



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 37 of 2022

Mujeeb Ur Rehman, CEO/Director Fragrance Land (SMC-Private) Limited
...Appellant

versus

Executive Director (Adjudication-II)
...Respondent

Date of hearing:

August 22, 2024

Present:

For the Appellant:

1. Mr. Abuzar Jahangeri, Legal Counsel of Appellant

For the Respondents:

1. Mr. Hammad Javed, Additional Director, Adjudication II, SECP
2. Mr. Sanaullah Jatoi, Deputy Director, Adjudication-II, SECP

ORDER

1. This Order shall dispose of the proceedings initiated through Appeal No. 37 of 2022 filed by Mr. Mujeeb Ur Rehman (the Appellant), CEO/Director of Fragrance Land (SMC-Private) Limited (the Company) under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997, against the order dated November 18, 2021 (the Impugned Order), passed by the Executive Director (Adjudication-II) (the Respondent), under Section 172 of the Companies Act, 2017 (the Act).



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2. The brief facts of the case are that the Company was incorporated on July 6, 2018 as a single member Company under the Act and its principle line of business was to carry on all or any kind of the business of trading, manufacturing, import, export, buying and selling of cosmetics. In view of certain complaints received by the Securities and Exchange Commission of Pakistan (the Commission), as well as the findings of the Investigation Report dated January 13, 2021 (the Investigation Report), the Additional Registrar, Company Registration Office Islamabad (the CRO) sought sanction of the Commission to present a petition for winding-up of the Company under clause (b) of the proviso to section 304 read with section 301 of the Act on the grounds that the Appellant is engaged in prohibited/unlawful business of multi-level marketing (MLM) and failed to maintain proper books and accounts which gave a true and fair view of the state of affairs of the Company.

3. Accordingly, a show cause notice (the SCN) was issued to the Appellant on May 3, 2021 calling upon him to show-cause in writing as to why sanction sought by the Additional Registrar, CRO, Islamabad may not be granted, and in addition, the SCN was also issued for calling upon the Appellant to show-cause in writing as to why *inter alia* disqualification order for a period of five (5) years may not be passed against him under subsection (1) of Section 172 of the Act, on the grounds that the Company in which the Appellant is a director/CEO is *prima facie* engaged in the prohibited/unlawful business of MLM. A written response of the Appellant was received from the authorized representative vide email dated June 14, 2021, in which the contents of the SCN against the Appellant were denied and the Appellant also requested for a copy of the Investigation Report, which was then provided to the Appellant on August 30, 2021. Multiple hearing opportunities were granted to the Appellant and final hearing was held on September 15, 2021 which was attended by the Appellant along with the authorized representatives. After examining the submissions and considering the facts, the Respondent, in exercise of powers delegated vide the Commission's Notification No. S.R.O. 129(1)/2020 dated February 24, 2020 (the Notification) read with clause (d) of sub-section (1) of Section 172 of the Act, disqualified the Appellant to hold office as a director of any Company formed and registered under the Act, for a period of five (5) years commencing from the date of the Impugned Order.



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4. The Appellant has preferred this Appeal, *inter-alia*, on the grounds that the Impugned Order has been passed without considering the facts submitted by the Appellant, therefore, the order is in violation of the due process of law.
5. The Appellant submitted that the complaints, that were initially launched against the Company, have a direct nexus with an employee who happened to be a security guard at the premises of the Company, therefore, it happened to be an attempt made by an ex-employee to settle his old scores with his employer and that the Company has also filed a civil suit for damages against the ex-employee for levelling false allegations against the Company.
6. The Appellant further stated that Impugned Order has been passed without adequate disclosure on part of the Commission which did not reveal the alleged complaints and also failed to share the report of the undisclosed visit and inspection reports to the Appellant.
7. The Appellant further stated that the Impugned Order failed to incorporate the principle of '*audi alteram partem*' as the accountant of the Company was not allowed to represent the Company. The Appellant further argued that the Impugned Order failed to encapsulate the explanation of the Company whereby the field "name of senior" is a hierarchal position in the Company and "sponsor name" is a term used in the Company for a person who helps to sell the products on a profit-sharing basis and, hence, in these circumstances neither does the business model of the Company create a chain of customers nor does it compel other distributors to buy inferior products at exorbitant prices, thus, the question of MLM does not arise as otherwise stipulated in the Impugned Order.
8. The Appellant denied the findings of the Investigation Report on the basis that the allegations imposed against the Appellant were not backed up by concrete evidence. The Appellant further argued that the Investigation Report failed to appreciate the fact that unbranded products and absence of price tags is a common feature in the cosmetic and skincare industry of Pakistan and that the skincare industry is an unregulated sector in the country and as such unbranded products and absence of price tags is not explicitly prohibited by any laws of the country, and such circumstances attributing the name to MLM is completely uncalled for and against the law.



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9. The Appellant stated that the 'Silver' and 'Executive' packages being offered by the Company have been wrongly interpreted in the Investigation Report as, in fact, these were introduced to incentivize the distributors through the economies of scale and under no circumstances does this amount to MLM.
10. Controverting the arguments of the Appellant, the Respondent, *inter alia*, contended that the Impugned Order has been rightly passed after considering all the facts and examining the submissions put forth by the Appellant.
11. The Respondent stated that complete findings of the Investigation Report were shared with the Appellant as the said findings were reproduced in the SCN and further, that in order to meet the demand of the Appellant, a copy of the Investigation Report was provided to the authorized representative of the Appellant on dated August 30, 2021, and upon receipt of the Investigation Report, the Appellant did not submit additional comments to negate the findings contained in the Investigation report, therefore, stating that the due process of law was adopted with regard to the SCN proceedings.
12. The Respondent further stated that the Appellant was provided multiple hearing opportunities after which the Impugned Order was passed, therefore, refuting the claim of the Appellant that the Impugned Order has been passed without providing a fair opportunity to the Appellant and the Company.
13. The Respondent further argued that the Impugned Order has been passed on merit and within legal framework, in terms of Explanation 1 of Section 301 of the Act, wherein, raising unauthorized deposits and indulging in referral marketing (RM) and MLM have been declared unlawful activities and in the instant appeal, the Company was found involved in MLM, therefore, sanction under section 304 read with section 301 of the Act, was granted to CRO, in-charge, Islamabad to present a petition before the Court for winding-up of the Company and in terms of section 172 of the Act, and after conclusion of the SCN proceedings, the Appellant i.e. director/CEO of the Company was disqualified to hold the office of director of any Company, for a period of five years from the date of the Impugned Order.
14. With regard to the merits of the Appeal, the Respondent further argued that as mentioned in Para 6.11.11(a) of the Investigation report, upon query by the inspectors, one trainee who introduced himself



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as 'Shoaib' responded that he was under training since December and stated that he had initially paid Rs. 100 for training and then purchased Company products for Rs. 20,000/-. Mr. Shoaib also shared that the Company was working in the shape of a 'tree' and if 'Mr. A' referred 'Mr. B' and 'Mr. B' referred 'Mr. C' then 'Mr. A' will receive a commission for purchases made by both 'Mr. B' and 'Mr. C'.

15. The Respondent further stated that in Para 6.11.05 of the Investigation Report, queries were also made from a randomly chosen trainee who introduced herself as Ms. Farah Bashir. She stated that she was assigned designation as "Sales Distributor" as per her rank and that after her initial training, she purchased Company's products and opened her account in the Company and that the Company maintained a dedicated shopper account for each shopper and she further revealed that it is a network marketing business and has earned commission from the Company when the persons referred by her purchased Company's products.
16. The Respondent further rebutted the Appellants stance while arguing that before issuance of the Impugned Order, the inspection/investigation team collected and verified irrefutable evidence through conducting further investigation into the affairs of the Company and that on request of the Appellant, one of the members of the investigation team was also changed.
17. The Respondent further argued that the examination of a specimen agreement form, executed by the Company with its distributor(s) revealed that the distributor had to opt for either a 'Silver' or an 'Executive' package, and as per the documents attached with the Investigation Report, the Appellant announced various awards for its sale distributors and it was mandatory for the distributors to purchase the 'Executive' package in order to be eligible for the awards.
18. The Appellate Bench (the 'Bench') has heard the arguments of both the parties and perused the record.
19. Before discussing the specifics of the business model of the Company, the procedural lapses as highlighted by the Appellant are addressed as follows:



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- i. The Appellant has failed to prove that the complaints against the Company are factually incorrect or are fictitious;
- ii. The Appellant has failed to furnish before the Bench, any information, that the accountant of the Company, which as per the Appellant was not allowed to appear before the Respondent, wished to be present at that forum; and
- iii. The Appellant, through the instant Appeal, appears to be relying on the procedural aspects of the investigation and adjudication process such as non-sharing of investigation report, visit report, complaints etc. These concerns have been addressed by the Respondent by sharing the complete investigation report and provision of multiple hearing opportunities to the Appellant.

20. In order to assess whether the Company was indulging in an MLM Scheme, it is necessary to describe how an MLM/Pyramid Scheme generally operates. A business entity following such a scheme combines the roles of a consumer and sales agent to a single person. It recruits individuals as first-level distributors and requires them to spend a certain amount to purchase its products which they otherwise do not need or intend to purchase. It then persuades them to recruit other individuals as second-level distributors with the same conditions. It offers commissions to the first-level distributors on purchases made by the second-level distributors. The process goes on with third and fourth-level distributors and so forth. The strategy aims to create a web of higher-level distributors who initially purchase the products themselves and then recruit other lower-level distributors to do the same. The higher-level distributors initially spend their own money to purchase the products and later try to recover this amount and earn additional income through commissions on new purchases made by lower-level distributors. The scheme helps to sell products, with no genuine consumers, to a long list of distributors. Ultimately the scheme unravels when new distributors can no longer be recruited, and a huge number of existing distributors lose money on the purchases made by them. Such schemes are usually employed to sell inferior products with little or no genuine market demand.

21. Based on the facts and circumstances of the case, business model of the Company as explained by the Appellant through written and verbal submissions, further elaborated through the findings of the



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investigation made in the case, the Impugned Order and comparison with the characteristics of a standard Multi-Level Marketing Scheme, illustrate that the Company was indeed running an MLM/Pyramid Scheme for the reasons stated below:

- i. The Company was recruiting individuals as (first level) distributors but was requiring them to make an upfront investment by purchasing certain products from the appellant;
- ii. The distributors made the purchase of products which were unbranded and without price tags;
- iii. The Company was not concerned whether the distributors were able to further sell these products to actual consumers;
- iv. To earn commission income in future, the (first level) distributors had to recruit new (second level) distributors who would make similar purchases from the Company. The (first level) distributors were paid commissions from the revenue earned by the Company from the (second level) distributors. The process would continue with the aim to add more layers of so-called distributors;
- v. The amount paid by a (higher level) distributor to the Company on account of the upfront purchase was called investment which entitled him to commissions from similar amounts paid to the Company by (lower level) distributors recruited by him;
- vi. Various packages ('silver package', 'executive package') were offered to the distributors. By subscribing to a higher package, a distributor had to make a bigger amount of initial purchase / investment and was entitled to higher commissions later. The packages were designed to entice distributors to bring more distributors in the name of investment; and
- vii. The underlying products were of inferior quality, had little or no demand from actual consumers, and were being sold to a web of distributors at a higher price as compared to their actual worth. The products were only made part of the Company's business model to act as a guise for the underlying MLM/Pyramid Scheme.



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viii. The Appellant also failed to furnish any evidence of purchase and sale of the Company's products by genuine customers, nor could it present any supporting evidence to substantiate presence of any of the Company's shop, outlets and customers.

22. The Bench is of the view that varied terminology, designations or titles assigned to individuals at multiple levels of an MLM/Pyramid Scheme does not change the substance or essence of the underlying scheme. The Appellant has been unsuccessful to substantiate its case by persuading the Bench that the business activities of the Company do not come under the purview of an MLM Scheme/Pyramid Scheme and the Appellant being the sole shareholder and director of the Company was primarily responsible for conceiving and executing the MLM Scheme/Pyramid Scheme.

23. The Bench also notes that the Appellant failed to furnish any evidence of purchase and sale of the Company's products by genuine customers, nor could it present any supporting evidence to substantiate presence of any of the Company's shops, outlets and customers.

24. In view of the foregoing, the Bench finds no reason to interfere with the Impugned Order, therefore, by maintaining the Impugned Order, we hereby **dismiss** this Appeal without any order as to costs.


(Akil Saeed)
Chairman/Commissioner


(Abdul Rehman Warraich)
Commissioner

Announced on:

16 APR 2025