Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 29 (14)/Misc/ABR/ 2023 (Objection Case)

Zultec (Private) Limited

...Appellant

versus

Director/HOD, Onsite Department, SECP

...Respondent

Date of hearing:

January 18, 2024

Present:

For the Appellant:
    Mr. M. Javed Panni, Authorized Representative

ORDER

1. This Order is in Appeal No. 29 (14)/Misc/ABR/ 2023 (Objection Case) filed by M/s. Zultec (Private) Limited (the "Appellant") under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "SECP Act").

2. Brief facts of the case are that the Appellant is aggrieved of the investigation order dated November 13, 2023 (the "Impugned Order") passed by the Respondent under section 257 of the Companies Act, 2017 (the "Act"). Subsequently, the Appellant filed an appeal before the Appellate Bench (the "Bench"), however, the Appellant Bench Registry, vide letter dated December 05, 2023, informed the Appellant that the appeal is not maintainable under section 33 of the SECP Act and in pursuance of the general order of the Bench dated July 29, 2022 declined to register the appeal. In response thereof, the Appellant

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vide letter dated December 08, 2023 has requested to place the matter before the Bench to decide the question of maintainability.

3. The authorized representative of the Appellant stated that his sole contention is that the instant appeal is maintainable under section 33 of the SECP Act. He contended that the Impugned Order does not fall in any of the exceptions of proviso to sub-section (1) of section 33 of the SECP Act and his submissions are as hereinunder,

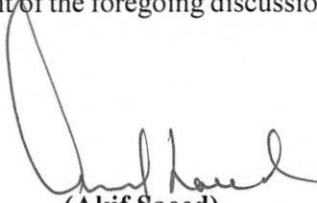| Provision	Appellant's Response
(a) an administrative direction given by a Commissioner or an officer of the Commission;	An investigation order under section 257 of the Act is not an administrative direction as a direction is always to do some act. Thus, this provision is not applicable.
(b) an order passed in exercise of the powers of revision or review;	This provision is not applicable.
(c) a sanction provided or decision made by a Commissioner or an officer of the Commission to commence legal proceedings; and	Legal proceedings imply the initiation of proceedings in the court of law. This matter is not a legal proceeding and is not applicable.
(d) an interim order which does not dispose of the entire matter.	This provision is not applicable.

4. The Bench has heard the arguments and perused the record. The Bench maintains its consistent view that an investigation is a fact-finding exercise conducted with the aim of ascertaining the accurate state of affairs pertaining to companies, hence the same is not appealable in view of an express bar contained in section 33 of the SECP Act. The Securities and Exchange Commission of Pakistan (the "Commission"), being a regulator, is competent to initiate investigation into the affairs of a company and thus an order passed under section 257 of the Act is an administrative order as the same does not result in determination of rights and liabilities and is also not penal in nature *per se*. Therefore, the same is not appealable and falls within the proviso to sub-section (1) of the section 33 of the SECP
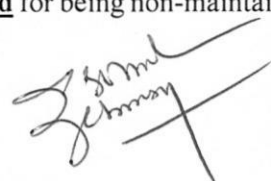
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Act. The Bench is of the view that in light of the judicial precedents i.e. 'Depilex Smileagain Foundation vs. SECP and others' (reported as 2019 CLD 861), and 'Attock Refinery Limited vs. Executive Director, Enforcement and Monitoring Division, SECP' (reported as PLD 2010 SC 946) an investigation order does not dispose of the entire matter before the Commission and is an exploratory measure and not an end by itself. Thus, applicability of both the case laws in the instant matter cannot be disregarded.

5. In light of the foregoing discussion, the instant Appeal is hereby **dismissed** for being non-maintainable.

(Akif Saeed)
Chairman/Commissioner

(Abdul Rehman Warraich)
Commissioner

Announced on: 3 1 JAN 2024