



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 24 (14) Misc/ABR/23

M/s. Cnergyico Pk Limited

versus

Commissioner-Supervision Division, SECP

...Appellant

...Respondent

Date of hearing:

September 06, 2023

Present:

For the Appellant:

Mr. Abdul Ahad Nadeem, Advocate

ORDER

1. This Order is in Appeal No. 24 (14) Misc/ABR/23 (Objection Case) filed by M/s. Cnergyico Pk Limited (the "Appellant") under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "SECP Act").
2. Brief facts leading to the instant case are that the Appellant is aggrieved of the investigation order dated July 18, 2023 (the "Impugned Order") passed by the Securities and Exchange Commission of Pakistan (the "Commission") in exercise of powers under section 258 of the Companies Act, 2017. The Appellant vide letter dated August 16, 2023 intimated the Commission that the Appellant has challenged the Impugned Order before the Hon'ble High Court of Sindh in Suit No. 1324 of 2023 and the Hon'ble High Court of Sindh vide its order dated August 16, 2023 has *inter alia* issued a following direction to the Appellate Bench,



Securities and Exchange Commission of Pakistan

“The Appellate Bench of the defendant No.1 / SECP is directed to decide the plaintiff's appeal within fifteen (15) days strictly in accordance with law and after providing opportunity of hearing to the plaintiff. The defendants are jointly and severally directed to place on record on the next date of hearing the final order passed in the aforesaid appeal.”

3. In compliance of the aforementioned direction of the Hon'ble Court, notice was issued to the Appellant and the instant Appeal was fixed today for a preliminary hearing on the issue of maintainability of the same before the Appellate Bench constituted for the purpose.
4. At the outset, the Appellate Bench confronted the Appellant with a question of jurisdiction and asked the Appellant to explain whether the Appellate Bench is competent to hear the instant appeal in light of the embargo contained in sections 33 and 34 of the SECP Act. In response thereof, Counsel for the Appellant submitted that the Impugned Order is an order passed by the Respondent Commissioner-Supervision Division as the same has been issued with his signature. He argued that though it is mentioned in the Impugned Order that the Respondent Commissioner-Supervision Division has signed the order for and on behalf of the Commission, however, the same is identical to the situation where any action of one Commissioner or an authorized officer of the Commission is deemed to be an action of the Commission for all practical purposes. The Counsel for the Appellant summed up his argument with the contention that as appeal against the order of one Commissioner lies before the Appellate Bench, hence, under section 33 of the SECP Act, the jurisdiction to hear the instant Appeal lies with the Appellate Bench.
5. The Appellate Bench has heard the Appellant and perused the record. Upon enquiring that whether the Appellant has any objection with respect to the constitution of the Appellate Bench, as both the members are also part of the Commission which passed the Impugned Order; the Counsel for the Appellant submitted that he has no objection in this regard.



Securities and Exchange Commission of Pakistan

6. On the issue of jurisdiction, in order to determine whether the Appellate Bench has jurisdiction to entertain the instant Appeal, it would be apt to first have a glance at the relevant legal provisions, and the same are reproduced hereinunder,

“33. Appeal to the Appellate Bench of the Commission.- (1) Except as otherwise provided any person aggrieved by an order of the Commission passed by one Commissioner or an officer authorized in this behalf by the Commission, may within thirty days of the order, prefer an appeal to an Appellate Bench of the Commission constituted under sub-section (2):

Provided that no appeal shall lie against ----

- (a) an administrative direction given by a Commissioner or an officer of the Commission;*
- (b) an order passed in exercise of the powers of revision or review;*
- (c) a sanction provided or decision made by a Commissioner or an officer of the Commission to commence legal proceedings; and*
- (d) an interim order which does not dispose of the entire matter...” (emphasis provided)*

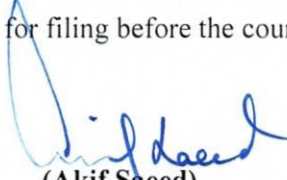
“34. Appeal to the Court.- (1) An appeal shall lie to the Court referred to in Part II of the Ordinance in respect of an order of the Commission comprising two or more Commissioners or the Appellate Bench or order made under sub-section (2) of section 32B...” (emphasis provided)

7. Bare perusal of the aforementioned provisions of the SECP Act leave no doubt that an order of the Commission, passed by two or more Commissioners is appealable before the High Court, whereas an appeal against an order of the Commission, except in matters provided therein, passed by one Commissioner or an officer authorized shall lie before the Appellate Bench. Jurisdiction of the Appellate Bench to entertain an appeal is unambiguously provided in section 33 *ibid* which in no manner should be confused with the jurisdiction of the High Court under section 34 *ibid*. It is a trite law that jurisdictional error is always fatal to any legal proceedings and a *coram non judice* order has no sanctity in eyes of the law. The aforementioned provisions expressly provide the jurisdiction of forums to avail statutory remedy i.e. appeal, and thus leave no room for any misconception.



Securities and Exchange Commission of Pakistan

8. The Impugned Order before the Appellate Bench in the instant Appeal is neither an order by one Commissioner, nor of an authorized officer. On the contrary, the Impugned Order is a collective decision of the Commission, presently comprising of four Commissioners, which was signed by one Commissioner, for and on behalf of the Commission, as decided vide the Commission's decision dated May 9, 2023. Thus, it clearly shows that the Appellate Bench is devoid of jurisdiction to hear the instant Appeal in terms of express provisions of section 33 of the SECP Act.
9. In view of the foregoing, the Appellate Bench lacks jurisdiction to entertain the instant Appeal against the Impugned Order passed by the Commission and in consequence thereof, the instant Appeal be returned for filing before the court of competent jurisdiction, if so advised.


(Akif Saeed)
Chairman/Commissioner


(Mujtaba Ahmad Lodhi)
Commissioner

Announced on:

06 SEP 2023