



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 28 of 2011

Muhammad Inam

...Appellant

versus

SECP and 2 others

...Respondents

For the Appellant: Ch. Imran Arshad Naro, Advocate

For the Respondent Nos. 1 and 2:

1. Mr. Hammad Javed, Additional Director, Adjudication-I, SECP
2. Mr. Raja Farukh Ahmad, Additional Joint Director, Adjudication-I, SECP
3. Mr. Muhammad Faisal, Assistant Director, Adjudication-I, SECP

For the Respondent No. 3: *Nemo*

Date of hearing: October 12, 2023

ORDER

1. This Order shall dispose of Appeal No. 28 of 2011 filed by Mr. Muhammad Inam (the "Appellant"), partner M/s. Ravi Oil Cake Traders (the "Firm"), under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated January 05, 2011 (the "Impugned Order") passed by the Joint Director (SROD), SECP (the "Respondent No. 2") under section 22 of the Securities and Exchange Ordinance, 1969 (the "Repealed Ordinance").
2. The brief facts of the case are that a complaint dated March 03, 2010 (along with documents) was filed by Respondent No. 3 before the Securities and Exchange Commission of Pakistan (the "Commission") against the Firm, alleging its involvement in listing/transacting standardized contract lots of Oil Seed



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Cake with the characteristics of 'Commodity Futures Contracts' as defined in section 2(cd) read with section 3(1) of the Repealed Ordinance. Respondent No. 3, in addition to the documentary evidence, also brought to the notice of the Commission that a Writ Petition No. 19277/2009, wherein Mr. Muhammad Latif (partner in the Firm) was a petitioner, was disposed of by the Hon'ble Lahore High Court, Lahore wherein Mr. Muhammad Latif (partner in the Firm) clearly and categorically admitted that he was a director of the Firm and that the same is doing business of oil seed cake in the market. The Respondent No. 3 stated that Mr. Muhammad Latif (partner in the Firm), in the aforesaid writ petition, also admitted that the Firm provides the facility of future trading of oil seed cake to its customers and is doing business for almost four years and has earned a very good reputation in the market and the Firm obtained the signatures of all of its customers on the agreements, who engaged in the business of future trading. In view thereof, the Commission issued a Prohibitory Order/Show Cause Notice dated April 26, 2010 (the "SCN") under section 20 of the Repealed Ordinance *inter alia* against the Appellant with the direction to refrain from dealing/trading in commodity futures and all ancillary transactions on behalf of general investors/traders, and was also called upon to clarify in writing as to why proceedings under section 22 of the Repealed Ordinance for the violation of section 3(1) of the *ibid* not be initiated. Various hearing opportunities were provided and the Appellant, initially through a letter, stated that he has no concern or relationship with the Firm. After multiple hearing opportunities, final opportunity of hearing was provided, however, no one appeared on behalf of the Appellant. Respondent No. 2 while taking into consideration the material available on record, concluded that the Appellant has willfully and blatantly violated section 3(1) of the Repealed Ordinance, and thus vide Impugned Order imposed a penalty of 5,000,000/- on the Appellant.

3. The Counsel for the Appellant, at the outset, stated that the SCN was without jurisdiction as the Appellant or the Firm does not fall within the scope of clause (cc) of section 2(1) of the Repealed Ordinance where 'Commodity Exchange' means a company. He further submitted that the Respondent erred in passing the Impugned Order against the Appellant as section 3(1) of the Repealed Ordinance prohibits the operation of an 'Exchange', as defined in clause (da) of section 2(1) of the Repealed Ordinance, without registration. According to the Appellant, this, in no manner can be extended to include the Appellant within the said definition.



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4. On merits, the Counsel for the Appellant submitted that the Impugned Order has been passed on the basis of pleadings in Writ Petition No. 19277/2009 which was in fact filed by Mr. Muhammad Latif (partner in the Firm) against a third person (Respondent No. 3) having no nexus with the matter at hand. The Counsel for the Appellant argued that the Appellant was not a party in the above-referred petition and thus nothing in the pleadings in the said writ petition can be attributed to the Appellant. The Counsel for the Appellant argued that it is a matter of record that the Firm, wherein the Appellant was a partner, was dissolved with effect from January 23, 2010 as evident from Form D dated February 06, 2010 issued by the Registrar of Firm, Faisalabad District. He further contended that the complaint was filed with the Commission on March 03, 2010 i.e. post dissolution of the Firm and thus the Impugned Order is liable to be set-aside on that score alone. With regards to the 'Sharait-Nama', the Counsel for the Appellant vehemently denied the same having been issued by the Appellant or the Firm. He submitted that the purported standardized contract does not bear signatures of the Appellant, nor its contents signify, anywhere in the document that it is being used by the Appellant for the purpose of entering into any contractual obligation. The Counsel for the Appellant argued that SCN proceedings were initiated against the Appellant on the basis of a frivolous complaint as the Complainant (Respondent No. 3) never appeared before the Commission during the SCN proceedings and still the Impugned Order was passed against the Appellant without any evidence against the Appellant. While summing his arguments, the Counsel contended that the SCN and Impugned Order suffer from material irregularity in that it considers the business in operation while the Firm stood dissolved at the time. The Counsel contends that trading of the future contracts was never carried out by the Appellant and Impugned Order has been passed in a slipshod manner on the basis of some misconceived notion, without even affording an opportunity of hearing to the Appellant, and is thus liable to be set-aside.
5. Controverting the arguments of the Appellant, the Respondent Nos. 1 and 2 vehemently denied the allegation that hearing opportunity was not provided to the Appellant before passing the Impugned Order. In support of the said contention, the Respondent No. 2 has relied on the hearing notices issued to the Appellant from time to time, and responses received from the Appellant. The Respondent Nos. 1 and 2 submitted that clauses of the 'Sharait-Nama' clearly show that the Firm was acting as an 'Exchange' without registration under the Repealed Ordinance and was, thus, rightly penalised under the Impugned Ordinance.



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6. The Appellate Bench (the “Bench”) has heard the parties. Perusal of the record suggests that notices of hearings in the SCN proceedings were issued to the Appellant which were never returned undelivered and the Appellant also acknowledged the receipt of notices and even sought adjournment as well on one occasion. This clearly suggests that ample hearing opportunities were granted to the Appellant before passing the Impugned Order and for that reason the Appellant’s objection is not-sustainable. Moreover, the contention of the Appellant that the same is not liable for the acts of Firm after its dissolution is correct only where a public notice of dissolution is given in terms of the Partnership Act, 1932. However, the contention of the Appellant that a public notice of dissolution, absolves a partner of a firm from any liability for acts committed prior to dissolution is misconstrued. For ease of reference, section 45 of the Partnership Act, 1932 is reproduced hereunder,

“45. Liability for acts of partners done after dissolution. (1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution: ...”

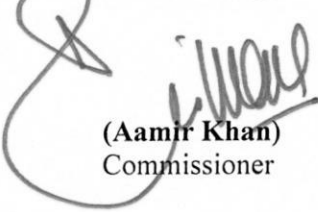
7. After hearing both the parties and perusing the record, the Bench is of the view that the evidence relied upon by Respondent No. 2 is inadequate for arriving at the conclusion that the Appellant was operating an ‘Exchange’ for trading of futures contracts. Respondent No. 2 interpreted the contents of the petition filed by Mr. Muhammad Latif (partner in the Firm) before the Hon’ble Lahore High Court, Lahore in a certain manner and treated it as evidence that the Appellant was running such an ‘Exchange’. Moreover, Respondent No. 2 was unable to interrogate the Appellant or find sufficient evidence in terms of any witnesses, bank statements or any other document to support his conclusion as per the Impugned Order. The standardized document provided by the Respondent No. 2, purported to be the form/receipt used by the Appellant as record for futures contract, is not a reliable evidence. The Appellant denied any association with the said form/receipt. The document did not mention any particulars of a trade or parties involved or any entity acting as an ‘Exchange’.



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8. In view of the above, the Impugned Order is hereby *set-aside*. Accordingly, the instant Appeal is **accepted** without any order to costs.

Additional note appended


(Aamir Khan)
Commissioner

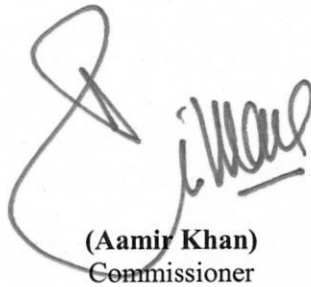

(Abdul Rehman Warraich)
Commissioner

Announced on: 18 MAR 2024



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Aamir Khan, Commissioner. – In addition to the reasons provided in the main order, I am of the view that the SCN, in so far as it relates to the Appellant and the consequent order suffers from serious defects. The level of scrutiny, application of mind, and due diligence expected from a public sector functionary is clearly lacking. Operating as an ‘Exchange’ without registration in terms of the Repealed Ordinance is different from undertaking day to day activity in connection with the specific business which in the instant case was trading of oil cakes by the Firm. Moreover, the Respondent, apart from a template receipt, failed to produce any document or evidence on the basis of which it could be established that the Appellant, as a partner in the Firm, was involved in the trading of futures contracts. Instead sole reliance for issuance of the SCN was a complaint, and the Complainant never appeared in any of the hearings or shared his personal testimony to pursue this matter. Thus, the department must reflect on this Order, and ensure that cognizance of a matter must be backed by sound interpretation of law and corroborated with reasonable and reliable evidence; not on the basis of surmises and conjectures.



(Aamir Khan)
Commissioner