



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 88 of 2016

Mr. Nadeem Iftikhar

...Appellant

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 (Cornelius, Lane & Mufti)

For the Respondent:

- 1) Ms. Amina Aziz, Director (CSD)
- 2) Ms. Zohra Sarwar, Deputy Director (CSD)

ORDER

1. This Order is in the matter of appeal No. 88 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.

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2. The brief facts of the case are that Amtex Limited (Company) became a listed company on 13/04/10 by virtue of its shares being listed on the Karachi Stock Exchange (now Pakistan Stock Exchange). As per record of the Respondent, Mr. Nadeem Iftikhar (Appellant) has been Director of the Company since long before the date of listing of the Company. Ms. Sonia Nadeem, wife of the Appellant, has been Director of AMCAP Securities (Private) Limited (AMCAP), a corporate brokerage house, since 18/03/10. Being the spouse of a person engaged in the business of brokerage, the Appellant was, prima facie, found not to be eligible to be appointed as Director of the Company since its listing on 13/04/10 in terms of section 187(j) of the Companies Ordinance, 1984 (Ordinance). However, despite his ineligibility, the Appellant continued to be Director of the Company.
3. Show Cause Notice dated 08/01/16 (SCN) was issued by the Respondent to the Appellant under section 189 of the Ordinance (Ordinance) whereof he was called upon to show cause in writing as to why penal action may not be taken for contravening the law. The reply to the SCN was submitted by Cornelius, Lane & Mufti (Counsel) vide letter dated 20/01/16. A hearing in the matter was fixed on 03/03/16 in response to which the authorized representative through letter dated 02/03/16 requested for adjournment for fourteen days. The case was again fixed for hearing on 15/03/16 but no one appeared on the date of hearing. Another hearing in the matter was fixed on 27/03/16 through hearing notice dated 17/06/16. In response to the hearing notice, the authorized representative through letter dated 24/06/16 submitted a detailed reply to the SCN. Hearing in the matter was finally held on 13/07/16 and Mr. Furqan Naveed appeared before the Respondent as authorized representative of the Appellant.
4. The Appellant was found to be in violation of provisions of section 187(j) of the Ordinance over a period from 13/04/10, as he was ineligible to be Director of the Company while his wife, being Director of AMCAP, was involved in the business of brokerage. Therefore, in exercise of the powers conferred by section 189 of the



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Ordinance, a fine of Rs.100 per day for 2,315 days of default from 13/04/10 until the passing of the Impugned Order was imposed by the Respondent. The Appellant was directed to deposit the aggregate fine of Rs.231,500.

5. The Appellant preferred the appeal on the following grounds:
- a) There is no contravention of section 187(j) of the Ordinance as in terms of the provisions of Securities and Exchange Commission of Pakistan Ordinance, 1969 and the Securities Act, 2015, a person can only be engaged in the business of brokerage after being registered with Securities and Exchange Commission of Pakistan or on issuance of the requisite certificate to that effect. Therefore, it is submitted that the Appellant's wife is not involved in the business of brokerage as she is neither registered as a broker nor carries out business of brokerage nor holds any certificate to such effect, in her personal capacity, as contemplated by Securities and Exchange Commission of Pakistan Ordinance, 1969 and the Securities Act, 2015. The Impugned Order fails to take account of the same and is liable to be dismissed.
 - b) There is a clear distinction made in section 187(j) of the Ordinance between a person being, "*engaged in the business of brokerage or spouse of such person*" and a person who is, "*a sponsor, director or officer of corporate brokerage house*". Therefore, the law has specifically not barred appointment as Director of a listed company on account of the Director being spouse of a person who is sponsor, director or officer of corporate brokerage house in terms of section 187(j) of the Ordinance.
 - c) It has been held by the Respondent in the Impugned Order that every Director of a corporate brokerage house would be considered as being in the business of brokerage. By holding the same in the Impugned Order, the Respondent has in essence amended provisions of the law which deal with the subject issue. The Respondent has no mandate to do so. It is a settled principle of Company Law that a corporate entity and its Directors are separate legal persons, having their own rights and liabilities. The analogy and the allegation in SCN that Appellant's wife, in her capacity as Director of a corporate brokerage house, is engaged in the business of brokerage is contrary



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to such basic settled principle of the Company Law. Furthermore, such interpretation would also be violative of the provisions of Securities and Exchange Commission of Pakistan, 1969 and the Securities Act, 2015. The Impugned Order fails to take account of the same and is liable to be dismissed.

6. The Respondent rebutted the arguments of the Appellants on the following grounds:
 - a) The Appellant's wife is considered to be engaged in the business of brokerage being the Director of AMCAP. As Director, she has the responsibility to make decisions on behalf of AMCAP and it would not be logical to construe that a corporate brokerage house can be involved in business of brokerage without its Directors.
 - b) Neither the show cause notice nor the Impugned Order observe that the Appellant is in contravention of section 187(j) because he is spouse of a sponsor, director or officer of a corporate brokerage but rather he was found to be in violation of the section on account of his spouse being engaged in the business of brokerage which has been sufficiently deliberated in the Impugned Order.
 - c) The Impugned Order is self-speaking and sufficiently elaborates the scheme of laws and the fiduciary duties of the Directors and their relationship and role in the functioning of the company. The sponsors of the brokerage business have handed over the responsibility and authority of making decisions regarding the functioning of a brokerage house to the Directors who either personally have to discharge or through setting in place an operational setup which the Directors would direct on behalf of the company. Therefore, the Directors are fully involved in the brokerage of business.

7. We have heard the parties. The Appellant has argued that the Appellant's spouse is not involved in the business of brokerage and is neither registered as a broker nor carries out business of brokerage nor holds any certificate to such effect, in her personal capacity. The Respondent argued that as Director, the Appellant's spouse has the responsibility to make decisions on behalf of AMCAP, therefore, it would not be



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logical to construe that a corporate brokerage house can be involved in brokerage business without its Directors.

8. We are of the view that section 187j(i) of the Ordinance is very clear and unambiguous which provides that, *“No person shall be appointed as a director of a company if he is engaged in the business of brokerage; or is a spouse of such person or is a sponsor, director or officer of a corporate brokerage house; provided that clauses (i) and (j) shall be applicable only in case of a listed company.”* The Appellant’s wife is Director of AMCAP which is a corporate brokerage house and a TRE Certificate holder of the Pakistan Stock Exchange. It is not possible for Director of a brokerage house not to be directly or indirectly involved in decisions which affect the business of the brokerage house. The Appellant’s wife being Director had the fiduciary responsibility to take decisions on behalf of AMCAP, therefore, the Appellant’s argument that she was a separate legal person who had no involvement in the business of AMCAP does not hold any merit.
9. In view of the foregoing, we see no reason to interfere with the Impugned Order. The Appeal is dismissed with no order as to costs.

(Fida Hussain Samoo)

Commissioner (Insurance)

(Zafar Abdullah)

Commissioner (SCD)

Announced on: **18 MAY 2017**