



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

85

Before Amir M. Khan Afridi, Director/HOD (Adjudication-I)

In the matter of

Shah Sachal Sami Foundation

Show Cause Notice No. & Issue Date: SECP/SCD/ADJ-I/38/2021-757 dated April 30, 2022

Date of Hearing: May 20, 2022

Present at the Hearing Representing the Respondent i. Mr. Yasir Arafat, Manager Finance

Date of Order: June 23, 2022



ORDER

UNDER SECTION 6(A)(2)(h) OF THE ANTI-MONEY LAUNDERING ACT, 2010 (THE AML ACT) READ WITH RULE 4(1) AND 6(1) OF THE AML/CFT SANCTIONS RULES, 2020

.....

This Order shall dispose of the proceedings initiated through the aforesaid Show Cause Notice (the SCN) by the Securities and Exchange Commission of Pakistan (the Commission) against **Shah Sachal Sami Foundation (the Respondent and/or the Company)** for contravention of S.R.O. 920 (I)/2020 dated September 28, 2020 (the Directive) read with rule 4(1) and 6(1) of the AML/ CFT Sanctions Rules, 2020 (the AML Rules).

2. The Company was incorporated under Section 42 of the Companies Ordinance 1984 (the Ordinance) and licensed by the Commission to undertake microfinance business as an NBFC under Non-Banking Finance Company (Establishment and Regulations) Rules, 2003 (the NBFC Rules).

3. As per the Directive, the Compliance Report on Statutory Regulatory Orders issued by the Ministry of Foreign Affairs (MOFA) under the United Nations (Security Council) Act, 1948 or intimation from National Counter Terrorism Authority (NACTA)/ the Law Enforcement Agencies (LEAS)/ Home Departments of the Provinces/ Ministry of Interior (MoI) regarding updates in the list of the proscribed person(s)/ entity(ies) under the Anti-Terrorism Act, 1997 (the AML Act 1997), is required to be submitted to the Commission within forty-eight (48) hours of receiving the same in the manner as instructed from time to time by the Commission.

4. Upon review of the record of the Commission, it was transpired that during the period November 2021 – March 2022, in twenty-nine (29) instances the Company had failed to submit the required Compliance Report in relation to SRO(s) issued by the MOFA, NACTA etc. within 48 hours of receiving the same and intimation through the Commission's automated reporting mechanism i.e. SECP's e-Services Portal.

5. The Directive provides that, "any person to whom this directive applies and who contravenes or fails to comply with the requirements of this directive or submits a return which is false in a material respect or where under a misstatement is made shall be liable to sanction in accordance with AML/CFT Sanctions Rules, 2020 issued under AML Act, 2010 and imposed by the Commission according to Section 6A of the AML Act."

[Signature]



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Division Adjudication Department-I

86

6. Non-submission of the Compliance Report, *prima facie*, is violation of clause D of the Directive, which attracts applicability of rule 4(1) and 6(1) of the AML Rules, and Section 6(A)(2)(h) of the Anti-Money Laundering Act, 2010 (the **AML Act 2010**). The said provisions of the law are reproduced as under:

Rules 4(1) of the AML Rules 2020:

“(1) On any contravention as set out in rule 3(2), any or all of the following sanctions may be imposed by the concerned AML/CFT Regulatory Authority, namely:-

- (a) Impose a monetary penalty in accordance with these Rules;*
- (b) impose any condition, limitation or restriction on the reporting entity's business or product offerings, as it considers appropriate,*
- (c) Revoke license or de-registration of the reporting entities as applicable;*
- (d) Impose a temporary or permanent prohibition on any natural person who holds an office or position involving responsibility for taking decisions about the management of the reporting entity, including but not limited to:
 - (i) issuing a written warning;*
 - (ii) imposing a temporary suspension; or*
 - (iii) removal from service.**
- (e) Issue a statement of censure/warning/reprimand;*
- (f) Issue a direction to the person to undertake any given actions, including but not limited to:
 - (i) comply with the requirements within a specified time period through a remedial plan;*
 - (ii) conduct internal inquiries; or*
 - (iii) take disciplinary action against directors, senior management and other officers.**
- (g) Impose any other sanction permitted under the AML/CFT Regulatory Authority's enabling legislation and any rules, regulations or directives issued thereunder.”*

Rules 6(1) of the AML Rules 2020:

“(1) The AML/CFT Regulatory Authority shall apply monetary penalties upto Rs. 100 Million per violation, in accordance with the risk-based penalty scale of the respective AML/CFT Regulatory Authority.”

Section 6(A) (2) (h) of the AML Act 2010:

“(h) impose sanctions, including monetary and administrative penalties to the extent and in the manners as may be prescribed, upon their respective reporting entity, including its directors and senior management and officers, who violates any requirement in section 7(1), 7(3) to 7(6) and 7A to 7H and any rules or regulations made thereunder or those who fail to comply with the TFS regulations. Any person aggrieved by the imposition of sanctions under this clause may prefer an appeal in such manner and within such period to such authority as may be prescribed.”

7. Keeping in view the aforesaid contravention, the SCN was issued to the Respondent, calling upon it to show cause in writing as to why the penalty as provided under Section 6(A)(2)(h) of the **AML Act 2010**, may not be imposed on them for the aforementioned contraventions of the law.

8. In response to the SCN, the Company through letter dated May 19, 2022 submitted as under:

“I am writing with regret to share you that we have delayed in reporting of AML/CFT because the employee who deals with SECP reporting resigned from his services, as our head office is located at Nawabshah city and to hire a new competitive resource for the vacant position was not easy at this rural and remort area so the reporting was pending and delayed. But now we have hired the employee for the SECP compliance who have reported all the compliances of AML/CFT.

All the reporting are completed and shared with SECP till April 2022.

I apologize for the late submission and promise to report on time in the future so please give us the favor to not impose any penalty.

I hope you understand the situation and give the favor at this time.”



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Adjudication Division Adjudication Department-I

87

9. In order to afford the Respondent opportunity of personal representation, hearing in the matter was fixed for May 20, 2022. Mr. Yasir Arafat, Manager Finance appeared before the undersigned as the Authorized Representatives (**Representative**) on behalf of the Respondent. The Representative was advised to explain the reason for not submitting the Compliance Reports in respect of compliance with the notifications, as mentioned in the SCN. The Representative reiterated the stance taken in the aforementioned written reply by the Company and admitted the default on part of the Respondent.

10. The Representative further submitted that the designated Officer for AML Reporting resigned in November 2022 and the said position filled in March 2022, therefore during the said period the Compliance Reports as required in the Directive was delayed. Now all the Reports have been submitted. The representative further added that the Company's Compliance Department has only one person. It was explained to the Representative that AML law requires strict compliance with AML regime therefore, in order to avoid such non-compliances, the Respondent needs to develop systems and or mechanisms at their end (i.e. allowing remote access to the system to the concerned official, and more staff for compliance function). The Representative requested to take a linnet view and assured that they shall remain careful regarding timely compliance with the regulatory requirements in the future.

11. I have considered the facts of the case and verbal submissions of the Respondent and its Representative and of the view that stance taken by the Respondent is not cogent as it was required to regularly check e-Services Portal for ensuring timely compliance of each and every notification. This mandatory requirement could have been fulfilled if the Respondent had adopted a vigilant approach regardless of any vacant position of designated officer of the AML/CFT Reporting. During the period of vacant post of designated officer for AML Reporting, the Respondent could have assigned the said responsibility to some other resource. This state of affairs showed negligence, and casual attitude of the Respondent towards obligatory requirements of the AML Regime. Further, it is also pertinent to mention here that the Respondent had also been previously adjudicated, for violating provisions of the same Directive, vide Order dated June 25, 2021, whereby, the Respondent was warned to be careful and ensure timely compliance with the requirement of AML Laws in future. However, it has been noted with serious concern that despite warning the Respondent through the above said Order, noncompliance with the same provisions of the law reoccurred.

12. In view of the foregoing and the admission made by the Representative, non-compliances/ contraventions of clause D of the Directive has been established which attract imposition of penalty under Section 6(A)(2)(h) of the AML Act 2010 read with rules 4(1) and 6(1) of the AML Rules. Therefore, in exercise of the powers conferred under Section 6 (A) (2) (h) of the AML Act, I hereby, impose a fine of **Rs. 145,000/- (Rupees, One Hundred and Forty-Five Thousand Only)** on the Company on account of the conceded and established non-compliance of the aforesaid regulation 31 of the AML Regulations, rule 4(1) of the AML Rules, and Section 6(A)(2)(h) of the AML Act.

13. 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 within thirty (30) days of the date of this Order and furnish received voucher evidencing payment of the same.

14. 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.



Amir M. Khan Afridi

(Amir M. Khan Afridi)
Director/HOD (Adj-I)