

# Securities and Exchange Commission of Pakistan

## **BEFORE APPELLATE BENCH**

In the matter of

**Appeal No. 28 of 2017**

Progressive Friends Foundation (Guarantee) Limited

Appellant

Versus

Mubasher Saeed Saddozai, Director-CCD, SECP.

Respondent

**Date of hearing:**

21/02/19

**Present:**

For Appellant:

Agha Mujeeb Ahmed Khan

For Respondent:

- i. Mubasher Saeed, Director (CLD-CCD)
- ii. Anas Noman, Additional Director, (CLD-CCD)

## **ORDER**

1. This Order is in the matter of Appeal No. 28 of 2017 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the Order dated 06/03/17 (the Impugned Order) passed by the Director-CCD (the Respondent) under Rule 35 of the Companies (General Provisions and Forms) Rules 1985 (the Rules) read with Section 506(2) of the Companies Ordinance, 1984 (the Ordinance).
2. Brief facts of the case are that the Progressive Friends Foundation (Guarantee) Limited (the Appellant) had violated the condition imposed under Rule 6(4) of the Rules whereby it was required to obtain prior permission of the Securities and Exchange Commission of Pakistan (the Commission) if any of its members intend to exit. During the scrutiny of revised Form B and 29 for the year 2012 (Submitted on 24/6/16), the Respondent observed that one of the members of the Appellant namely Agha Mujeeb Ahmed Khan had exited without obtaining the prior approval of

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the Commission therefore, a Show Cause Notice dated 31/01/17 (the SCN) was issued to the Appellant and its directors/ officers. Hearing in the matter was held on 13/02/17, which was attended by Agha Mujeeb Ahmed Khan. The alleged violation was established and apparent therefore, the Respondent imposed a fine of Rs. 50,000/- on the Appellant and warned its CEO and directors to be careful in future.

3. The Appellant has challenged the Impugned Order before the Appellate Bench (the Bench) *inter alia* on the grounds that proper opportunity of hearing was not provided and the Respondent had failed to establish as to which particular clause of Rule 6(4) of the Rules had been violated. The Respondent has rebutted the grounds of Appeal through written comments.
4. The Bench has perused the record of Appeal with the able assistance of the parties. Appellant's plea with regard to non-provision of proper hearing opportunity is not tenable because after issuance of the SCN, a reasonable time to submit written comments was provided and Appellant was given opportunity of hearing. Accordingly, Appellant's representative Agha Mujeeb Ahmed Khan attended the hearing dated February 13, 2017.
5. Appellant's other plea that the Respondent had failed to establish, which particular provision had been violated, is without any merit. The SCN was issued under Rule 6 read with the Rule 35 of the Rules and Section 506(2) of the Ordinance. The Rule 6(4) of the Rules not only imposes particular conditions for a licence but also imposes conditions of Section 42 of the Ordinance and Rule 6(3) of the Rules. Therefore, Rule 6, sub Rule 3 and 4 of the Rules completely implicate Appellant in violation. For ready reference Rule 6(3) and Rule 6(4) of the Rules are reproduced below;

***"6. Application for grant of a licence under section 42 in case of charitable and other associations.— (3) The Commission on being satisfied, after such enquiry and after obtaining such further information as it may consider necessary, that it shall be in the public interest so to do, may grant the licence applied for subject to such conditions as it may deem fit to impose."***

**Emphasis Added**

***"(4) In particular and without prejudice to the generality of the power of the Commission under section 42 and sub-rule (3), a licence shall be granted subject, besides others, to the following conditions, namely"***

**Emphasis Added**






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6. Rule 6(3) of the Rules empower the Respondent to impose "such conditions as it may deem fit" whereas Rule 6(4) of the Rules impose additional conditions for a licence. In view of Rule 6(4) of the Rules conditions mentioned under Section 42 of the Ordinance and Rule 6(3) of the Rules are applicable on the Appellant. "*Besides others*" mentioned in Rule 6(4) of the Rules also recognize that the Respondent is empowered to impose further conditions to issue a licence.
7. The Bench has perused the copies of licence granted and renewed. Clause 3 of the licence No. 520 of 2010 and licence No. 1044 of 2017 states that "*this licence is granted subject to the conditions as mentioned overleaf*". Condition six of licence No. 520 of 2010 and condition four of the licence No. 1044 of 2017 clearly states that the subscriber to the memorandum of association and articles of association cannot leave the Company without obtaining prior approval of the Commission.
8. The revised Form B and 29 for the year 2012 has clearly established the violation committed by the Appellant whereby Mr. Agha Mujeeb Ahmed Khan left the Appellant without obtaining prior permission of the Commission. In the circumstances, the Bench find no reasons to interfere with the merits of the Impugned Order, therefore, we hereby dismiss this Appeal without any order as to cost.



(Shauzab Ali)  
Commissioner (SMD)



(Aamir Ali Khan)  
Commissioner (SCD-PRDD)

Announced on: 26 MAR 2019