



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

Seedcred Financial Services Limited

Show Cause Notice No. & Issue Date:	No. SECP/SCD/ADJ-I/Seedcred/67/2022- 3387 July 20, 2023
Date of Hearing:	August 31, 2023
Present at the Hearing Representing the Respondent	1. Mr. Muhammad Abrar Ameen, Chief Executive Officer; 2. Mr. Muneeb A. Cheema, General Counsel (Authorized Representatives)

ORDER

UNDER SECTION 282 J (1) OF THE COMPANIES ORDINANCE, 1984 FOR CONTRAVENTION OF CLAUSES 2(3), 2(5), 2(7), 5(4), AND 9(3) OF CIRCULAR 15 OF 2022 DATED DECEMBER 27, 2022; AND SECTION 282I(2) OF THE COMPANIES ORDINANCE 1984

This Order shall dispose of the proceedings initiated through the Show Cause Notice dated July 20, 2023 (**the SCN**) by the Securities and Exchange Commission of Pakistan (**the Commission**) against Seedcred Financial Services Limited (**the Company and/or Respondent**), issued under Section 282 J (1) of the Companies Ordinance, 1984 (**the Ordinance**) for contravention of clauses 2(3), 2(5), 2(7), 5(4), and 9(3) of Circular 15 of 2022 dated December 27, 2022 (**Circular 15 of 2022**); and Section 282 I (2) of the Ordinance.

2. The Company was incorporated on June 11, 2021, as a public unlisted company under the Companies Act, 2017 (**the Act**) and licensed by the Commission on July 16, 2021, to undertake Investment Finance business as an NBFC under Non-Banking Finance Companies (Establishment and Regulations) Rules, 2003 (**the NBFC Rules**) and Non-Banking Finance Companies and Notified Entities Regulations, 2008 (**the NBFC Regulations**).

3. Brief facts leading to this case are that the inspection of the Company was ordered under Section 282 I of the Ordinance and Section 6A(2)(f) of the Anti Money Laundering Act, 2010 (**the AML Act**) vide inspection order bearing number OD(NBFCs)/SD/SEEDCRED/2023/144 dated February 06, 2023. The scope of the inspection included a review of compliance with the AML laws and relevant regulatory framework. The findings/observations of the inspection team were shared through a Letter of Findings dated May 02, 2023 (**LOF**) with the management of the Company, and comments received from the management vide email dated May 22, 2023, were made part of the Inspection Report dated May 31, 2023 (**the Inspection Report**). The Inspection Report of the Company, depicts the following non-compliances with the NBFC regulatory framework:

- (i) The Loan Application (**App**) of the Company i.e. Barwaqt has access to the private and confidential information of the customer contrary to the requirement of clause 2(5) of Circular 15 of 2022;



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- (ii) Key fact statement displayed to the customer did not contained the minimum information as set out in Annexure A read with clause 2(3) of Circular 15 of 2022;
- (iii) Upfront charges from the approved loan was deducted by the Company contrary to the requirement of clause 2(7) of Circular 15 of 2022;
- (iv) Annual Percentage Rate (APR) charged by the Company was; inconsistent, higher than the APR mentioned in its Key Fact statement, and service fee was being charged other than the APR, contrary to the requirement of clause 9(3) of Circular 15 of 2022;
- (v) Call recording of the call made to the clients was not maintained by the Company contrary to the requirement of clause 5(4) of Circular 15 of 2022;
- (vi) The Company has not provided the requisite information to the inspection team contrary to the requirement of Section 282 I (2) of the Ordinance.

In view of the above deficiencies, the Company, *prima facie*, was found non-compliant with the provisions of clauses 2(3), 2(5), 2(7), 5(4), and 9(3) of Circular 15 of 2022, and Section 282 I (2) of the Ordinance, for which the penalty has been provided under Section 282 J (1) of the Ordinance. Therefore, the SCN was issued to the Company.

4. In response to the SCN, the Company vide its letter dated August 24, 2023, submitted on merits as under:

"..... Our point-wise answer are as follows:

I. Non-Compliance with Circular: -

- (i) *Clause 2(5) – We respectfully submit that our App’s Cybersecurity Audit was completed by PTA Category “A” company M/s Trillium on 7th April 2023, which clearly shows that their App does not have access to personal information of customers. Only the necessary information of the customer required for loan processing is gathered, which is also shown by Google on Play store (Screen Shot attached as “Annex – A”). Copy of Audit Report by Trillium, dated 7th April 2023, as well as the Report Revalidated by them on 21/8/23 in response to Circular 10 dated August 2023, is attached (as “Annex – B & B-1”) for validation of our claim;*
- (ii) *Clause 2(3) – Key Fact Statement has already been added on our App (Screen Shot attached as “Annex – C”);*
- (iii) *Clause 2(7) – No upfront fee or charges are deducted by us from the customer. Full amount is credited to the customer’s account;*
- (iv) *Clause 9(3) – It is impossible to predict whether the customer will pay on time or delay the payment. Therefore, late payment penalty cannot be calculated as a component of cost while giving a loan. However, there are two points which definitely need to be mentioned:*
 - a) *We have special offers on various days, under which we provide very competitive rates to clients if they apply on that day. On normal days, we have priced our loan at standard rates. Hence, no fixed rate is applied and to the best of their knowledge, SECP Regulations do not require a fixed/constant rate for all categories of customers, as the pricing is risk-based, like the worldwide practice relating to unsecured loans.*
 - b) *APR is clearly mentioned in our App and website. Any customer who applies for a loan is able to see this APR. Our technical view however is that APR is an incorrect measure to apply for nano-loans, because not a single nano-loan carries a duration of over one year, and therefore, the full percentage as is being required from us, will never be applied on any loan at all.*
 - c) *We cannot stop any customer from repaying the loan on the same day. None of the Regulations prevents this well. It is entirely up to the customer to carry the loan to its*



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- full term or make the repayment earlier or on the same day. It is an emergency loan, and if the need of the customer has been fulfilled, he is free to repay the amount;*
- d) *Further, with regards to the ambiguity where the customer has repaid the loan on the same day is concerned, every loan has been repaid, we see no reason to doubt the customer's ability to acquire a loan and then repay it;*
- (v) *Clause 5(4) – We checked about this matter with the company which had installed this system (NetHawk), and they told us that this instance was purely due to some technical error. Our intention has never been to hide any call with the customer, and we voluntarily provide all call recording whenever these are required and will continue to do so in future as well.*

2. **Non-Compliance with Ordinance: -**

- (i) *The billing was done by Ying Liang based on their own agreement with Facebook/ Google etc, whereby Ying Liang purchases Bulk time from these entities, and then sublets that time to organizations like us. All invoices generated by Ying Liang are available in their record, and ready for presenting to the Commission any time. They also have the complete details of the reconciliation of marketing expenses, and the same will be submitted to the Honourable Commission whenever required.*

We hope that these submissions would be positively considered by the Honourable Commission and accepted as a valid and justified response to all the observations raised in the aforesaid Showcause notice.”

5. In order to provide the Respondent an opportunity for personal representation, a hearing in the matter was fixed for August 4, 2023, however, upon receipt of an adjournment request from the Respondent, the said hearing was re-fixed for August 11, 2023. Thereafter, on receipt of another adjournment request from the Respondent, the said hearing was again re-scheduled, and finally, the hearing was held on August 31, 2023, before the undersigned, wherein Mr. Muhammad Arbab Ameen, Chief Executive Officer; and Mr. Muneeb A. Cheema, General Counsel appeared as Authorized Representative of the Respondent (**Representatives**). The Representatives reiterated the stance taken in the above-stated written response to the SCN and further submitted that:

- (i) Their App “Barwaqt” is yet not been approved by the Commission, however, it is on the white list available on the Commission’s website. They have been given nine (9) Demos regarding their App to the Commission and presently it is pending approval from the Commission;
- (ii) They had conducted a complete Cybersecurity Audit of their App through PTA Category A company and their App is found to be compliant with the requirement of Circular 15 of 2022;
- (iii) Inspection by the Commission and Cybersecurity Audit of their App was conducted during the same period, the Inspection team obtained the information prior to the completion of their App’s Cybersecurity Audit in April 2023, therefore, due to overlapping period the non-compliance appeared in the data information obtained by the Inspection Team;
- (iv) Prior to issuance of the Circular 15 of 2022, their App had access to the information regarding the privacy of the clients, however, subsequently the amendments/changes had been made in their system and the access to private information of the client was denied;
- (v) Prior to issuance of Circular 15 of 2022 APR was not included in Key Fact Statement however, the same was added during April-May 2023;
- (vi) Grace period/ time allowed for making the amendments in the App/system as per the requirement of Circular 15 of 2022 was up till March 2023 whereas the inspection team obtained the information for the year 2022 i.e. prior to issuance of Circular 15 of 2022 on December 27, 2022.



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6. With regard to the assertions made by the Representatives during the hearing following information was sought from the Respondent and the Inspection Team: -

- (i) Regarding assertions for updating the Key Fact statement and amendment in the App for denying access to the privacy information of the customer, the Representatives during the hearing were advised to provide the specific date of updating the Key Fact Statement and bringing changes/amendments in App for denying access to private and confidential information of the customers. However, the same has not been provided by the Respondent up till now.
- (ii) With regard to assertions made by the Representatives regarding collecting/obtaining the information by the inspection team pertaining to the period prior to the applicability of Circular 15 of 2022, it was confirmed by the Inspection team that all the observations highlighted by the inspection team related to Circular 15 of 2022, pertains to data selected from January 2023 onward.

7. 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 Respondent and its Representatives. I have noted the following pertinent aspects in the matter at hand:

1. **Non-Compliance with Circular 15 of 2022:**

- (i) **Comprehensive Disclosure to the Borrowers on Collection of Data and Not to Acquire Personal Information (Clause 2(5) of Circular 15 of 2022): -**

Clause 2(5) of Circular 15 of 2022, requires the digital lending NBFCs to provide comprehensive disclosures to the borrowers on the collection of data, its safe storage, sharing, and its usage. Furthermore, the digital lender could not acquire any information that is personal in nature and is not directly related to the credit score calculations, including information stored on the device such as videos, photos, SMS, or other digital content. Whereas, a review of the privacy policy of the Respondent's Loan Application (App) i.e. Barwaqt, revealed that the Respondent has incorporated access to personal and private information of its clients/borrower such as the borrower's internet protocol (IP) address, internet service provider, Location, SMS, photos, videos, media Camera, other installed Apps and calendar etc. The particulars of the Barwaqt App were also checked from the Google Play store which transpired that the App has been taking access to customer's private/confidential data.

The Respondent in its written response submitted that its App's Cybersecurity Audit was completed by PTA Category "A" company M/s Trillium on 07-Apr-23, which showed that the App does not have access to the personal information of customers. Only the necessary information of the customer required for loan processing is gathered. Further, the Representatives during the course of the hearing asserted that prior to the issuance of Circular 15 of 2022, they had access to the private and confidential information of the customer, however, subsequently changes had been made in the system and the said access was denied. They further submitted that the inspection team obtained the information for the period 2022 i.e. prior to the issuance of Circular 15 of 2022, and that under the said Circular a grace period up to March 2023 was given to the Respondent for making necessary changes in the App for meeting the requirement of the said Circular.



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In this regard, it may be noted that the said violation of having access to private and confidential information of the customer was highlighted by the inspection team on reviewing the information/screenshot provided by the Respondent to the inspection team via email dated March 15, 2023. Therefore, the stance of the Representatives regarding highlighting the non-compliances on the basis of information prior to the applicability of Circular 15 of 2022 is not tenable. Moreover, Circular 15 of 2022 was issued on December 27, 2022, and the said Circular provides that all Digital Lenders must ensure compliance with requirements under clauses 2, 3, 4, 5, and 7 within seven (7) days and clause 6 and 8 within ninety (90) days of the issuance of the circular. Accordingly, the Respondent was required to make necessary changes in its App by January 3, 2023, to deny access to private and confidential information of the customer as per the requirement of clause 2(5) of Circular 15 of 2022, whereas a review of information obtained for the period March 2023 transpired that the Respondent's App has access to the private and confidential information of the customers, contrary to the requirement thereof and subsequent compliance with the requirement of law does not absolve the Respondent from the non-compliance observed during the review period of the Inspection. Thus, non-compliance with the requirement of clause 2(5) of Circular 15 of 2022 has been established on the part of the Respondent.

(ii) **Key Fact Statement did not contain the minimum information set out in Circular (Clause 2(3) of Circular 15 of 2022): -**

Clause 2(3) of Circular 15 of 2022 requires a digital lending NBFCs to display a summary of key fact statement to the borrower in a simple clear and easily accessible format, including minimum information as prescribed in "Annexure A" thereof, before proceeding with loan disbursement. The abovesaid requirement was required to be complied within seven (7) days of issuance of Circular 15 of 2022. Whereas a review of the information provided by the Respondent revealed that the information disclosed to the customer did not contained the minimum information set out by the Circular 15 of 2022 with regard to key facts statement. The missing / deficient information in the key fact statement is:

- Cooling off period
- Repayment frequency
- Name, designation, contact number, and address of the officer designated to deal with digital lending complaints/issues.

The Respondent in its written response submitted that Key fact statement has already been added to their App. Further, the Representatives during the hearing submitted that they have updated the Key Fact Statement in Apr-May 2023 which is now fully compliant with the requirement of law.

In this regard, it may be noted that the above deficiency in Key Fact statement was observed/highlighted on the basis of information provided to the inspection team by the Respondent through its email dated February 24, 2023, whereas the key fact statement was required to be amended as per the requirement of Circular 15 of 2022 by January 3, 2023. Keeping the forgoing in view it transpired that the Key Fact Statement of the Respondent did not contained the minimum information as provided under the Circular contrary to the requirement of clause 2(3) of Circular 15 of 2022 and subsequent compliance with the requirement of law does not absolve the Respondent from the non-compliance observed during the review period of the Inspection. Thus, contravention of clause 2(3) of Circular 15 of 2022 has been established.



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(iii) **Disbursed amount of loan to be equal to approved amount of loan (Clause 2(7) of Circular 15 of 2022): -**

Clause 2(7) of Circular 15 of 2022 restrained the lending NBFCs from making any deductions (first instalment, charges, fee, etc.) from the approved amount of the loan and requires the loan disbursed amount to be equal to the loan approved amount. Whereas, a review of the data of the loans extended to identified clients provided by the Respondent revealed that the amount of loan approved is different from the amount of loan disbursed, which implies that upfront charges from the approved loan were deducted by the Respondent contrary to the requirement of clause 2(7) of Circular 15 of 2022.

The Respondent and its Representatives submitted that no upfront charges have been deducted by them from the customers. The full amount of the loan was credited to the customer's account. In this regard, it is pertinent to mention that the said provision of Circular 15 of 2022 was required to be met by January 3, 2023, whereas the Inspection team observed such violation while reviewing the loan applications approved by the Respondent on January 3, 2023, January 4, 2023, and January 7, 2023, respectively, whereby charges ranging from Rs. 101 to Rs. 260 were deducted by the Respondent from the approved amount of the loan. Thus, non-compliance with the requirement of clause 2(7) of Circular 15 of 2022 has been established.

(iv) **Annual Percentage Rate (Clause 9(3) of Circular 15 of 2022): -**

Clause 9(3) of Circular 15 of 2022 provides that "Annual Percentage Rate" or "APR" means effective annualized rate comprising all cost of the loan including the nominal interest/markup/profit rate and all other applicable fees (i.e. processing fee, service fee, notarial fee, and verification fees among others). The APR does not include penalties for late payments and non-payments. Whereas a review of the information shared by the Respondent pertaining to disbursement and collection for February 28, 2023, it has been observed that the interest rate charged by the Respondent is inconsistent and the Respondent charged different rates to different customers. In addition, the APR stated by the Respondent in its key Fact statement and advertisement is 0.8% per day, however, it has been observed that the interest rate charged by the Respondent ranges from 4.57% to 67.52% per day and the Respondent also charged a service fee to the customer in addition to APR, which contravenes the requirement of clause 9(3) of Circular 15 of 2022. Moreover, it has also been observed that in some cases, the customer has repaid the loan on the same day or on the following day, which creates ambiguity regarding the purpose of the loan which exhibited that the Respondent loan disbursement process is not efficient to highlight any unusual transaction.

The Respondent submitted that they have special offers on various days, under which they provide very competitive rates to clients if they apply on that particular day and on normal days they priced the loan on standard rates, therefore, no fixed rate is applied, further the loan pricing is also risk base. Moreover, with regard to repaying the loan on same day the Respondent is of opinion that they cannot stop the customer to repay on the same day, it's up to customer to carry the loan to its full term of to repay on the same day they do not found any reason to doubt the customer's ability to acquire the loan and then to repay it. Further, the Representatives during the hearing also submitted that prior to the issuance of Circular 15 of 2022, APR was not mentioned in their Key Fact Statement however, the same has been added in Key Fact Statement in April-May 2023.



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In this regard, it may be noted that the Respondent has not submitted any evidence of offering special offers on various days on which they offer discounts of loan price due to which no fixed rate was applied to the customers, nor they have provided any bases of determining the risk of the customers due to which they applied different rate to different customers. Further, the Respondent has not submitted any comments on service charges being charged by them in addition to APR. Moreover, if a customer is taking a loan more than one time in a day and repaying on the same day which is quite suspicious, the Respondent has to identify these transactions and should ask the borrower about the purpose of the loan. Additionally, the Representatives submitted that they have updated the APR in their Key Fact Statement in Apr-May whereas the same was required to be updated within seven (7) days of the date of the issuance of Circular 15 of 2022. Thus, the response of the Respondent is not found cogent, hence the Respondent is found to be non-compliant with the requirement of Clause 9(3) of Circular 15 of 2022.

(v) **Call made by the Digital Lender to be recorded (Clause 5(4) of Circular 15 of 2022)**

Clause 5(4) of Circular 15 of 2022 requires the Respondent to make all calls and messages for loan collection through the its designated phone numbers and to be recorded. Further, the Respondent has to maintain the call recording and logs for a period of at least one year. Whereas the inspection team requested the Respondent to provide the call recording of three (3) selective clients. In this regard, the Respondent provided the call recording of two clients, and in respect of the call recording of the remaining client, they submitted that the call recording is not available as the order occurred in 2021 and at that time their system did not support the call recording.

On examining the call recordings, it was observed that some of the call recordings are empty, for which the Respondent asserted that some calls appear to be empty because the customer did not pick up the phone and they were one-sided calls. However, in case of not picking up the phone, as also noted in other calls, the dial tone or starting conversation from the agent was hearable. Whereas, the recording sent by the Respondent did not contain any voice from any side. The length of some calls was around 3.5 minutes without any voice and these calls contained stoppage of recording after systematic beeps which indicates that the recording system has been designed in such a way that recording may be skipped if needed.

The Respondent in its written Response submitted that they checked this matter with the company that had installed this system (NetHawk) and they told them that this instance was due to some technical error. The above response of the Respondent is not found cogent, hence contravention of clause 5(4) of Circular 15 of 2022 is established.

2. **Non-Compliance with Ordinance**

(i) **Non-provision of information to the Inspection Team (Section 282 I (2) of the Ordinance):-**

Section 282 I (2) of the Ordinance requires an NBFC to provide the requisite information for inquiry. However, while reviewing the unadjusted trial balance shared by the Respondent, it was noted the Rs.771.838 million as payable to Ying Liang Limited (YLL). The inspection team required the details/documents in respect of said balance. The Respondent provided the Marketing Agreement signed by YLL which was noted to have expired on June 30, 2022, and renewed agreement was not provided. Further, the Respondent has not provided the pricing



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mechanism, detail of verification procedures it applied in respect of the amount billed by YLL, and reconciliation of marketing expenses with the liability appearing in aforesaid unadjusted Trial Balance.

The Respondent submitted that the billing was done by YLL based on their own agreement with Facebook/Google, whereby YLL purchased bulk time from these entities, and then sublet that time to organizations like the Respondent. All invoices generated by YLL, and complete details of the reconciliation of marketing expenses, are available in the record of the Respondent and can be provided whenever required by the Commission.

It may be noted that the said information was not provided to the Inspection Team when they required the same from the Respondent, and the Respondent has not submitted any specific reason for not providing the requisite information to the inspection team during the course of inspection, thus the contravention of Section 282 I (2) of the Ordinance is established.

8. In view of the above-stated facts, circumstances, and submissions made by the Respondent and its Representatives, the Respondent has failed to comply with the requirements of clauses 2(3), 2(5), 2(7), 5(4) and 9(3) of Circular 15 of 2022; and Section 282 I (2) of the Ordinance; which attracts the imposition of penalty. Therefore, in exercise of the powers conferred under Section 282 J (1) of the Ordinance, I hereby, impose a fine of **Rs.3,500,000/- (Rupees; Three Million and Five Hundred Thousand Only)** on the Respondent on account of the aforesaid established and conceded non-compliance. The Respondent is also advised to ensure meticulous compliance with all applicable laws in true letter and spirit, henceforth.

9. 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.

10. 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:
November 1, 2023
Islamabad.