



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal Nos. 10 of 2020

M/s. IGI Holdings Limited

Appellant

Versus

1. The Executive Director, SCD, SECP
2. M/S. RSM Avais Hyder Liaquat Nauman
Chartered Accountants.

Respondents

Date of hearing:

August 23, 2022

Present:

For the Appellant:

Khwaja Aizaz Ahsan, Advocate High Court.

For the Respondents:

1. Mr. Mohammad Tanweer, Joint Director, Onsite Department, Supervision Division, SECP.
2. Mr. Qaiser Iqbal, Additional Joint Director, Onsite Department, Supervision Division, SECP.
3. Syed Asif Hussain, Additional Joint Director, Adjudication-III, Adjudication Division, SECP.

ORDER

1. This Order shall dispose of Appeal No. 10 of 2020 filed by M/s. IGI Holdings Limited (Appellant) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the Order dated December 27, 2019 (Impugned Order) passed by the Executive Director, SCD (Respondent No.1) under Section 282H of the Companies Ordinance, 1984 (Ordinance).



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Hearing notices were served on the Appellant and the Respondents, however, Respondent No.2 namely; M/s. RSM Avais Hyder Liaquat Nauman, Chartered Accountants, neither filed their comments nor attended the hearing before the Appellate Bench (the Bench).

2. The brief facts of the case are that Mrs. Farida Rehman and Ms. Farah Rehman ([the Complainants] investors in IGI-Investment Bank Limited [IGI-IBL]) filed a complaint against the Appellant. In view of the conflicting claim, Respondent No.1, in exercise of powers conferred upon the Securities & Exchange Commission of Pakistan, under section 282H of Ordinance and in pursuance of SRO 247 (I)/2017, appointed Respondent No.2, to conduct a Special Audit of IGI-IBL (merged with and into IGI Holdings Limited). The disputed transactions were executed during the period when IGI-IBL was licensed as an NBFC and the provisions of the NBFC regulatory framework were applicable to it, therefore, the special audit was ordered under the provisions applicable to licensed NBFCs.
3. The Appellants filed this Appeal *inter alia* on the grounds that it is a settled principle of law that no adverse order can be passed against a person without due process and without issuing a notice to that party. The Appellant further stated that, in this case, no notice was issued to the Appellant and no hearing opportunity was provided prior to passing the Impugned Order and was, therefore, passed in violation of the principles of natural justice and Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. The Appellant's Counsel argued that the Impugned Order is not a speaking order, therefore, liable to be *set aside*.
4. The Appellant's Counsel argued that the same matter was previously agitated by the Complainants, however, it was disposed of by the Commission vide letter dated April 16, 2014 wherein it was held that the dispute between the Complainants and the Appellant is commercial in nature, which cannot be adjudicated by the Commission and the Complainants should approach the appropriate forum for redressal of grievances. The Appellant's Counsel argued that as the Commission has already decided the matter in year 2014, therefore, being time barred it cannot be reviewed in year 2019 in terms of Section 32B of the SECP Act, 1997 (SECP Act).



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5. The Appellant's Counsel also argued that without prejudice to the aforesaid argument, it is important to note that under Section 282H of the Ordinance a special audit can only be conducted to monitor the general financial condition of a NBFC, therefore, cognizance of the matter under Section 282H of the Ordinance on the basis of an individual complaint is against the law and beyond the scope of the section.
6. Respondent No.1 rebutted the grounds of Appeal and arguments/objections of the Appellant and its Counsel. Respondent No.1 Representatives stated that the law does not require Respondent No.1 to provide an opportunity of hearing, therefore, the argument is without any legal force. Respondent No.1 stated that the Impugned Order had been passed due to conflicting claims of the parties and this reason was stated in the Impugned Order, thereby, the Impugned Order is a speaking order.
7. Respondent No.1 also stated that the Appellant's contention that special audit under Section 282H of the Ordinance can only be conducted to monitor the general financial condition of a NBFC is denied. Respondent No.1 argued that the aforesaid Section clearly allows discretion to the Commission to carry out detailed scrutiny of the affairs of NBFC. Accordingly, under the Impugned Order special audit was ordered, which is lawful.
8. Respondent No.1 denied the Appellant's assertion that previously the matter was decided vide decision dated April 16, 2014. As a matter of fact, the referred letter dated April 16, 2014 was issued to the attorney of the complainant with a view to facilitate both parties to amicably resolve the matter. The said letter, *inter alia*, stated that: "*... if both parties agree, we may facilitate and provide an appropriate forum/ place at Karachi to discuss the matter and come to a resolution amicably*". The above referred letter was not an order to dispose of the matter but it was correspondence with the complainant. Since the aforesaid letter was not an order for disposal of the matter, the question of review of decision under Section 32B of the SECP Act does not arise.
9. The Bench is of the view that the Appellant's assertion with respect to opportunity of hearing is misconceived. The Bench is of the view that Section 282H of the Ordinance does not warrant affording an opportunity of hearing before proceedings thereunder. The scheme envisaged under the said provision is, *inter alia*, similar to section 221 of the Companies Act, 2017 (the Act)



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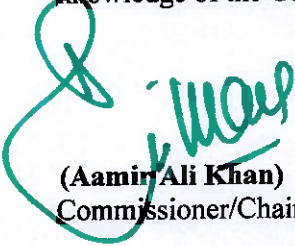
whereunder the Commission is, inter alia, empowered to inspect the books of account of every company without affording any prior opportunity of hearing; as opposed to section 256 of the Act where a prior opportunity of hearing is a sine qua non before proceeding thereunder. It is safe to deduce that the legislative intent is clear where an opportunity of hearing is required under the law and the said law has been fortified vide various judicial pronouncements of superior courts.

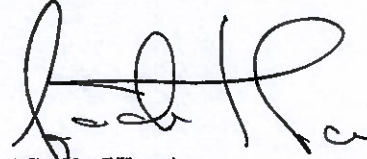
10. The Bench is of the view that the contention raised by the Appellant, about two different decisions of the Commission rendered regarding similar set of facts vide letter dated April 16, 2014 and the Impugned Order is very important to decide the fate of this case. The Bench has reviewed the letter dated April 16, 2014, which revealed that it was held that the matter between the Appellant and Complainants is of a commercial nature and the NBFC regulatory framework does not provide any dispute resolution mechanism or empowerment to settle commercial disputes of parties. In view thereof, it appears that, the Commission had rejected the Complainants request vide letter dated April 16, 2014 to conduct a special audit (complaint dated June 27, 2013) of the Appellant, however, through the Impugned Order, a special audit was ordered without citing reasons. The basis of rejecting the request for a special audit earlier, and ordering one at a later point in time is quite contradictory. The Bench is of the view that the mere fact that the parties have conflicting claims, and that too without initial determination of facts related to alleged violations and quantum of claims, the order to conduct the special audit under Section 282H appears to be flawed.
11. Notwithstanding hereinabove, the Bench is of the view that this is a case of misapplication of law because Section 282H pertains to conduct of special audit and to pass interim orders with respect to proceedings initiated to monitor "general financial condition of a NBFC" or to carry out a special audit", therefore, Respondent No.1 had wrongly assumed power to deal investors' complaints under this Section. The Bench is of the view that upon receipt of a complaint, Respondent No.1 should have proceeded to probe into the matter under Section 282I of the Ordinance and obtain substantive evidence to establish fault or wrongdoing of either party. In the circumstances, we accede with the Appellant's assertion that under Section 282H of the Ordinance a special audit can only be conducted to monitor the general financial condition of an NBFC, therefore, cognizance of the matter under Section 282H of the Ordinance on the basis of investors' complaints is against the law and beyond the scope of section 282H of the Ordinance.



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12. In view of the foregoing, the Bench has no doubt to hold that Impugned Order is not sustainable, therefore, we hereby *set aside* the Impugned Order and admit this Appeal, without any order as to costs.
13. This order is being issued without prejudice to any other regulatory actions, legal proceedings initiated or intended to be initiated by the Commission, against or in favor of either party under relevant laws on matters subsequently inquired, investigated or otherwise brought to the knowledge of the Commission.


(Aamir Ali Khan)
Commissioner/Chairman


(Sadia Khan)
Commissioner

Announced on: **14 DEC 2022**