

Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 29 of 2006

Mr. Mohammad Iqbal Khawaja

...Appellant

Versus

1. Mr. Imtiaz Haider, Director (SMD), SECP
2. Sheikh Abdul Jabbar

...Respondents

Date of hearing:

16/09/15

Present:

For Appellant:

- i. Mr. Omer Iqbal
- ii. Mr. Asad Ullah Javied, Advocate High Court

For Respondents:

- i. Mr. Nasir Askar, Director (SMD)
- ii. Ms. Nazish Zubair, Deputy Director (SMD)
(On behalf of Respondent No.1)
- iii. Nemo (on behalf of Respondent No.2)

ORDER

1. This order shall dispose of Appeal No. 29 of 2006 filed under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 07/02/06 (the Impugned Order) passed by the Respondent No.1.

Appellate Bench No. I

Appeal No. 29 of 2006

Page 1 of 5



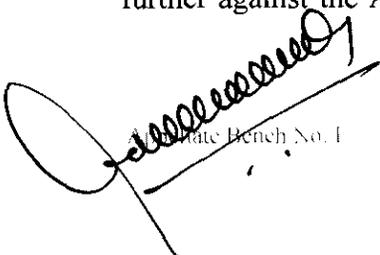
Securities and Exchange Commission of Pakistan

2. The titled appeal was previously fixed on 11/10/11, 15/11/11, 11/01/12, 01/01/15 and 09/03/15. On last hearing date i.e. 09/03/15 it was dismissed vide order dated 16/03/15 for non-appearance of the Appellant. The Appellant being aggrieved from the dismissal order filed a review application on the ground that hearing notice dated 09/03/15 was not received by him; therefore in the interest of justice titled appeal may be restored for regular hearing. The Bench after hearing the Appellant and upon satisfaction of the ground taken for restoration, acceded with the prayer of restoration.
3. Brief facts of the case are that nine complaints were filed by the investors against the Appellant (a member of Lahore Stock Exchange). The Respondent No.1 ordered for enquiry under Section 21 of the Securities and Exchange Ordinance 1969 (the Ordinance) and appointed Mr. Ahmad Noman General Manager Islamabad Stock Exchange as enquiry officer to ascertain claims of the complainant (Respondent No.2) and identify any violations of applicable provisions. After completion of enquiry proceedings, the Respondent No.1 fixed the matter for hearing. The Respondent No.1 heard the parties and passed the Impugned Order. The Respondent No.1 not only considered the contents of enquiry report, he also independently applied his mind while considering the relevant documents and record. The Respondent No.1 brief findings to the extent of Respondent No.2 were as follows;
 - Complainant No.3 (Sheikh Abdul Jabbar): The Respondent No.1 directed the Appellant to pay Rs.308,325 to the complainant as sale proceeds.
4. The Appellant has challenged the Impugned Order and preferred the instant appeal on the following grounds:
 - a. The Respondent No.1 order to hold enquiry under Section 21 of the Ordinance is against the law as the matter between the parties was of civil nature, therefore the Respondent No.1 has no jurisdiction to entertain the matter.



Securities and Exchange Commission of Pakistan

- b. No violation of any law was attributed to the Appellant, therefore order to pay the claim of Respondent No.2 is not sustainable.
 - c. The claim of the Respondent No.2 is time-barred under Section 23(6) of the Ordinance.
 - d. The Appellant has not admitted the claim of the Respondent No.2 before the enquiry officer or Respondent No.1, therefore assertion made and conclusion drawn by the Respondent No.1 with respect to quantum of claim and admission by the Appellant in pare 5(b) and (d) of the Impugned Order is not acceptable.
5. The Respondent No.1 denied and rebutted the grounds of appeals and prayed to dismiss the appeals while considering the arguments and grounds stated in the Impugned Order. The Respondent No.1 rebutted the ground of appeals in the following manner:
- a. The order to conduct enquiry on the subject matter and Impugned Order passed by the Respondent No. 1 is in accordance with the laws, enactments and regulatory ambit.
 - b. The Respondent No.1 has passed the Impugned Order by keeping in view the relevant facts and prevailing laws.
 - c. The claim of the Respondent No.2 is not time barred; therefore the Appellant is liable to pay him in accordance with the Impugned Order.
 - d. The Appellant has admitted claim of Respondent No.2 before the enquiry officer and stated that he does not have enough money to pay according to his claim.
6. We have heard the parties at length and perused the relevant record with the assistance of the parties. Appellant and Respondent No.1 were represented as stated above however no one appeared on behalf of other Respondent No.2.
7. During the hearing the Appellant Counsel (the Counsel) apprised the Appellate Bench that claim of the Respondent has been settled amicably, therefore he did not want to proceed further against the Appellant. The Counsel also highlighted that since filing of the appeal


Appellate Bench No. 1

Appeal No. 29 of 2006



Page 3 of 5



Securities and Exchange Commission of Pakistan

the Respondent No.2 never appeared before the Bench, which clearly indicates that the his claim has been settled, however during the hearing the Appellant has not provided any documentary evidence in this regard. Thereafter through email dated 30/09/15 the Counsel was asked to provide the proof of claim settlement with Respondent No.2, however till to date no evidence has been provided in this regard.

8. The Counsel has also raised a legal objection regarding the jurisdiction of the Respondent No.1 whereby he took cognizance and ordered enquiry proceedings on complainants received against the Appellant and passed the Impugned Order. The Counsel argued that matter between Appellant and Respondent No.2 was of civil nature, therefore only civil court has the jurisdiction to decide the matter. The Counsel cited a decision of the Bench reported as 2002 CLD 1583 to substantiate the claim regarding the lack of jurisdiction of the Respondent No.1.
9. We have gone through the record and it exhibited that the preliminary investigation against the Appellant was initiated on receipt of complaints against him. Initially, the matter was referred to the Lahore Stock Exchange (the Exchange) for investigation and enquiry but the Exchange refused to investigate into this matter because Appellant was in direct litigation with the Exchange, therefore, an inference could have been drawn in case of any adverse conclusion against the Appellant. In view of aforementioned and in order to provide adequate safeguard to investors and to meet ends of justice, an enquiry under section 21 of the Ordinance was ordered by the Commissioner (SM) as discussed in para three of this order. As matter of fact the Respondent No.2 was the investor and he filed his claim against the Appellant because of his investment in securities through the Appellant, therefore they were entitled to file complaints with the Securities and Exchange Commission of Pakistan (the Commission) being a regulator of corporate and securities market. The Appellant has cited different case laws including the Appellate Bench decision to establish that the matter between the Appellant and Respondent No.2 was civil in nature; however facts of the cited case law are different, therefore not applicable to the case in hand. Further in view of the


Appellate Bench No. 1

Appeal No. 29 of 2006



Page 4 of 5



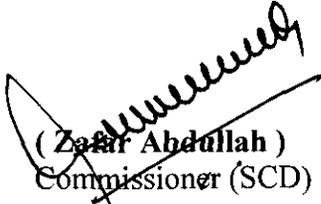
Securities and Exchange Commission of Pakistan

SECP

above discussion it could be safely said that matter between the Appellant and Respondent No.2 was not of civil nature, rather it falls under the ambit of investors protection guaranteed by the preamble of the Ordinance.

10. In the view of the aforesaid, we believe that order of enquiry to probe into the merits of the complaints and all subsequent proceeding including the Impugned Order were in accordance with the applicable laws. We find no reason to interfere with the Impugned Order dated 07/02/06 passed by the Respondent No.1, therefore appeal is dismissed.

11. Parties to bear their own cost.


(Zahir Abdullah)
Commissioner (SCD)


(Tahir Mahmood)
Commissioner (CLD)

Announced on:

02 NOV 2015