



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 64 of 2019

1. Mr. Ehmer Iqbal
2. Mr. Muhammad Ahmed Imran
3. Mr. Muhammad Obaid
4. Mr. Adnan Ullah Tauseef
5. Mrs. Mubashra Khan
6. Mr. Amir Hussain Kazmi
7. Mr. Mubasher Mehmood Abbasi

Appellants

Versus

The Executive Director (CSD), SECP.

Respondent

Date of hearing:

July 16, 2020

Present:

For Appellants:

- i. Barrister Omer Malik,
- ii. Ms. Safa Chaudhry

For Respondent:

- i. Amir Saleem, Joint Director (Adjudication-I), SECP
- ii. Ms. Zohra Sarwar Khan, Joint Director (Adjudication-I), SECP

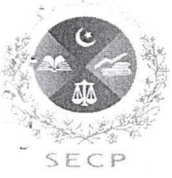
ORDER

1. This Order shall dispose of Appeal No. 64 of 2019 filed by the directors of M/s. Drekkar Kingsway Limited (the Appellants) against the Order dated June 24, 2019 (the Impugned Order) passed by the Commissioner (SMD) under 237 read with section 476 of the Companies Ordinance, 1984 (the Ordinance), passed by the Executive Director, CSD (the Respondent).

Appellate Bench

Appeal No. 64 of 2019

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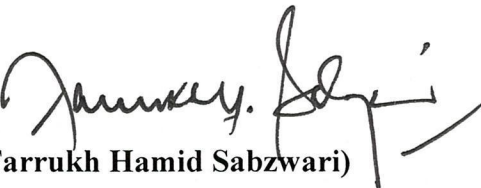
2. The brief facts of the case are that M/s. Drekkar Kingsway Limited (the Company), vide letter dated April 20, 2017, applied for an exemption to file consolidated financial statements under Section 237 of the Ordinance. The Company had taken the plea that the Securities and Exchange Commission of Pakistan (the Commission) had seized the computer data, books of accounts, paper and documents of Invest Forum (Private) Limited (Subsidiary Company), and therefore, preparation and filing of consolidated financial statements for the quarter ended March 31, 2017 was not possible. The application was turned down by the Commission vide letter dated April 27, 2017. Subsequently, the Company filed its stand-alone quarterly accounts for the quarter ended March 31, 2017 through letter dated May 8, 2017. In view of the above, a Show Cause Notice dated August 18, 2017 (the SCN) was issued to the Appellants. The written reply of the SCN was received on August 29, 2017, and after numerous hearings, the Impugned Order was passed and penalty of Rs. 10,000/- on each Appellant (Aggregate Rs.70,000/-) was imposed.
3. The Appellant had challenged the Impugned Order *inter alia* on the grounds that the Commission had seized the record of its Subsidiary Company, therefore, preparation and filing of consolidated financial statements was not possible. The Appellants' Representatives further stated that the Appellants and the Company are law abiding citizens and they want to comply with the requirements of the Ordinance. The Appellants' Representative denied the alleged fact that backup of record was provided to the Subsidiary Company by the investigating officer. The Respondent's Representatives accepted that the record of Subsidiary Company was seized, however, back up of all record was left to the management of the Subsidiary Company. In this regard, the Respondent's Representative relied upon the statement of the investigating officer mentioned in para nine of the Impugned Order. The Respondent's Representative stated that in view thereof, the Appellants should have had no difficulty in filing of consolidated financial statements of the Company.
4. The Appellate Bench (the Bench) has heard the parties and perused the record. The Bench asked the Respondent's Representative to substantiate the statement of the investigation officer that he had left a backup of record with the Subsidiary Company, however, they only relied upon the statement of investigation officer. In view of the facts and circumstances of the case, the Bench is compelled to accept the presumption favoring the Appellants i.e. non-availability of backup

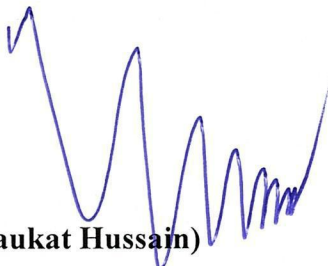


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of Subsidiary Company. The Bench believes that the Subsidiary Company had no backup of record otherwise the Company would have filed the consolidated financial statements. The Bench's view is based on the fact that the Company had filed its stand-alone quarterly accounts for the required period.

5. In light of the above, the Bench has no doubt that the Impugned Order is not sustainable, therefore, we hereby *set aside* it. We direct the Respondent to handover all original record or backup record of the Subsidiary Company if there is no legal bar or legal implication including any pending inquiry, investigation or criminal complaint, so that the Company may file consolidated financial statements of the required period and other periods subsequent for the quarter ended March 31, 2017. We further direct the Respondent to keep a duly signed and stamped documentary record of the documents/instruments/record, which will be handed over to the management of the Subsidiary Company. We also direct the Respondent that after handing over the documents/instruments/record to the Subsidiary Company, reasonable time (not exceeding six months) may be given to the Company to file required consolidated statements.
6. The Appeal is disposed of, without any order as to cost.


(Farrukh Hamid Sabzwari)
Commissioner (SCD,AML)


(Shaukat Hussain)
Commissioner (Insurance, C&CD)

Announced on: **13 AUG 2020**