



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

Soon Valley Development Program

Show Cause Notice No. & Issue Date:	No. SCD/ADJ-I/GL/148/2023-3663 dated November 2, 2023
Date of Hearing:	December 26, 2023; January 8, 2023; February 12, 2024
Present at the Hearing Representing the Respondent	Mr. Javed Baid, CEO; Malik Sher Afzal, Director; and Syeda Anum Fatima, Company Secretary

ORDER

UNDER SECTION 282 J (1) OF THE COMPANIES ORDINANCE, 1984 FOR CONTRAVENTION OF RULE 7(3) OF THE NON-BANKING FINANCE COMPANIES (ESTABLISHMENT AND REGULATIONS) RULES, 2003; AND REGULATION 4 OF THE NON-BANKING FINANCE COMPANIES AND NOTIFIED ENTITIES REGULATIONS, 2008.

This Order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the Commission) through the Show Cause Notice dated November 2, 2023 (the SCN) against Soon Valley Development Program (the Company and/or Respondent No. 1); Mr. Aijaz Hussain, Director (Respondent No. 2); Mr. Malik Sher Afzal, Director (Respondent No. 3); Muhammad Fahad Naeem, Director (Respondent No. 4); Mr. Shehab Farrukh Niazi, Director (Respondent No. 5), Mr. Shehzad Ahmad Tahir, Director (Respondent No. 6) Mr. Sohail Hussain, Director (Respondent No. 7) and Ms. Tahira Azam, Chief Executive Officer (CEO) (Respondent No. 8) hereinafter collectively referred as the Respondents, issued under Section 282 J (1) of the Companies Ordinance, 1984 (the Ordinance).

2. Brief facts leading to this case are that the Company was incorporated on December 01, 2014 under section 42 of the Companies Ordinance, 1984 (the Ordinance), the Companies Act, 2017 (the Act), and licensed by the Commission, to undertake Non-Banking Microfinance business as a Non-Banking Finance Company (NBFC) under the Non-Banking Finance Company (Establishment and Regulations) Rules, 2003 (the NBFC Rules) and Non-Banking Finance Companies and Notified Entities Regulations, 2008 (the NBFC Regulations). Rule 7(3) of the NBFC Rules requires that an NBFC shall comply with such Minimum Equity Requirement (MER) as may be prescribed by the Commission from time to time for specific form of business or class of companies. Further, regulation 4 of the NBFC Regulations requires that a licensed NBFC shall at all times meet the MER as provided in Schedule-I thereof, which prescribed that a microfinance company shall maintain the MER of Rs. 50 million. A review of monthly returns filed by the Company through Specialized Companies Returns System (SCRS), for the period June 2023 to September 2023, revealed that the Company has failed to maintain its MER according to the prescribed limit of Rs. 50 million.



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The Commission, vide email dated September 08, 2023 sought explanation of the Company on the aforesaid non-compliance of MER. The Company, vide email dated September 20, 2023, submitted that:

"We are proactively involved with PMIC for early clearance and acceptance of our request and hopefully things will be finalized at management level by the end of current month or in the first week of October.

We assure you that we are conscious about our depleted equity and making every possible effort to meet the target."

The response of the Company was not found cogent as the Company was required to maintain the MER at all times, whereas the MER of the Company remained below the required level from June 2023 to September 2023 and was continuously declining.

3. In view of the aforesaid, the Respondents, *prima facie*, were non-compliant with the provisions of the Rule 7(3) of the NBFC Rules; and regulations 4 of the NBFC Regulations, which attracts the penal provisions provided under Section 282 J(1) of the Ordinance. 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, may not be imposed on them for the aforementioned contravention of the law. The said requirement of the law is reproduced as under:

Rule 7(3) of the NBFC Rules:

"An NBFC shall comply with such minimum equity requirement or any other requirement in lieu of minimum equity requirement as may be prescribed by the Commission from time to time for specific form of business or class of companies by notification in the official Gazette."

Regulation 4 of NBFC Regulations:

"An NBFC licensed by the Commission to undertake form of business mentioned in Regulation 3 shall, at all the times, meet the minimum equity requirement or any other requirement in lieu of minimum equity requirement in respect of each form of business as provided in Schedule I."

Schedule I of NBFC Regulations:

Form of Business	Minimum Equity requirement
Non-Bank Microfinance Company for Investment Finance Services License *	Rs. 50 million Rs. 20 million for Digital Lending

**The Non-Bank Micro Finance Companies which do not have share capital shall maintain minimum "Fund and Reserves" (being the excess of assets over liabilities excluding surplus on revaluation of assets and investments) equal to the amount of minimum equity requirement as prescribed in the above table."*

Section 282J(1) of the Ordinance:

"Penalty for failure, refusal to comply with, or contravention of any provision of this Part.- (1) Notwithstanding anything contained in any other provision of this Ordinance, if a NBFC or the notified entity or its officers (including auditors) fails or refuses to comply with, or



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contravenes any provision contained in this Part or of any of the provisions of the rules or regulations made under section 282 B or regulation, circular or directive or any direction or order passed by the Commission under the provisions contained in this Part or knowingly and willfully authorizes or permits such failure, refusal or contravention, shall, in addition to any other liability under this Ordinance, be also punishable with fine the amount of which shall not exceed fifty million rupees:

Provided that if the failure, refusal, default, contravention is committed by NBFC or the notified entity, every director, manager, or other officer or person responsible for the conduct of its affairs shall, unless he proves that the failure or contravention or default took place or committed without his knowledge, or that he exercised all diligence to prevent its commission, be deemed to be guilty of the offence."

4. Written response to the SCN duly signed by the Respondent No. 6 was received on November 16, 2023, whereby the Respondents submitted on merits as under:

Quote

"This is with reference to the Show Cause under section 282J(1) of the companies Ordinance, 1984 for the contraventions of Rule 7(3) of the NBFC Rules; and Regulations 4 of the NBFC Regulations dated November 02, 2023.

Regarding the respondents of the Show Cause Notice, it is to inform you that the Chairman, Board of Directors of the Company, Soon Valley Development Program (SVDP) in consultation with other directors has accepted the resignations of the following directors from directorship and membership of the Company:

- 1. Mr. Sohail Hussain (Resignation accepted on 15th June 2023)*
- 2. Ms. Shehab Farrukh Niazi (Resignation accepted on 07th August 2023)*
- 3. Ms. Tahira Azam (Resignation accepted on 4th November 2023)*

Further Ms. Tahira Azam has also resigned from the position of Chief Executive Officer and the resignation was accepted by the Chairman SVDP on 7th August 2023, while her notice period ended on 31st August 2023. Later Mr. Javed Baig was appointed as Chief Executive Officer on 9th September 2023 and his document for the post of CEO have been submitted to SECP on 27th September 2023. Moreover, the Company has made the required changes in Form 29 that are still pending for approval from SECP.

It is also understood by the company, Soon Valley Development Program (SVDP) that under Section 282 J (1) of the Companies Ordinance, 1984 for the Contraventions of Rules 7(3) of the NBFC Rules 2003, and Regulation 4 of the NBFCs and notified entities regulations, 2008, NBFC shall meet the minimum equity requirement of Rs. 50 million at all times to carry out the business. SVDP is struggling and making every possible effort to fulfill the minimum equity requirement. SVDP is hopeful to strengthen partnerships with lenders including PMIC. We kept engaged PMIC for revival of our stagnant relationship and were able to have their positive response. Hence with complete involvement of PMIC officials, a three-year business plan having provision for addressing acute equity issue was prepared and submitted to PMIC. We understand our case was positively discussed at Board level in PMIC as we have been advised by the PMIC for submission of a five-year business plan.

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Recently, Pakistan Microfinance Company Limited (PMIC) sanctioned a grant assistance of Rs. 4,015,700/- (Four Million Fifteen Thousand and Seven Hundred only) for the institutional Support of SVDP. The duration of the grant assistance is 3 months (1st October 2023 to 31st December 2023).

Furthermore, PMIC ensured to support in fulfilling the minimum equity requirement of Rs. 50 million along with a grant of credit facility of Rs. 100 million. SECP may request directly to PMIC to conform their commitment of Rs. 150 million (100 million for credit facility and 50 million subordinated loan to fulfill minimum equity requirement) with the Company, SVDP.

On the basis of above developments we are sanguine that soon SVDP will be able to have enough support to regain its gone progressive lending business and also to come out from the existing equity scarcity.

We request for your precious time for a meeting in person and allow the following representatives from SVDP to meet and share the Company's response:

1. Malik Sher Afzal, Director
2. Syeda Anum Fatima, Company Secretary

Looking forward to your patience and cooperation in this matter."

Unquote

5. In order to afford the Respondents an opportunity of personal representation, a hearing in the matter was fixed for December 26, 2023 which was adjourned on the request by the Respondents. Later another opportunity of hearing was provided by fixing hearing on January 08, 2024, wherein Mr. Javed Baig, CEO; Malik Sher Afzal, Director; and Syeda Anum Fatima, Company Secretary appeared on behalf of Respondents No. 1, 2, 3, 4 & 6 as their (Representatives) however no one appeared on behalf of Respondents No. 5, 7 & 8. The Representatives were advised to explain the reasons for the alleged non-compliance as narrated in the SCN. The Representatives reiterated the stance taken in the above-stated written response to the SCN and submitted that their main lender i.e. PMIC stopped its financing due to management issues at SVDP. A five year plan has been submitted, on the basis of which PMIC has committed around Rs. 100 million funding during next 5 years and therefore, it is hoped that by April 2024, MER will be above Rs. 50 million level. Further, the Representatives informed that Respondents 5, 7 & 8 have resigned as directors of the Company and despite dissemination of SCN, have not provided authority to represent them in the hearing.

6. In order to provide final opportunity of personal representation to Respondents 5, 7 & 8, hearing was scheduled on February 12, 2024, wherein it was explicitly stated that in case the said Respondents fail to appear in person or through their authorized representative, the Commission will proceed to issue an ex-parte Order on the basis of material available on record. It was again observed that no one appeared on the hearing date on behalf of Respondent No. 5 & 7, therefore, I am constrained to conclude the proceeding against Respondent No. 5 & 7 based on the available record. It is however noted Respondent No. 8



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appeared on February 16, 2024 and submitted that she has resigned from the position of CEO in August 2023 and as director in November 2023 due to the internal issues between the management which is also the main cause of erosion of equity. She further stated that she had consistently endeavored to bring attention to the matters at SVDP by informing BoD and restoring to legal avenues to ensure Company's adherence to applicable regulatory framework and despite restrictions, worked to restore normal business operations of the Company.

7. Later Respondent No. 8 vide email dated February 20, 2024 submitted that:

Quote

"I hope this correspondence finds you well. I am writing to update you on the discussions during my meeting on 15th Feb 2023 with Mr. Shahzad Afzal Khan, Director/Head of the Adjudication Department, and his SECP team at the Islamabad office.

In the course of our conversation, I conveyed my decision to resign as the CEO of SVDP on 2nd August 2023 and subsequently stepped down from the Directorship/Membership of the BoD SVDP on 1st Nov 2023. I have consistently endeavored to bring attention to the matters at SVDP, informing the Board of Directors (BoD), SECP, and resorting to legal avenues to ensure the company adheres to the highest corporate standards and regulatory guidelines.

From June 2022 onwards, I encountered unwarranted restrictions on my official email, FIS and MIS access, and even entry to the company's head office. Despite these challenges, my fellow Directors and I have passionately worked to salvage the company and restore its normal business operations. We expressed deep concerns regarding the company's equity, regulatory compliance, and other pertinent issues. Regrettably, two Directors, namely Mr. Sher Afzal and Mr. Ijaz Hussain, aligned with the family members of the late CEO, chose not to address these concerns.

In light of the persistently non-cooperative, non-compliant, and unprofessional behavior exhibited by Mr. Sher Afzal Malik, Mr. Ijaz Hussain, and the family team at the SVDP Head Office, Ms. Shehab Furrkh Niazi, Mr. Suhail Hussain Advocate, and I have taken the difficult decision to resign from our respective positions. It is crucial to emphasize that the three of us have severed all responsibilities and affiliations with SVDP.

I kindly request, on behalf of Ms. Shehab Furrkh Niazi, Mr. Suhail Hussain Advocate, and myself, that you convey to the relevant departments of SECP to expeditiously remove our names from the SVDP list of Directors/Members, including my designation as CEO.

For your convenience, I have attached the meeting minutes of the BoD SVDP held on May 30, 2023, which serves as evidence of our diligent efforts in addressing the equity deficit issue and our commitment to regulatory compliance."

Unquote

8. 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



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of the Respondents and their Authorized Representatives. I have noted the following pertinent aspects in the matter at hand:

(i) **Whether the Respondents Compliant with Minimum Equity Requirements (rules 7(3) of the NBFC Rules read with regulation 4 of the NBFC Regulations):**

No, the Respondents are not compliant with the prescribed MER for NBMFCs. Rule 7(3) of the NBFC Rules read with regulation 4 of the NBFC Regulations requires an NBFC to maintain MER at all time as provided/specified for each form of business in Schedule-I of the NBFC Regulations. However, as per the information submitted through SCRS for the period from June 2023 to September 2023, the Respondent failed to maintain the prescribed MER of Rs. 50 million as its equity for the said periods stood as under:-

Date of SCRS Returns	Reported Equity (Rs. in Million)
June 30, 2023	26.40
July 31, 2023	25.68
August 31, 2023	20.80
September 30, 2023	10.14

(ii) **Whether Rule 7(3) of the NBFC Rules and/ or Regulation 4 of the NBFC Regulations provides any exception for non-compliance:**

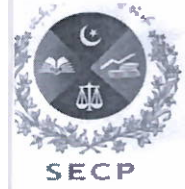
No, the requirements of rule 7(3) of the NBFC Rules and regulation 4 of the NBFC Regulations are explicit and without any exception require all NBFCs to ensure compliance with the MER prescribed by the Commission from time to time, at all times.

(iii) **Whether the resignation of directors exonerate them from the responsibility of non-compliance with rule 7(3) of the NBFC Rules and regulation 4 of the NBFC Regulations:**

No. Mr. Sohail Hussain and Ms. Shehab Farrukh Niazi resigned as directors of the Company on June 15, 2023 and August 07, 2023, respectively and Ms. Tahir Azam resigned from the position of CEO w.e.f. August 30, 2023 and as director on November 04, 2023. It is noted from the above that the directors/ CEO resigned during/ after the period of alleged default and hence cannot be exonerated from the responsibility of not ensuring compliance with MER.

(iv) **Whether any agreement/ assurance from PMIC available reflecting their commitment to support for MER compliance by the Company:**

No, the Respondents claimed that PMIC has assured to support it in fulfilling MER of Rs. 50 million however no evidence in regards has been submitted to the Commission. Further the PMIC letter for grant of Rs. 4,015,700 to SVDP submitted by the



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Respondents relates to sanction of institutional support to SVDP for salary and audit purposes only which cannot be accounted for while computing equity.

9. In view of the above-stated facts, circumstances, and submissions made by the Respondent and its Representatives, it is established that the Respondents have failed to comply with the MER during the period from June 2023 to September 2023, thus violating the requirements of rules 7(3) of the NBFC Rules; and regulation 4 of the NBFC Regulations, 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.100,000/- (Rupees, One Hundred Thousand Only)** on the Company (Respondent No.1) and Warn all the remaining Respondents 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.

10. 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.

11. 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/ HOD
Adjudication Department-I

Announced:
Dated: April 02, 2024
Islamabad