



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 28 of 2022

1. Mr. Shaukat Ullah Khan, CEO
2. Ms. Bakhmal Bibi, Director

Appellants

Versus

The Executive Director (Adjudication-II) SECP, Islamabad

Respondent

Date of hearing:

March 30, 2023

Present:

For the Appellants:

Ms. Sadia Javed, Advocate High Court

For the Respondent:

1. Mr. Muhammad Farooq Bhatti, Additional Director (Adjudication-II)
2. Mr. Hassnain Raza, Management Executive (Adjudication-II)

ORDER

1. This Order shall dispose of Appeal No. 28 of 2022 filed by Mr. Shaukat Ullah Khan and Ms. Bakhmal Bibi (the Appellants) against Order dated March 25, 2022 (Impugned Order) passed by the Executive Director Adjudication-II, SECP (the Respondent) under Section 172 of the Companies Act, 2017 (Act) and Section 500 of the Act.
2. The brief facts of the case are that Mr. Shaukat Ullah Khan (Appellant No. 1) being the chief executive, and whereas Ms. Bakhmal Bibi (Appellant No. 2) as director of six companies were involved in deposit-taking from the public in violation of Section 84 of the Act. Appellant No. 1 and



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Appellant No. 2 have shareholdings of 99.9% and 0.1%, respectively in the following six companies:

S.No.	Name of Company	Incorporation Date
1.	Shaukat Marwat Estates & Builders (Pvt.) Limited	November 13, 2020
2.	Shaukat Marwat Imports /Exports (Pvt.) Limited	November 16, 2020
3.	Shaukat Marwat Group of Companies (Pvt.) Limited	November 20, 2020
4.	Shaukat Marwat Restaurants (Pvt.) Limited	November 23, 2020
5.	Shaukat Marwat Transports (Pvt.) Limited	November 13, 2020
6.	Shaukat Marwat Hotels (Pvt.) Limited	November 18, 2020

3. In view of the above, the show-cause notice dated July 13, 2021 was issued under Section 172 of the Act (1st SCN). The reply to the 1st SCN was submitted by the Appellants on August 30, 2021. A hearing in the matter was held on September 2, 2021, however, in view of the findings of the investigation report dated November 29, 2021, the Respondent issued another show-cause notice dated January 28 2022 under Section 500 of the Act (2nd SCN). The 2nd SCN was issued for violation of object clause 3 of the memorandum of association of the companies mentioned hereinabove. Thereafter, the case was fixed for hearing on February 23, 2022. The Respondent concluded the SCNs proceedings and disqualified Appellant No. 1 and Appellant No. 2 to become directors of any company for a period of 5 years under clause (d) and (h) of Section 172(1) of the Act. Furthermore, a penalty of Rs. 30 million on Appellant No. 1 and Rs. 1 million on Appellant No. 2 was imposed under Section 500 of the Act for violation of Section 84(1) of the Act read with clause 3 of the memorandum of association of the companies.
4. The Appellants filed this Appeal *inter alia* on the grounds that no complaint against the Appellants is on record and that no deposit has been received from the public. The Appellants stated that they



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had made investments through personal savings and contributions of friends and received funds as loan investments after making proper agreements/contracts. The Appellants stated that all show-cause notices were duly replied to by the Appellants and accordingly, all hearings were attended either by the Appellants or by their representatives and that they have always extended their cooperation with the Respondent. The Appellants pleaded that penalties imposed by the Respondent through the Impugned Order and three other orders passed under Section 84(2) of the Act are very harsh and are not commensurate to the amount of money received.

5. The Respondent rebutted the Appellants' grounds of appeal and stated that for initiation of any proceedings under Section 84 of the Act, receipt of a complaint is not necessary but rather the Commission may initiate legal proceedings under Section 84 of the Act against a company on its own. It was contended that the three companies had raised/accepted deposits, in violation of Section 84(1) of the Act, hence Appellate No. 1 and Appellant No. 2 had been penalized and disqualified from becoming directors of any company for a period of five years.
6. The Appellate Bench (the Bench) has heard the parties and perused the record. As per the record, the Respondent had passed three separate orders dated March 18, 2022 for violation of Section 84(2) of the Act against three companies, Appellant No. 1 and Appellant No. 2. In view thereof, as a consequential outcome, the Respondent has disqualified Appellant No. 1 and Appellant No. 2 to become directors in companies for a period of five years, and for violation of Section 84(1) of the Act read with clause 3 of the memorandum of association, penalty was imposed on Appellate No. 1 and Appellant No. 2. The Appellants' representatives' stance that funds should not be treated as deposit-taking from the general public because these were received from sponsors' friends and family as loan investment, is a misconceived notion and ignorance of the fundamentals of company law. The Bench is of the view that the scheme of law recognizes only two ways of investing in a company- either as equity (shares) investment or investment through bonds/debentures, as well as a loan to the company by the existing directors via a separate and independent agreement. The Bench has no doubt that any agreement with friends and family to seek investments coupled with a rate of return is purely a banking business, which is not permissible and such an investment arrangement does not qualify as equity or other investments in a company. The Appellants' representative argument that no case is made out, as there was not a single complaint against the Appellants is not a



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plausible reason to exonerate the Appellants from the legal consequences of illegal deposit-taking. The Securities and Exchange Commission of Pakistan (the Commission) has a prime responsibility to ensure smooth, transparent, and a well-regulated *corporate* sector in Pakistan, and as a regulator, it is empowered under the law and at its own motion to proceed against the persons who commit violations under the laws governed by it. As per law, the Commission has the power to initiate proceedings under Section 84 of the Act, regardless of any complaint. Furthermore, deposit-taking is *ultra vires* to the object clause of the companies mentioned at serial 1 to 3 in para two above. Therefore, deposit-taking, even from friends and family is illegal.

7. 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 cost.

(Abdul Rehman Warriach)
Commissioner

(Akif Saeed)
Chairman/Commissioner

Announced on:

04 MAY 2023