

## Appellate Bench Orders

Before Appellate Bench No.III

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March 26, 2003

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### Before Appellate Bench No. III

In the Matter of

Appeal No. 10 of 2003

1. Attock Refinery Limited  
Morgah, Rawalpindi ..... Appellant

**Versus**

1. Executive Director (Enforcement &  
Monitoring) SEC

2. Mr. Khalid Majeed  
Khalid Majeed Rahman Sarfraz Rahim  
Iqbal Rafiq  
Chartered Accountants  
Al-Malik Centre  
70-West, G-7 & F-7  
Jinnah Avenue, Islamabad ..... Respondent

**Date of Impugned Order** January 14, 2003

**Date of Hearing** March 20, 2003

March 24, 2003

**Present:**

For the Appellant

1. Mr. Ali Sabtain Fazli, Advocate Supreme Court
2. Mr. Nasar Ahmed, Advocate
3. Mr. M. Raziuddin, Chief Executive Officer
4. Mr. S. Ahmed Abid
5. Mr. Khurram Shiraz

For the Respondent

1. Mr. Ashfaq Ahmed Khan, Director SEC
2. Mr. Mubasher Saeed, Joint Director SEC
3. Mr. Musharraf Khan, Joint Director SEC
4. Ms. Amina Aziz, Deputy Director

### Order

This matter arises from an appeal filed before us under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "Act") by the Appellant against the order dated January 14, 2003 (the "Impugned Order") passed by Executive Director (Enforcement & Monitoring) SEC.

1. The Executive Director vide the Impugned Order, passed under clause (b) of section 265 of the Companies Ordinance, 1984 (the "Ordinance") appointed Respondent No.2 as inspector to investigate into the affairs of the Appellant. The Appellant not being satisfied with the Impugned Order has preferred this appeal before us. The Appellant has also filed two applications along with the appeal. One is an application seeking stay/suspension of the Impugned Order, whereas the other is an application for condonation of the delay in filing the appeal. The application for condonation of delay disclosed that an appeal against the Impugned Order was also pending before the Hon'ble Lahore High Court, Rawalpindi Bench.

2. The case was fixed for hearing on March 20, 2003 when the parties appeared before the Bench. Taking notice of the proceedings pending before the Hon'ble High Court, the Bench at the outset of the proceedings inquired from Mr. Ali Sabtain Fazli, the learned counsel for the Appellant, about the appeal filed before the High Court. It was revealed that the Appellant has also filed an appeal against the Impugned Order under section 485 of the Ordinance and the relief claimed therein is entirely similar to the relief claimed from this Bench. The Bench inquired from Mr. Fazli as to why parallel proceedings have been initiated by the Appellant before two forums. In his reply, the counsel stated that in his opinion the Impugned Order was appealable before the High Court under section 485 of the Ordinance and not before the Appellate Bench under section 33 of the Act. However, upon the insistence of his client he has put in an appeal before the Appellate Bench as well. The Bench inquired from the counsel as to how the Bench could proceed to hear the matter when the exact matter was pending adjudication before the Hon'ble High Court. Although the counsel asserted that the Bench could proceed with hearing the matter, however he failed to provide any satisfactory grounds to that effect. The case was therefore adjourned till 3pm on March 24, 2003 with specific instructions to the counsel to either withdraw the case from the High Court or convince us on the legality of conducting parallel proceedings along with the High Court.

3. The parties appeared again before the Bench on March 24, 2003. Mr. Fazli informed that the Appellant has decided not to withdraw the appeal filed before the High Court, however he argued that the Bench could proceed to hear the matter nonetheless. He again argued that in his opinion the Appellate Bench could not hear an appeal against an order passed by an Executive Director of SEC under section 33 of the Act. He asserted that under section 33, an appeal lies to the Appellate Bench in respect of an order made by one Commissioner of the SEC. The Bench inquired from Mr. Fazli as to why the Bench should hear his appeal if he himself is challenging the jurisdiction of the Bench to hear the very appeal. In any case, the argument of the counsel was self-contradictory as on one hand he argued that the Bench should

hold parallel proceedings on an issue, which was sub-judice before the High Court, whereas on the other hand he was arguing that the Appellate Bench did not have jurisdiction to hear the appeal. Mr. Fazli contended that as the Appellate Bench has on previous occasions held that it does have the jurisdiction to hear appeals against orders passed by Executive Directors, he has filed this appeal out of abundant caution.

4. On the issue of the matter being sub-judice before the High Court, Mr. Fazli argued that there was no bar on the Appellate Bench to hold parallel proceedings and hear and decide the matter. In support of his argument he relied on the case of PLD 1981 Lahore 623 where the High Court rejected the argument of estoppel by election of remedies presented by the appellant in the case. The court held, "To give rise to estoppel by election, two remedies should not only be available in the alternative but should also be inconsistent, so that the option of one must necessarily imply the repudiation of the other."

5. This argument of the counsel for the Appellant is however extraneous to the issue raised by the Bench. The issue before us is not of estoppel by election of remedies or res judicata; the issue is as to why parallel proceedings be allowed to continue where the party has sought the same relief in the same cause of action before a higher forum. The case referred to by the counsel is therefore irrelevant. Mr. Mubasher Saeed appearing on behalf of the Executive Director (Enforcement & Monitoring) contended that the principle of res sub-judice was contained in section 10 of CPC. The object behind this principle is to prevent the same court or two different courts from simultaneously entertaining and adjudicating upon two parallel litigations in respect of (i) the same cause of action; (ii) the same subject matter; and (iii) the same relief. The policy of law behind this principle being to obviate the possibility of conflicting decisions and to avoid unnecessary labour on adjudication of simple matters.

6. Mr. Fazli contended that the principle of sub-judice only applied to cases pending before the same court and not two different courts. This argument of the counsel is again not correct as section 10 of CPC clearly states that the two suits may be pending before the same court "or any other Court in Pakistan". Mr. Nasar Ahmed, Advocate also appearing on behalf of the Appellant contended that section 10 was not applicable to the proceedings before the Bench. We do not disagree with this contention. However, in our view since the relief sought before the two forums is identical, in order to avoid multifarious proceedings, we consider it appropriate to stay the proceedings pending before us.

We therefore hold that the proceedings pending before us in this appeal and the two applications filed by the Appellant shall be stayed till the disposal of the appeal under section 485 of the Ordinance pending before the Hon'ble Lahore High Court, Rawalpindi Bench.

**(M. Zafar -UI-Haq Hijazi)**  
Commissioner (Company Law)

**( Etrat H. Rizvi )**  
Commissioner (Insurance & SCD)

Islamabad

Announced: March 26, 2003