SECP

# Securities and Exchange Commission of Pakistan

**BEFORE THE APPELLATE BENCH**

In the matter of

**Appeal No. 30 of 2022**

1. M/s. Shaukat Marwat Imports/Exports (Pvt.) Limited
2. Mr. Shaukat Ullah Khan, CEO
3. 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. 30 of 2022 filed by M/s. Shaukat Marwat Imports/Exports (Pvt.) Limited, Mr. Shaukat Ullah Khan and Ms. Bakhmal Bibi (the Appellants) against the Order dated March 18, 2022 (Impugned Order passed in the matter of SCN No. Adj-II/84/24/IAN-1671/2021-727 dated July 13, 2021) passed by the Executive Director Adjudication-II, SECP (Respondent) under Section 84(2) of the Companies Act, 2017 (Act) for violation of Section 84(1) of the Act.

2. The brief facts of the case are that it came into the knowledge of the Securities and Exchange Commission of Pakistan (the Commission) that, in violation of Section 84(2) of the Act, M/s.

Shaukat Marwat Imports/Exports (Pvt.) Limited (Appellant No. 1), Mr. Shaukat Ullah Khan (Appellant No. 2) and Ms. Bakhmal Bibi (Appellant No. 3) are inviting and accepting deposits from the public through social media sites/group companies' website to invest in different investment plans with monthly profit thereon. Appellant No. 2 is the sponsor and CEO of Appellant No. 1 and five other companies with 99.9% shareholding and Appellant No. 3 has 0.1% shareholding in Appellant No. 1 and five other companies. Appellant No. 1 and other group companies were offering the public various investment plans of different amounts and maturity periods by promising them a monthly return ranging from 3% to 9% on their investments. In order to corroborate the information, the officials of the Company Registration Office, Islamabad visited the registered office of Appellant No. 1 and other group companies on May 31, 2021. The findings of the visit report confirmed that Appellant No. 1 and other group companies are involved in unauthorized and illegal deposit-taking from the public. On June 10, 2021, the Commission issued a direction under section 474 of the Act to Appellant No. 1 and other group companies to refrain from soliciting deposits and to refund the amount, if any, collected from the public (the Direction). In this regard, concurrently on the same day, the Commission also issued a public warning through print as well as social media. After the issuance of the Direction and public warning, Appellant No. 1 and other group companies removed the investment offering content from the website. However, they continued misleading the public through the social media stating that the news regarding legal actions against Appellate No. 1 and other group companies is false and they were working in collaboration with the Commission. In addition to the above, tweets were exchanged with investors for offering a rate of 9-11% per month for a 3-years investment plan and 3-4% for a six-month plan.

3. In view of the above, a show-cause notice dated July 13, 2021 (the SCN) was issued to Appellant No. 1, Appellant No. 2 and Appellant No. 3. The SCN was replied to on August 30, 2021. A hearing in the matter was held on September 2, 2021, which was attended by the Appellants' representatives. The Respondent concluded the SCN proceedings and imposed a penalty of Rs. 10 Million on Appellant No. 1 under Section 84(2) of the Act for inviting and accepting deposits and a direction was issued to Appellant No. 2 under Section 475 of the Act, to refund the entire deposit of Rs. 5.47 million raised from the public.

4. The Appellants filed this Appeal *inter alia* on the grounds that neither was there any complaint against the Appellants nor any deposit had been received from the public. It was stated that the Appellants had made investments through personal savings and contributions of friends and received Rs. 33.03 Million 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 the penalty is Rs. 70 Million, which is very harsh and is not commensurate to the amount of money received by the three companies including Appellant No.1.

5. The Respondent rebutted the Appellants' grounds of appeal and stated that for initiation of proceedings under Section 84 of the Act receipt of the complaint is not necessary 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 including Appellate No. 1 had raised/accepted deposits, in violation of section 84(1) of the Act.

6. The Appellate Bench (the Bench) has heard the parties and perused the record. The Bench has noted that six companies were incorporated by Appellant No. 2 within a span of ten days (between November 13, 2020 to November 23, 2020) and out of six, three companies were used to invite and accept deposits from the public by offering different projects and plans through the social media and websites. The Appellants' representatives' stance that Appellant No. 1 and other group companies had received funds from sponsors' friends and family as investment, therefore, should not be treated as deposit-taking from the general public and is a misconceived notion and ignorance of the fundamentals of the 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 against Appellant No. 1 as there was not a single complaint against it is not a plausible reason to exonerate the Appellants from the legal

consequences of illegal deposit-taking. 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 the Commission. 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 Appellant No. 1. Therefore, deposit-taking, even from friends and family is illegal.

7. The Appellants also failed to corroborate and substantiate the argument of a disproportionate amount of penalty as to the quantum of deposits, therefore, the Bench is not inclined to endorse it. As per facts and record of the case the Appellants have been charged on two separate counts i.e. invitation of deposits. For reference, relevant provisions are reproduced below;

> ***"84. Prohibition on acceptance of deposits from public.—*** *(2) Where a company accepts or invites, or allows or causes any other person to accept or invite on its behalf, any deposit, the company shall be punishable-*
> *(a) where such contravention relates to the acceptance of any deposit, with penalty which shall not be less than the amount of the deposit so accepted; and*
> *(b) where such contravention relates to the invitation for any deposit, shall be liable to a penalty of level 3 on the standard scale."*

The Bench has noted that in this case, the aggregate penalty of Rs. 10 Million had been imposed under Section 84(2) (a) (b) of the Act, whereby, Rs. 5.47 Million was imposed under clause "a" of Section 84(2) of the Act and Rs. 4.53 Million was imposed under clause "b" of Section 84(2) of the Act. The Respondent had the power to impose a maximum penalty of Rs. 100 Million as level 3 penalty under clause "b" of Section 84(2) of the Act, however, by considering the facts of the case, a minimum proportionate penalty has been imposed. Therefore, the Bench is of the view that the Respondent had already taken a lenient view and imposed a proportionate penalty, hence, the Appellants' contention cannot be accepted. Furthermore, the Bench finds it appropriate to state here that imposition of a penalty does not set-off the amount of illegal deposit-taking, therefore, the Respondent has rightly issued a direction under Section 475 of the Act to refund the entire deposit of Rs. 5.47 Million raised from the public.

8. The Bench has noted that as the violation was established against the Appellants, therefore, criminal proceedings against Appellant No. 2 and Appellant No. 3 under Section 84(3) of the Act, should have been initiated. The Bench has been apprised vide email dated April 18, 2023 that proceedings under Section 84(3) of the Act have already been initiated and are currently pending with the Legal Department of the Commission for further action. For reference relevant provision is reproduced below;

> *"(3) In addition to the fine on the company under sub-section (2), every officer of the company which is in default shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine which may extend to five million rupees."*

9. 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)** | **(Akif Saeed)** |
| Commissioner | Chairman/Commissioner |

Announced on: 02 MAY 2023