



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal Nos. 26 to 33 of 2019

1. Appeal No.26: Mehmood Ali Shah Bukhari [COO & Member Credit Committee]
2. Appeal No.27: Farrukh Shaukat Ansari [Independent Director]
3. Appeal No.28: Rashid K. Siddiqui [Ex- CEO & Chairman Credit Committee]
4. Appeal No.29: Syed Muhammad Rahmanullah [Ex-Director]
5. Appeal No.30: Liaquat Mahmood Shah [GM & Member Credit Committee]
6. Appeal No.31: Syed Shahid Owais [Company Secretary]
7. Appeal No.32: Aftab Afroze Mahmoodi [Chief Financial Officer]
8. Appeal No.33: Syed Waseem Ul Haq Haqqie [Ex-Director]

Appellants

Versus

The Registrar Modaraba Companies and Modaraba, SECP

Respondent

Dates of hearing:

December 12, 2019,
March 5, 2020, July 23, 2020
& August 17, 2021

Present:

For the Appellants:

Muhammad Mahmood Ali, Advocate High Court

For the Respondent:

1. Ms. Bushra Aslam, Registrar Modaraba
2. Mr. Shahid Mahmood, Additional Director
3. Mr. Ibrar Saeed, Additional Director (Adjudication-III)

ORDER

1. This single Order shall dispose of eight appeals registered as Appeal Nos. 26 to 33 of 2019 filed by the above-mentioned Appellants under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the Act) against Order dated April 3, 2019 (Impugned Order) passed under Section 20 of the Modaraba Companies and Modaraba (Flotation and Control) Ordinance, 1980 (Ordinance).



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2. The brief facts of the case are that an enquiry under section 21 of the Ordinance was conducted against M/s. KASB Invest (Pvt.) Limited (Management Company) managing KASB Modaraba, First Prudential Modaraba and First Pak Modaraba (Modarabas). The enquiry report dated April 18, 2018 highlighted certain violations of the Modaraba regulatory framework committed by the Management Company, its Board of Directors and Credit Committee of the Modarabas. In view thereof, the Respondent issued show-cause notices dated November 5, 2018 and February 7, 2019 (SCNs) to the Management Company, its Board of Directors and ex-directors. Written reply to the SCNs were received on November 30, 2018 and February 25, 2019. Hearings in the matter were held on December 14, 2018 and March 4, 2019. Syed Waseem ul Haq Haqqie, ex-director of the Management Company, neither submitted a reply to the SCN nor appeared for hearings before the Respondent, therefore, he was proceeded ex-parte. The Respondent concluded the SCNs proceedings and appointed Mr. Khawaja Waheed Raza as administrator of the Modarabas in terms of Section 20 of the Modaraba Ordinance. The Management Company was directed to handover the control and management of the Modarabas to the administrator immediately without any hindrance or obstruction. Furthermore, the Respondent also imposed an aggregate penalty of Rs. 900,000/- under Section 32 of the Ordinance for violations of Regulation 4(e) of Part-IV of the Prudential Regulations for Modarabas, in the following manner;

S.No	Names	Penalty (Rupees)
1.	Mr. Rashid K. Siddiqui, Ex-Chief Executive	100,000/-
2.	Mr. Farrukh S. Ansari, Director	100,000/-
3.	Mr. S. M. Rehmanullah, Ex-Director	100,000/-
4.	Syed Waseem ul Haq Haqqie, Ex-director	100,000/-
5.	Mr. Mehmood Ali Shah Bukhari, Chief Operating Officer	100,000/-
6.	Mr. Liaquat Mahmood Shah, Ex-GM and Member of Credit Committee	100,000/-
7.	Mr. Aftab Afroze Mahmoodi, CFO	100,000/-
8.	Mr. Shahid Owais, Company Secretary	100,000/-
9.	M/s. KASB Invest (Pvt.) Limited	100,000/-

3. The Appellants filed Appeals on May 6, 2019, however, the Appeals were deficient in terms of the Securities and Exchange Commission of Pakistan (Appellate Bench Procedure) Rules 2003. Therefore, after removal of all deficiencies, the Appeals were registered on July 1, 2019. The Registrar Modaraba



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Companies and Modarabas (Respondent) was directed to submit parawise comments in all Appeals, however, only preliminary objections were filed by the Respondent on July 12, 2019 which were shared with the Appellants' Counsel (Counsel) via email. The Respondent submitted that the Appeals are not maintainable under Section 33 of the Act. The Respondent stated that the Management Company and its CEO have already filed a Constitutional Petition No. D-2669 of 2019 (Writ Petition) which is pending before the Honorable High Court of Sindh (Court). The Respondent apprised that the matters agitated in all the Appeals are similar in the Writ Petition hence, none of the Appeals are maintainable and are liable to be rejected. The Respondent further objected that the Appellants cannot challenge the Impugned Order issued under section 20 of the Ordinance in their personal capacities and without the approval/resolution of the Board of Directors of the Company. The Respondent stated that the Appeals against imposition of fine are not maintainable because in terms of sub-section (2) of section 32 of the Ordinance the Appellants were required to file Appeals before the Commission within sixty days, however, they have filed the Appeals before the Appellate Bench under Section 33 of the Act.

4. Hearing in the matter was held before the Appellate Bench (the Bench) on August 12, 2021 wherein the Respondent raised the above-mentioned preliminary objections against maintainability of the Appeals under Section 33 of the Act. The Bench asked the Counsel to respond to the objections raised by the Respondent, however, the Counsel was not prepared to argue on maintainability of the Appeals, therefore, in the interest of justice, the Bench adjourned the matter for re-hearing on August 17, 2021. On August 18, 2021, the Counsel appeared before the Bench and referred to Section 2(g) and Section 3 of the Act, to construct the argument that although the Appeals had been filed under Section 33 of the Act before the Appellate Bench, however, the Bench being a part of the Commission can transfer Appeals for adjudication before appropriate forum. In this regard the Counsel has relied upon a case law cited as 1982 SCMR 673 wherein it has been held that **"..... mentioning of a wrong provision in a pleading (which otherwise is flawless) would not, normally render it invalid."** The Counsel also relied upon case cited as 1994 SCM 1555 wherein it has been held that on technical non-observance of procedural laws and rules, relief should not be denied. Furthermore, it was also held that **"Court can allow conversion of proceedings of one kind into another and correction of misdescription in the title of proceedings---Mention of a wrong provision of law cannot be considered fatal to the grant of relief if it is otherwise available under the law to an aggrieved party."** The Counsel also relied upon a case law cited as PLD 2014 Sindh 574 and PLD 2006 Karachi 664 in which the aforementioned rulings are provided.



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5. The Bench has perused the record and considered the arguments of the parties. In view of the arguments put forth by the Counsel and case laws cited, it appears that it has been conceded that the Appeals have been filed before the incorrect forum under incorrect provisions. The Bench noted that in the instant Appeals, the Counsel was required to assist the Bench regarding consequences of filing of Appeals before the incorrect forum, however, he only advocated arguments and cited case laws on mentioning of incorrect provisions in pleadings, which have no bearing on this issue.
6. The Bench has perused the record, which revealed that in this particular case pertaining to, the matter of Section 20(2) of the Ordinance, the Commission gave its approval to the action taken by the Registrar Modaraba under Section 20(1) of the Ordinance in its 16th meeting held on March 28 and 29 of 2019. Therefore, in view of the facts of the case that the matter has been approved by the Commission itself, therefore, appeals cannot lie before the Bench, comprising two Commissioners.
7. The Bench is not inclined to accept the Respondent's argument that the Appellants cannot challenge the Impugned Order (to the extent of Section 20 of the Ordinance) in their personal capacity and without obtaining a special resolution from the Management Company. The Bench is of the view that the aforestated argument of the Respondent is without any substance because the Appeals have not been filed by the Management Company or on its behalf, therefore, we are not convinced to endorse this argument. The Respondent's argument that the subject matter of the Appeals and Writ Petition are similar, hence the Appellants are barred to seek remedy or relief under Section 33 of the Act is not justified. The Bench has perused paragraph five of the judgement dated December 12, 2019 passed in Writ Petition (Judgement) by the Court wherein it has been categorically held that while hearing the Writ Petition it is not acting as a court of appeal. Relevant part of judgment is reproduced below;

“..... It is recorded at the very onset that this Court is not sitting in appeal over the Impugned Order and that our jurisdiction, pursuant to Article 199 of the Constitution, is to determine whether any fundamental rights have been infringed.....”

8. The Bench has also examined the matter of imposition of fine for violation of Regulation 4(e) of Part-IV of the Prudential Regulations for Modarabas. The Bench has noted that Section 32 of the Ordinance under which fine was imposed, clearly prescribes a special procedure and provision to file appeal



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before the Commission against imposition of fine. Therefore, in our view, the Impugned Order is not maintainable for hearing before the Bench under Section 33 of the Act.

9. In view of the above, the Appeals are not maintainable, therefore, we hereby dismiss the titled eight appeals through this consolidated order, without any order as to cost.

(Sadia Khan)
Commissioner

(Farrukh Hamid Sabzwari)
Commissioner

Announced on: **27 OCT 2021**