



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 3 of 2021

Mr. Daulat Ali Lehri

Appellant

Versus

1. Sardar Taran Khan , CEO of M/s. Super Sada Bahar Daewoo Bus Services (SMC-Private) Limited
2. Executive Director (Legal Affairs Division), SECP

Respondents

Date of hearing:

May 6, 2021

### Present:

For the Appellant:

1. Mr. Hussain Abuzar Pirzada, Advocate High Court
2. Mr. Shehryar Nawaz Malik, Advocate High Court

For the Respondent No.1:

Mr. Abdul Rehman Qureshi, Advocate

For the Respondent No.2:

Ms. Saba Iqtidar, Assistant, Director, LAD, SECP

## ORDER

1. This order shall dispose of Appeal No. 3 of 2021 filed by Mr. Daulat Ali Lehri (the Appellant) against the Order dated December 14, 2020 (Impugned Order) passed by the Executive Director-LAD, SECP (Respondent No.2).



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2. The brief facts of the case are that M/s. Super Sada Bahar Daewoo Bus Service (SMC-Pvt.) Limited (Company) was incorporated on October 12, 2018, however, the owners (Complainants) of a registered partnership firm and trademark namely; Sada Bahar International Goods Transport Company filed a complaint on January 30, 2019 (Complaint) before Additional Joint Registrar of Companies Multan, SECP (AJ Registrar) against the Company. The Complainants sought issuance of a direction against the Company to change its name due to similarity with the name of Complainants' partnership firm and trademark. The AJ Registrar issued a direction to the Company under Section 11(1) (b) of the Companies Act, 2017 (the Act) vide order dated December 9, 2019 to change its name within 30 days (**First Order**). The chief executive officer (CEO) of the Company challenged the First Order and filed an appeal under section 480(a) of the Act, before the Registrar of Companies (ROC) on January 13, 2020 (First Appeal). The ROC dismissed the First Appeal vide order dated September 8, 2020 (**Second Order**). The Company filed the second appeal under Section 480(b) of the Act before the Respondent No.2 and challenged the Second Order (Second Appeal). The Respondent No.2 *set aside* the direction issued to the Company and passed the Impugned Order.
3. The Appellant has challenged the Impugned Order *inter alia* on the grounds that the main issue in the matter is registration of the Company with identical / similar name and the infringement of trademark rights, however, the impugned Order has mainly discussed the registration of the company with identical / similar name. The Appellant stated that the First Order and the Second Order were passed in accordance with the law, however, Respondent No.2 has ignored this fact and passed the Impugned Order. The Appellant submitted that he is running the business since 1989 and operating 250 buses through Sada Bahar Bus Terminal, Quetta. The Appellant stated that Respondent No. 1 had registered his company through deceptive means and by furnishing false information, hence, the Securities and Exchange Commission of Pakistan (Commission) has jurisdiction to initiate legal action under Section 10(d) and (f) of the Act. The Appellant also alleged that Respondent No.1 concealed the fact that he was an ex-employee of the Appellant and to prove this fact the Appellant has relied upon FIR No. 163/2018 registered u/s 420/417/408/407 PPC, P.S Lora Lai on September 7, 2018 by Respondent No.1 against another employee of the Appellant's business. The Appellant stated that Section 10 of the Act has two dimensions, one is to provide protection to goodwill of a business and the other is to protect the rights of the public at large /

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consumers against exploitation by fake products/ services provided with an identical name. However, the Appellant further stated that Respondent No. 2 unfortunately reduced this broader context of law by comparing two different laws i.e. the Act and the Trademark Ordinance, 2001 to the level of an insignificant formality and thus totally defeating the scheme of law. The Appellant stated that Respondent No.2 illegally and unlawfully entertained the Second Appeal against ex-party Second Order.

4. Respondent No.1 rebutted the grounds of Appeal and stated that at the time the Company was incorporated, no other company with an identical/similar name existed, hence, there is no violation of Section 10 of the Act. Respondent No. 1 stated that his family is doing business since 1969 using the name of Sada Bahar. Respondent No. 1 further stated that the matter of trademark infringement is beyond the jurisdiction of the Commission. Respondent No.1 submitted that the Impugned Order has been passed after providing a proper opportunity of hearing to both parties, therefore, no illegality has been committed. Respondent No.1 stated that the Appellant's business is not a Company as defined under Section 2 and sub-section (17) of the Act. Respondent No.1 further stated that earlier, the Appellant had taken the plea before Respondent No.2 that his case falls under Section 10 sub-section (a) of the Act, however, in this appeal he has taken a different stance and claimed that his case falls under Section 10(1)(d) and (f) of the Act. Respondent No.1 denied the Appellant's assertion that its director was an ex-employee of the Appellant. Respondent No.1 further stated that the trademark of the Appellant was registered after incorporation of the Company e.g. November 29, 2018 whereas the Company was registered on October 12, 2018.
5. Respondent No.2 rebutted the grounds of the Appeal and stated that the Appellant had failed to point out any legal deficiency in the Impugned Order, rather factual controversies had been highlighted. Respondent No.2 stated that the remedy for infringement of a trademark is provided in the Trademark Ordinance, 2001 and the appropriate forum to address the grievance is the Court of Sessions. Respondent No.2 further stated that the verdict to establish whom amongst the parties is the prior user of the trade name "Sada Bahar" is in the jurisdiction of the courts, therefore, the Commission was not the appropriate forum to adjudicate the instant matter. Respondent No.2 stated that jurisdiction of the Commission and the courts have been discussed in detail in the Impugned Order.



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6. The Appellate Bench (the Bench) has heard the parties and perused the record. The Appellant's representatives and the Respondent's representative reiterated their grounds of Appeal and rebuttal thereof. All parties have raised numerous factual and legal issues before preceding legal forums within the Commission, however, the Bench will confine itself to the core issue i.e., whether in presence of a registered partnership firm and a registered trademark, Respondent No.1 was entitled to register its Company or not.
7. The Bench has perused the record which shows that the Appellant's registered partnership is named as **Sada Bahar International Goods Transport Company** and the same name has been registered as a trademark, whereas, Respondent No.1's Company name is **Super Sada Bahar Daewoo Bus Service (SMC-Pvt.) Limited**. The Bench further perused the Commission's database of registered companies containing word "Sada Bahar", which revealed that 7 companies are registered with the name starting with "Sada Bahar" whereas, Respondent No.1's Company is registered as "Super Sada Bahar" and another company as "A One Sada Bahar". In view of the above, it is clear that the phrase "Sada Bahar" is quite common, however, Respondent No.1's Company name contains the phrase "Super Sada Bahar", which is not common and is the only Company using this phrase. The Bench is of the view that after completion of all legal requirements, the Company was registered, therefore, the name of the Company is neither identical with the name of any existing company nor deceptive in any manner whatsoever.
8. The Impugned Order has discussed and mentioned numerous claims of the Appellant and Respondent No.1 regarding prior use of name "Sada Bahar", however, such facts and evidence including the partnership agreement, route permits, FIRs, trademark etc. have no direct or indirect impact to decide whether requirements of Section 10 of the Act have been complied or not. The Bench has noted that the Company was registered on October 12, 2018 with the name of Super Sada Bahar Daewoo Bus Service (SMC-Pvt.) Limited and at that time no other company had a similar name, therefore, alleged violation of Section 10 of the Act is not proved. Furthermore, the Appellant registered a different trademark on November 29, 2018, which is clearly subsequent to incorporation of Respondent No.1's Company, therefore, we find no reason to believe that by registering the Company, Respondent No.1 had infringed trademark rights of the

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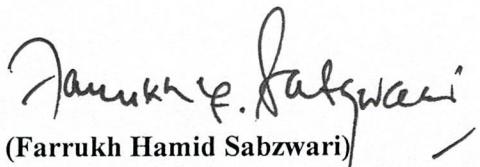
Appellant. It is also important to note here that the Appellant registered the trademark as "Sada Bahar International Goods Transport Company" whereas, Respondent No.1's Company name is Super Sada Bahar Daewoo Bus Service (SMC-Pvt.) Limited, both names being quite different. Therefore, the Bench is not inclined to endorse any element of deception in the name of the Company or infringement of trademark right of the Appellant.

9. In view of the forgoing, the Bench finds no reason to interfere with the merits of the Impugned Order, therefore, we hereby dismiss this Appeal, without any order as to cost.



(Sadia Khan)

Commissioner (SCD-S&ED, INS-SD, AML)



(Farrukh Hamid Sabzwari)

Commissioner (SCD-PRDD)

Announced on: 12 JUL 2021