



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 86 of 2016

1. Mr. Pervez Ahmed
2. Mr. Ali Pervez

...Appellants

Versus

Director (CSD) Securities and Exchange Commission of Pakistan ...Respondent

Date of Hearing: 13/04/17

### Present:

For the Appellant:

- 1) Mr. Furqan Naveed, Advocate (CLM)

For the Respondent:

- 2) Ms. Amina Aziz, Director (CSD)
- 3) Ms. Zohra Sarwar, Additional Director (CSD)

### ORDER

1. This Order is in the matter of appeal No. 86 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan (Commission) Act, 1997 (SECP Act) against the order (Impugned Order) dated 15/08/16 passed by the Respondent.
2. The brief facts of the case are that as per record, both Mr. Pervez Ahmed and Mr. Ali Pervez (Appellants) are Directors of Pervez Ahmed Capital Private Limited (PACPL)

Appellate Bench, No. IV

Appeal No.86 of 2016



## Securities and Exchange Commission of Pakistan

and Mr. Ali Pervez is also a Director of Ali Pervez Capital Private Limited (APCL). Both PACPL and APCL are corporate brokerage houses. Both Appellants also hold directorships in D.S. Industries Limited (Company) which is a listed company. In terms of section 187(j) of the Companies Ordinance, 1984 (Ordinance), the Appellants as Directors of corporate brokerage houses were not qualified to be appointed as Directors of a listed company. The Appellants despite not being qualified to be Directors of a listed company have been holding office of Director of the Company, prima facie, in contravention with the legal provisions.

3. Show Cause Notice dated 11/12/15 (SCN) was issued to the Appellants. The reply to the SCN was submitted vide letter dated 02/01/16. A hearing in the matter was finally held on 19/02/16 and Mr. Furqan Naveed and Mr. Salman Farooq, authorized representatives of the Appellants appeared before the Respondent and made their submissions.
4. The Appellant was found in violation of provisions of section 187(j) of the Ordinance over a period from 01/07/08 till date, as they are ineligible to be Directors of the Company while they have been Directors of a corporate brokerage house. By holding simultaneously directorship in the Company and the PACPL, the corporate brokerage house, they have made themselves liable for action under the provisions of section 189 of the Ordinance. Therefore, in exercise of the powers conferred by section 189 of the Ordinance, a fine of Rs.100 per day for 2,889 days of default was imposed on each of them starting from 01/7/08 to date. The Appellants were directed to deposit fine of Rs. 288,900 with the total amount aggregating to Rs.577, 800.
5. The Appellant preferred the instant appeal on the following grounds:
  - a) The Impugned Order is liable to be set aside on the ground that PACPL has never traded in Company shares. The Appellants had submitted before the Respondent that after the elections of PACPL in August 2016, the Appellants would not be re-elected



## Securities and Exchange Commission of Pakistan

as Directors. In light of the same, a lenient view should have been taken by the Respondent while passing the Impugned Order.

- b) The Respondent misconstrued the statement of authorized representative of the Appellants while passing the Impugned Order. It is submitted that the authorized representative of the Appellants stated during the proceedings that the Appellants will not get themselves re-elected as Directors of PACPL in the election of Directors which was held on 30/08/16. However, the Respondent held in the Impugned Order that the authorized representative of the Appellants undertook that the Appellants would resign from the Directorship of PACPL. It is submitted that no such statement was given and/or made during the course of proceedings.
- c) The Appellants admit their default, however, PACPL was not active; did not have license for a brokerage house and remained a dormant company till March 2015. Therefore, the finding of the Respondent that the Appellants were in violation of section 187(j) of the Ordinance since 01/07/08 is against the law and facts of the case. Penalty should have been imposed after August 2014 when brokerage license was granted to PACPL and not since 2008. PACPL was not a brokerage house since 2008 and there was no conflict of interest in terms of section 187(j) of the Ordinance. The Impugned Order, therefore, is liable to be set aside.

6. The Respondent rebutted the arguments of the Appellant as follows:

- a) Trading in shares of the Company is not subject matter of the Impugned Order. By virtue of holding directorship in a brokerage firm, the Appellants were not eligible to be appointed as Directors of the Company in terms of section 187(j) of the Ordinance. However, the Appellants have been in default of the provisions of section 187(j) of the Ordinance since 01/07/08 till date of Impugned Order. The said assertion was put forth by the Appellants and duly addressed in Impugned Order as well.
- b) Paras 4<sup>th</sup> and 6(c) of the Impugned Order specifically addressed the issue of commitment of the Appellants that they will not get themselves re-elected as Directors of PACPL in elections in August 2016. It is important to note such a commitment on



## Securities and Exchange Commission of Pakistan

part of the Appellants did not absolve them from the contravention of section 187(j) of the Ordinance which they had been in violation of since 01/07/08. Moreover, the Appellants continue to be Directors of PACPL to date.

- c) The Respondent, after analyzing the facts of the case and giving ample opportunity to the Appellants to respond to alleged non-compliance of law, issued the Order incorporating all relevant legal and background facts. The Appellants have continued to violate the requirements of section 187(j) of the Ordinance till date and have provided no supporting evidence to refute the same.
7. We have heard the parties. The Appellants admitted the default and argued that no penalty should be imposed since 2008 as PACPL was not granted license for brokerage services until 2014. The Respondent rebutted the arguments of the Appellants by stating penalty was rightly imposed on the Appellants for violation of section 187(j) of the Ordinance and the Appellants continue to be Directors of PACPL.
8. We have perused the records. PACPL had brokerage license from March 2008 until 2009 and then re-applied for license in 2014 which was granted as part of the requirements of Demutualization. PACPL had received Trading Right Entitlement Certificate (TREC) since 2012. The Appellants had a license to engage in brokerage business when penalty was imposed in July 2008 and continue to be Directors to date despite their earlier plea that they will discontinue as Directors of PACPL, therefore, we see no reason to interfere with the Impugned Order. The appeal is dismissed with no order as to costs.

**(Fida Hussain)**

Commissioner (Insurance)

**(Zafar Abdullah)**

Commissioner (SCD)

Announced on: 18 MAY 2017