



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 87 of 2016

Dr. Mohammad Azam Chaudhry and M. Farooq Akhtar
(Attorneys of Promoters of Pakistan Medical Association)

Appellant

Versus

1. The Commissioner (CLD), SECP, Islamabad.
2. The Deputy Registrar of Companies (CLD-CCD), SECP, Islamabad

Respondents

Date of hearing:

17/2/17 and 21/2/19

Present:

For Appellant:

- i. Dr. Mohammad Azam Chaudhry
- ii. Usman Nawaz Satti
- iii. Mohammad Qasim
- iv. Rehan Ali Bokhari

For Respondent:

- i. Mubasher Saeed Saddozai, Director (CLD-CCD)
- ii. Anas Noman, Additional Director, (CLD-CCD)
- iii. Beenish Waqas, Assistant Director (CLD-CCD)

ORDER

1. This Order shall dispose of Appeal No. 87 of 2016 filed under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the SECP Act) against the order dated August 1, 2016 (the



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Impugned Order) passed by the Commissioner-CLD (the Respondent No.1) under Section 484 (1) of the Companies Ordinance, 1984 (the Ordinance).

2. Brief facts of the case are that Dr. Muhammad Azam Chaudhry, the authorized representative of the promoters of Pakistan Medical Association (the Proposed PMA) filed a Revision Petition (the Petition) under section 484 (1) of the Ordinance before the Respondent No.1 against an order/letter dated January 9, 2014 (the First Order), issued by the Deputy Registrar of Companies-CCD (the Respondent No.2) whereby, the promoters of proposed PMA (the Promoters) were advised to obtain a licence from Directorate General of Trade Organization (the DGTO) under the Trade Organization Act, 2013 (the Act).
3. The Petition was heard by Respondent No.1 on April 26, 2016 and the Proposed PMA was represented by Farooq Akhtar (the Representative). The Respondent No.1 informed the Representative that the First Order was issued under his express authority and supervision therefore, it is not appropriate for him to hear the Petition. Therefore, the Respondent No.1 advised the Representative to file an Appeal under section 33 of the SECP Act, before the Appellate Bench (the Bench).
4. The Promoters preferred this Appeal through Dr. Mohammad Azam Chaudhry and M. Farooq Akhtar (the Attorneys) *inter alia* on the grounds that the Proposed PMA is a welfare association and its Promoters do not want to register it as a trade body. They further stated that upon the advice of the Executive Director (CLD), the Promoters had approached the DGTO, however, it refused to issue NOC on the ground that Proposed PMA is not a trade body. The Promoters submitted that the objects of the Proposed PMA does not suggest that it is a trade body, however, objects could be amended, to eliminate this impression. They stated that the Proposed PMA is already working and promoting social welfare activities under the Societies Registration Act, 1860 (the Societies Act) therefore, the Promoters intend to continue social welfare activities under the ambit of Section 42 of the Ordinance. The Promoters also stated that the Act deals with "services" whereas, the Proposed PMA desires to promote "social services and other useful objects", envisaged under Section 42 of the Ordinance, therefore, the Respondents' assertion about registration of the Proposed PMA under the Act is not tenable.
5. The Respondents have denied and rebutted the grounds of Appeal and submitted that the objects of the Proposed PMA are to promote services provided by medical practitioners and to protect their interests



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whereas, Section 42 allow formation of associations for social services. They submitted that the proposed objects are related to provision of services and not social services. It was also submitted that as per Section 5(3) of the Act, when an association is formed for promoting trade, commerce, industry or service and has used the word “association” as part of its name, then it is required to be registered as a trade organization under the Act. Furthermore, the amendments in the memorandum and articles of association will only be a cosmetic change, which may not serve the purpose. The Respondents stated that the clauses (b), (c), (e), (f), (g), (i) and (j) of the MOA of the Proposed PMA are related to the welfare of members, therefore, the Proposed PMA is a trade body. The Respondents did not deny that the Proposed PMA is registered under the Societies Act and explained that the matter of Proposed PMA and its objects was also referred to the DGTO, which also agreed vide its letter dated March 11, 2014 that the Proposed PMA is required to seek licence as trade organization under the Act.

6. Respondent No.2 raised a preliminary objection before the Bench that the Appeal is time barred in view of the limitation period provided in Section 33 of the SECP Act 1997 because the Promoters have not filed Appeal against the First Order. Respondent No.2, while arguing the non-maintainability issue stated that the grant of licence was refused vide the First Order, however, this Appeal has been filed against the Impugned Order whereby, the Respondent No.1 has refused to entertain the Petition filed by the Promoters against the First Order.
7. The Bench has heard the parties and perused the record of the Appeal. The Promoters have filed this Appeal after the pronouncement of the Impugned Order, with the request to set-aside both Orders (first Order and the Impugned Orders). The instant Appeal would have been time barred if the Appellant had filed it against the First Order; however, the Impugned Order has provided a new cause of action to the Appellant. The record reveals that the Petition was time barred, however, the Respondent No.2 has not agitated this legal ground before Respondent No.1. The Respondent No.2 should have raised this objection before Respondent No.1, however, the record shows that no such effort was made. In the circumstances, the Impugned Order has enabled the Promoters to file this Appeal within the time stipulated under Section 33 of the SECP Act, therefore, objection of Respondent No.2 cannot be acceded to. Hence, the Appeal is maintainable under Section 33 of the SECP Act.
8. The Bench has examined the verbal and written submissions of the parties. The Promoters have not substantiated their claim with the documentary evidence that the DGTO has denied to issue NOC to the



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Proposed PMA for registration as a trade body under the Act whereas the Respondents have relied upon the DGTO's letter dated March 11, 2014 whereby it has been stated that the Proposed PMA is required to seek licence as trade organization. The Bench has observed that while referring the matter to the DGTO, the Respondents have disclosed their preconceived mind with respect to non-registration of the Proposed PMA, under the Ordinance. Therefore, in view of non-availability of sufficient evidence, the Bench is unable to determine this controversy. The Bench is of the view that Section 42 of the Ordinance does not bar the Promoters to work and to get a licence thereunder for the social welfare of its members, however, it expressly prohibits, distribution of dividends to its members. The Respondents' assertion that the Proposed PMA cannot be registered under Section 42 of the Ordinance is based on misconception therefore, we are reluctant to accept it. The Promoters have stated in this Appeal that they are not interested to indulge into activities of trade unionism / labour unionism. Therefore, the Bench is of the view that there is no legal restriction in registration of the Proposed PMA under Section 42 of the Ordinance. However, we direct the Appellant to amend its objects especially clause "b" to dispel the impression that the Proposed PMA is a trade body. Without prejudice to the aforesaid, the Respondents are competent to evaluate independently each object clause and direct the Promoters for necessary amendments, to ensure requisite compliance. We also direct the Respondents to review the matter, in accordance with the statutory and regulatory requirements.

9. The Bench has also examined another aspect of the case, which requires due deliberation. It is an admitted position that the Promoters want to convert the PMA registered under the Societies Act (the Existing PMA) into a company licensed under the Section 42 of the Ordinance. In this case, conversion of the Existing PMA into a licensed company is not possible until it is dissolved as per the procedure envisaged under Section 13 of the Societies Act. The Existing PMA would have certain assets and liabilities therefore, without any substitutive entity, its dissolution may cause a vacuum with respect to management and ownership of assets and responsibilities. In the circumstances, the Bench find it appropriate to direct the Respondents' to allow the Promoters to seek issuance of a conditional licence for the Proposed PMA however, it may be required to initiate the dissolution process of the Existing PMA with immediate effect. . The Bench's direction to issue a conditional licence is subject to the fulfilment of all the relevant requirements by the Promoters. Furthermore, the conditional licence shall not allow the Proposed PMA to incorporate a company unless Existing PMA is dissolved and in this regard relevant dissolution papers/documents have been submitted before the Respondents. Therefore, If the Promoters are desirous to incorporate a company under the licensed regime of Section 42 of the



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Ordinance, they are required to dissolve the Existing PMA after grant of conditional licence and before incorporation of a company.

10. In view of above, we hereby direct the Respondents to facilitate the Promoters, without compromising the requirements of law and applicable procedure. Accordingly, the Appeal is disposed of without any order as to cost.


(Shauzab Ali)

Commissioner (SMD)


(Aamir Ali Khan)

Commissioner (SCD-PRDD)

Announced on:

11 JUN 2019