

Before Ali Azeem Ikram, Executive Director/HOD (Adjudication-I)

In the matter of Show Cause Notice issued to NAEL Capital Private Limited

Date of Hearing	July 23, 2020
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Order-Redacted Version

Order dated October 19, 2020 was passed by Executive Director/Head of Department (Adjudication-I) in the matter of NAEL Capital Private Limited. Relevant details are given as hereunder:

Nature	Details
<ul style="list-style-type: none">• Date of Action	Show Cause notice dated June 09, 2020
<ul style="list-style-type: none">• Name of Company	NAEL Capital Private Limited.
<ul style="list-style-type: none">• Name of Individual	The proceedings were initiated against the Company i.e. NAEL Capital Private Limited.
<ul style="list-style-type: none">• Nature of Offence	Proceedings under Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997.
<ul style="list-style-type: none">• Action Taken	<p>Key findings of default of Regulations were reported in the following manner:</p> <p>I have carefully 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. I am of the considered view that the Respondents did not ensure their compliance with the mandatory provisions of the Regulations in the following instances:</p> <p>i. In respect of alleged violations of Regulation 4(a) and 13(7), the Respondent submitted the evidences to exhibit the maintenance of requisite database through manual system (i.e. records in excel sheet) and manual screening of its clients, from PDF file extracted from its back office software. Further, Respondent has submitted pre-inspection evidences substantiating presence of reporting to the AML department of SECP regarding "Nil Report" on persons highlighted in the UNSC and NACTA list. Moreover, the Authorized Representatives during the hearing informed that Respondent is planning to develop and deploy the automated system along with transfer of previous data to new automated system till August 31, 2020. Nevertheless, the evidences produced by Respondent could not substantiate the existence of exhaustive database of beneficial owner which also requires screening under the AML regulatory framework.</p> <p>ii. With regard to alleged violations of Regulations 4(b) and 4(c), the Respondent through its written reply exhibited pre-inspection evidence</p>

substantiating presence of updated AML/CFT policy, covering the areas highlighted in SCN. Further, Authorized Representatives submitted that back office system was purchased by the Respondent in 2009 and it didn't have the flexibility to accommodate AML requirement at that point in time but now the Respondent has deployed new software module which has all the AML functionalities and is directly connected to the backoffice system and fully automated. Authorized Representative admitted that four instances from high risk areas, were rated low risk instead of high on account of reason that:

- a. In one instance account was an old dormant and was subsequently closed on client's request on March 02, 2020 so change in record after closure of account was not possible.
- b. in case of remaining 3 instances Respondent did not have access to the AML module to alter risk rating and immediately after acquiring the said module, risk categorization was duly updated in the back office system.

iii. With regard to violation of Regulation 6(4), the Authorized Representatives through its written reply submitted along with evidences that even prior to inspection Respondent tried it best to obtain Verisys system from NADRA but did not have any positive response from NADRA. Correspondence of Respondent with NADRA prior to inspection order depicts that a fair effort was made by the Respondent to get the requisite Verisys and the access/provision of the said system was not possible without the support of NADRA.

iv. With regard to violation of Regulations 6(2), 6(3)(c) and 13(3), the Authorized Representatives informed during the hearing that they could not submit the required information of the highlighted eleven instances completely due to the facts that Respondent was not given reasonable time by the inspection team to produce those documents as the relevant staff of Respondent was not available at that point in time due to corona pandemic and lockdown situation. So Respondent through its written reply submitted the further information, which reflects as follows:

a. Instance 1

In response to Letter of Findings dated March 4, 2020, the Respondent through its letter dated March 13, 2020 submitted that *"client is out of city currently, and is expected to arrive after March 21, 2020. He has committed to provide updated details after returning"*. During the hearing, while exhibiting the evidence, the Authorized Representatives submitted that subsequent to the Inspection, Respondent has rectified the deficiency.

	<p>b. Instance 2</p> <p>a. In case of Instances 2, 3, 4, 5,6,7,8,9,10 & 11, the evidences submitted through its written reply of the SCN and email dated July 27, 2020 by the Respondent, substantiate that Respondent took appropriate measures to comply with the requirements of the said Regulations. However, the Respondent has updated KYC forms of the highlighted instances subsequent to the Inspection, which has been admitted by the Authorized Representatives during the hearing.</p> <p>The post-inspection updating/rectification of KYC forms reflect deficiencies in the CDD measures, on-going monitoring system and related procedures adopted by the Respondent.</p> <p>v. With regard to violation of Regulation 9(4) (b) and Regulation 10(1), the Respondent through its written reply and email dated July 27, 2020 submitted appropriate evidences (Post-Inspection) of a highlighted instance, which revealed that the Respondent has taken the reasonable steps for complying with the requirements of the said Regulations.</p> <p>8. In view of the foregoing and admission made by the Representative, contraventions of the provisions of Regulations 4(a), 13(7), 6(2), 6(3)(c) and 13(3) of AML Regulations have been established. Therefore, in terms of powers conferred under section 40A of the Act, a penalty of <u>Rs. 175,000/- (Rupees one hundred seventy five thousand)</u> is hereby imposed on the Respondent. The Respondent is advised to examine its AML/CFT policy & procedures to ensure that the requirements contained in the AML Regulations are met in letter and spirit.</p> <p>Penalty Order dated October 19, 2020 was passed by Executive Director (Adjudication-I).</p>
<ul style="list-style-type: none"> Penalty Imposed 	Penalty of 175,000/- (<u>Rupees One Hundred Seventy Five Thousand only</u>) was imposed.
<ul style="list-style-type: none"> Current Status of Order 	No appeal has been filed against the Order.

Redacted version issued for placement on the website of the Commission.