



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 17 of 2013

1. Faisal Iqbal Khawaja S/O Muhammad Iqbal Khawaja
 2. Omer Iqbal Khawaja S/O Muhammad Iqbal Khawaja
 3. Musarat Iqbal Khawaja Wd/O Muhammad Iqbal Khawaja
 4. Aysha Jabbar D/O Muhammad Iqbal Khawaja
 5. Amina Iqbal D/O Muhammad Iqbal Khawaja
- (All legal heirs of Muhammad Iqbal Khawaja R/o 91 College
Block Allama Iqbal Town Lahore)

.... Appellants

Versus

1. Commissioner (Securities Market) Securities & Exchange
Commission Pakistan
2. Lahore Stock Exchange Limited through its Managing Director

.... Respondents

Date of hearings:

9/03/15, 16/09/15

Present:

For Appellants:

- i. Mr. Omer Iqbal
- ii. Mr. Asad Ullah Javied, Advocate High Court

For Respondents:

- i. Mr. Nasir Askar, Director(SMD)
- ii. Ms. Nazish Zubair, Deputy Director (SMD)
- iii. Mr. Mehr Muhammad Iqbal, Advocate High Court (Respondent No.2)



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ORDER

1. This order shall dispose of Appeal No. 17 of 2013 filed under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated (the Impugned Order) dated 18/10/2000 passed by the Respondent. Initially instant appeal was filed by Muhammad Iqbal Khawaja and after his death, upon an application by the legal heirs of the deceased, the Appellate Bench vide its order dated 19/03/15 allowed the necessary amendments in memorandum of appeal to implead the legal heirs of the deceased as party in the appeal.
2. The brief facts of the case are that Lahore Stock Exchange (Respondent No.2) through its notices dated 10/10/2000 had restored the suspended membership of M/s Muhammad Iqbal Khawaja and one other. The Respondent No.1 was of the view that the restoration order of Respondent No.2 did not mention whether the Appellants had cleared their liabilities and have met other requirements of law for being entitled to function as a member. Therefore, Respondent No.1 issued a notice to the Respondent No.2 to clarify the position. The matter was considered by the Respondent No.1 and a hearing was convened, wherein Mr. Jamil Ahmed, Managing Director of Respondent No.2 stated that the membership of Mr. Muhammad Iqbal Khawaja was restored on partial payment of clearing house dues by sale of shares of the member lying with the clearing house as security. The Respondent No.2 further stated that while considering the restoration, it has not taken into account the verification of fulfillment of net capital balance requirements envisaged in rule 3(b) of the Securities and Exchange Rules, 1971 and outstanding claims of the investors against and clearing house and against these members. Thereafter, the Respondent No.1 vide its Impugned Order dated 18/10/2000 directed the Respondent No.2 to abstain from putting into effect restoration circular dated 10/10/2000 till all the requirements of law including those of net capital balance are fully met. In consequence of the Impugned Order, Respondent No.2 issued an order dated 19/10/2000 wherein it was stated that



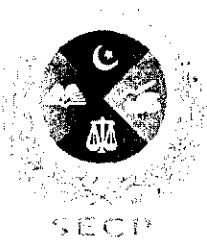
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membership could not be restored due to capital adequacy requirement etc. Therefore the Appellants challenged the Impugned Order along with order dated 19/10/2000 before the Honorable Lahore High Court (the Court) vide Writ Petition no. 21621/2000 wherein injunctive order was passed against the orders of Respondent No.1 and Respondent No.2. Thereafter on 07/02/13 the Court dismissed Appellants Writ Petition on maintainability issue considering that alternate remedy under the law is available to the Appellant on the account of capital adequacy requirements. After dismissal of Writ Petition the Respondent No. 2 expelled the Appellants from its membership through notice dated 11/02/13 (the Expulsion Notice).

3. The Appellants have challenged the Impugned Order before the Appellate Bench (the Bench) on the following grounds:

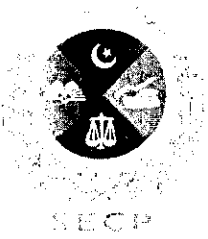
- i. The Appellants were condemned unheard by Respondent No.1 and Respondent No.2 while passing the Impugned Order dated 18/10/2000 and expulsion notice dated 11/02/13 respectively. The Appellant was neither served with any show cause notice nor called upon to explain his position either by Respondent No. 1 or 2. Hence, the Impugned Order and expulsion notice are ineffective, void and same merits to be set aside on the principle of natural justice.
- ii. The actions taken by respondent no. 2 on the basis of Impugned Order has made the appellant a victim of glaring discrimination inasmuch as the position/losses of almost all other members, who are on the same footing as the appellant, had been shifted into the membership/account of Mr. Iftikhar Shaffi, for the reason that said losses accrued to such members on account of Mr. Iftikhar Shaffi.

4. The Respondents (Respondent No.1 and Respondent No.2) denied the grounds of appeal and arguments of Appellants and prayed to dismiss the appeal.



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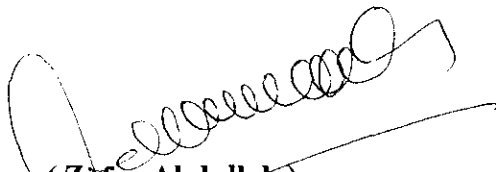
5. We have heard the parties at length and perused the relevant record with the assistance of the parties i.e. Appellants and Respondents. The legal ground of Appellant that they were condemned unheard by the Respondent No.1 cannot be acceded as there was no requirement or need to call the Appellants in the proceeding which exclusively were initiated against the Respondent No.2 with regard to restoration order dated 10/10/2000. However the Respondent No.2 was bound to proceed against the Appellants only after affording them proper hearing opportunity. If the expulsion notice has been issued by the Respondent No.2 without hearing of the Appellants then such proceeding and all consequential events shall be null and void ab initio. During the perusal of the record and arguments of the parties the Appellate Bench has observed the following:
- a) The Appellants are of the view that they have settled all the claims of investors and nothing is payable on their part with respect to claims of investors or non-clearance/settlement of clearing house exposure and losses.
 - b) The Respondent No.2 has expelled the membership of Appellants vide notice dated 11/02/13 and sold the Trading Rights Entitlement Certificate (TREC) of the Appellants without their consent, to recover claims of investors or non-clearance/settlement of clearing house exposure and losses.
6. The Impugned Order dated 18/10/2000 could not be interpreted as an order to proceed against the Appellants without application of mind and settled legal principles. The operative part of Impugned Order is reproduced below for ready reference:
- “.....the Lahore Stock Exchange shall abstain from putting into effect its restoration circular dated 10/10/2000 till all the requirements of law including those of net capital balance are fully met by the two members.”
7. Prima facie it seems that the Respondent No.2 has failed to discharge its functions to meet the direction contained in the Impugned Order. The Respondent No.1 only restrained the Respondent No.2 to restore the membership of the Appellants until




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requirements of law are met. The sale of TREC of the Appellants by the Respondent No.2 without the consent of Appellants seems an act not warranted by law. Therefore, while maintaining the Impugned Order we direct the Respondent No.2 to proceed strictly in accordance with the Impugned Order direction and settle the issue by calling the relevant parties and record to determine the rights and liabilities of the Appellants within thirty (30) days of this order.

8. Parties to bear their own cost.


(Zafar Abdullah)
Commissioner (SCD)


(Tahir Mahmood)
Commissioner (CLD)

Announced on: 21 SEP 2015