



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Before

Shahzad Afzal Khan, Director/ Head of Department

(Adjudication Department-I)

In the matter of

Qisstpay BNPL (Private) Limited

Show Cause Notice No. & Issue Date:	No. SECP/SCD/ADJ-I/Qisstpay/58/2022-2922, dated April 14, 2023
Date of Hearing:	June 5, 2023
Present at the Hearing Representing the Respondent	Barrister Safiullah Ghauri, Esquire Legal, Counsel Advocate Muhammad Zakwan Hazarvi, Legal Mr. Asim Rauf, Operations Mr. Mohsin Iqbal, Finance Mr. Zulfiqar Ali, Finance (Authorized Representative)

ORDER

UNDER SECTION 282 J (1) OF THE COMPANIES ORDINANCE, 1984 AND SECTIONS 134(12) & 178(6) OF THE COMPANIES ACT, 2017 FOR CONTRAVENTION OF RULES 5(6)(E)&(G), 7(1)(C), (CA) & (CB) AND 7(3) OF THE NON-BANKING FINANCE COMPANIES (ESTABLISHMENT AND REGULATIONS) RULES, 2003; REGULATIONS 4, 10(B) & 18A OF THE NON-BANKING FINANCE COMPANIES AND NOTIFIED ENTITIES REGULATIONS, 2008; AND SECTIONS 134(1)(II) & 178(4) OF THE COMPANIES ACT, 2017.

This Order shall dispose of the proceedings initiated through the Show Cause Notice dated April 14, 2023 (**the SCN**) by the Securities and Exchange Commission of Pakistan (**the Commission**) against Qisstpay BNPL (Private) Limited (**the Company and/or Respondent No. 1**); Mr. Jordan Scot Olivas, Chief Executive Officer (**CEO**)/Director (**Respondent No. 2**); and Syed Saad Ahmed, Director (**Respondent No. 3**); **hereinafter collectively referred as the Respondents**, issued under Section 282 J (1) of the Companies Ordinance, 1984 (**the Ordinance**) and Section 13(12) and 178(6) of the Companies Act, 2017 (**the Act**) for contravention of rules 5(6)(e)&(g), 7(1)(c),(ca)&(cb) and 7(3) of the Non-Banking Finance Companies (Establishment and Regulations) Rules, 2003 (**the NBFC Rules**); regulations 4, 10(b) and 18A of the Non-Banking Finance Companies and Notified Entities Regulations, 2008 (**the NBFC Regulations**); and Section 134(1)(ii) and 178(4) of the Act.

2. Brief facts leading to this case are that, the Company was incorporated on November 11, 2021, as a public unlisted company under the Act and licensed by the Commission on December 21, 2021 to undertake Investment Finance business as an NBFC under the NBFC Rules and the NBFC Regulations. A review of the record/information of the Company maintained with the Commission, depicts that the Respondents, *prima facie*, were non-compliant with the provisions of rule 5(6)(e)&(g), 7(1)(c),(ca)&(cb) and 7(3) of NBFC Rules; regulations 4, 10(b) and 18A of the NBFC Regulations; and Section 134(1)(ii) and 178(4) of the Act, which attracts the penal provisions provided under Section 282 J (1) of the Ordinance and Section 134(12) & 178(6) of the Act. Therefore, SCN was issued to the Respondents, calling upon them to show cause in writing as to why the penalty as provided under Section 282 J (1) of the Ordinance and Section 134(12) and 178(4) of the Act, may not be imposed on them for the aforementioned contraventions of the law.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

Continuation Sheet - 1 -

3. Written response to the SCN duly signed by the Respondent No.2 and Respondent No.3 was received via email dated June 9, 2023, whereby the Respondents, submitted on merits as under:
- (i) The accounts department misconstrued the amount received from sponsors of the Company as share deposit money to be deposited for the purpose of issuing of further share capital, however, during the course of audit it was identified that it is sub-ordinate loan classified as share deposit money in the draft financial statements presented to them whereas sponsors confirmed that these injections are sub-ordinate loans from time to time keeping in view of unsecured financing requirements as well as to finance capital assets of the Company. Moreover, the Company has presented the sub-ordinate loans agreements to the auditor, terms and amount of which has been verified by the auditor through direct confirmation from the sponsors. However, the Specialized Companies Returns System (SCRS) does not provide any column or segregation for subordinated loans, therefore, they had to be reported in general reserves. Auditor's certificate in this regard is awaited and will be provided to the Commission as soon as possible.
 - (ii) The engagement of Chief Financial Officer (CFO) (i.e. Mr. Mohsin Iqbal Mahmood); Internal Auditor (IA) (i.e. Mr. Zulfiqar Ali); and Compliance Officer (CO) (i.e. Mr. Muhammad Zakwan Hazarvi), have already been done after thoroughly verifying the eligibility criteria of the said officers in accordance with the criteria defined by the Commission. Furthermore, for getting the said officers (i.e. CFO and IA) officially appointed, Form-29 (Reference ID-4925895) has been filed which is pending for the formal approval from the Commission. Furthermore, for making the official engagement of CO, a notification has been submitted to the Supervision Department of the Commission.
 - (iii) It is stated that the Company is already in an agreement with the Central Depository Company of Pakistan Limited (CDC) Share Registrar Services Limited in order to get the CDC Accounts Statements. However, the Company is in process of increasing the authorized share capital from PKR 110 million to PKR 130 Million soon after which the Company will be in the position of submitting the latest statements to the Commission in a short time span along with undertaking of the Company Executives.
 - (iv) It is important to mention that the Company has already shortlisted a new CEO. This formal appointment of the new CEO will be made through Annual General Meeting (AGM) which is going to be held on July 3, 2023.
 - (v) The Company had filed form 29 for the removal of Ex-Independent Director which was duly accepted by the authorities. Appointment of new Independent Director will subsequently take place on July 3, 2023 during the conduction of AGM.
 - (vi) Rule 18A of the NBFC Rules requires that a non-deposit taking NBFC may provide unsecured finance up to 10% of equity to a single borrower or a single group. The figures mentioned by the Commission is actually approximately the amount of receipts till June 30, 2022, whereas as per the draft accounts vetted by the auditor, the actual receivable amount on June 30, 2022 are lower than equity as on June 30, 2022. Furthermore, the review of six months accounts from July 2022 to December 2022 is in progress and therefore, the figures from July 2022 to December may subject to change if the auditor proposes any suggestions.
 - (vii) After the acceptance of mistake with regard to notice of Board Meeting, the Company is trying its level best to comply with the notices of the Board meetings and with the minutes of the meeting. For that, present executives are fully notified of all the meetings which are taking place. Company still accepts its mistake on not fully furnishing the minutes of each meeting and for that their team is currently working on making up a software where all these minutes can be taken and accordingly be notified to the respective persons.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

Continuation Sheet - 2 -

(viii) In light of the above they submitted that the Company has already engaged the officers and legal team against the vacant positions which are working with their best expertise to get themselves fully Compliant with the NBFC Regulations. They also emphasized that due to Covid-19 restrictions, work from home policy made it difficult to generate a collaborative effort for a new team of newly incorporated Company.

4. In order to afford the Respondents an opportunity of personal representation, hearing in the matter was fixed for June 5, 2023, before the undersigned, wherein Barrister Safiullah Ghauri, Esquire Legal, Counsel; Advocate Muhammad Zakwan Hazarvi, Legal; Mr. Asim Rauf, Operations; Mr. Mohsin Iqbal, Finance; and Mr. Zulfiqar Ali, Finance; appeared as Authorized Representative of the Respondents (**Representatives**). The Representatives reiterated the stance taken in the above stated written response to the SCN.

5. I have examined the facts of the case in light of the applicable provisions of the law and have given due consideration to the written as well as verbal submissions and arguments of the Respondents and their Authorized Representatives. I have noted the following pertinent aspects in the matter at hand:

(i) **Non-Compliance with Minimum Equity Requirement (rule 7(3) of the NBFC Rules and regulation 4 of the NBFC Regulations):-**

As per information submitted through SCRS for the period November 2022 and December 2022, the Company failed to maintain the minimum equity requirement (**MER**) as stipulated in Schedule I read with regulation 4 of the NBFC Regulations and rule 7(3) of the NBFC Rules. The equity of the Company for the said period stood at Rs.75 million and 26 million respectively against the prescribed limit of Rs.100 million. The Company claimed its equity to be as Rs. 312 million and Rs. 323 million respectively by including the "Share Deposit Money" of Rs. 385 million and Rs.390 million respectively. Whereas as per the definition of equity provided under rule 2(xix) of the NBFC Rules, an amount against "share deposit money" could not be included in the Equity. In this regard the Respondents and their Representatives asserted that their Accounts Department misconstrued the amount received from sponsors of the Company as share deposit money, and their auditor, after due verification, identified the same as subordinated loan. The Respondents and Representatives committed to submit the auditor's certificate to this effect within 7 days of hearing, however, the said auditor's certificate has not been provided to date.

At the outset, it is mentioned that the Ordinance, Rules, Regulations, Guidebook and akin laws are the primary constituents that an NBFC is required to comply with in preparation of its financial statements, and as a generally established rule, where provisions and directives issued under the Rules, Regulations, Company Law (or akin) differ from the general accounting practice, and/or IFRS, the provisions of Rules, regulations and directives issued under the said law are required to be followed. Thus, it is abundantly clear that the computation and reporting of Equity is essentially a regulatory requirement stipulated/defined under the rule 2(xix) of the NBFC Rules (i.e. which do not include Share Deposit Money), and the NBFC is obliged to comply with the computation requirements strictly in the manner specified.

Furthermore, classification of a loan as subordinated loan is subject to certain conditions as prescribed under rule 2(xix) of the NBFC Rules, inter alia including, rate of profit on subordinated loan, if any, be decided by NBFC subject to the clearance of the Commission; auditor certificate evidencing injection of funds into NBFC as subordinated loan; minimum



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

Continuation Sheet - 3 -

tenor of subordinated loan has to be specifically mentioned; and, prior approval of the Commission is required for repayment of subordinated loan etc. In the absence of evincing documents with regard to classification of subordinated loan, the Respondents' above stance with regard to MER issue could not be substantiated.

Thus, the argument by the Respondents regarding inclusion of Share Deposit Money in Equity for the purpose of MER is not justifiable. The Respondents failed to meet the MER as of November and December 31, 2022 as stipulated under Schedule-I read with regulation 4 of the NBFC Regulations and rule 7(3) of the NBFC Rules, hence establishing the default thereof.

(ii) **Appointment of Chief Finance Officer (CFO), Internal Auditor (IA), and Compliance Officer (CO) (rule 7(1)(c), (ca) & (cb) of the NBFC Rules):-**

The Company was granted an NBFC license in December 2021, but it was unable to employ CFO, IA and CO for a considerable time without having any cogent reason. The positions of CFO and CO were vacant since March 2022 and May 2022 respectively, whereas IA had not been appointed since inception of the Company. As per the assertions made by the Respondents and their Representatives the said positions have now been filled (i.e. subsequent to issuance of SCN), and accordingly Form 29 and official notification to this effect has been filed with/sent to the Commission. This demonstrates that the aforementioned critical posts in the Company were unfilled for more than a year (a period of time between 13 and 16 months), casting doubt on the Company's capacity to function successfully or smoothly. Thus, contravention of rule 7(1) (c), (ca) and (cb) of the NBFC Rules on part of the Respondents have been established.

(iii) **Non-Compliance with the license conditions for carrying out Investment Finance Business as NBFC (rule 5(6)(e) & (g) of the NBFC Rules):**

The Company, failed to comply with the license conditions imposed on it at the time of grant of license, detailed as under:

- Failed to provide CDC Account statement of the blocked shares of sponsors/promoters within one month of grant of license i.e. by January 21, 2022 and an undertaking in compliance with the requirement of rule 5(6)(e) of the NBFC Rules; and
- The CEO of the Company (i.e. Respondent No. 2) failed to resigned from his position as CEO of Modern Dev5 and Dev5 (Pvt.) Limited in compliance with the requirement of rule 5(6)(g) of the NBFC Rules and has also failed to provide an undertaking to this effect.

Essence of the above license conditions imposed on the Company was to ensure that the promoters/ majority shareholders and directors has of the Company has deposited their shares into the CDC blocked account which could not be sold or transferred without prior approval of the Commission, as required under rule 5(6)(e) of the NBFC Rules and the CEO of the Company should not hold such office in any other company except for an investment company being managed by the Company, in compliance with rule 5(6)(g) thereof.

Accordingly, the Respondents were required to submit the CDC blocked account statement within one month of issuance of license i.e. by January 21, 2022; and an undertaking to the effect of rule 5(6)(e) of the NBFC Rules; which has not been provided to date. The Respondents and their Representatives asserted that the same will be provided after the completion of process of enhancing their share capital from Rs.110 million to Rs.130 million. In this regard, it may be noted that the said condition was imposed at the time of grant of license as per the then share capital position. Therefore, the Respondents stance regarding non-submission of account



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

Continuation Sheet - J -

statements of CDC blocked account even after a lapse of 18 months-time is not tenable, hence violation of rule 5(6)(e) has been established.

Regarding immediate resignation of CEO from such position holding in other company, the Respondents stance of initiating the process of appointment of a new CEO of the Company, exhibits that the CEO of the Company has not resigned from such position holding in other company and now subsequent to the SCN a new CEO of the Company is being appointed. Hence violation of rule 5(6)(g) has been established.

(iv) **Non-filing of application for appointment of Independent Director (regulation 10(b) of the NBFC Regulations):**

The Company had not filed an application for filling the casual vacancy created due to resignation of Independent Director on October 24, 2022. In this connection, the Respondents asserted that they had filed Form 29 for removal of Independent Director which was duly accepted by the Commission. It may be noted that in terms of regulation 10(b) of the NBFC Regulations, the Respondents were required to file an application to the Commission for soliciting approval of appointment of new Independent Director within 10 days of creation of such casual vacancy. However, such application for appointment of new Independent Director has not been filed up till now even after a lapse of considerable time period. Thus, the Respondents are found non-compliant with the requirement of regulation 10(b) of the NBFC Regulations.

(v) **Unsecured financing exceeded the equity of the company (regulation 18A of the NBFC Regulations):-**

As per SCRS record for the month of June 2022 and December 2022, the Company provided unsecured finance amounting to Rs.271 million (i.e. 1.09 times of the reported equity of Rs.249 million); and Rs.137 million (i.e. 5.26 times of the equity of Rs.26 million) respectively, contrary to the requirement of regulation 18A of the NBFC Regulations requiring that aggregate unsecured finance provided by an NBFC has not to be exceeded its Equity. Regarding this, the Respondents and their Representatives argued that as per the draft accounts for the period June 30, 2022 vetted by the auditor, their unsecured financing is within the limits i.e. below the equity. It has been noted that the said draft accounts submitted by the Respondents has shown /reported the previously reported amount of "share deposit money" under the title of Equity as "subordinated loan", leading the unsecured financing within the statutory limits. However, it is reiterated that in absence of an auditor certificate to the effect of "subordinated loan" categorization, the sum previously stated as share deposit money could not be accepted as subordinated loan. Moreover, the accounts submitted by the Respondents are draft accounts and have yet not been certified by the auditor. Furthermore, the Company's audited financial statements have yet to be presented to the Commission. Thus, the Respondents claim to be compliant with the requirement of regulation 18 A could not be substantiated.

(vi) **Notice of Board Meeting (Section 134(1)(ii) and Section 178(4) of the Act):-**

The Ex-Independent Director of the Company who served as director of the Company from 14-Oct-2021 till 24-Oct-2022, in his resignation contented that during his directorship neither any notice was sent for the board meeting nor minutes of the meeting were shared with him, contrary to the requirement of Sections 134(1)(ii) and 178(4) of the Act. In this regard the Respondents and their Representatives admitted the negligence and informed that currently they are developing a software where all these minutes can be taken and accordingly be notified to the



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I
Adjudication Division

Continuation Sheet - 5 -

concerned. They also assured to ensure the compliance in future. Thus, the non-compliance of Sections 134(1)(ii) and 178(4) of the Act has been established.

6. In view of the above-stated facts, circumstances and submissions made by the Respondents and their Representatives, the Respondents has failed to comply with the requirements of rules 5(6)(e)&(g), 7(1)(c),(ca)&(cb) and 7(3) of the NBFC Rules, regulations 4, 10(b) and 18A of the NBFC Regulations, and Sections 134(1)(ii) & 178(4) of the Act, which attracts the imposition of penalty under Section 282 J (1) of the Ordinance and Section 134(12) & 178(6) of the Act. Therefore, in exercise of the powers conferred upon me thereof, I hereby, impose an aggregate fine of **Rs.1,765,000/- (Rupees, One Million, Seven Hundred and Sixty-five Thousand Only)** on the Company/Respondent No.1 on account of the aforesaid established and conceded non-compliance. The Respondents are also advised to ensure meticulous compliance with all applicable laws in true letter and spirit, henceforth. Detail of penalty against the established violations is as under:

Violations	Penal Provision	Penalty Imposed
Non-Compliance of NBFC Rules and Regulations,	Section 282 J (1) of the Ordinance (Maximum penalty up to Rs. 50,000,000/-)	Rs.1,500,000/-
Non-Compliance of Section 134(1)(ii) of the Act	Section 134(12) of the Act (Maximum Penalty up to Rs. 500,000/-)	Rs. 250,000/-
Non-Compliance of Section 178(4) of the Act	Section 178(6) of the Act (Maximum Penalty up to Rs. 500,000/-)	Rs. 15,000/-
Aggregate amount of Penalty		Rs.1,765,000/-

7. The Company is hereby directed to deposit the afore-mentioned fine in the designated Bank Account maintained in the name of the Securities and Exchange Commission of Pakistan with MCB Bank Limited or United Bank Limited within thirty (30) days of the date of this Order and furnish receipted voucher evidencing payment of the same.

8. This Order is issued without prejudice to any other action that the Commission may initiate against the Company and/or its CEO in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

(Shahzad Afzal Khan)
Director / Head of Department
Adjudication Department-I

Announced:
July 26, 2023
Islamabad.