

Appellate Bench Orders
Before Appellate Bench No.1 (Reconstituted)

July 29, 2002

Before Appellate Bench No. 1 (Reconstituted)

In the Matter of

Appeal No. 38 of 2002

Diamond Industries Limited ----- Appellant
Versus

Commissioner (Enforcement), Securities and Exchange Commission ----- Respondent
of Pakistan & others

Impugned Order Passed by:

Mr. Abdul Rehman Qureshi
Commissioner (Enforcement)

Date of Impugned Order:

May 31, 2002

Date of Hearing

July 24, 2002

Present:

For the Appellant - Diamond Industries:

1. Mr. Irfan Qadir

For the Respondent - Securities Market Division of the Commission:

1. Syed Aamir Masood, Director

2. Ms. Aly Osman, Joint Director

Order

The present appeal arises out of the order dated May 31, 2002 passed by the Commissioner (Enf), Mr. Abdul Rehman Qureshi (the "impugned order"). The impugned order was passed pursuant to the order of the Supreme Court of Pakistan dated April 1, 2002 wherein the Hon'ble court had given a directive requiring the Appellant to appear and raise expressly in writing before the Securities and Exchange

Commission ("SEC") the question of SEC's jurisdiction *vis-à-vis* freezing of shares of the investors and to decide the said question/issue within a period of one month.

2. The Appellants filed an application dated May 2, 2002 before the SEC, which was received on May 6, 2002. An opportunity of hearing was given to the Appellant on May 21, 2002 vide notice dated May 15, 2002 and the Impugned order was passed by the Commissioner (Enf) in respect of the said issue which is the subject matter of the present appeal.

3. At the outset the counsel for the Appellant Mr. Irfan Qadir raised the following preliminary objections: firstly, paragraphs 2, 3 & 4 of the Impugned order are outside the domain of Supreme Court's directive as the Commissioner (Enf) has not restricted himself to the question of jurisdiction but has infact gone into the merits of the case; secondly, it was argued that the thrust of the learned Commissioner in the impugned order is that the onus is on the party that challenges the jurisdiction, and for this reason it appears that it was for the Appellant to establish that SEC had no jurisdiction whereas, in the learned counsel's submission the onus is not on one who asserts the negative, it is on the party which asserts the positive. Hence, in the absence of any express provision empowering SEC to freeze shares of an investor the onus would rest on SEC to satisfy as to how such action falls within the scope and ambit of SEC's jurisdiction; and thirdly, that an attempt has been made in the impugned order to give an impression that the counsel did not argue or press any ground in support of his objection to the jurisdiction of SEC *vis-à-vis* freezing of shares whereas, to the contrary, maximum assistance was provided; the Impugned order, therefore, does not depict the true picture in respect of the hearing that took place on May 21, 2002.

4. While going into the merits of the appeal, the counsel submitted that there are the following two legal questions arising out of this appeal which need to be adjudicated upon by the Bench: -

- (1) Whether the single Commissioner implemented the order of the Hon'ble Supreme Court;
- (2) Whether SEC has the jurisdiction to freeze the shares.

i. He contended that in his view the answers to both the above questions are not in the affirmative. The Hon'ble Court had directed to decide the issue of jurisdiction within one month, which SEC has failed to do. Besides paragraph 6 of the impugned order a mere passing reference has been made with respect to the jurisdictional issue. In the remaining paragraphs, particularly 2, 3 & 4, the single Commissioner has not restricted himself to the issue in hand and has infact gone into the merits, which is far beyond the domain of the Hon'ble Court's Order.

ii. On the issue of jurisdiction, it was argued that Section 20 of the Securities and Exchange Ordinance, 1969 (the Ordinance) does not specifically state that shares can be frozen. While reading the said provision it was pointed out that freezing of shares does not fall within the ambit of Section 20 *ibid*. As per his arguments an interim order can be passed where powers also vest with the authority to pass a final order. It was further stated that even in respect of a member of a Stock Exchange such powers cannot be exercised by the SEC. The most appropriate measure in such circumstances according to the counsel would have been to proceed

under Section 305 of the Companies Ordinance thereby invoking the provisions for the winding up of the company and a High Court could have exercised such powers i.e. freezing of shares.

iii. Furthermore, it was argued that assuming, without conceding that power to freeze the shares and to pass such an order is available with SEC, then such an order is to be a speaking order and an opportunity of hearing must be afforded to the aggrieved parties. He referred to the notice dated July 27, 2000 as a pre-emptory order whereby parties were informed for the first time regarding freezing of the shares. It was also pointed out that the Lahore High Court had suspended the said order vide its order dated June 28, 2000. Despite this, SEC remained adamant to continue with the freezing of the account. He further drew attention of the Bench to Section 22 (3) of Securities and Exchange Commission of Pakistan Act, 1997 (the "Act") and submitted that Section 20 of the Ordinance has to be read with the said provision. In his view the said provision has been violated as no opportunity of hearing was afforded before passing such order. Even otherwise, it was stated that the principle of natural justice is to be read into each and every statute. He also took the stand that as neither in the inquiry report a finding against the Appellant has been made nor any complaints were received against the Appellants, no such order could have been issued. It was contended that by freezing shares of the Appellant SEC has acted in contravention of Section 17 *ibid* by preventing the Appellant from buying and selling its shares. He also emphasized that before passing a prohibitory order under Section 20 *ibid* against any party, SEC has to first form an opinion on the basis of a positive finding against such a party and in the absence of any such contravention, in particular, in the present case that of Section 17 *ibid*, no such prohibitory order could have been passed.

iv. Articles 18, 24 and 25 of the constitution of Islamic Republic of Pakistan were also highlighted in the argument by the learned counsel and also the fact that SEC cannot hamper, restrain, restrict or prohibit an investor from his trading rights and deprive him from his property by passing an order, which in effect is tantamount to a penalty. It was contended that the power to grant injunction vests with the Civil Courts as envisaged under Section 23 of the Ordinance and for this purpose guidance is to be sought from the principles enunciated in Sections 54 and 56 of the Specific Relief Act. He added that the injunction granted is in fact of perpetual nature and if it is not perpetual it certainly cannot be termed as temporary. It was also argued that the freezing of shares by SEC is in violation of Sections 24 & 28 of Central Depositories Act, 1997 (the CD Act) which primarily deals with handling of book entry securities without authority of the sub account holder and penalty for such unauthorized handling respectively. He concluded his arguments by submitting that Central Depositories Company Account (CDC Account) is within the domain of the CD Act and, therefore, precludes SEC from passing a sweeping order in respect of such accounts. It was also clarified by the learned counsel that though the Supreme Court has directed the SEC to decide on the issue of jurisdiction of SEC *vis-à-vis* freezing of shares alone, he has argued on the merits and details of the case since the Commissioner in his Impugned order has dilated on the same.

5. Mr. Aamir Masood appeared for and on behalf of the Respondents and made the following submissions: -

i. He sought the permission of the Bench to read out the following excerpt of the order dated April 1, 2002 passed by the Hon'ble Supreme Court which reads as follows:

"Learned counsel for the petitioner submits that SECP to whom the case has been remanded through the impugned judgment according to the petitioner was not vested with any power to pass an order for freezing of the shares of the investors. The order of freezing the shares of the investors was an interim order and the case has been remanded to the said SECP before whom the petitioner shall appear and raise expressly in writing the question of jurisdiction of the said authority who shall decide the said point after hearing the petitioner and other concerned within a period of one month positively and in case, the decision goes against the petitioner, it may seek remedy in accordance with law"

With these directions and observations, this petition is disposed of as pre-mature (emphasis added by the Respondent).

It was explained by the Respondent that the "impugned judgement" referred to in the above-mentioned order is the judgement of the High Court passed by Mr. Jawad Khawaja in WP 13811/2001 whereby SEC was directed to pass such order in the matter of the Appellant which should serve the objective of avoiding any further erosion in the value of Appellant's account with the brokerage house of Mr. Tanveer Malik after hearing the Appellant. In pursuance of that order an order dated August 31, 2001 was passed by the Commissioner (Enf) whereby the restriction already imposed on shares was directed to continue. However, the Appellant was allowed to approach the Commission for the release of shares lying in its account if it desired to dispose of the same at best available price at any time. M/s. Diamond Industries Limited (the Appellant) was however, required to keep the sale proceeds in a profit bearing escrow account till resolution of the disputed accounts. The Respondent strongly asserted that the Appellant did not bring the true and complete facts to the notice of the Hon'ble Supreme Court and is infact abusing the process of law.

ii. It was argued that the Appellant at all times had notice of the appeals before this Appellate Bench in which, *inter alia*, the question of jurisdiction of the order dated July 25, 2001 is in dispute. This is because of the fact that both Mr. Irfan Qadir and Mr. Iftikhar Shaffi (purportedly representing the Appellant in this matter) are also before Appellate Bench in that appeal. The appellant had filed Writ Petition 13811 of 2001 challenging the Show Cause Notice dated July 27, 2000 and the powers of the SEC to freeze the CDC account of Diamond Industries Limited. The Hon'ble Justice Jawwad Khawaja had ordered on August 7, 2001 in the same terms as for Writ Petitions 1220, 1221 and 1222, in which SEC was directed to pass an interim order after taking the submissions of the Appellant on the manner and form the shares were to be kept so as to avoid erosion in their value. The interim order was passed and is reproduced in the impugned order in para 3 thereof. The orders in WP's 1220 to 1222 were set aside by the Hon'ble Supreme Court and the same were sent back to the SEC to decide all matters before this Appellate Bench including that of jurisdiction to freeze the shares. The Appellant intentionally misguided the Hon'ble Supreme Court by not informing it of the fact that the exact similar contention raised by the Appellant and Mian Nisar Elahi was already in the process of Appeal before the SEC.

iii. It was also contended that the Appellant has now raised completely different issues which were never raised before the Commissioner (Enf) and it would not be fair to allow such grounds or pleas which were never taken earlier at the initial stage and were thus not addressed in the impugned order. Since the appeal arises from the issues arising from the impugned order it should be restricted to the pleas taken by the party at that stage. He pointed out to the application filed before the Commissioner (Enf) by the Appellant wherein not a single ground relating to jurisdiction was raised by the Appellant. He further added that even during the arguments not a single ground *vis-à-vis* lack of jurisdiction of SEC regarding freezing of shares was deliberated upon by the learned counsel. Emphasis was advanced to the fact that the directive given by the Hon'ble Court in its order April 1, 2002 is only with respect to deciding the question of jurisdiction of freezing of shares of investors by SEC and not the alleged irregularity in exercising such jurisdiction. In his submission the latter argument concedes to the fact that there is jurisdiction enjoyed by SEC thus rendering the issue of jurisdiction infructuous.

iv. With respect to the first legal issue that the single Commissioner has not implemented the order of the Hon'ble Court by not complying with the time prescribed in its order and going beyond the scope of its directive, it was argued that the Hon'ble Court passed the order on April 1, 2002 that was communicated to SEC through a letter dated April 19, 2002 which was received on April 22, 2002. The application filed by the Appellant dated May 2, 2002 was received by SEC as per the record on May 6, 2002. The hearing in respect of the matter took place on May 21, 2002 and the impugned order was passed on May 31, 2002. In view of the foregoing it is evident that the time limits prescribed by Supreme Court were duly complied with since the impugned order was passed within thirty days of receipt of the Appellants application. He also stated that paragraphs 2, 3 & 4 of the impugned order only provide the context of the issue at hand in an effort to render a comprehensive view. Paragraphs 2 & 3 are only related to factual statements stating the background of the case whereas paragraph 4 mainly summarizes as to what happened on the date of hearing. According to the Respondent what needs to be appreciated is that despite the non presentation of a power of attorney by counsel, the Commissioner did not impede the process on technicalities.

v. On the issue of jurisdiction, the Respondent drew the attention of the Bench to the preamble of the Ordinance which provides for the protection of the investors, regulation of markets and dealing in securities and the matters ancillary thereto. He argued that when the Ordinance talks of protection of investors it must be borne in mind that to every right there is a corresponding duty. Therefore, it cannot be argued that investors cannot be subjected to the provisions of the Ordinance. He also referred to Sections 17 & 20 of the Ordinance, which refer to the term "no person" and "any person" respectively. It was argued that the term "person" is wide enough to include an investor dealing in securities. Furthermore, he stated, that the offence of price manipulation under Section 17 *ibid* is committed where players in the market manipulate to the detriment of other players and it would be ludicrous to construe that members of stock exchanges alone can commit such violations as envisaged in Section 17 *ibid*.

vi. While addressing the issue of SEC forming an opinion he submitted that it is not a must that a contravention must have occurred for SEC to take action under Section 20 of the Ordinance, which may be done on the basis of an apprehension of any contravention likely to happen. He also submitted that if an

opportunity of hearing would be afforded prior to passing an order of such nature it would defeat the purpose of issuing such a prohibitory order. Such a prohibitory order is not a penal action but an interim measure. He pointed out that since show cause notice allowing an opportunity of hearing was served soon thereafter *i.e.* two days later, the principles of natural justice have been duly adhered to.

vii. With respect to the onus on party alleging lack of jurisdiction it was submitted that an order of any regulatory body or court is presumed to have been made in exercise of jurisdiction. It is, therefore, the obligation of the party contending against that to show that jurisdiction was not there. The prohibitory order was employed to pre-empt a real likelihood of price manipulation and not to prevent trading *per se*.

viii. It was argued that it has been misstated that there is no finding against the Appellant in the inquiry report. To the contrary annexure 26 (a) of the inquiry report dated August 31, 2000 shows a list of members of Iftikhar Shafi Group and his stockbroker, which includes the name of Appellants against whom findings of price manipulation and unfair trade practices in shares of Adamjee Insurance Company Limited and Bank of Punjab have been duly established.

ix. Regarding the objection of the counsel for the Appellant that freezing of the shares is in contravention of CD Act, it was argued that the Ordinance has a wider scope and is more general in nature as compared to the CD Act. There is no bar under the CD Act which precludes passing of such an order or exclusion of application of the Ordinance. Under the CD Act there is no provision whereby accounts of a sub account holder can be frozen. Under the CD Act one can at best suspend the participants' account and not the accounts of the sub account. Preamble of the CD Act is clearly indicative of its restrictive scope.

x. The argument relating to the violation of constitutional provisions depriving a person of its property and the right to trade being affected because of the order being in effect a penalty is also misconceived because such a prohibitory order as envisaged under Section 20 of the Ordinance is interim in nature and, therefore, cannot be termed as amounting to penalizing a party.

xi. The Respondent also emphasized that the Bench should restrict itself to the issue directed to be adjudicated upon by the Hon'ble Court as it would be appropriate not to deliberate on other extraneous issues.

6. We have heard the parties at length, since both the parties before us have themselves conceded that the precise issue which required adjudication by the Commissioner (Enf) in pursuance of the Hon'ble Supreme Court order dated April 1, 2002, is as to whether SEC has jurisdiction *vis-à-vis* freezing of shares of investors, we consider it appropriate to restrict ourselves to this issue alone and will not delve into the merits of the case. While addressing this issue we will take into account those arguments that primarily relate to the question of jurisdiction.

7. Taking the preliminary objections of the Appellant, we concur with the submissions of the Respondent that paragraphs 2 & 3 of the impugned order provide the context and background under which the restraint order was passed, in an effort to give a comprehensive view and as such no ruling is rendered on the merits of the case. As for the objection relating to paragraph 4 of the impugned order, that the

counsel did not provide any explanation of the legal and factual position. Since the observation of the Commissioner is strengthened by the contents of the application filed by the Appellant before him is available on the record, we see no reason to question and to consider such controversies. Even if the Appellant considers that these paragraphs are not relevant, we should then proceed to adjudicate the issue itself. As for the objection that the onus to prove in civil matters is not on one who asserts the negative as it is also on the party which asserts positive, we feel that it is quite a well settled principle that the onus of proving in any matter is on the party which alleges. Though it is true that the onus in civil matters keeps shifting, we are not in agreement with the argument made by the counsel that the fact that there is no specific provision under the Ordinance providing for freezing of shares the onus would, therefore, shift on SEC to prove as to how such powers exist and may be exercised by the said authority. During the proceedings, the Bench had pointed out that SEC infact has issued a restrain order and the term "freezing of shares" has not been used against the Appellant in the relevant order. All that has been ordered was that a member of LSE holding a participant account with CDC was restrained from transferring any shares held by him in the account of the Appellant (the sub account holder) without the approval of the Commission. The Commissioner (Enf) in his order has also pointed out the said fact in the following words "*it must be borne in mind that the order of July 25, 2001 which the Appellant has termed as freezing order was infact a prohibitory order under Section 20 of the Ordinance.*" The learned counsel for the Appellant also agreed to the fact that freezing of shares is being referred to as synonymous to the restrain order issued against the Appellant. Therefore, what needs to be examined is whether powers to issue such restrain order, which in Appellant's view, amounts to freezing of shares falls within the SEC's purview. Where Section 20 ibid clearly provides for issuance of prohibitory orders, it is our view that the onus would rest on the Appellant to prove that the particular restrain order in question is outside the ambit of the said provision. We concur with the single Commissioner's view that SEC as a regulator has to rise to the occasion for taking appropriate measures to combat such situations which may or may not be expressly stipulated. It may also be helpful to state the connotations of the term "freezing of shares" as opposed to a restrain order issued against the Appellant in the present case. Under Black's Law Dictionary the term "freeze" has been defined to mean, "*To cause to become fixed and unable to increase or to cease physical movement.*" In the hand book of international financial terms freeze has been defined as "*a colloquial term used to describe a bank's stop on the withdrawal of funds from an account.*" Examining it in the light of a restrain order the Commission has only placed a restrain on the transfer *i.e.* withdrawal from the Appellant's account subject to the approval of the Commission. Therefore, freezing of shares and the restrain order in the instant case are not identical in their meaning.

8. To consider the legal questions raised by the Appellant: whether the single Commissioner implemented the order of the Hon'ble Supreme Court, the Appellant's main objection in this regard is with respect to non-compliance within one month period prescribed by the Hon'ble Court. We fail to understand, when the counsel admits that the application before the Commissioner was sent on May 2, 2002 and the order has been passed on May 31, 2002, as to how a contravention of the time limit can be made out. It is the counsel's argument that he informed SEC regarding the said order of the Hon'ble Supreme Court through a letter dated April 19, 2002 and, therefore, the case should have been decided within a month's period starting from that date. The counsel must appreciate that it is the requirement of the Supreme Court order itself that the question of jurisdiction had to be raised expressly in writing before the SEC. We are in agreement with the Commissioner

(Enf)'s view that raising the issue in writing would implicitly include the grounds to be taken by the applicant in this regard. Therefore, no adjudication could have taken place until and unless this direction was complied with. Accordingly, we hold this objection, besides being trivial and technical, without merit. As for the objection that paragraph 6 of the impugned order merely touches the question of jurisdiction, we have reviewed the same and are of the view that, in the absence of any objections which have now been raised before the Bench, the Commissioner has satisfactorily dealt with the issue. However, without deliberating on technicalities, we shall proceed to address the pleas relevant to the issue, which have now been taken before the Bench.

9. Now to consider whether, pursuant to Section 20 of the Ordinance, a restrain order, purportedly freezing shares of the investors, can be passed by SEC, Section 20 *ibid* is reproduced hereunder:

Prohibitory orders. (1) Where the Commission is of opinion that any person is engaged or is about to be engaged in any act or practice which constitutes or is calculated to constitute a contravention of the provisions of this Ordinance or of any rules made thereunder, or that any person has neglected, or is not likely, to do an act the omission or failure to do which constitutes such contravention, it may, by order in writing, direct such person to abstain from doing the act or committing the practice which constitutes or is calculated to constitute such contravention, or to do the act, the omission or failure to do which constitutes such contravention.

(2) Every person to whom a direction under sub-section (1) is given shall comply therewith in such manner, if any, and within such time as may be specified therein.

The Appellant in support of his argument has taken the plea that Section 20 *ibid* cannot be invoked against an investor. Furthermore, he has argued that passing of such an order is in violation of the Sections 24 and 28 of CD Act and that the power to grant an injunction vests with the Civil Court as envisaged in Section 23 of the Ordinance, for which purpose guidance must be sought from Section 54 and 56 of the Specific Relief Act. It has also been argued that by passing such a restraining order, which in his view amounts to freezing of shares of an investor, SEC has itself committed contravention of Section 17 *ibid*. This is so because SEC has prevented the Appellant from buying and selling its shares. Additionally, constitutional *vires* of Articles 18, 24 & 25 of the Constitution of Islamic Republic of Pakistan have also been alleged as it has been argued that freezing of shares amounts to imposing a penalty depriving the Appellant of his trading right and his right to property.

10. The above contentions have been strongly rebutted by the Respondent. We find some merit in what the Respondent has stated that the term "any person" is wide enough to include an investor and also where the preamble of the Ordinance expressly states that it is for the protection of the investors, regulation of market and dealing in securities, it is explicit that the investor is envisaged as one of the major market players and any protection and right conferred upon him would also entail a corresponding duty. From the plain reading of Section 20 *ibid* there appears no ambiguity with respect to SEC's power to issue a restraining order against "any

person" including an investor. Where "any person" is engaged or is about to be engaged in any act which constitutes a contravention of the Ordinance or of Rules made thereunder and also where any person including the investor has neglected or is not likely to do an act the omission of failure to do which constitutes such contravention, such powers can be exercised. It needs to be appreciated that powers conferred under Section 20 of the Ordinance are two fold, and the heading 'prohibitory order' is restrictive and misleading. The said provision empowers the SEC to pass a restrain order in addition to the power to direct any person to do an act, the omission or failure of which constitutes or may constitute contravention of the Ordinance and Rules made thereunder. Therefore, as for the application of the Ordinance and, in particular Section 20 *ibid*, we are in no doubt that the same is also applicable to an investor. The argument that the power to grant an injunction lies with a Civil Court under Section 23 *ibid* appears to be without any merit and is misconceived. Section 23 *ibid* deals with civil liabilities whereas Section 20 *ibid* relates to powers of SEC to issue a restraining order in the circumstances stipulated therein. The comparison by the Appellant is misplaced. As for the argument to seek guidance from the Specific Relief Act, we do not find it relevant. If such a restraining order is similar to or termed as an injunction we do not understand the necessity of reverting to other statutes when Section 20 *ibid* itself clearly provides the requisites for issuing a restrain order. The argument that the issuance of the restrain order amounts to contravention of Section 17 *ibid* on part of the regulator (the SEC) is rather absurd. While, on one hand, the counsel is holding that the investors are not amenable to the jurisdiction of SEC, on the other hand, he argues that the term "no person" is wide enough to include the regulator itself because it is a body corporate and falls in the definition of 'person' *i.e.* SEC. In our considered view, the term 'person' in Section 17 *ibid* does not include a regulator as the prevention under Section 17 *ibid* is for the beneficial regulation of the securities market and protection of the investors. Section 17 *ibid* deals with the act and practices of market players whereas the regulator oversees such activities, therefore, prohibition under Section 20 *ibid* by the regulator cannot be equated with the act of prevention as stipulated under Section 17 *ibid*. In any event the opening lines emphasized by the Appellant cannot be read in isolation and must be read with the sub clauses stipulated thereunder as otherwise it does not convey any meaning worthy of application.

11. As to the plea that issuing of such an order contravenes Section 24 and 28 CD Act, we have reviewed the said provisions and note that Section 24 *ibid* mainly provides that a participant shall not handle or authorize or permit any handling of book entry securities entered in the sub account and maintained under his account or beneficially owned by such client without the authority of the sub account holder. Section 28 *ibid* deals with punishment for contravention under the CD Act. It is not clear to us as to how issuing of a restraint order by a regulator to the participant relating to a sub account holder violates the aforesaid provision. The participant Mr. Tanveer Malik is not authorizing or permitting handling of book entry securities to the SEC and, therefore, the regulator's powers under Section 20 of the Ordinance cannot be read subject to such permission. The Appellant has not been able to convey or convince the Bench his viewpoint. The Appellant's argument, that since the CD Act does not contemplate freezing of shares, SEC cannot pass a sweeping order pursuant to the Ordinance against a CDC sub account holder, is also without merit. The basic object of having a CD Act is to have a book entry system as laid down in its preamble '*whereas it is expedient to make provisions for the establishment and operation of book-entry systems for the transfer of securities by central depository companies.*' The objective is to facilitate and provide efficiency and transparency to the Securities Market. The participant accounts and the sub

accounts are utilized by brokers and investors for *day-to-day* trading in securities and thus the manner in which trading takes place may constitute violation which would fall within the ambit of the Ordinance. The Ordinance as compared to the CD Act has a more general application with much wider scope and its application is not and could not have been excluded by the CD Act.

12. To consider the argument that such restrain order or freezing of shares is tantamount to a penalty and deprives the Appellant of his trading right and right to property under the Constitution. In our view, there is no question of any punishment or penalty involved for the simple reason that Section 20 of the Ordinance clearly contemplates an interim order and in the present case, as also observed by the Supreme Court in its order dated April 1, 2002, the order of freezing of shares has been held as an interim order. In the absence of such measures if parties were allowed to trade despite the apprehension and likely contravention of the provisions of the Ordinance, in particular Section 17 *ibid* it would surely result to the detriment of the investors. The objective is not to punish but to preserve the subject matter until final adjudication thus deprivation in terms of right to property is misconceived. We agree with the observation made by the single Commissioner, that the regulator is obliged to regulate a speculative market and in case of a speculative market varied situations may arise and it is looking at the exigencies and requirements that the regulator has to take such measures as it deems fit. It is keeping in mind such situations that the power has been conferred on the regulator under Section 20 *ibid*.

13. It may be emphasized that we have confined our deliberation on the issue of jurisdiction as required by the Hon'ble Supreme Court and deliberated upon the arguments raised by both the parties in this context *vis-à-vis* freezing of shares in terms of the restrain order issued by SEC against the Appellant. We have done so in view of the fact that the Appellant himself has raised the objection against the impugned order alleging that the Commissioner (Enf) has gone beyond the domain of the order of the Hon'ble Court. Accordingly, we are of the considered view that SEC has the jurisdiction to issue such a restrain order, viewed by the Appellant as freezing of shares of an investor and, therefore, maintain the order of the Commissioner (Enf) to the extent dilated herein. The appeal is disposed off accordingly.

Announced : 29 July, 2002

(M. ZAFAR-UL-HAQ HIJAZI)

Commissioner
(Company Law)

(N.K. SHAHANI)

Commissioner
(Insurance & Information Technology)