



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. II

In the matter of

Appeal No. 19 of 2015

M. Nadim Anwar Khan

...Appellant

Versus

Joint Director (SCD) Securities and Exchange
Commission of Pakistan

...Respondent

Date of Hearing

01/09/15

Present:

Appellant:

M. Nadim Anwar Khan

For the Respondent:

- (i) M. Rashid Safdar Piracha, Director (NBFCs)
- (ii) Tanzila Nisar Mirza, Joint Director (NBFCs)
- (iii) Saima Ahrar, Deputy Director (NBFCs)

ORDER

1. This order is in appeal No. 19 of 2015 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order (Impugned Order) dated 17/02/15 passed by the Respondent.



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SECP

2. The brief facts of the case are SME Leasing Limited (SME Leasing) made an application dated 31/07/12 to the Respondent for appointment of Mr. Muhammad Nadeem Anwar as its Chief Executive Officer (CEO). The Respondent examined the above-referred application in terms of the fit and proper criteria laid down in the Non-Banking Finance Companies and Notified Entities Regulations, 2008 (NBFC Regulations) and Mr. Nadeem Anwar was found to be ineligible as per fit and proper criteria for the post of CEO of SME Leasing. Therefore, the application was rejected by the Respondent and the decision was conveyed to SME Leasing on 28/08/12.
3. Aggrieved by the decision, Mr. Nadeem Anwar filed a writ petition No. 3799 of 2012 in the Honourable High Court of Islamabad (High Court) and the Court vide its order dated 23/05/13 disposed of his petition with the observation that the Commission shall reconsider his name and yet if it disapproves the name of Mr. Nadeem Anwar, it shall communicate the reasons to him and SME Leasing so that Mr. Nadeem Anwar may avail his remedy in accordance with the law. As per the order of the High Court, the Commission reconsidered the application of SME Leasing for appointment of Mr. Nadeem Anwar as its CEO and his application was again rejected vide letter dated 12/07/13. Again aggrieved by the decision of the Commission, Mr. Nadeem Anwar filed an appeal before the Appellate Bench of the Commission against the letter dated 12/07/13, hearing of which was conducted on 02/12/14 and the case was remanded back to SCD to decide the application of the appellants on merits afresh.
4. In compliance with the order of the Appellate Bench, an opportunity of hearing before Mr. Amir Khan - Executive Director (PRDD) was provided to Mr. Nadeem Anwar on 04/02/15 at the SECP Head Office in Islamabad. Keeping in view the documents available on record and the hearing conducted in this regard, the Respondent held that Mr. Nadeem Anwar is not a fit and proper person as per the criteria prescribed in the Non-Banking Finance Companies and Notified Entities Regulations 2008 (NBFC Regulations 2008) for the position of chief executive of a



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financial institution. Therefore, the application of SME Leasing for appointment of Mr. Nadeem Anwar Khan as its chief executive was rejected.

5. The Appellant has preferred the appeal on the grounds that the judgment of the Honourable Islamabad High Court states “The petitioner has been serving in financial institutions and qualifies for the job of CEO and has the fundamental right to be permitted to do that job and the Respondent No.1 still considers that the Petitioner does not fulfill the criteria to be CEO then it should convey the detailed reasons of its refusal to approve the name of the petitioner.” It was the moral, legal and ethical duty of the Commission to have filed intra court appeal instead of opting to delay justice by repeating the same objection which is violation of the Court orders. The Appellant had given a satisfactory response to all the queries put to him by the Respondent regarding his past experience. The Impugned Order should be set aside and the Appellant should not be disqualified from seeking employment in public sector under the Companies Ordinance, 1984 or any Rules made thereunder.
6. The Respondent rebutted the arguments by stating that the Appellant was given a fair opportunity of hearing, a speaking order was passed for Appellant’s candidature as CEO of SME Leasing on 17/02/15. The Respondent assessed the fitness and propriety of the proposed chief executive and directors as per the “Fit and Proper Criteria” given in Schedule IX to the NBFC Regulations, 2008. The Appellant’s 25 years of experience in banking and financial sector includes twenty two years with Allied Bank Limited (ABL) and three years at Natover Lease & Refinance Limited (NLRL). Details of his assignments are as follows:

Institution	Time period	Positions held	Designation
Allied Bank Limited	Mar 1996 to Oct 1997 (1 year 7 months)	Zonal Chief Rawalpindi	AVP



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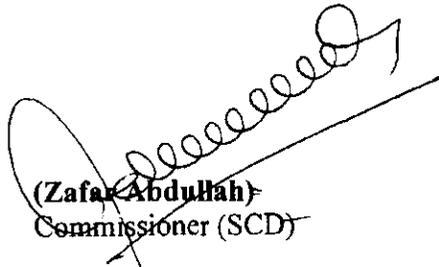
-do-	July 1995 to Mar 1996 (Approx 1 year)	Zonal Chief Chakwal	AVP
-do-	May 1993 to July 1995 (2 years)	In-charge Audit & Inspection	AVP
-do-	Feb 1989 to Feb 1992 (3 years)	In-charge establishment and advances	AVP
Natover Lease & Refinance Limited	July 2006 to May 2009 (3 years)	Manager, Rawalpindi Branch	

During the hearing with the Executive Director (SCD), the Appellant was asked to substantiate that he had the minimum 7 to 10 years senior management experience as required under the Fit and Proper Criteria. The Appellant informed that his appointments as Zonal Chief and In-charge establishment and advances and audit and inspection at ABP were senior management positions, therefore, he qualifies to be appointed as chief executive of a financial institution. As per the Black law dictionary, however, senior management is defined as the highest level of company management where major policy decisions and long term business plans are made. Moreover, as per fit and proper criteria of State Bank of Pakistan, one of the criteria for appointment of CEO of a bank is that the individual must be a career banker and must have minimum 5 years' experience at Executive Vice President (EVP) level. During the hearing, the Appellant was asked about the hierarchy of senior management level positions at ABL and he admitted that at ABL, senior management level was EVP and above. Furthermore, the highest rank attained by the Appellant was Assistant Vice President (AVP) and while serving as a branch Manager of Natover, he was a recovery officer which cannot be considered to be senior management level. The same was communicated to him vide letter dated 17/02/15.



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7. We have heard the arguments. The Appellant has argued that his appointments as Zonal Chief of ABL at Rawalpindi and Chakwal and subsequent appointments were senior management positions, therefore, he qualifies to be appointed as CEO of a financial institution. The Respondent has given reasons how the Appellant did not meet the criteria for appointment of CEO of a financial institution. This bench is of the view that the Appellant being a banker for more than 25 years including his experience as Zonal Chief in one of the country's leading banks i.e. ABL makes him experienced enough to be eligible to be considered for CEO of a financial institution including SME Leasing.
8. In view of the foregoing, the Impugned Order is set aside with no order as to costs.


(Zafar Abdullah)
Commissioner (SCD)


(Tahir Mahmood)
Commissioner (CLD)

Announced on: 21 SEP 2015