal, failure or contravention continues.”

8. **NOW THEREFORE**, you are hereby called upon to show cause in writing by February 1, 2013, as to why action as provided under Section 22 of the may not be initiated for violation as indicated above. You are further directed to appear in person or through an authorized representative (with documentary proof of such authorization), on **February 4, 2013** at 3:00 p.m. at the SECP Headquarters – Islamabad. You are advised to bring all relevant record in original, which you may consider necessary for clarification or in your defense. This notice sufficiently discharges the Commission’s obligation to afford an opportunity of hearing in terms of Section 22 of the Ordinance. In case of your failure to appear on the stated date of hearing it will be deemed that you have nothing to say in your defense and the matter will be decided ex-parte on the basis of available record.

9. Please note that this show cause is being issued without prejudice to any action, which may be taken or warranted for the above said or any other default under the above referred or any other provisions of law. Kindly acknowledge receipt of this show cause notice through return fax or courier at your earliest.

Sd/-
Hasnat Ahmad
Director

4. Thereafter, the hearing fixed for February 4, 2013 was adjourned on the request of the Respondent. The Respondent submitted a written response to the SCN dated January 23, 2013. The following arguments were put forward by the Respondent in its written response and during the hearing held on March 13, 2013:

“...Third Schedule to the Rules did not categorically specify ‘Other assets’ as line item in the statement of NCB despite the fact that these are ‘current’ in nature according to Generally Acceptable Accounting Principles and are in the ordinary course of business...”

The point to be noted here is that the Inspection Team of the Commission has accepted and included items classified as ‘Other Assets’ aggregating to Rs. 8’864’211, despite the fact that the Third schedule to the Rules did not categorically specify these items. However, ‘Other Assets’ listed from of Rs. 27, 692,776 were not accounted....

The Company while calculating its NCB, considered these balances based on the understanding that these amounts are in current nature (the Inspection Team of the Commission has adopted the same view while adding Rs 8,864,211 in their calculation of NCB)..

The differences pointed out by the Inspection Team are the result of difference of opinions on interpretation of the Law and due to non-availability of any proper clarification/guidelines in this regard...”



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During hearing, the Respondent stated that they were under the impression that the disputed heads are current in nature that is why they have included these in "Other Assets". The Respondent stated that there were interpretation issues and such act was not willful, therefore they have issued disclosure. The Respondent during the hearing assured compliance of rules and regulations more vigilantly in future.

5. I have examined the facts, evidences and documents on record, in addition to the written and verbal submissions made on behalf of the Respondent. The Inspection Team has accepted few items under the head "Other Assets", however after evaluating the written and oral submission made by the Respondent and by close perusal of the relevant provision of law, I am of the considered opinion that the third schedule of SE Rules does not allow items under the head "Other Assets" and therefore the complete figure of 8.86 million should not have been included in the NCB.

6. The violation of the Ordinance, rules and regulations is a serious matter. However, considering that the violation was inherently because of the interpretation issue and that the Respondent assured that the provision of law would be more vigilantly followed by in future; I have taken a lenient view. The Respondent is hereby warned and strictly advised to be vigilant and to fully comply with applicable Rules and Regulations in future.

7. This Order is issued without prejudice to any other action that the Commission may initiate against the Respondent in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.


Hasnat Ahmad
Director (MSRD)

Announced on April 11, 2013
Islamabad.

