



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

Sarmaya Microfinance (Pvt) Limited and Directors

Show Cause Notice No. & Issue Date:	No. SECP/SCD/ADJ-I/Sarmaya/68/2022-3107, dated May 23, 2023
Date of Hearing:	July 18, 2023
Present at the Hearing Representing the Respondent	Mr. Shah Ali Naeem, Chief Financial Officer (Authorized Representative)

ORDER

UNDER SECTION 282 J (1) OF THE COMPANIES ORDINANCE, 1984 FOR CONTRAVENTION OF RULES 5(6)(E) & (F) AND 9 OF THE NON-BANKING FINANCE COMPANIES (ESTABLISHMENT AND REGULATIONS) RULES, 2003;

This Order shall dispose of the proceedings initiated through the Show Cause Notice dated May 23, 2023 (**the SCN**) by the Securities and Exchange Commission of Pakistan (**the Commission**) against Sarmaya Microfinance (Pvt) Limited (**the Company and/or Respondent No.1**); Mr. Habib-ur-Rehman, Chief Executive Officer (**CEO**)/Director (**Respondent No.2**); Mr. Ali Ahmed, Director (**Respondent No.3**); Ms. Goher Munir, Director (**Respondent No.4**); and Mr. Sher Ahmed, Director (**Respondent No.5**); **hereinafter collectively referred as the Respondents**, issued under Section 282 J of the Companies Ordinance, 1984 (**the Ordinance**) for contravention of rule 5(6)(e) & (f) and 9 of the Non-Banking Finance Companies (Establishment and Regulations) Rules, 2003 (**the NBFC Rules**).

2. Brief facts leading to this case are that the Company was incorporated on November 29, 2021, as a private limited company under the Companies Act, 2017 (**the Act**) and licensed by the Securities and Exchange Commission of Pakistan (**the Commission**) on February 1, 2021, to undertake Non-Banking Microfinance business as an under the NBFC Rules and Non-Banking Finance Companies and Notified Entities Regulations, 2008 (**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 rules 5(6)(e) & (f) and 9 of the NBFC Rules, for which the penalty has been provided under **Section 282 J (1)** of the Ordinance, 1984 (**the Ordinance**). Therefore, the SCN was issued to the Respondents, calling upon them to show cause in writing as to why the penalty as provided under Section 282J(1) of the Ordinance, may not be imposed on them for the aforementioned contraventions of the law.

3. In response to the SCN, the Company vide its letter dated May 30, 2023, submitted on merits as under:

- (i) On April 14, 2022, a letter to the Central Depository Company of Pakistan Limited (**CDC**) was sent for the freezing of shares of the sponsors.



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- (ii) On November 14, 2022, the Company got approval from the Commission in terms of rule 7(2)(aa) of the NBFC Rules for the appointment of Respondent No.2 as Director/ and CEO, Respondent No.4 as Director, and Respondent No.5 as an independent Director.

After the approval of the change/appointment of officers/directors from the Commission the Company submitted form 28 & form 29 to the concerned Company Registration Office (CRO). The concerned registrar sent them an observation upon the submitted process on November 20, 2022, stating that the directors cannot be appointed unless holding shares in the Company. In compliance with the query/observation raised by the concerned CRO, the Company submitted Form 3A for the transfer of 2,250,000 shares of Mr. Waqar Abbas, the outgoing director/sponsor. The concerned CRO accepted their request for the transfer of shares with effect from November 2, 2022, as per the following details;

Name of Transferor	Name of Transferee	No of Shares Transferred
Mr. Waqar Abbas	Mr. Ali Ahmed, (Respondent No.3)	2,025,000
	Ms. Goher Munir, (Respondent No. 4)	112,500
	Mr. Habib ur Rehman, (Respondent No. 2)	112,500
Total Shares Transferred		2,250,000

After that, the Company submitted Form 29 for the new Appointment and ceasing of Officers/Retirement/Resignation and the Commission approved this on December 05, 2022.

- (iii) In compliance with rule 9 of the NBFC Rules, the Company assured that they shall comply as required and shall obtain sufficient insurance coverage to cover any loss that may incur as a result of employee fraud or gross negligence.

4. In order to afford the Respondents an opportunity of personal representation, a hearing in the matter was fixed for July 18, 2023, before the undersigned, wherein Mr. Shah Ali Naeem, Chief Financial Officer appeared as the Authorized Representative of the Respondents (**Representative**). The Representative reiterated the stance taken in the above stated written response to the SCN and also informed that Respondent No.2 has resigned from the post of CEO on June 9, 2023.

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 Representative. I have noted the following pertinent aspects in the matter at hand:

- (i) **Non-blocking of promoters and directors shares and Transfer of share without prior approval of the Commission (rules 5(6) (e) & (f) of the NBFC Rules: -**

- (a) Rule 5(6) (e) of the NBFC Rules requires the promoters/majority shareholder and directors of an NBFC to deposit their shares with CDC in an account marked as blocked and such shares could not be sold or transferred without prior approval of the Commission, further, they are also required to make an undertaking to this effect in terms of rule 5(6)(f) thereof. In this connection, it was observed that:

- In terms of clause 5(i) of the licensing condition imposed on the Company at the time of the grant of license, the Company was required to provide the Commission, an



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account statement of CDC blocked account (where the promoters/directors' shares have been deposited and marked as blocked) within two months of the grant of license. However, the requisite CDC Accounts statement of blocked shares has not been submitted to the Commission and the Company also failed to block the requisite shares of its sponsors/promoters and directors, as confirmed by the CDC vide their email dated March 13, 2023.

- A review of the minutes of the Board of Directors (**the Board**) meeting dated July 23, 2022, submitted by the Company along with its request/ application for approval of the appointment of two new directors, transpired the Board's approval for the transfer of shares by sponsors/promoters of the Company, contrary to the requirement of rule 5(6) (e) & (f) of the NBFC Rules. In this regard, despite being advised by the Licensing Department of the Commission through email dated November 23, 2022, the Company failed to file an application seeking prior approval of the Commission for the transfer of such shares.

(b) The Respondents and their Representative asserted that they had requested the CDC on April 14, 2022, for blocking of promoters' share as per the requirement of rule 5(6)(e) of the NBFC Rules and also provided a copy of the letter to CDC as evidence. The Representative during the hearing submitted that the Respondents were of the impression that since they instructed the CDC for blocking these shares, therefore, the same has been done by the CDC. However, subsequent to highlighting the issue by the Commission, they again approached the CDC and now the promoters' shares have been blocked/frozen by the CDC in May 2023. In this regard, it may be noted that simply asking the CDC to block shares did not relieve the Respondents of their responsibility or satisfy the requirement because they were expected to ensure the blocking/freezing of the promoters' shares and to provide the account statements of the blocked CDC Accounts within two months' time.

(c) Regarding the reported transfer of shares by the sponsor/promoter without prior approval, it may be noted that the requisite approval for the transfer of shares was required to be obtained before filing Form 3A to the concerned CRO. In this regard, the Respondents failed to apply to the Commission for the transfer of shares by one of its sponsors, despite clear instructions given by the Licensing Department of the Commission through their email dated November 23, 2022.

(d) Thus, in view of the above, non-compliance with the requirements of rules 5(6) (e) & (f) of the NBFC Rules has been established.

(ii) **Failed to obtain insurance coverage (Rule 9 of the NBFC Rules): -**

With regard to non-compliance with the requirement of obtaining sufficient insurance coverage, as required under rule 9 of the NBFC Rules, the Representative admitted that currently they don't have requisite insurance coverage, however, they are in the process of obtaining the said insurance coverage and will obtain the same shortly. Thus, the Respondents have admitted the default with the requirements of rule 9 of the NBFC Rules, and corrective measure for the same has yet to be taken, hence, non-compliance thereof is established.

6. In view of the above-stated facts, circumstances, and submissions made by the Respondents and their Representative, the Respondents have failed to comply with the requirements of rules 5(6)(e) & (f) and 9 of the NBFC Rules, which attracts the imposition of penalty. Therefore, in exercise of the



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powers conferred under Section 282 J (1) of the Ordinance, I hereby, impose fine of **Rs.500,000/- (Rupees, Five Hundred 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.

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 and/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
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Announced:
July 26, 2023
Islamabad.