

# Securities and Exchange Commission of Pakistan

## **BEFORE APPELLATE BENCH NO. IV**

In the matter of

**Appeal No. 63 of 2013**

M/s Tianshi International Pakistan Co. (Pvt.) Ltd

...Appellant

**Versus**

1. Mr. Nazir Ahmed Shaheen, Executive Director (CCD), SECP
2. Securities and Exchange Commission of Pakistan

...Respondents

**Dates of hearing:**

20/11/14, 02/12/14, 06/04/15,  
15/04/15, 14/10/15

**Present:**

**For Appellant:**

Mr. Idrees Ashraf, Advocate High Court

**For Respondents:**

- i. Mr. Muhammad Siddique, Executive Director (C & CD)
- ii. Mr. Mubasher Sadozai, Director (C & CD)
- iii. Mr. Waseem Ahmed, Joint Director (C & CD)

## **ORDER**

1. This order shall dispose of Appeal No. 63 of 2013 filed by the Appellant under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the Act) against the Sanction granted under Clause (b) of Section 309 of the Companies Ordinance 1984 (the Ordinance) by the Respondent No.1 vide order dated 06/11/13 (the Impugned Order).

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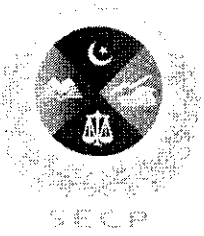
2. Brief facts of the case are that the Additional Registrar sought the Sanction of winding up against the Appellant from the Respondent No.1. The Respondent No.1 issued a Show Cause Notice dated 03/11/06 (the SCN) to the Appellant and its Chief Executive to explain the position as to why the Sanction for filing of winding up petition might not be granted. The reply to the SCN was submitted by the Appellant vide its letter dated 20/11/06, however the management of the Appellant filed to appear for personal opportunity of representation. Thereafter, the Appellant, filed a Constitutional Petition No. 2371 of 2009 before the Honorable Islamabad High Court (the Court), challenging the validity of the SCN, however it was dismissed vide order dated 11/04/13. Therefore, Sanction was granted by the Respondent No.1 under clause (b) of section 309 to present a petition before the court of competent jurisdiction for winding up of the Appellant in terms of section 305 and 309 of the Ordinance vide the Impugned Order dated 06/11/13. The Appellant has challenged the Impugned Order through the instant appeal under the Section 33 of the Act. The Appellant Counsel intimated the Appellate Bench (the Bench) vide letter dated 28/11/14 that Leave to Appeal in CPLA No.836/2013 wherein SCN Proceedings were challenged has been granted by the Supreme Court without any stay Order.
3. We have gone through the record which exhibited that SCN proceedings were culminated into the Impugned Order dated 06/11/13, whereas the Supreme Court has granted Leave to Appeal in CPLA No.836/2013 without any stay order on 03/12/13. Therefore, it is evident that the Respondent No.1 has passed the Impugned Order much before the grant of Leave to Appeal. Without prejudice to the merits of the case, the question of maintainability of the present appeal under Section 33 of the Act is of great importance and need to be addressed. Section 33(1) (c) of the Act expressly prohibits appeal against the Sanction granted by the Commission or its officers. For reference relevant abstract of the provision is as follows:

“33. Appeal to the Appellate Bench of the Commission. - (1) Except as otherwise provided any person aggrieved by an order of the Commission passed by one Commissioner or an officer authorized in this behalf by the Commission,

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may within thirty days of the order, prefer an appeal to an Appellate Bench of the Commission constituted under sub-section (2)

Provided that no appeal shall lie against ----

(c) a sanction provided or decision made by a Commissioner or an officer of the Commission to commence legal proceedings;

[Emphasis Added]

4. In addition to the aforementioned prohibitory provision, the Appellant Counsel also intimated to the Bench vide a letter dated 06/04/15 that this appeal is not maintainable under Section 33(1) (c) of the Act. In the view of the aforesaid, express prohibitory provision and intimation of the Appellant Counsel regarding non-maintainability of the instant appeal, we hereby dismiss the appeal being non-maintainable under Section 33 of the Act.

5. Parties to bear their own cost.

(Fida Hussain Samoo)  
Commissioner (Insurance)

(Zafar Abdullah)  
Commissioner (SCD)

Announced on: **04 NOV 2015**

Appellate Bench No. 01

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