



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 24 of 2022

Sardar Shahbaz Ali Khan Khosa

Appellant

Versus

1. Commissioner Supervision Division, SECP
2. M/s. Next Capital Limited and its Directors
3. M/s. Al-Falah CLSA
4. Central Depository Company of Pakistan (CDC)
5. Pakistan Stock Exchange Limited (PSX)

Respondents

Date of hearing:

May 18, 2023

Present:

For the Appellant:

1. Sardar Shahbaz Ali Khan Khosa
2. Mr. Ghulam Murtaza Malik, Advocate
3. Ms. Suzain Khattac, Advocate
4. Mr. Saeed

For the Respondents:

1. Mr. Muhammad Ali, Additional Director, SECP
2. Ms. Neelum Aamir, Joint Director, SECP
3. Mr. Muhammad Najam Ali, Chief Executive Officer, Next Capital Limited
4. Mr. Rizwan Yousuf, Company Secretary, Next Capital Limited
5. Mr. Ajeet Kumar, Chief Regulatory Officer, PSX
6. Mr. Tariq Qureshi DGM & Unit Head Litigation, PSX
7. Mr. Atif Islam Siddiqui, Senior Manager Regulatory Affairs Division, PSX



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8. Mr. Rashid Mahar authorized Representative, CDC
9. Mr. Badiuddin Akber, Chief Executive Officer CDC

ORDER

1. This Order shall dispose of Appeal No. 24 of 2022 filed by Sardar Shahbaz Ali Khan Khosa (the “Appellant”) against the Order dated October 14, 2021 (the “Impugned Order”) passed by the Commissioner Supervision Division, SECP (“Respondent No. 1”) whereby the Appellant and M/s. Next Capital Limited (“Respondent No. 2”) were directed to resolve their dispute through arbitration as envisaged under the Rule Book of Pakistan Stock Exchange Limited (the “PSX Rule Book”).
2. The brief facts of the case are that the Appellant has alleged that illegal and unlawful trades/transactions were made in the Appellant’s trading Account No. 30231 maintained with Respondent No. 2. Whereas, Respondent No. 2 claimed that the Appellant has committed default in settlement of his debit account. The matter was referred to the Securities and Exchange Commission of Pakistan (the “Commission”) by the Hon’ble Islamabad High Court (the “Court”) vide its order dated July 19, 2021 passed in Writ Petition No. 2597/2021. In pursuance of the direction of the Court, hearing was held before Respondent No. 1 on August 31, 2021. After hearing the Appellant, his representatives, CEO of Respondent No. 2 and its legal representative, Respondent No. 1 passed the Impugned Order and directed the parties to resolve their dispute as per the arbitration mechanism provided under the PSX Rule Book as agreed in the Account Opening Form. Accordingly, the parties were directed to approach PSX (Respondent No. 5) for arbitration in terms of Chapter 18 of the PSX Rule Book. It is important to mention here that both parties agreed to resolve their disputes through the above-mentioned arbitration mechanism as provided in the PSX Rule Book. However, commitment of Respondent No. 2 to enter into arbitration proceedings was conditional and subject to the withdrawal of pending court cases by the Appellant.
3. The Appellant has filed this Appeal *inter alia* on the grounds that the Impugned Order is against the law and facts of the case, hence, need to be modified. The Appellant contended that, in violation of the Court’s order dated July 19, 2021, Respondent No. 1 has passed a non-speaking order regarding the misdeeds of Respondent No. 2 and did not specify the time-frame for the arbitration proceedings. The



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Appellant stated that Respondent No. 1 has failed to exercise powers vested in it being a regulator and acted in violation of the preamble of the Securities and Exchange Commission of Pakistan Act, 1997 (the “SECP Act”) because the Commission has powers to deal with all the matters culminating out of the capital markets, superintendence and control of corporate entities. The Appellant further contended that the Impugned Order is in violation of the powers and functions of the Commission as provided under section 20 of the SECP Act. The Appellant submitted that the Commission is mandated under the law to investigate, inspect and regulate such matters on its own and on application by the aggrieved, however, Respondent No. 1 has failed to abide by the requirements of the law. The Appellant argued that Respondent No. 1 while passing the Impugned Order has violated sections 28A, 29, 30, and 31A, of the SECP Act and concluded the matter in a mechanical manner. The Appellant also stated that Respondent No. 5 also kept silent on the grievances of the Appellant which is a clear case of ‘justice delayed, justice denied’. The Appellant while summing his arguments has also placed reliance on decisions of the superior courts.

4. Respondent No. 1 rebutted the Appellant’s grounds of appeal and stated that the Impugned Order is lawful and has been passed in accordance with the direction of the Court. Respondent No. 1 stated that the Court directed the Commission to decide the complaint in accordance with the law. As the mode of dispute resolution through arbitration between the Appellant and Respondent No. 2 is provided under PSX Rule Book and Account Opening Form, therefore, the Impugned Order was passed to resolve the issue through arbitration. Respondent No. 1 stated that the Appellant in its written submission requested for arbitration and Respondent No. 2 also conditionally agreed to the same and desired withdrawal of the civil suit filed by the Appellant before Civil Court, Lahore (the “Civil Court”). Respondent No. 1 stated that Respondent No. 5 (PSX), as the frontline regulator, in its written statement to the Civil Court, submitted that if there is any dispute between a TREC holder and its client, the matter shall be decided through arbitration under the PSX Regulations, therefore, there is no misinterpretation of the order of the Court.
5. Respondent No. 2 while contesting the grounds of the Appellant *inter alia* stated that it has filed an application before the Civil Court for dismissal of the civil suit filed by the Appellant as a dispute between the Appellant and Respondent No. 2 can be resolved through arbitration proceedings before the PSX, however, the same is not possible unless the civil suit is withdrawn by the Appellant.



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Respondent No. 5 while endorsing the above argument of the Respondent No. 2, contended that no action can be taken by the Respondent No. 5 as there is a restraining order in field, passed by the Hon'ble High Court of Sindh in Suit No. 925/2020, and moreover the Respondent No. 2 is not sharing any information with the PSX. As far as Respondent No. 4 (CDC) is concerned, the same submitted that it is merely arrayed in the instant Appeal as a *performa* respondent.

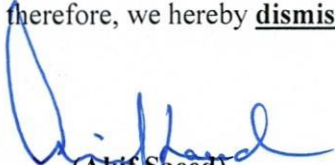
6. The Appellate Bench (the "Bench") has heard the parties and perused the record. In response to the query of the Bench regarding the status of arbitration proceedings, the Appellant's representative stated that arbitration proceedings were initiated, however, during the proceedings, Respondent No. 2 submitted fictitious documents hence, the Commission must initiate investigation proceedings against Respondent No. 2. The Appellant's representative further contended that under the circumstances, continuation of arbitration proceedings is a useless exercise because Respondent No. 2 is distorting the facts of the case through the presentation of fake documents and fabricated record.
7. The Bench has perused the Court's order dated July 19, 2021, wherein the Commission was directed to decide the matter in accordance with the law. The Bench is of the view that the relevant law is very clear and unambiguous, therefore, any dispute between a securities broker and its client is subject to determination through the arbitration mechanism provided under the PSX Rule Book, which is a compendium of PSX Regulations made in exercise of powers conferred under section 7 of the Securities Act, 2015 with the prior approval of the Commission, and in terms of the Account Opening Form, which is an underlying agreement between the parties. In view thereof, the Bench has no doubt that the Impugned Order has been passed in compliance with the Courts order and as per law. The said view is also fortified by order of the Court dated November 17, 2021 in Criminal Original No. 303-W/2021 whereby contempt original petition filed by the Appellant was disposed of. Moreover, the case laws relied upon by the Appellant are not relevant to the matter at hand and are thus distinguished. As far as the Appellant's request to modify the Impugned Order to make it time bound is concerned, the same is not tenable for the reason that in the applicable arbitration framework an in-built timeline is provided, hence, there is no need to issue a separate time-bound direction. Furthermore, in addition to the above, the Bench is of the view that generally, the presentation of any fake or fabricated document during arbitration proceedings does not vitiate the proceedings rather the arbitrator has the authority to




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determine through appropriate procedures whether the documents submitted by either party are real or fictitious.

8. In view of the foregoing, we find no reason to interfere with the merits of the Impugned Order, therefore, we hereby **dismiss** this Appeal, without any order as to costs.


(Akif Saeed)
Chairman/Commissioner


(Abdul Rehman Warraich)
Commissioner

Announced on: **01 SEP 2023**