



BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 05 of 2006

Eastern Capital Limited
609-612, Clifton Center
Block 5, Clifton
Karachi

.....

APPELLANT

Versus

Director (SMD)

.....

RESPONDENT

ORDER

Date of Hearing

14 November 2008

Present:

For the Appellant:

Mr. Iqbal Ahmed
Advocate

For the Respondent Department:

Najia Ubaid
Assistant Director



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

1. This order shall dispose of the appeal No. 05 of 2006 filed under section 33 of the Securities and Exchange Commission of Pakistan (“SECP”) Act, 1997 by Eastern Capital Ltd (the “Appellant”) against the order dated 09-12-2005. of the Director Securities Market Division (“Respondent”), (the “Impugned Order”)
2. The Appellant is a corporate member of Karachi Stock Exchange (Guarantee) Limited and is engaged in the business of brokerage of shares and securities.
3. The facts leading to the case are that the Appellant has been running its branch offices at five (5) location in Karachi, one (1) each at Bahawalpur, Multan and Islamabad without registration of its branch heads as an agent with Securities and Exchange Commission of Pakistan (“SECP”) as required under section 5A of the Securities and Exchange Ordinance 1969(the “Ordinance”).The Multan branch of the Appellant was visited by the Joint Registrar of Companies of SECP, Multan office, who sent a report to the Respondent informing him that the branch office of the Appellant was operating in violation of section 5(A) of the Ordinance. The Respondent issued two notices dated 21-10-2005 and 26-10-05, and the Appellant directed to forthwith cease dealing in any security at all the branch offices under section 20 of the Ordinance and further called upon the Appellant to show cause why it should not be penalized under section 22 of the Ordinance.
4. The Appellant in response to the show cause notice informed the Respondent that it had been providing internet trading services through its branch offices and are not dealing with sale and purchase of securities/shares. The heads of branches were not registered as agents with SECP on the advice of Karachi Stock Exchange (“KSE”). The Appellant



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however showed its willingness to register the heads of branches as agents with SECP and undertook to do the same by 20-11- 2005.

5. The Respondent after giving an opportunity of hearing passed the Impugned Order and imposed a penalty of Rs. 50,000/- (Rupees fifty thousand) only, under section 22 of the Ordinance. Moreover, the Respondent allowed the Appellant to operate branch offices after getting its heads of branches registered with the SECP as agents.
6. The counsel for the Appellant stated that the branch offices were operating only for online trading i.e. those who wanted to trade were allowed access to a computer in the Appellant's various premises and business of sale/purchase of shares/securities was not undertaken at the premises. Moreover, KSE, being the front line regulator had allowed the Appellant vide letter dated 14-6-05 to operate the branches and provide internet trading services without registration, therefore the Appellant acted in good faith. The Appellant's counsel contended that the penalty imposed on the Appellant is harsh and should therefore be set aside.
7. The Departmental Representative stated, that the Appellant has substantially complied with the Impugned Order by registering its branch heads as agents with SECP after passing of the Impugned Order. That the penalty was imposed for non compliance of the mandatory provision of section 5A of the Ordinance and as such was justified.
8. We have heard both the parties and having gone through the record. Section 5(A) of the Ordinance and rule 2 (A) of the Members, Agents and Traders (Eligibility Standards) Rules 2001 are reproduced below:



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5A. *Broker or agents not to engage in business without registration-* No person shall act as broker or agent to deal in the business of effecting transactions in securities unless he is registered with the Commission in such manner, on payment of such fees and charges and on such conditions as may be prescribed.

2A. "Agent" means a person appointed by a member of a stock exchange to act on his behalf for the purposes recognized by a stock exchange and includes a sub-broker or head of a branch office

emphasis added

The joint registrar of companies report on his visit to the Multan branch of the Appellant is reproduced to ascertain whether or not the Appellant branch manager was acting as an agent or not:

"I have personally visited the entity on 28.9.2005 and met there Mr. Ali Raza Jaffri, Marketing Manager (Branch Manager/ agent for the purposes of section 5A). I showed my seriousness to invest in stock market through them. Thereupon, Mr Ali Raza Jaffri told me that they open the account of new investor with the minimum of 100,000/- and allow him online trading up to the extent of deposited sum of Rs 100,000/- on daily basis. In case, an investor wants to withdraw his deposited money, he is refunded the same after clearance from Karachi. Visiting card of Mr. Ali Raza Jaffri, Marketing Manager and company brochures are enclosed herewith in original"



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From the above statement it is clear that the branch offices of the Appellant were allowed to open accounts, receive deposits and allow trading in securities to the extent of the amount deposited with the branch. The individual investor was permitted access to the computer to buy and sell securities; however, he could only do so to the extent of the amount deposited with the branch of the Appellant. This is no different than the activity performed by the broker himself on behalf of clients except that instead of the broker pressing the buy and sell button, the investor himself did this at the Appellants branch, as such the branches were working as agents for those desiring to trade.

9. Section 5A of the Ordinance read with report of the Joint Registrar of the companies and the brochures mentioning the branch offices addresses submitted with the report leads us to the conclusion that the Appellant was in violation of section 5A of the Ordinance. The violation was also admitted by the Appellant, when in response to the notice dated 21-10-05, the Appellant showed its willingness to register the heads of branches as agents with the SECP.
10. The Respondent rightly held that any person working as head of branch can be classified as an agent and hence needs to be registered under the Rules. The Appellant by collecting money through its various branches without getting their heads of branches registered with the SECP has breached the provisions of the Ordinance and the Rules.
11. The Appellant's counsel plea that the Appellant acted in good faith as KSE advised the Appellant not to register with SECP has also been examined. The letter seeking KSE's permission has not been provided by the Appellant, we are therefore unaware whether the activities performed by the branches were clearly communicated to KSE based on which KSE granted permission. More importantly it transpires from the SECP record

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that the advice rendered by the KSE on the issue was without consultation with SECP. We are of the view that any instruction or advice given by the KSE which is inconsistent with the laws administered by SECP is not acceptable and cannot be a ground of defense. If the Appellant as a result of KSE's advice suffer a loss, it may take up the issue with KSE

12. The Appellant since the passing of the Impugned Order has complied with section 5A of the Ordinance by registering the heads of the branches. The Appellant however, failed to register the heads of all the branches by 20-11-05 as undertaken by it in its letter dated 29-10-05. In spite of clear directive by the SECP, the Appellant failed to get the heads of branches registered till as late as December 2007. We therefore do not find any reason to interfere with the Impugned Order. The Appeal is dismissed. Parties to bear their own cost.

A handwritten signature in black ink, appearing to read 'Razi', is written over the printed name of the Chairman.

(MR. RAZI-UR-REHMAN KHAN)

Chairman

A handwritten signature in black ink, appearing to read 'S. Tariq A. Husain', is written over the printed name of the Commissioner (LD).

(S. TARIQ. A HUSAIN)

Commissioner (LD)

Announced on: 31st December 2008.