



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. 1

In the matter of

### Appeal No. 19 of 2004

Ms. Naureen Ahsan

...Appellant

versus

(i) Director (Securities Market Division)

(ii) Samba Bank Limited

(iii) First Fidelity Leasing Modaraba

...Respondents

Date of Hearing: 08/11/16

### Present:

#### For the Appellant:

(i) Barrister Mustafa Munir, Associate Partner RIAA Barker Gillette

(ii) Mr. Abdul Manan, Advocate, RIAA Barker Gillette

#### For the Respondent No.1:

(i) Mr. Tahir Mahmood, Deputy Director (SMD)

#### For the Respondent No.2

(i) Mr. Ali Raza Kamyana, Samba Bank Limited

(ii) Mr. Zeeshan Ahmed Khan, Advocate

#### For the Respondent No.3

(i) Mr. Wasim ul Haq Osmani, Chief Executive, First Fidelity Leasing Modaraba



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### ORDER

1. This Order is passed in the matter of Appeal No. 19 of 2004 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 07/06/04 (Impugned Order) passed by the Respondent No.1.
2. Brief facts of the case are that Ms. Naureen Ahsan (Appellant) filed a complaint dated 11/12/02 with the Commission against Fidelity Investment Bank Limited (FIBL) and Fidelity Services (Pvt.) Ltd (FSL). FIBL, on 05/05/04, was merged into Trust Commercial Bank Limited (TCBL). TCBL was then merged into Crescent Commercial Bank Limited (CCBL) in November, 2004. The interests of FIBL after its merger on 05/05/04 initially vested with TCBL and upon merger of TCBL into CCBL in November, 2004, are now vested with Samba Bank Limited (Respondent No.2). FSL was merged into First Fidelity Leasing Modaraba (Respondent No.3) on 01/07/04. The interests of FSL, subsequent to the merger, vest with Respondent No.3. The Appellant in her complaint to the Commission stated that she had opened an account with FIBL in June/July 2000 for trading in securities and had authorized her father, namely; Mr. Ahsan-ul-Haque, to operate the account on her behalf which was operated on an interactive basis through Mr. Talat Mehmood of FIBL. The Appellant alleged that her father stopped operating the account in December, 2000 as he had fallen sick and was hospitalized. In January, 2001, her father proceeded abroad for medical treatment and returned in June, 2001. She alleged that during this period when her father was abroad, no verbal or written orders for trading were placed by her or her father with Mr. Talat Mehmood or any other employee of FIBL. She further stated that she had not authorized Mr. Talat Mehmood or FIBL to operate the account on their own. When her father returned from abroad he was informed by Mr. Talat Mehmood, in July, 2001, that the account had suffered losses. Furthermore, the Appellant alleged that some 16,500 shares of Kohinoor Energy Limited owned by her father were transferred from his account held with a broker named Mr. Saad Maniar to her account in FIBL and then sold without any authority. The Appellant also alleged that in December, 2000 her

Appellate Bench  
*[Signature]*



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account held with FIBL was illegally and without her authorization transferred to FSL. On 12/12/00 she had received a letter from FSL, wherein, she was requested to provide a new account opening form as well as an authority letter to transfer her account balance from her FIBL account to an account in FSL. However, despite the fact that she had not provided the account opening form or the authority letter to FSL, her account along with her balance was transferred from FIBL to FSL. The Appellant alleged that FIBL and Mr. Talat Mehmood had misappropriated her account and made a complaint to the Commission that the balance amount of Rs 48,184.08 in her account, as on 21/12/00, along with 16,500 shares of Kohinoor Energy Ltd, may be reimbursed to her.

3. The Appellant's complaint was heard by the Respondent No.1 who dismissed it stating that the Appellant or her father did not have a CDC sub-account with Mr. Saad Maniar and that there was no credit of 16,500 shares of Kohinoor Energy Ltd in the Appellant's sub-account and furthermore, the Appellant had received trade confirmation slips and had not contested the transactions carried out by FSL which meant, therefore, that she had accepted them.
4. The Appellant preferred the appeal against the Impugned Order in the Appellate Bench, wherein, the appeal was allowed and it was held vide Order dated 30/09/04 that Kohinoor Energy Limited shares were transferred from Mr. Saad Maniar to square the position in the Appellant's account on 15/08/01. FIBL and FSL were directed to reimburse Rs 48,184.08 and 13,000 shares of Kohinoor Energy Limited to the Appellant within 10 days of receipt of the Order. Furthermore, the Respondent No.1 was ordered to hold an inquiry within 30 days and give his findings on 3,500 shares of Kohinoor Energy Limited claimed by the Appellant. The Respondent No.1, on his request, was granted extension of time until 30/11/04 by the Appellate Bench. Subsequently, Order was passed by the Respondent No.1 on 30/11/04 directing FIBL and FSL to further reimburse 3,900 shares of Kohinoor Energy Limited.
5. The Appellant filed an appeal with the Lahore High Court (LHC) raising a limited challenge to the Appellate Bench's Order stating that even though the Order was



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decided in favour of the Appellant, the Appellate Bench while passing the final order did not take into consideration the different denomination of shares mentioned in the detailed account report and, therefore, no direction was passed by the Appellate Bench for either the return of the shares to the Appellant or for the Appellant to be reimbursed to an amount equal to the value of those shares. The LHC vide Order dated 09/03/16 accepted the application for impleading Respondents No.2 and 3 in place of the original Respondents i.e. FIBL and FSL

6. The appeal was accepted by the LHC vide Order dated 25/05/16 and the matter was remanded to the Appellate Bench to determine the fate of the remaining shares mentioned in the detailed report relating to the period since 21/12/00 to be done within sixty days from the receipt of the Order of the Court by the Appellate Bench.
7. The Appellant's Counsel at the hearing of the Appellate Bench on 08/11/16 pleaded for the shares rightfully owned by the Appellant to be transferred to the Appellant which at present remain in the custody of Respondent No. 3, particulars of which are:

Al-Faysal Investment	15,000 shares
Crescent Investment	11,000 shares
Dewan Sulman Fibers	2,000 shares
Tri Pack Films Ltd	3,000 shares
<b>Total</b>	<b>31,000 shares;</b>

Furthermore, it was submitted that any and all bonus shares issued in respect of the above mentioned 31,000 shares since 21/12/00 to date and any and all dividends accrued in relation to the aforementioned shares, since 21/12/00, to date also be transferred to the Appellant.



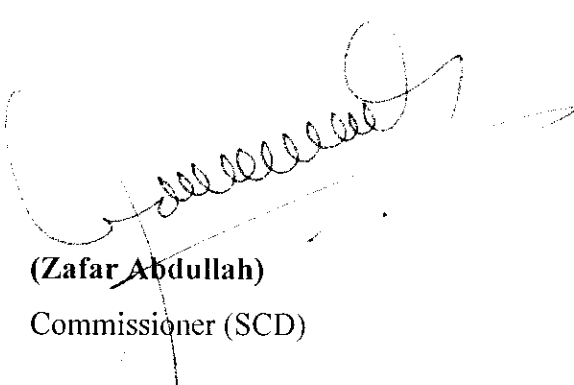
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8. The representative of Respondent No.1 stated that they have no objection on the remaining shares being transferred to the Appellant and the Appellate Bench may decide the appeal accordingly.
9. The Counsel of Respondent No.2 stated that FSL has amalgamated into Respondent No.3 and all the assets, liabilities and obligations of FSL stand transferred to Respondent No.3 and, therefore, Respondent No. 3 is liable for the settlement of the aforesaid complaint.
10. The authorized representative of Respondent No.3 argued that the claim of additional shares by the Appellant in her appeal made to the LHIC should be rejected on legal and technical grounds. He stated that the issue of additional shares was brought up afresh by the Appellant in the appeal before the LHC in November 2004 that the claim should be rejected on the basis that these shares were not claimed before the Appellate Bench. The authorized representative also stated that after the merger, Respondent No.3 was made a party to the case, however, FFLM never received any court notice and consequently remained non-represented even at the time of LHC hearing and Order dated 25/05/16 and, furthermore, the Appellant in her appeal to LHC had attached a statement of account appeared to have been issued by FSL of an irrelevant date i.e. 21/12/00, however, the account of the Appellant was transferred from FIBL to FSL on 13/11/00. The authorized representative further stated that the Appellant should produce a statement of her account maintained with FIBL as of 13/11/00 or Respondent No.2 should disclose which shares it had at the time of transfer of Appellant's account from FIBL to FSL on the said date and the transfer of account of Appellant from FIBL to FSL was declared unauthorized by the Appellate Bench in its decision dated 30/09/04, therefore, any privity of contract by FSL with the Appellant is denied and as FSL did not have any privity of contract with FSL, Respondent No.3 being the surviving entity cannot be held responsible for those shares and the name of Respondent No.3 should also be excluded from the list of Respondents.



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11. We are of the view that the Appellate Bench has already ruled on the merits of the Appeal vide Order dated 30/09/04. The LHC vide Order dated 25/05/16 has directed us to determine the fate of the rest of the shares mentioned in the detailed account report as on 21/12/00. The contention of Respondent No. 3 that FSL did not have privity of contract with the Appellant, and cannot be held responsible, does not hold any merit. Once the merger took place, all the liabilities were also transferred to the new entity i.e. Respondent No.3. Furthermore, the shares cannot be withheld from the Appellant on technicalities.
12. Therefore, in furtherance to our Order dated 30/09/04, we direct that the shares (particulars of which are stated in paragraph 7) above be transferred to the Appellant by the Respondent No.3 along with any bonus shares issued and any dividend accrued in respect of those shares from 21/12/00 to date within 15 days of date of this Order.
13. In view of the foregoing, the appeal is accepted with no order as to costs.

  
(Zafar Abdullah)  
Commissioner (SCD)

  
(Tahir Mahmood)  
Commissioner (CLD)

Announced on:

04 JAN 2017