

Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 26 of 2016

German Shepherd Dog Club of Pakistan

Appellant

Versus

1. The Commissioner (CLD), SECP
2. Mr. Imran Hussain

Respondents

Dates of hearing:

01/08/16 and

21/09/16

Present:

For Appellant:

1. Mr. Rashid Hanif
2. Mr. M. Jahanzab Butt, Advocate High Court
3. Mr. Shahid Saleem, Advocate
4. Mr. Abrar Bashir

For Respondents:

1. Mr. Muhammad Siddique, Executive Director (C&CD)
2. Mr. Mubasher Saeed Saddozai, Director (C&CD)
3. Mr. Abdul Qayyum, Joint Registrar (C&CD)
4. Syed Ahmad Hassan, Advocate Supreme Court
5. Mr. Imran Hussain
6. Mr. Atiq Akram Khan
7. Syed Muddassir Rizvi
8. Hamza Wajid

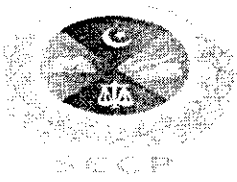
ORDER

1. This order shall dispose of appeal No. 26 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated

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29/04/16 (the Impugned Order) passed by the Respondent No.1 under section 42(4) of Companies Ordinance 1984 (the Ordinance) and the application for interim relief filed on 24/06/16.

2. Brief facts of the case are that German Shepherd Dog Club of Pakistan (the Appellant) was issued a licence under section 42 of the Ordinance on 03/04/15 in pursuance whereof a company was incorporated on 18/05/15. The licence was granted to the Appellant after considering the application of the promoter, containing relevant information as prescribed by rule 6 of the Companies (General Provisions & Forms) Rules, 1985 (the Rules) and other applicable circulars setting out requirements for making of application for grant of the licence. The application requirements *inter alia* include furnishing of a brief statement of the work already done and resume of promoters setting out particulars thereof including but not limited to their experience details particularly related to the objects of the proposed association. The application for grant of licence to the Appellant was accompanied by duly verified affidavit of the promoters, whereby they have solemnly affirmed that whatever has been stated in the application and accompanied documents is true and nothing has been concealed therein.
3. After grant of the licence and registration of Appellant as a company, the Respondent No.1 received a complaint from Mr. Imran Hussain (Respondent No.2) that a club with the name of German Shepherd Dog Club of Pakistan (the Club) is already in existence since many decades in Pakistan and it has similar object as of the Appellant. The Respondent No. 2 further stated that most of the promoters of Appellant were already members of the Club and they remained actively engaged in the activities of the Club. However, it was observed that this fact has not been disclosed while obtaining the licence under section 42 of the Ordinance and registration of company.
4. The Respondent No.1 instead of taking any instant action, forwarded the complaint to the Appellant on 15/07/15 for verification of the alleged concealment of facts while obtaining the licence under section 42 of the Ordinance. The allegation contained in the complaint were denied by the Appellant vide its written comments dated 12/08/15. However, the Respondent No.1 being dissatisfied with the response of Appellant,

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issued a Show Cause Notice (the SCN) on 23/11/15 in terms of sub-section (4) of section 42 of the Ordinance as to why the licence may not be revoked. Hearing of the SCN was held on 14/01/16 and 27/01/16. After hearing, the Respondent No.1 observed that the Appellant's promoters have not disclosed the relevant information about their membership/experience in the Club and concealed the existence of the Club. The concealed information was essential for the grant of licence. The application for the grant of licence was supported by an affidavit whereby it has been declared by the Appellant's promoters that whatever has been stated in the application and accompanied documents for grant of licence under section 42 of the Ordinance, is true and nothing has been concealed, however later on it was proved otherwise. Therefore, the Respondent No.1 in exercise of powers under section 42(4) of the Ordinance, revoked the licence granted to the Appellant and advised the registrar concerned to initiate proceedings under Section 439 of the Ordinance against the Appellant.

5. The Appellant being aggrieved by the Impugned Order, preferred an appeal before the Appellate Bench (the Bench) on the following grounds:

- i. The Respondent No.1 completely overlooked the serious doubts raised by the Appellant as to the *locus standi* of the Respondent No. 2 to file complaint.
- ii. The Respondent No. 2 sought only the cancellation / revocation of the licence of the Appellant, however the Respondent No. 1 in addition revocation of licence, advised the concerned registrar to initiate proceedings under section 439 of the Ordinance, which is in violation of section 42(4) of the Ordinance.
- iii. The Respondent No. 1 ignored the fact that the Respondent No. 2 in para 1 of the complaint stated that the Club was formed and registered in 1980 with the Kennel Club of Pakistan (the KCP), however the KCP certificate of registration itself was issued on 23/11/83. The Respondent No. 1 failed to note that how an entity established in 1983 can affiliate any other entity in 1980.
- iv. The Respondent No. 1 overlooked the certificate issued by Colonel (Retd.) K. M. Roy because he is neither current president nor authorized to issue certificate on behalf of KCP and it is clear from the covering letter dated 30/07/12 and documents pertaining to the annual list of managing body for the year 2011-12 of

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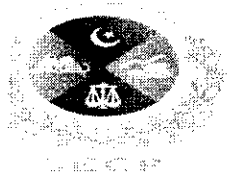
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the KCP, filed under section 4 of the Societies Registration Act, 1860 before the Registrar Joint Stock Companies, Rawalpindi.

- v. The Respondent No. 1 while passing the Impugned Order has ignored the fact that a suit titled Lt. Col (R) Faiz Mukhtar vs. Col (R) K. M. Roy and others is pending before a District Court in Lahore and an injunctive order dated 21/10/13 has been passed by the Court against the defendants Colonel (Retd) K. M. Roy and Mr. Imran Hussain. The suit pertains to illegal infringement of the logo of KCP by the Defendants.
- vi. The Respondent No. 1 has ignored the fact that during the SCN proceedings a company with the name of G.S.D.C.P (Private) Limited was fraudulently registered with the SECP. The name of fraudulently registered company is the abbreviation of the Appellant's name. In this regard, the Appellant filed a request for direction under section 38 of the Ordinance for change of G.S.D.C.P (Private) Limited name, however, this request is still pending.
- vii. The Respondent No. 1 failed to note that the Club has no NTN or any exemption from the tax authorities and is illegally transmitting foreign exchange. The Club is operating bank accounts without providing legal documentation of its formation and no such document was provided to the Respondent No. 1 to verify how and under which law the Club was formed.

6. The Respondent No. 1 has rebutted the grounds of appeal in the following manner:

- i. The Corresponding paragraph is incorrect as sufficient material was on record to decide the matter.
- ii. The licence of Appellant was revoked due to misstatement and concealment of facts. Further, the objection of the Appellant with respect to initiation of proceedings under section 439 of the Ordinance is also not valid because the company was registered as a consequence of licence. Therefore, revocation of licence and initiation of proceedings under section 439 of the Ordinance are in accordance with law.
- iii. No Comments.
- iv. No Comments for want of knowledge.



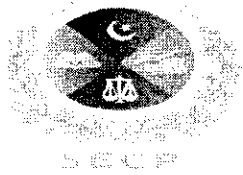
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- v. No Comments for want of knowledge.
 - vi. The Appellant filed a request/application for direction under section 38 of the Ordinance, for another company G.S.D.C.P (Pvt.) Limited incorporated on 27/08/15, however, since the fate of Appellant was pending adjudication before the Respondent No.1 therefore, no decision was made.
 - vii. The Impugned Order was passed after considering all relevant facts and documents.
7. The Respondent No. 2 has rebutted the grounds of appeal in the following manner:
- i. The status of the Club has been considered by the Respondent No. 1 whilst passing the Impugned Order, particularly in paragraphs 3, 4 and 6 of the Impugned Order.
 - ii. The Respondent No. 1 has correctly examined all the material on record and has passed the Impugned Order.
 - iii. The KCP was under incorporation at the time the Club became its member and subsequently, affiliation/ registration of the Club was formalized.
 - iv. Col K.M Roy is the elected President of the KCP and the documents referred by the Appellant are vehemently denied. The KCP elections were held under a Commissioner, Justice (R) Jamshaid Rehmatullah, who has certified Col. K.M. Roy as the President of the KCP, which fact has also been recognized by the FCI and Kennel Club England.
 - v. The Appellant has twisted the facts in order to conceal its own illegalities and it is respectfully submitted that the referred court proceedings are in relation to the logo of KCP and are irrelevant to the proceedings at hand or the complaint.
 - vi. That the contents of paragraph are vehemently denied.
 - vii. The Respondent No.2 has clarified its position as requested and the same were considered by the Respondent No.1.
8. This appeal was filed on 30/05/16 and after removal of deficiencies it was registered on 15/06/16. Thereafter, the Appellant also filed an application for interim relief on 24/06/16 whereby it was prayed that during the pendency of appeal, the operation of

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the Impugned Order may be suspended. The hearing of the appeal was fixed on 01/08/16 and the Appellant and Respondents were intimated through hearing notices dated 21/07/16. The Appellant Counsel responded to the hearing notice vide letter dated 26/07/16 and informed that due to non-fixation of appeal/application and issuance of two letters dated 08/06/16 and 12/07/16, the matter has been challenged before the Islamabad High Court (the Court) through a writ petition No. 2849 of 2016 and the Court vide its order dated 22/07/16 has suspended the operation of the letters dated 08/06/16 and 12/07/16. The Appellant Counsel requested to stay the proceedings of the Bench on the ground that matter being *sub judice*. The Bench has carefully perused the Court order dated 22/07/16 and observed that there is no restraining order for the Bench. Therefore the Appellant Counsel was advised vide email dated 29/07/16 to appear and plead the appeal on the date fixed for hearing before the Bench. On 01/08/16 Mr. Shahid Saleem Advocate and Mr. M. Jahanzab Butt Advocate (the Counsels) appeared on behalf of Appellant and argued that the matter is pending before the Court therefore, proceedings before the Bench should be stayed. The Bench informed the Counsels that the Court has not stayed the proceeding of the Bench and most importantly the Impugned Order has not been challenged by the Appellant before the Court, however despite ample opportunities they refused to argue the case. On the other hand, the Respondent No. 1 and Respondent No. 2 argued their case at length, however in the interest of justice the Bench decided to give another opportunity of hearing to the Appellant, therefore appeal was re-fixed for hearing on 21/09/16 and meanwhile the writ petition no. 2849 of 2016 was disposed of by the Court vide order dated 29/09/16 with the direction to decide the instant appeal within four weeks of receipt of Court order.

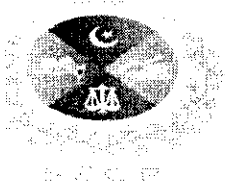
9. We have heard the parties i.e. Appellant and Respondents and pursued the record of the case. The Appellant and Respondents representation was as stated above.

10. On 21/09/16, the Appellant Counsel appeared and stated that the Respondent No.1 has accepted a frivolous complaint of a person who has no locus standi and passed the Impugned Order. [Emphasis Added] The Appellant Counsel argued that the Respondent No.1 has not only revoked the licence of Appellant but also ordered

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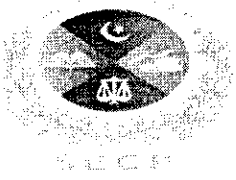
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initiation of proceedings under section 439 of the Ordinance, which is not permitted under section 42(4) of the Ordinance. The Appellant Counsel also challenged the truthfulness of the certificate of registration issued to the Club and status of Colonel (Retd) K. M. Roy who issued that certificate of registration, being president of KCP. The Appellant Counsel also agitated the pending issue of registration of a company with the name of G.S.D.C.P (Private) Limited which is the abbreviation of the Appellant's name. During the hearing the Appellant Counsel requested to allow submission of rejoinder in response of Respondent No.2 written comments, which was allowed by the Bench.

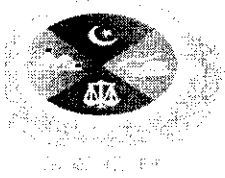
11. The Appellant Counsel filed a rejoinder through email on 07/10/16 and postal copy was received on 10/10/16 wherein grounds of memorandum of appeal, arguments during the hearing before the Bench were reproduced. However, the Counsel raised a new objection that the Club is an unregistered entity hence it is barred to initiate any legal proceedings under section 69 of partnership Act, 1932. [Emphasis Added] Reliance in this regard was placed on PLD 1966 SC 328.
12. The Respondent No.1 argued that the licence of Appellant was revoked on the basis of misstatement and concealment of facts by the promoters of Appellant in the application for grant of licence. Further, the objection of the Appellant with respect to initiation of proceedings under section 439 of the Ordinance was also denied because Appellant was registered as company in consequence of grant of licence, therefore in case of revocation licence, initiation of proceedings under section 439 of the Ordinance is in accordance with law. The Respondent No.1 further stated that issue with respect to direction under section 38 of the Ordinance, to another company G.S.D.C.P (Pvt.) Limited remained pending due to issue in hand.
13. The Counsel of Respondent No. 2 argued and clarified the status of Respondent No.2 and one Col K.M Roy. The Counsel of Respondent No.2 has stated that the Respondent No.1 has passed the Impugned Order in accordance with law and there is no illegality in it, therefore requested to dismiss the appeal.



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14. The Appellant has built its whole case on the issue of *locus standi* of the Respondent No.2, however it not important factor to decide the fate of this appeal. As matter of fact the complaint lodged by the Respondent No.2 was just a source of information which put into motion the regulatory character of Securities and Exchange Commission of Pakistan (the Commission). Therefore, we want to make it clear that, to adjudicate upon the alleged regulatory violations, the Bench is not supposed to determine or question the *locus standi* of the Respondent No.2 as it does not come under the ambit of Respondent No.1 or the Bench. The Commission being a regulator of corporate sector has right to have true and accurate information with respect to its regulatees (the Appellant), therefore, the Bench shall focus whether the Appellant has disclosed the required information to get the licence and registration of company or has concealed the information, as alleged in the complaint.
15. The arguments of the Appellant Counsel and Appellant's pleadings contained a narration that the Respondent No.1 has accepted the complaint of Respondent No. 2 and passed the Impugned Order. As matter of fact, the Appellant has misconceived the proceedings against it, the Impugned Order has not been passed on the basis of complaint filed by the Respondent No.2, rather said complaint was forwarded to the Appellant for verification and on the basis of facts/violations noticed from the Appellant's comments, a SCN was issued, and thereafter the Impugned Order was passed. Therefore, the Bench rejects the assertion of Appellant that the Respondent No.1 has accepted the complaint and passed the Impugned Order.
16. In furtherance of arguments with respect to *locus standi* of the Respondent No.2, the Appellant Counsel has taken plea of bar contained in section 69 of the Partnership Act, 1932 which prohibits unregistered firms/entities to initiate legal proceedings. This is not a valid argument because proceedings against the Appellant were never initiated by or on behalf of the Respondent No.2, rather it was purely a regulatory action, therefore section 69 of the Partnership Act, 1932 puts no bar on the proceedings before the Respondent No.1 or the Bench.

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17. The promoters of the Appellant were required to made disclosure of their prior experience as per rule 6 of Companies (General Provisions and Forms) Rules, 1985 (the Rules), however they failed to do so. The information related to experience and background of Appellant promoters was directly relevant to decide the grant or refusal of the licence. However, no disclosure was made about the promoters experience and participation in the activities of the Club. It is undisputed fact that the majority of the Appellant's promoters were the members of the Club and this fact has been admitted by the CEO of the Appellant vide letter dated 12/08/16 (Para 1 at page 4). The rejoinder submitted before the Bench also contained the admission of temporary membership of Appellant CEO with the Club.
18. The Respondent No.1 while passing the Impugned Order, has not only revoked the licence granted to the Appellant under section 42 of the Ordinance but also advised the concerned registrar to initiate proceeding under section 439 of the Ordinance. Revocation of licence and initiation of proceedings under section 439 are two different procedures and there is need to deliberate upon and draw a distinction between both.
19. As per settled case laws of apex courts, licence is a privilege or permission granted to the licensee and the person who granted the licence may revoke it for any reason, even before the time and date fixed for its expiration. However, prior to revocation of licence, licensor is required to give an opportunity of hearing to the licensee. In present case due opportunity of representation and personal hearing was given to the Appellant, therefore, without any doubt we may say that the mechanism provided in section 42 (4) of the Ordinance is in line with the verdicts of courts and Respondent No.1 has committed no illegality or irregularity by revoking the licence.
20. Section 439 of the Ordinance sets out a different procedure whereby the Registrar may strike off the name of a defunct company from the register of companies. This section could only be applied in the following two situations;
- where the company is not carrying on business or is not in operation, or
 - where a company is being wound up

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21. In view of the facts of the case, section 439 of the Ordinance has no relevance to adjudicate the issue of concealment of facts while obtaining the licence under section 42 of the Ordinance. Therefore, we believe that Appellant should have been dealt only under the mechanism provided under section 42 of the Ordinance and as per the contents of the SCN dated 23/11/15. After revocation of license, the Respondent No.1 was required to proceed in accordance with the section 42(4) of the Ordinance which authorizes the Registrar to change the status of association whose licence has been revoked and he shall enter the word or words "Limited", "(Private) Limited", or "(Guarantee) Limited", as the case may be, at the end of the name of the association.
22. After revocation of licence under section 42, company cannot continue its operation without making required amendments in constituent documents. Furthermore, it is the matter of choice for the company whose status has been changed whether to continue with new status and new business or opt for winding up etc. Therefore, in the instant case, if the Appellant decides to continue its operation by adopting new status, object and amended constituent documents, then the Respondent No.1 shall be required to decide the fate of the newly formed company G.S.D.C.P (Private) Limited under section 38 of the Ordinance.
23. In view of above facts and analysis it is quite clear that the majority of Appellant promoters have concealed their working experience in the Club. In this regard, status of their membership, whether permanent or temporary, does not make any difference. The licence has been obtained by the concealment of facts, therefore, the Respondent No.1 has rightly passed the order for revocation of the licence granted to the Appellant.
24. In view of the above discussion, there is no doubt that the Respondent No.1 has rightly revoked the licence granted to the Appellant under section 42 of the Ordinance, therefore we hereby maintain the Impugned Order to the extent of revocation of licence; however, we remand the Impugned Order to the extent of initiation of proceedings against the Appellant under section 439 of the Ordinance and direct the Respondent No.1 to decide this issue keeping in view the observation

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contained in para 18 to 22 of this order. The Appeal is disposed of, with no order as to cost.

(**Fida Hussain Samoo**)
Commissioner (Insurance)

(**Zafar Abdullah**)
Commissioner (SCD)

Announced on: **04 NOV 2016**