

Securities and Exchange Commission of Pakistan
Securities Market Division
Public Offering and Regulated Persons Department

No. 4(BRK-271)SE/SMD/14

October 24, 2016

Mr. Muhammad Bilal Vohra,
Chief Executive Officer,
Javed Omer Vohra & Company Limited,
507-511, Stock Exchange Building,
Stock Exchange Road,
Karachi.

Subject: Order in the matter of Application for Registration as Broker under the Brokers and Agents Registration Rules, 2001.

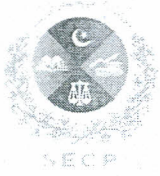
Reference to the subject matter, please find enclosed a copy of Order dated October 21, 2016 passed by Executive Director / HOD (PRPD), for information and compliance.

Yours truly,

Asima Wajid
Deputy Director (PRPD)

Copy to:

1. **Mr. Ashfaq Tola -FCA,**
Senior Partner,
Naveed/Zafar Ashfaq Jaffery & Co.,
1st Floor, Modern Motor House,
Beaumont Road,
Karachi.
2. **Chief Regulatory Officer,**
Pakistan Stock Exchange Limited,
Stock Exchange Building,
Stock Exchange Road,
Karachi.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
(Public Offering & Regulated Persons Department)

Order

In the matter of application made by Javed Omer Vohra & Company Limited for grant of certificate of Registration as a Broker under the Brokers and Agents Registration Rules, 2001

Date of Hearing:

December 18, 2015

Present at the Hearing:

Representing Javed Omer Vohra & Company Limited

i. Mr. Ashfaq Tola

Authorized Representative

Assisting the then Director/HOD (PRPD)

i. Mr. Muhammad Farooq Bhatti

Additional Director, PRPD

ii. Ms. Asima Wajid

Deputy Director, PRPD

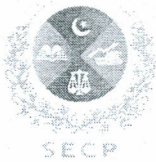
ORDER

This Order shall dispose of the matter remanded by Appellate Bench of the Securities and Exchange Commission of Pakistan (“**the Commission**”) through Order dated October 15, 2015, passed in the matter of Appeal No. 30 of 2015. The appeal was filed by Javed Omer Vohra & Company Limited (“**JOVC**”) against the Order dated February 25, 2015 (“**Impugned Order**”), passed by Director / HOD MSR-D-SMD under Rule 5(5) of the Brokers and Agents Registration Rules, 2001 (“**BR Rules**”).

2. The brief facts of the case leading to the Impugned Order are that the Commission received an application from JOVC on August 19, 2014 (through the then Karachi Stock Exchange) (“**PSX**”) for grant of Certificate of Registration (“**COR**”) as a broker, under the BR Rules. The scrutiny of the application, including other deficiencies revealed that Net Capital Balance (“**NCB**”) of JOVC as on June 30, 2014, was negative Rs.307 million. After providing an opportunity of hearing, the Commission refused to grant COR to JOVC on the grounds recorded in para 10 and 11 of the Impugned Order, as under: -

“It is important to note here that Rule 19.3.2 of the Rule Book of the exchange stipulates the requirements of NCB for TREC holders and Rule 19.3.2. (a) read with Schedule II of the Rule Book of the exchange provides that a TREC holder can take maximum exposure of 25 times of its NCB cumulatively for all the markets. The NCB certificate issued by the Chartered Accountants shows negative balance of Rs. 307,970,652/-, as on June 30, 2014 whereas Rule 3 (b) the SE Rules, stipulates the requirements for maintaining at all times NCB amount for the TREC holders which in the current scenario is Rs.2.5 million for the TREC holders of the





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exchange. In the presence of negative NCB of Rs. 307,970,652/-, JOVC is not capable of taking any exposure in the market and, therefore, the application for grant of certificate of registration falls short of the prescribed criteria.

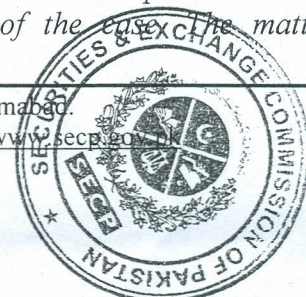
The Commission made every possible effort to ensure that JOVC acquire the certificate of registration as broker under the Rules, to avoid the repercussions of Section 16(11) of the Act. However, based on the deficiencies in the application, including Form A & Form 29, National Clearing Member ID and particularly the negative NCB, I am of the considered opinion that JOVC's application for grant of certificate of registration as broker under the Rules cannot be processed hence refused in terms of Rule (5) of the Rules."

3. Being aggrieved by the Order, JOVC filed an Appeal No. 30 of 2015 before the Appellate Bench of the Commission under Section 33 of Securities and Exchange Commission of Pakistan Act, 1997 ("SECP Act"). The Appellate Bench scheduled the matter for hearing on September 17, 2015. During the proceedings before Appellate Bench, the Authorized Representative of JOVC *inter alia* took the stance that JOVC has managed to remove the deficiency of negative NCB of Rs. 307,970,652/- and presented the following documents before the Appellate Bench in support of the claim: -

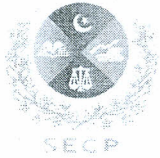
- i. Sindh High Court order dated 05/08/2014 in J.M No.37 of 2011.
- ii. Settlement Agreement including Schedule 1,2,3,4,5, dated 13/05/2014 between Javed Omer Vohra & Company Limited and Bank AI-Falah Limited.
- iii. Application of Javed Omer Vohra & Company Limited for consent decree in suit No. B-41 of 2013 filed by Summit Bank Limited for recovery of Rs. 107,815,552,18
- iv. The Sindh High Court Order dated 27/06/14 with respect to consent decree of suit No. B-41 of 2013
- v. Settlement Agreement including Schedules and Annexure between Javed Omer Vohra & Company Limited and Summit Bank Limited
- vi. Appellate Bench Order dated 07/03/08 in appeal No.61, 62 and 63 of 2006

In light of the above the Appellate Bench was of view that: -

"prima facie it appears that the JOVC has removed the deficiency of negative NCB, however, there is need for deeper appreciation of the evidence to evaluate the authenticity and extent of actual execution of aforementioned settlement deeds and orders. Furthermore, the JOVC has taken a view that that Section 16 (1), (3) and (11) of the Act is not applicable in the instant case as it was registered broker even prior to the promulgation of the Act, however on the other hand its application for registration as a broker remained pending before the Commission, which was eventually refused through the Impugned Order. The contention of the JOVC regarding non-application of Section 16 (1), (3) and (11) of the Act requires probe with open mind and by considering applicable legal requirements and facts of the case. The matter of



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application or non-application of Section 16 (1), (3) and (11) of the Act should have been discussed carefully in the Impugned Order, however the Respondent has rejected the plea of the Appellant without any cogent reason.”

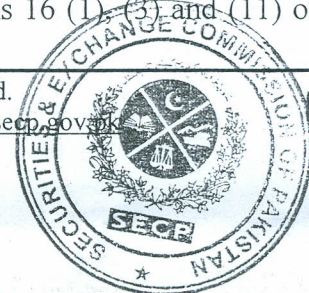
4. In view of the observation stated above, the Appellate Bench remanded the case with the directive “to consider and evaluate the evidentiary value of the documents mentioned in para seven of the order. Therefore, the Impugned Order dated 25/02/15 is set aside and matter is remanded to the Respondent to decide it afresh. Without prejudice to the afforested observations and discussion the Respondent is at liberty to call any document from the Appellant which he deemed necessary to decide the issue, in just and equitable manner”.

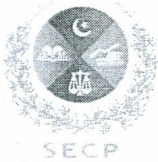
5. Subsequent to the Appellate Bench Order, the JOVC vide letter dated October 21, 2015 was advised to provide its Financial Statements and NCB as of June 30, 2015. The same were received in the Commission on November 9, 2015. Scrutiny of the said documents revealed that contrary to the stance taken before the Appellate Bench, the JOVC has still negative NCB of Rs.254 million as well as negative shareholders’ equity of Rs.194 million as on June 30, 2015.

6. Since contrary to the claim made before Appellate Bench, the NCB was still negative of Rs.254 million, therefore, the matter was scheduled for hearing on November 26, 2015 at the Commission’s Head Office Islamabad, which on the request of JOVC was adjourned and re-scheduled for December 18, 2015.

7. On December 18, 2015, Mr. Ashfaq Tola (“**Authorized Repetitive**”) appeared before the then Director/HOD (PRPD) on behalf of JOVC and submitted that JOVC was registered as broker under the BR Rules up to the 2009. Thereafter, operations of the company were closed due to pending winding up petition filed by lenders against JOVC before the Sindh High Court. Therefore, commencement of business was beyond their control. However, as soon as they entered into settlement agreement with their lenders, the winding up petitions against JOVC were disposed of by Sindh High Court. Thereafter, JOVC applied to the Commission for grant of COR as broker under the BR Rules in order to meet the requirement of section 16 of the Act. With regard to negative NCB, the authorized representative submitted that since settlement with banks, (as per agreement) is in process, therefore, the NCB is still negative. However, it will be much higher than the required level once the settlement process is completed. Moreover, he intimated that JOVC will require at least six months-time for full and final settlement with banks.

8. Before the matter could be concluded by then Director/HOD (PRPD), I assumed the charge of the post of Executive Director (PRPD) and the matter was placed before me. I have reviewed the available record, including evidences, and documents submitted by JOVC during the course of proceedings. I have also discussed the matter with then Director/HOD (PRPD) who heard the matter on December 18, 2015. In my opinion, the primary reasons for remanding of the instant matter was the claim of JOVC that it has managed to remove deficiency of negative NCB and the issue of applicability of Sections 16 (1), (3) and (11) of





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the Stock Exchanges (Corporatization, Demutualization and Integration) Act, 2012 ("the Act"). In order to arrive at decision, the both issues are discussed hereunder in detail.

1) Applicability of Section 16 (1), (3) and (11) of the Act

Concerning the issue of applicability of the Act in the instant matter, Section 16 (1), (3) and (11) of the Act is reproduced hereunder:

"Trading rights:- (1) An initial shareholder who is issued a TRE certificate under section 5 shall, if not already registered as a broker with the Commission, be entitled to be so registered not later than two years from the date of demutualization provided that he meets the fit and proper criteria:

Provided that such TRE certificate holder shall commence business not later than six months from the date of registration as a broker; -----

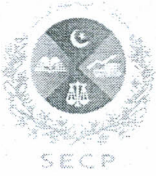
(3) Any fit and proper person who acquires a TRE certificate from an initial shareholder in accordance with sub-section (2) shall get himself registered as a broker not later than six months from the date of acquiring the TRE certificate and shall commence business not later than twelve months from the date of acquiring the TRE certificate.....

(11) Failure of a person, holding a TRE certificate including an initial shareholder, to get himself registered as a broker or commence business within the different periods specified in this section, or in the case of an initial shareholder to transfer the TRE certificate within two years from the date of demutualization shall result in the lapse of such TRE certificate....."

It is agreed that JOVC was registered with the Commission as a broker under the BR Rules up to 2009. However, at the time of promulgation of the Act in the year 2012 the JOVC was not registered as broker under the BR Rules, and Sections 16 (1), (3) and (11) of the Act requires that the TREC holders who are not registered with the Commission as a broker under the BR Rules at the time of Demutualization of Stock Exchange(s), shall have to get registered as broker with in 2 years and then to commence business within six months. Thus merely applying for registration as broker does not suffice the above stated requirement of Section 16 of the Act.

While arguing the said issue during the hearing before the then Director/HOD (PRPD), the authorized representative of JOVC submitted that since the winding up petition against JOVC was pending before the court, therefore, it was beyond their control to commence the business of the company. Thus JOVC could not apply for registration as a broker. However, as soon as the said winding up petitions was disposed off by the court in June 2014, JOVC applied for registration as broker under the BR Rules in order to meet the requirements of Section 16 of the Act.





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In order to ascertain the factual position with regard to the contentions made by JOVC, the authorized representative was advised, vide e-mail dated December 30, 2015, to share any order passed by the Court to maintain status quo during the pendency of the winding up petition filed by lenders against JOVC. In response, the authorized representative through his e-mail dated January 11, 2016 submitted that:

“With reference to your email appended below and on behalf and under instruction of our client, we would like to submit your required information as follows:

1. *According to section 311 of the Ordinance, the winding up of JOVC commenced at the time of filing of winding up application. The said section is reproduced below for your perusal:*

Quote:

Commencement of winding up by Court. - A winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Unquote:

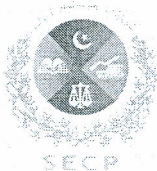
It may also be noted that it was established vide case reference NLR 1996 CLJ that winding up of company by Court is deemed to commence from date of filing of winding up petition.

As the winding up of JOVC is deemed to commence at the time of presentation of winding up petition, the commencement of a process (winding up process) is conclusive evidence that the court has also allowed the process itself i.e., the winding up process. Neither any such written approval is present nor is the same required.

2. *No such order is present in the records maintained by the client; however, the same information has been requested from legal advisor of the client as communicated to you earlier. We will provide the information as soon as we have any positive or negative confirmation from the legal advisors.”*

It is pertinent to mention here that commencement of winding up of a company does not bar the operation of the business of a company until and unless an order for liquidation and maintenance of status quo is passed by the Court. It is evident from above that in this particular case no such order is in place. Thus, the arguments of the authorized representative with regard to inability of the JOVC to commence the business are not tenable. Therefore, I am of the view that Section 16 (1), (3) & (11) of the Act is duly applicable on JOVC.





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2) Removal of Deficiency of Negative NCB

In order to ascertain the sanctity of the claim of removal of deficiency in NCB, JOVC was asked to provide copy of its financial reports and NCB as at June 30, 2015. The same was received on November 12, 2015 and scrutiny of the documents revealed that the JOVC's NCB as of June 30, 2015 was negative Rs.254million and financial statements of JOVC as of June 30, 2015 showed the negative equity of Rs.194 million. Since representative of JOVC submitted during the hearing, that it will require six months to settle the dues and thereafter the NCB of JOVC will improve. In order to ascertain the impact of the settlement on NCB, JOVC was asked vide email dated January 27, 2016 to submit its NCB as of December 31, 2015 which also revealed the negative balance of Rs.242million. Thereafter, in order to provide another opportunity and to check the impact of any settlement whatsoever on NCB after completion of six months' time, JOVC vide email dated September 9, 2016 was asked to submit its NCB as of June 30, 2016. Even the latest NCB as of June 30, 2016 submitted by JOVC on September 30, 2016 did not show any improvement as it was negative Rs.244 million.

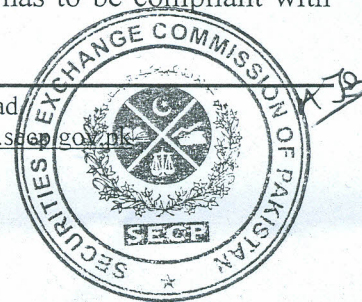
It is pertinent to mention that the application of JOVC for grant of registration as a broker under the BR Rules was refused through Impugned Order for being deficient on NCB requirement. The said order was set aside by Appellate Bench on contention made by JOVC regarding the removal of deficiency of negative NCB. Thereafter, NCB as of June 30, 2015, December 31, 2015 and June 30, 2016 were obtained to ascertain the current status of the matter which showed negative balances as under:

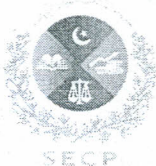
- NCB as on June 30, 2014: Negative Rs.307 million
- NCB as on June 30, 2015: Negative Rs.254 million
- NCB as on December 31, 2015: Negative Rs.242 million
- NCB as on June 30, 2016: Negative Rs.244 million

In view of the above factual position regarding NCB, it is evident that JOVC is still non-compliant with the requirement of NCB as stipulated in Rule 3(b) of the Securities and Exchange Rules, 1971 ("**SE Rules**"). Thus contentions and arguments of JOVC with regard to removal of deficiency of negative NCB could not be substantiated, hence are untenable.

Keeping the forgoing in view, it is evident that JOVC failed to remove the deficiency in respect of NCB and Section 16 of the Act is duly applicable on JOVC.

9. It is important to mention here that Rule 4 (1) of the BR Rules provides the eligibility criteria for registration as broker under the Rules, and that Rule 4 (1) (k) stipulates that person shall be eligible for registration as a broker under these rules, if he "*has not defaulted in compliance with the provisions of the Ordinance, the Act and the rules and regulations made thereunder.*" Thus, an applicant applying for registration as broker has to be compliant with all the requirements of the regulatory framework.





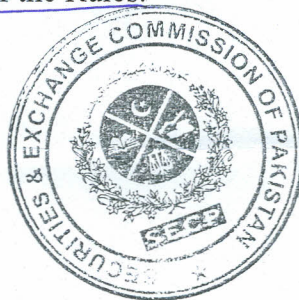
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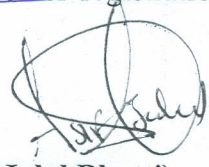
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10. Rule 3 (b) of the SE Rules stipulates that a TREC holder has to maintain NCB of Rs. 2.5 million at all times. Whereas submitting the negative NCBs as on June 30, 2014, June 30, 2015, December 31, 2015 and then on June 30, 2016, proves that JOVC is non-compliant with Rule 3(b) of SE Rules.

11. Further, Regulation 19.3.2 of the PSX Rule Book which stipulates the overall requirements of NCB for TREC holders when read with Schedule II of the PSX Rule Book provides that a TREC holder may take maximum exposure of 25 times of its NCB cumulatively for all the markets. Since NCB of JOVC shows negative balances since June 30, 2014 and is negative Rs.244 million as on June 30, 2016. Therefore, JOVC is not capable of taking any exposure in the market. Thus, application of JOVC for grant of certificate of registration as a broker under the BR Rules falls short of the prescribed eligibility criteria. Further, the assertions of JOVC before the Appellate Bench with regard to negative NCB were found incorrect as the NCB of JOVC is still negative even as on June 30, 2016.

12. The case has been considered on the evidentiary value of all documents submitted by authorized representative of JOVC before the Appellate Bench. Based on evaluation of documents, it is evident that the plea taken by the authorized representative before the Bench has been found misleading. Hence, JOVC has failed to improve its NCB from negative of Rs.307 million to required minimum limited. In view of the facts stated above, I am of the considered opinion that JOVC has failed to establish its claim made before the Appellate Bench regarding removal of deficiency of negative NCB. Despite providing ample opportunities to remove its deficiency regarding negative NCB, JOVC's NCB is still negative Rs.244 million as on June 30, 2016. Therefore, the application of JOVC for registration as broker is refused in terms of Rule 5 (5) of the Rules.




(Asif Jalal Bhatti)
Director/HOD (PRPD)

Announced on
Islamabad.

27/10/2016