



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

IN THE MATTER OF

APPEAL No. 95 OF 2020

(Against Order Dated 12-09-2019 passed by Commissioner-CCD, SECP)

INDUS CRAFTS FOUNDATION

... APPELLANT(S)

V E R S U S

COMMISSIONER, SECP

... RESPONDENT(S)

Date of hearing:

October 14, 2021

Present: (Via Video-Link)

For the Appellant(s):

Mr. Rashid Sadiq, CEO/Managing Partner, RS Corporate Advisory

For the Respondent(s):

Mr. Waseem Ahmad Khan, Director, Adjudication Department – II, SECP

ORDER

1. This Order shall dispose of Appeal No. 95 of 2020, filed by Indus Crafts Foundation (the “Appellant” or the “Company”), under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the “SECP Act”), against Order dated 12-09-2019 (the “Impugned Order”), passed by the Respondent, where the Appellants are aggrieved.
2. Brief facts of the case are that the Appellant was established in the year 2012 as a not-for-profit company under section 42 of the repealed Companies Ordinance 1984 (the “Repealed



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Ordinance”). The Appellant was granted license in pursuance of section 42 of the Repealed Ordinance on 18-04-2012 (the **“License”**) and subsequently, the Company was registered on 04-06-2012. The License was granted for a period of five years i.e. till 17-04-2017, renewable for further term(s) of five years each. The Appellant was required to apply for renewal of the License three months before the expiry of five years period as provided under Regulations 5(3) and 8(1) of the *Associations with Charitable and Not for Profit Objects Regulations 2018* (the **“Regulations”**) and in accordance with the conditions of the License granted by the Commission. The Appellant failed to apply for renewal of the License within the stipulated time. Proceedings against the Appellant were initiated through a Show-Cause Notice dated 12-04-2017 issued by the Securities & Exchange Commission of Pakistan (the **“Commission”**), however, during these proceedings, the Appellant filed an application for renewal of the License on 22-01-2018. Therefore, the Commission, through its order dated 07-02-2018 directed the Appellant to be careful in compliance with the mandatory provisions of law in the future.

3. However, it was noted that the Appellant failed to file annual audited financial statements for the years 2017 and 2018 and hence, was non-compliant with the requisite formalities related to renewal of the License. Accordingly, another Show-Cause Notice (SCN) dated 25-04-2019 was issued to the Appellant to clarify the position in relation to the default in compliance with the requirements of section 42(5)(d) of the Companies Act, 2017 (the **“Act”**). During the course of proceedings, the Appellant, through a letter dated 18-06-2019, informed that the annual return for the year 2018 has been filed and also assured to file the overdue annual accounts before 30-06-2019. Subsequently, the Appellant through a letter dated 15-07-2019, informed that the Company had decided to apply for striking-off its name from the register of companies. In this regard, through a letter dated 03-09-2019, a copy of the members’ resolution dated 09-06-2019 was submitted to the Commission, which mentioned filing of an application before the Commission for striking-off the name of the Company from the register of companies as the Company had no assets and liabilities and no recovery on its operations. However, this fact, that the Company had no assets and liabilities, was contended by the learned representative of the Respondent as being contradictory to the record submitted by the Appellant.



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4. The proceedings initiated through the SCN dated 25-04-2019 were disposed through the Impugned Order dated 12-09-2019, whereby the License of the Company was revoked in exercise of the powers conferred under section 42(5) of the Act along with directions to proceed in terms of section 43 of the Act, failing which necessary proceedings under section 44 of the Act would be initiated.
5. Subsequently, as the Impugned Order was passed, members of the Company after discussion and deliberation, passed another resolution in the Annual General Meeting (AGM) on 10-01-2020 in favor of the Company to continue its operations. Hence, the Appellant moved an application on 30-01-2020 to Commissioner, CCD, SECP, to review the Impugned Order. However, the review application was not entertained and the Appellant was advised, through letter dated 24-04-2020 from the Adjudication Department-II, to file an appeal before the Appellate Bench. Therefore, being aggrieved from the Impugned Order, the instant appeal was filed before the Bench.
6. Learned representative for the Appellant submitted that the SCN (dated 25-04-2019) was served for non-filing of the financial statement for the years 2017 and 2018. The audited financial statements have since been filed with the SECP and the Appellant is fully compliant with all regulatory requirements.
7. Another point made out by the learned representative for the Appellant was that the Company did not have a license or deemed valid license, per Regulation 8 of the Regulations, which could be revoked. Therefore, the Commission should have only refused renewal of the License in terms of Regulation 9 of the Regulations. Hence, the learned representative for the Appellant argued that the Impugned Order is not in accordance with the requirements of the law, primarily for the reason that the Commission was only empowered to refuse renewal of the License; and revocation was not an option in the absence of any valid license. Hence, an expired license cannot be revoked as it was not in existence at the time of revocation.
8. It was also mentioned on behalf of the Appellant that members of the Company initially passed a resolution to have the name of the Company struck-off from the register of companies based on the misunderstanding that the activities of the Company could be transferred to some other not-for-profit organization to be formed by the Board members which would not be a licensed



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company under the Act. Thus, the members passed a fresh resolution, superseding the previous resolution and reversed that decision in the interest of work being done by the Company. This decision was taken unanimously.

9. In light of the above stated arguments placed before the Bench, it was prayed that the Impugned Order may be set aside and the Company be allowed to continue as a going concern.
10. Learned representative for the Respondent rebutted the arguments of the Appellants, *inter-alia*, that the Appellants were previously non-compliant with filing of an application related to renewal of its License. However, later when the application was filed, a lenient view was taken in the order dated 07-02-2018 and the Appellant was directed to be careful and ensure compliance with the mandatory provisions of all the applicable laws in future.
11. Thereafter, since the Appellant remained non-compliant, again, with respect to non-filing of annual audited accounts for the years 2017 and 2018, the SCN was issued under section 42(5) of the Act, which provides for the Commission to revoke a license granted under section 42(1) of the Act. After reiterating the material facts produced above, learned representative of the Respondent emphasized on the point that due to statutory non-compliance related to non-filing of the annual audited accounts for the years 2017 and 2018, the Impugned Order for revocation of the License was passed. The Impugned Order clearly spells out failure of the Appellant to file financial statements for the years 2017 and 2018, which is a ground for revocation of the License. Section 42(5)(d) of the Act empowers the Commission to revoke the License if a company has made a default in filing with the Registrar financial statements or annual returns for the preceding two consecutive financial years. Accordingly, notwithstanding the Appellant's resolution for having its name struck-off the register of companies, the License in the Impugned Order was in fact revoked upon failure of the Company for violation of the mandatory requirements of law. Hence, prayed that the Impugned Order may be upheld in its entirety.
12. **The Appellate Bench** (the "Bench") has heard the parties and perused the record. Representatives of the Appellants and the Respondent reiterated their grounds of appeal and rebuttal thereof.



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13. The point of contention between the parties in the instant matter relates to revocation of License of the Appellant in the Impugned Order dated 12-09-2019 where proceedings initiated through the SCN dated 25-04-2019, issued under section 42(5) of the Act were disposed.
14. Relevant provisions of Section 42(5) of the Act and Regulation 8 of the Regulations are produced herein below:

Excerpts from Section 42(5) of the Companies Act 2017

“42. Licencing of associations with charitable and not for profit objects.—(1).....
(5) The Commission may at any time by order in writing, revoke a licence granted under sub-section (1), with such directions as it may deem fit, on being satisfied that—
(a) the company or its management has failed to comply with any of the terms or conditions subject to which a licence is granted; or
(d) the company has made a default in filing with the registrar its financial statements or annual returns for immediately preceding two consecutive financial years; or”

Excerpts from Regulation 8 of the Associations with Charitable and Not for Profit Objects Regulations 2018

“8. Renewal of license.- (1) The company which was issued license under the company law shall, within a period of three months, prior to expiration of license, make an application to the Commission for renewal.
(2) The application

Provided that till such time the license is renewed the existing license shall be deemed valid for the purposes of these regulations unless the company failed to apply as specified in sub-regulation (1) or fails to fulfil all the requirements to the satisfaction of the Commission for the renewal of license:

Provided further that if the company fails to apply within the specified time period or fails to fulfil all the requirements to the satisfaction of the Commission, the Commission may initiate proceedings in terms of provisions of sub-section (5) of section 42 of the Act.”



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15. Plain reading of Section 42(5)(d) clearly suggests that the Commission is empowered to revoke a license granted under section 42(1) of the Act, if a company is at default in filing with the registrar its financial statements for previous two consecutive years. In the instant matter, the Company had failed to file its annual audited financial statements for the years 2017 and 2018. Hence, the SCN was issued and thereafter the Impugned Order was passed whereby the License of the Company was revoked along with additional facts mentioned therein that the Company has also resolved to strike-off its name from the register of companies. Nevertheless, the basis of the Impugned Order remains related to the fact that the Appellant was in default in filing its financial statements as being the mandatory requirements of law and therefore, Section 42(5)(d) was rightly applied to take the necessary action provided therein.
16. Now coming to the argument raised on behalf of the Appellant, where it was stated, that License of the Company had expired on 17-04-2017, therefore, the Commission could not revoke an invalid License through the proceedings initiated by SCN dated 25-04-2019; and at the maximum could have only refused to renew the License. After reviewing the second proviso of Regulation 8 of the Regulations, in particular, we find it hard to agree with the notion that the Commission could not revoke a license granted to the Company since it was expired. We believe that the second proviso of Regulation 8, provides a clear scenario that where a company fails to apply for renewal of its license within the specified time period, the Commission may initiate proceedings in terms of provisions of Section 42(5) of the Act. Meaning, thereby, that when the Company fails to apply for renewal of license, its license would stand expired, and the Commission may proceed under section 42(5) of the Act, which empowers the Commission to revoke the license in such conditions. Hence, we consider that the law provides to revoke a license even if it has expired and revocation, in such situation, is a formal closure of an already expired license. Thus, in situations where a company has not applied for renewal of license within the specified time, section 42(5) of the Act, which relates to revocation, will come into effect.
17. Another point presented by the representative of the Appellant during the hearing proceedings is that the Company did not receive any donations from the general public and that operations of the Company are based on grants received from the government. In this regard, learned representative for the Respondent also mentioned that this has been verified from the financial statements for the



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years 2017 to 2019. It is disclosed therein that the Appellant's income has been derived from grants received from provincial and local governments as well as return on investment in bank accounts and TDRs (Term Deposit Receipts), etc. Even though donations were not received directly from the public, the grant through the provincial and local governments do constitute public funds and as such need to be safeguarded and utilized for the specific purposes given.

18. Be that as it may, in the present circumstances, the Company also pleads that it has since filed the audited accounts and claims to have fulfilled all other requirements, we find it proper to extend an opportunity for the application related to renewal of the License of the Appellant be reviewed by the department (CCD) within the parameters available under the law and without prejudice to any other actions that the law may warrant for the time being.
19. In light of the above, the matter is returned to the department (CCD) to review a refreshed application for renewal of License from the Company. In case the requirements fall short within the applicable provisions of law, or are not met within a 30 days' time, from the date of this order, the Impugned Order shall remain intact and License of the Company be considered revoked along with other direction(s) provided in the Impugned Order dated 30-09-2019.

(Sadia Khan)
Commissioner

(Farrukh Hamid Sabzwari)
Commissioner

Announced on: **24 NOV 2021**