



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH

In the matter of

### Appeal No. 13 of 2016

1. Dewan Muhammad Yousuf Farooqui
2. Dewan Abdul Baqi Farooqui
3. Dewan Abdullah Ahmed Farooqui
4. Dewan Abdul Rehman Farooqui

Appellants

versus

The Commissioner, Securities Market Division, SECP.

Respondent

**Date of hearing:**

July 20, 2023 and

February 15, 2024

**Present:**

For Appellants:

1. Syed Muhammad Abbas Hyder, Advocate High Court
2. Syed Muhammad Raza
3. Mr. Muhammad Hanif German

For Respondent:

1. Mr. Hammad Javed, Additional Director, Adjudication-I, SECP
2. Raja Farukh Ahmad, Additional Joint Director, Adjudication-I, SECP
3. Mr. Muhammad Faisal, Assistant Director, Adjudication-I, SECP

## ORDER

1. This Order shall dispose of Appeal No. 13 of 2016 filed under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the Appeal) against the order dated April 5, 2016

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passed by the Commissioner, Securities Market Division (the Respondent) under Section 160 read with Section 100 of the Securities Act, 2015 (the Act).

2. Earlier, this Appeal was dismissed vide order dated March 26, 2019 by the Appellate Bench (the Bench). Mr. Dewan Muhammad Yousuf Farooqui (Appellant No.1) challenged the Bench's order dated March 26, 2019 before the Islamabad High Court, Islamabad (the Court) through F.A.O No. 133 of 2019. The Court vide order dated December 13, 2022 *set aside* the order dated March 26, 2019 and remanded the matter to the Bench. In view thereof, the Appeal was fixed for hearing on July 20, 2023, however, it was adjourned due to the non-availability of the Appellants' Counsel. Thereafter, the Appeal has been re-fixed for February 15, 2024, which was attended by the parties.
3. The brief facts of the case are that Dewan Automotive Engineering Limited (the Company) was placed on the defaulter counter of PSX on December 8, 2014 and trading in its shares was also suspended since then due to its failure to hold its annual general meeting for two consecutive years and its failure to pay the annual listing fees for two years. The Securities and Exchange Commission of Pakistan (the Commission) issued a direction on September 1, 2015 to the Appellants under Section 100 of the Act (the Direction) to take immediate steps to undo the defaults of the requirements contained under the Listing of Companies and Securities Regulations of the Rule Book of Karachi Stock Exchange within 14 days of the date of the Direction. The Company failed to comply with the Direction. Therefore, the Respondent issued the Show-Cause Notice dated October 16, 2015 in terms of Section 160 read with Section 100 of the Act (the SCN). The Appellants neither submitted the reply of the SCN nor attended the hearings fixed before the Respondent. The Respondent concluded the SCN proceedings and imposed an aggregate fine of Rs. 35,00,000/- on seven directors of the Company. In view thereof, the Appellants were held liable to pay Rs. 500,000/- each.
4. The Appellants have preferred this Appeal *inter alia* on the grounds that at the time the default was committed, they were not directors of the Company. In this regard, the Appellants have relied upon Form 29 dated January 6, 2014 which affirms the plea.

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5. In a written response dated June 30, 2016, the Respondent acknowledged that the Appellants were not directors of the Company at the time the Company's failure began. In view thereof, the Respondent prayed to remand the matter for the initiation of proceedings against the directors who were responsible for the default.
  
6. The Bench has heard the parties and perused the record. Given the above contention of the Appellants and admission of the Respondent, it is evident that this Appeal involves a question of misjoinder of parties during the SCN proceedings and the Impugned Order, therefore, it would be a futile exercise to deliberate the merits of the case. In view thereof, without going into the merits of the case we hereby admit this Appeal and *set aside* the Impugned Order to the extent of the Appellants. This order has been passed without any order as to cost.

(Mujtaba Ahmad Lodhi)

Commissioner

(Aamir Khan)

Commissioner

Announced on: 04 JUL 2024<sup>th</sup>