



**Securities and Exchange Commission of Pakistan**  
**Appellate Bench Registry**

No. 45 (33)B-IV/Onsite/22

**Courier**  
July 29, 2020

Mr. Bilal Kasbati, Company Secretary, M/s. Clover Pakistan Limited, B-23, MT Khan Road, Lalazar, Karachi.	The Executive Director. Onsite Department, Supervision Division, SECP, Islamabad.
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Subject:- **Appellate Bench's Order in Appeal No. 45 of 2022 titled Clover Pakistan Limited Versus Deputy Registrar, Appellate Bench and Executive Director, Onsite Department, Supervision Division, SECP passed on July 29, 2022.**

Dear Sir(s),

In reference to the subject Appeal, filed under Rule 8(5) of the SECP (Appellate Bench Procedure) Rules 2003, please find the attached order passed by the Appellate Bench on July 29, 2022.

A handwritten signature in black ink, appearing to be 'Raja Farukh Ahmad', is written over a white rectangular area.

**Raja Farukh Ahmad**

Deputy Registrar (Appellate Bench)



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 45 of 2022

M/s. Clover Pakistan Limited

Appellant

Versus

1. Deputy Registrar Appellate Bench
2. Executive Director, Supervision Division, Onsite Department, SECP

Respondents

Date of hearing:

July 14, 2022

Present:

For the Appellant:

1. Mr. Anas Makhdum, Advocate
2. Mr Javaid Iqbal – CEO
3. Mr Owais Ali Khan – CFO
4. Mr. Bilal Kasbati, Company Secretary

For the Respondents:

1. Syed Ali Adnan, Additional Director
2. Mr. Adeel Peter, Deputy Director
3. Mr. Hassan Akbar Sharifzada, Management Executive

## ORDER

1. This Order shall dispose of Appeal No. 45 of 2020 filed under Rule 8(5) of the Securities and Exchange Commission of Pakistan (Appellate Bench Procedure) Rules, 2003(the Rules). The Appeal has been filed by M/s. Clover Pakistan Limited (Appellant) against letter dated June 10, 2022



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(Impugned Letter) whereby registration of the Appeal under Section 33 of the SECP Act, 1997 (SECP Act) was refused by the Deputy Registrar, Appellate Bench.

2. The brief facts of the case are that registration of the Appeal under Section 33 of the SECP Act against Investigation Order dated May 27, 2022 (Investigation Order) was refused by the Deputy Registrar vide the Impugned Letter citing an express bar contained under clauses “a” and “d” of the proviso of Section 33 of the SECP Act. As per clause “a” an administrative direction given by a Commissioner or an officer of the Commission and whereas, as per clause “d” an interim order which does not dispose of the entire matter, are not appealable before the Appellate Bench. The Appellant had challenged the Impugned Letter before the High Court of Sindh, Karachi (the Court) vide Misc. Appeal No. 53 of 2022. The Court decided the matter vide order dated June 28, 2022 and directed the Appellant to file an appeal against the Impugned Letter before the Appellate Bench (the Bench) under Rule 8(5) of the Rules, accordingly, the Appellant has filed this Appeal on July 4, 2022. Therefore, in view of the Court’s order dated June 28, 2022, the Bench has to decide “*whether the appeal ought to be registered or not*”.
3. The Appellants filed the Appeal *inter alia* on the grounds that the Impugned Letter whereby registration of appeal under Section 33 of the SECP Act was refused is unlawful and Investigation Order under Section 257 of the Companies Act, 2017 (the Act) was passed without jurisdiction, hence both are liable to be *set aside*. During the hearing of this Appeal, the Appellant’s Counsel has raised a preliminary objection regarding constitution of the Bench, hearing the Appeal. The Counsel stated that the Executive Director, Supervision Division, Onsite Department, who passed the Investigation Order is subordinate to Ms. Sadia Khan, therefore, Commissioner Sadia Khan being the ‘*concerned*’ Commissioner cannot be a part of this Bench. The Counsel submitted that to avoid the conflict of interest, the Chairman, Securities and Exchange Commission of Pakistan (the Commission) is required to re-constitute the Bench under Section 33(3) of the SECP Act. At this juncture the Counsel requested the Bench to decide this issue so that in case of any adverse finding, the Appellant may assail it before court. As an alternate option, the Counsel requested the Bench permission to raise further objections, so that the Bench may pass a consolidated order regarding objections. The Bench asked the Counsel to proceed with other objections, so that a consolidated order regarding such objections may be passed.



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Therefore, the Counsel raised the following additional objections against the Impugned Letter and the Investigation Order;

- i. The Investigation Order has been passed without jurisdiction because as per Section 257 of the Act, power and authority to invoke this section is vested with the Commission, therefore, exercise of such power by the Executive Director Onsite Department is illegal. The Counsel argued that in case titled Muhammad Ashraf Tiwana and others Versus Pakistan and others (2013 SCMR 1159) the Supreme Court has clearly held that if the statute has expressly given a power to the Commission then such power cannot be delegated to individuals. The Counsel further stated that as per referred case-law, discretionary powers entrusted to some individual or body by the statute, cannot be further delegated. The Counsel also relied upon another case law titled Dr. Zahid Javed Versus Dr. Tahir Riaz Chaudhary and others (PLD 2016 Supreme Court 637) wherein term “Quasi-Judicial” has been defined and it has been discussed that quasi-judicial powers used by any person or body other than judicial officers is always discretionary in nature and cannot be delegated.
- ii. The Counsel objected that the Deputy Registrar of the Appellate Bench has neither provided opportunity of hearing to the Appellant nor the Impugned Letter has contained reasons to declare the appeal as non-maintainable under Section 33 of the SECP Act. In view of above objections, the Counsel has prayed to *set aside* the Impugned Letter being illegal and remand to the matter to the Deputy Registrar with the direction to provide opportunity of hearing;
- iii. The Counsel argued that the Investigation Order is not an administrative order or administrative direction, therefore, clause “a” of the proviso of Section 33 of the SECP Act is not applicable in this case and appeal under Section 33 of the SECP Act is maintainable. Investigation Order was passed after serving a Show Cause Notice, therefore, in view of verdict of the case law titled Mubarak Textile Mills (Pvt.) Ltd. Versus Director (Enforcement), SECP and others (2016 CLD 2293 Islamabad) the Investigation Order cannot be termed as administrative order/Direction rather it is a Quasi-Judicial decision, which



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is appealable under Section 33 of the SECP Act. The Counsel has also relied on another similar case law titled OFSPACE (Private) Limited Versus FOP and 3 others (2012 CLD 923 Sindh).

- iv. Investigation Order is also not an interim order because matter of initiation of investigation and appointment of inspectors was conclusively decided and it has attained finality. Therefore, Investigation Order cannot be considered as an interim order as mentioned in clause “d” of the Provision of Section 33 of the SECP Act, 1997, hence, appeal against Investigation Order is appealable before the Bench. In support of this contention, the Counsel has relied upon an un-reported family case law of the High Court of Sindh passed in Constitution Petition No. S – 550 of 2022.
- v. The Counsel has argued that due to Investigation Order, the Appellant’s reputation is at risk and it would adversely affect the interest of all stakeholders, therefore, Impugned Letter and the Investigation Order may be *set aside*.

4. Respondents have not specifically rebutted the grounds of Appeal and stated that as this is a legal matter, therefore, Appellate Bench may take the decision.
5. The Bench has heard the parties and perused the record. In view of the Court’s Order dated June 28, 2022 the Bench has to decide “*whether the appeal ought to be registered or not*”. Therefore, to decide the issue of maintainability of Appeal under Section 33 of the SECP Act, we intend to discuss all core objections and grounds of Appeal agitated by the Appellant and its Counsel. The Bench’s analysis and findings on the objections raised by the Appellant and its Counsel are as under;
6. The Bench has noted that as per Rule 24(b) of the Rules, irrespective of the correctness or otherwise of the decision, the Deputy Registrar is authorized and competent to decide whether any appeal under Section 33 of the SECP Act is maintainable or not. The Bench has also perused the Court’s Order dated June 28, 2022 wherein it has been held that the Appellant had a remedy to file appeal against the Deputy Registrar’s decision before the Bench under Rule 8(5) of the Rules. Furthermore, the Court has expressly declared in order dated June 28, 2022 that the Registrar is competent to refuse registration of



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appeal and also advised the Appellant to file appeal against the Deputy Registrar's letter under Rule 8 of the Rules before the Bench. In the circumstances, the Bench is not inclined to accept the assertion that the Deputy Registrar's decision is illegal.

7. The Bench is of the view that the Appellant's objection on constitution of the Bench and inclusion of Ms. Sadia Khan as a member of the Bench is misconceived because the learned Bench member only has administrative charge of the Supervision Division, whereas, the Commission had delegated its powers under section 257 of the Act directly to the Executive Director Onsite Department Supervision Division vide SRO No.380 (I) / 2021 dated March 31, 2021. It was ascertained by Mr. Aamir Ali Khan, Member of the Bench, from Ms. Sadia Khan, Member of the Bench, whether she has participated or has been concerned with regard to the proceedings and issuance of the Investigation Order, to which Ms. Sadia Khan replied in the negative. Therefore, it is established that Ms. Sadia Khan had no concern whatsoever regarding exercise of powers directly delegated under Section 257 of the Act, to the Executive Director Onsite Department Supervision Division.
8. The Bench is of the view that the Appellant's contention regarding bar on the Commission's authority to delegate its powers under Section 257 of the Act is flawed. As a matter of fact, the Commission is empowered under Section 10 of the SECP Act to delegate its powers to its officers, and accordingly, powers under Section 257 of the Act were duly delegated to the Executive Director, Onsite Department. Thereby, the Commission is not bound to act as a collegiate body to exercise powers under Section 257 of the Act. The Bench is of the view that the Commission has duly delegated its power under Section 257 of the Act to the Executive Director, Onsite Department for smooth functioning of the day to day affairs of the Commission. To establish its contention, the Appellant placed reliance on a case law titled Muhammad Ashraf Tiwana and others Versus Pakistan and others (2013 SCMR 1159), however, facts of the case law are not relevant to the merits and facts of this case. We have observed that in the cited case law, it has been held that hiring and firing of employees is a highly significant matter involving personal judgement of the Commissioners and Chairman and insertion of a separate Section 8 in the SECP Act has made it clear that it is not an ordinary function of the Commission, therefore, the Commission cannot delegate such power to individuals. The Bench is of the view that the Appellant's case falls under the ordinary functions of the Commission provided under Section 20 of the SECP Act and to regulate the affairs of companies in an appropriate manner,





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power to exercise such function has been specifically delegated under Section 10 of the SECP Act, to the Executive Director, Onsite Department. Therefore, we reject the Appellant's assertion that powers under Section 257 of the Act are non-delegable being discretionary in nature because specific instances have been provided therein to trigger and initiate investigation proceedings to discover the actual state of affairs of a company. The Bench has also gone through the other cited case law titled Dr. Zahid Javed Versus Dr. Tahir Riaz Chaudhary and others (PLD 2016 Supreme Court 637), however, it too has no relevance to the facts of the Appellant's case. As a matter of fact, the Executive Director Onsite Department has exercised powers of the Commission under section 257 of the Act which is an administrative action, *inter alia* in the light of various judicial precedents, hence, we are not inclined to the Appellant's assertion that powers under Section 257 of the Act are discretionary and non-delegable. Furthermore, being a Regulator, the Commission is competent to either initiate investigation proceedings as a collegiate body or delegate such powers to any of its officers to probe into the affairs of companies.

9. The Bench has noted that the Appellant's objections regarding issuance of the Impugned Letter is without any substance because as per Rule 24 of the Rules, the Deputy Registrar is empowered "*to decide all questions arising out of the scrutiny of the appeals before they are registered*". Furthermore, under the applicable law, the Deputy Registrar is not required to provide an opportunity of hearing to the Appellant. We have perused the Impugned Letter, wherein the Deputy Registrar has specifically provided reasons to decline registration of the Appeal under Section 33 of the SECP Act, therefore, the Appellant's objection is rejected. Without prejudice to the aforesaid, as the Bench has provided an opportunity of hearing to the Appellant and has stated reasons for non-registration of the Appeal under Section 33 of the SECP Act, therefore, the Appellant's objections have been adequately addressed by the Bench. Furthermore, as the Bench has now provided an opportunity of hearing and stated reasons regarding non-maintainability of the Appeal in this order, therefore, the Appellant's request to remand the matter to the Deputy Registrar is a futile exercise.
10. The Bench is of the view that investigation orders are administrative in nature because there are no penal or adverse consequences on the parties against whom such orders are passed. The Bench has gone through the judgements cited by the Appellant wherein it has been held that inspection orders under Section 231 of the Companies Ordinance, 1984 (the Ordinance) are administrative orders



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because of non-issuance of Show Cause Notices in such cases. The Appellant has drawn an adverse analogy and argued that as a Show Cause Notice is issued, therefore, an investigation order is not an administrative order/direction, hence, Clause “a” of the proviso of Section 33 of the SECP Act is not applicable in this case and appeal under Section 33 of the SECP Act is maintainable. The Bench is of the view that the purpose of inspection and investigation is to explore the grounds and present findings in order to evaluate the accurate state of affairs of companies. And since an investigation is a comprehensive exercise as compared to the limited scope of inspection, therefore, the requirement of a Show-Cause Notice is placed to provide an opportunity to a company to rebut the apprehensions of the Commission. We are of the view that the analogy drawn by the Appellant on the basis of issuance and non-issuance of Show-Cause Notice is without any substance.

11. The Bench is of the view that an investigation order is an interim order because appointment of inspectors or initiation of investigation proceedings does not dispose of the entire matter, rather it clearly remains pending before the Commission at least until a report is made by the inspectors. Therefore, we believe that the Investigation Order is interim in nature which cannot be challenged through an appeal under Section 33 of the SECP Act. As the Investigation Order itself has neither penal consequences, nor does it dispose of the entire matter of alleged violations, therefore, the registration of the Appeal was rightly denied by the Deputy Registrar. Furthermore, in the context of the family case law cited by the Counsel e.g. Constitution Petition No. S – 550 of 2022 of the High Court of Sindh, the Bench is of the view that principles defined in the family case laws have different mechanisms and considerations including but not limited to welfare and well-being of the dependents, therefore, such precedents are not *ipso facto* applicable in the Appellant’s case. The Bench has reviewed the case law titled *Attock Refinery Limited Versus Executive Director Enforcement and others* (PLD 2010 SC 946) wherein the honorable Supreme Court has discussed Section 265 of the Ordinance, which is the corresponding provision of Section 257 of the Act. In this case law, Section 485(1) of the Ordinance was also discussed and it was held that mere passing of an investigation order does not dispose of the entire matter before the Commission. The Bench has noted that the principle envisaged in the referred case has been followed and implemented by the Deputy Registrar.

12. The Bench is of the view that the Appellant’s Counsel’s contention, that appointment of inspectors is likely to affect the reputation of the Appellant, may not be treated as a valid ground for rendering



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redundant the express provision of Section 257 of the Act. Moreover, mere passing of an investigation order does not implicate the Appellant with the alleged violations or offenses, rather it is an appropriate exercise to collect evidence and to bring on record the true state of affairs of a company. The investigation order is merely a step to probe further into the alleged violations committed by the Appellant, and after due investigation, the Respondent may or may not proceed against the Appellant.

13. In view of the foregoing, we find no reason to interfere with the decision made by the Deputy Registrar vide letter dated June 10, 2022. Therefore, we hereby dismiss this Appeal without any order as to the costs.

14. The Bench is pleased to direct the Registrar, Appellate Bench, not to entertain appeals against orders passed to initiate inspections or investigations and this order may be treated as a general order of the Bench to refuse registration of all such appeals in future which may be filed against inspection or investigation orders.

(Sadia Khan)  
Commissioner

(Aamir Khan)  
Chairman/Commissioner

Announced on:

29 JUL 2022