



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 88 of 2019

Shaheed Zulfikar Ali Bhutto Foundation

Appellant

Versus

The Director (CLD-CCD), SECP.

Respondent

Date of hearing:

March 9, 2020

Present:

For Appellant:

Mr. Ejaz Hussain Rathore, FCA

For Respondent:

Ms. Maheen Fatima, Director-Adjudication-II, SECP

ORDER

1. This Order shall dispose of Appeal No. 88 of 2019 filed by Shaheed Zulfikar Ali Bhutto Foundation (the Appellant) against the Order dated July 9, 2015 (the Impugned Order) passed by the Director, CLD-CCD (the Respondent).
2. The Brief facts of the case are that a licence under Section 42 of the Companies Ordinance, 1984 (the Ordinance) was issued and in pursuance whereof the Appellant was incorporated as a company on November 21, 1995. In contravention of the direction issued by the Securities and Exchange Commission of Pakistan (the Commission) vide Circulars No.2 of 2015 dated January 1, 2015, Circular No.4 of 2015 and Circular No. 5 of 2015 dated January 30, 2015; the Appellant had failed to apply for renewal of licence up to February 16, 2015. Therefore, the competent authority has revoked Appellant's licence under Section 42, sub-section 4 of the Ordinance and concerned registrar was directed to initiate proceedings to strike off Appellant's name from the register of companies, under Section 439 of the Ordinance.



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3. The Appellant had filed this Appeal *inter alia* on the grounds that the due to political situation involving the promoters/directors and their subsequent exile from the country caused non-compliance. The Appellant stated that deaths of four out of seven promoters/directors of the Appellant and death of the legal counsel, whose office address was the Registered Address of the Appellant, further aggravated the situation. The Appellant apprised that information regarding the Impugned Order was communicated to the Appellant by its Banker vide its letter dated June 14, 2019 and prior to the aforesaid date neither any notice nor the Impugned Order was received by the promoters/directors. The Appellant contended that the surviving promoters/directors desire to reactivate the Appellant to promote its objectives and in this regard they undertake to comply with all the formalities and documentation required for the purpose of issuance and maintenance of license under Section 42 of the Companies Act, 2017 (the Act). The Appellant stated that the surviving promoters/directors undertake to make good all the default in filing of forms and documents, and compliance with license requirements, after revival of the license. The Appellant lastly stated that the Appellant was condemned unheard (*Audi Alteram Partem*) and principles of due process and fair trial were not observed.

4. The Respondent has rebutted the grounds of Appeal and stated that the Impugned Order was duly sent at the registered office address of the Appellant, which never returned back undelivered. The Respondent further stated that in Form-A of the instant Appeal, registered office address has been mentioned as “No.1, Second Floor, 6-B, Markaz F-6, Islamabad” which is the same address on which the Impugned Order was served. Therefore, the given address is valid and there appears no reason why the Appellant could not receive notices or the Impugned Order. The Respondent stated that three promoters are alive and residing in Pakistan, therefore, the justification for non-compliance of the requirements of law is not tenable. The Respondent had admitted that Appellant’s promoters desire to reactive the Appellant. The Respondent has contended that, if this honorable Bench is inclined to allow the appeal, then, the appellant may be directed to first submit an application for the renewal of licence, and to comply with all the filing requirements of the Act, and other requirement pertaining to maintenance of proper books of account and statutory records and registers as well as the requirements of the Associations with Charitable and Not for Profit Objects Regulations, 2018. The Respondent stated that the Appellant and its directors had also constructive knowledge/notice through circulars and wide press coverage on national scale about



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decision of the Commission requiring “not-for-profit companies” older than five years to get renewed their licence under Section 42 of the Ordinance. However, the Appellant failed to apply for renewal of its licence.

5. The Appellate Bench (the Bench) has heard the parties and perused the record. The Appellant’s representative reiterated the grounds of Appeal whereas, the Respondent’s representative argued that if Appellant undertake to make good previous defaults then they will have no objection to allow this Appeal.
6. The Bench has carefully gone through the contents of the Impugned Order, grounds of Appeal, parties’ arguments and other relevant record, which revealed that since its incorporation as a licensed entity, the Appellant had neither submitted required annual financial statements nor filed statutory returns. The Bench has noted with great concern that for last twenty five years the Appellant remained non-compliant with the statutory and regulatory requirements, however, the Respondent had failed to initiate legal proceedings in this regard. The Bench is astonished that even the Impugned Order has not mentioned any previous non-compliances committed by the Appellant, rather it was passed due to a technical default (*failure to apply for renewal of licence*).
7. The Bench is of the view that Appellant’s failure to file audited annual financial statements, annual statutory forms and directors’ election forms and Respondent’s failure to implement required procedure, is a grave reflection of abuse of licensing requirements and authority. The Bench has no doubt that the Respondent was required to initiate legal and penal proceedings against the Appellant at the time when first default was committed, however, the Respondent had failed to discharge its duties in a required manner.
8. The Bench has examined the written comments filed by the Respondent, wherein, it has been stated that if Appellate Bench is inclined to allow the appeal, then, the appellant may be directed to first submit an application for the renewal of licence, and to comply with all the filing requirements of the Act and the Associations with Charitable and Not for Profit Objects Regulations, 2018. The Bench has also considered the Respondent’s representative statement whereby she has stated that subject to fulfillment of all applicable requirements, the Appeal may be allowed. The Bench is of the view that Respondent’s written comments and Respondent’s representative statement are not



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appropriate because without filing the past twenty five years annual audited accounts and statutory returns, the Appellant cannot be allowed to file application for renewal of licence under Section 42 of the Act. Therefore, the Bench cannot accept Respondent's argument.

9. The Appellant is interested to revive its licence and subject to fulfilment of applicable requirements, the Respondent is inclined to provide said privilege, therefore, we hereby direct the Appellant to file past twenty five years (since 1995) audited financial statements, annual statutory returns, forms related to directors' election and other required forms and documents with the Commission. We further direct the Appellant to pay late/delayed filing fees applicable under the Ordinance and the Act to rectify its previous non-compliances. The Bench is of the view that the Appellant's application for renewal of licence cannot be considered unless filing of past twenty five years annual audited financial statements and statutory returns. Therefore, we direct the Respondent not to proceed with the licence renewal application unless aforesaid past twenty five years filings are duly admitted.
10. The Bench has noted an anomaly in the Impugned Order, whereby initiation of proceeding under Section 439 of the Ordinance was advised. We are of the view that after revocation of the licence under section 42 of the Ordinance, the Respondent was required to proceed in accordance with the requirements of the proviso of Section 42 of the Ordinance, therefore, without adopting the required procedure, advising the concerned registrar to initiate proceeding under section 439 of the Ordinance was unlawful. The sub-section 4 of Section 42 of the Ordinance require that upon revocation of licence the Registrar shall change the status of association whose licence has been revoked and word or words "Limited", "(Private) Limited", or "(Guarantee) Limited", as the case may be, shall be entered at the end of the name of the association.
11. The Bench has observed that the Appellant's licence was revoked in 2015, however, its status has not been changed by the Respondent and the Appellant is still operating under the name "SHAHEED ZULFIKAR ALI BHUTTO FOUNDATION". The law is clear and the Bench has no doubt that after revocation of licence, the Appellant cannot continue its operation without converting its status and making required amendments in necessary documents. Furthermore, the Bench has observed that under the Ordinance, after change in status, the Appellant had only two options, whether to continue with new status or opt for winding up. Without prejudice to the aforesaid correct legal position, the Bench has noted that even no action under Section 439 of

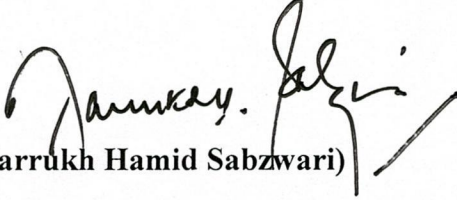


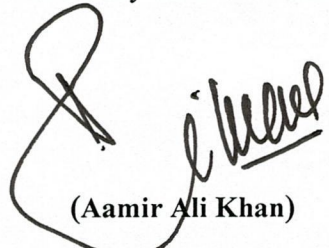
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the Ordinance has been executed. The Bench is of the view that above mentioned facts reflect absence of due deliberation of actions and execution of orders under the licensing regime of Section 42 of the Ordinance/Act.

12. In view of above, the Bench is not inclined to restore the licence revoked through the Impugned Order. However, the Bench has considered Appellant's representative request for grant of time to fulfill all applicable previous regulatory and statutory requirements, therefore, we hereby allow six months (*to be reckoned form the dated of this order*) to remove past twenty five years defaults. Furthermore, the Respondent is directed to consider Appellant's licence restoration/renewal application in accordance with the applicable law, if previous defaults are removed within allowed time.

13. In the circumstances, the Appeal is disposed of, without any order as to cost.


(Farrukh Hamid Sabzwari)
Commissioner (SCD,AML)


(Aamir Ali Khan)
Chairman/Commissioner (CLD-CSD)

Announced on: **24 MAR 2020**