

Appellate Bench Orders

Order in the matter of Appeal No. 5 of 2001 before Appellate Bench No. 2 in respect of appeal filed by Haji Haroon Kapadia against the order passed by Executive Director (SM).

June 29, 2001

Before Appellate Bench No. 2

In the Matter of

Appeal No. 5 of 2001

Haji Haroon Kapadia.....Appellant

versus

Mr. Khurshid Ahmed Balouch.....Respondent

Date of Final Hearing: 14 June 2001

Date of impugned order: 12 February 2001

Present:

1. Mr. Munib Ahmed Khan, Advocate

2. Mr. Muhammad Munaf Kapadia On behalf of the Appellant

3. Syed Aamer Masood,

Director (Securities Markets),

Securities and Exchange Commission of Pakistan,

Islamabad...On behalf of Executive Director, Securities Markets Division of SEC

4. Mr. Hizbullah Siddiqui

Joint Director,

Securities and Exchange Commission of Pakistan,

ORDER

This appeal has been filed by the Appellant against the order (impugned order) dated 12 February 2001 passed by the Executive Director (Securities Markets) of the Commission directing the Appellant to deliver 10,000 shares of Dhan Fibre Limited to the Respondent.

2. The appeal first came up for hearing on 17th May, 2001 whereat the Appellant Haji Haroon Kapadia alongwith Mr. Munib Ahmed Khan for the Appellant attended. Neither Mr. Khurshid Ahmed Balouch the Respondent attended nor any representative entered appearance on his behalf. Syed Amar Masood, Director (CEL), Securities Market Division alongwith Mr. Hizbullah Siddiqui, Joint Director, Enforcement Division of the Commission attended. The hearing was adjourned at the request of the Appellant's Advocate.

3. The appeal finally came up for hearing on 14th June, 2001. Mr. Muhammad Munaf Kapadia, son and authorized representative of the Appellant alongwith Mr. Munib Ahmed Khan, counsel for the Appellant, attended. Neither Mr. Khurshid Ahmed Balouch the Respondent attended nor any representative entered appearance on his behalf. Syed Amar Masood, Director (CEL) Securities Market Division alongwith Mr. Hizbullah Siddiqui, Joint Director, Enforcement Division of the Commission attended.

4. Mr. Munib Ahmed Khan, Appellant's advocate submitted that the learned Executive Director, Securities Market Division of the Commission who passed the impugned order had no justification to file written reply to the appeal and assume the role of a Respondent when he has not been made a party to the appeal; it is for the Complainant to defend the appeal, as he may deem appropriate. He contended that the Appellate Bench is a higher forum set up to hear orders passed by an Executive Director within the framework of the Commission that provides administrative justice. He emphasized that the powers exercised by an Executive Director of the Commission corresponds to an order of a court of original jurisdiction and such a court is not made a party before the Appellate Court. Similarly, appeals preferred before the Appellate Bench do not warrant that the Executive Director be made a party thereto. He further amplified that the role of the Appellate Bench was subservient to a High Court who assumed jurisdiction to hear matters preferred against an order of the Appellate Bench. He further expressed that the bias of the learned Executive Director is patent in the impugned order itself; the hearings were conducted in the absence of the Complainant, whose role the learned Executive Director assumed, acting with a manifest tilt in favour of the Complainant, now the Respondent in this appeal, at the commencement and during the course of hearing.

5. He further stated that clauses (c) and (d) of sub-section 4 of section 20 of the Securities and Exchange Commission of Pakistan Act, 1997 (the Act) under which the Commission supervises, monitors and regulates the working of stock brokers, etc. does not empower the Commission to interfere in the matters as that of the instant case. The learned counsel urged that in view of the aforesaid provisions of the Act, the Commission has no power of adjudication and its functions are confined to that of monitoring and regulating the securities markets. He stressed that the Appellate Bench is without jurisdiction and has no legal authority to proceed in this matter.

6. The Appellant's counsel further submitted that since the complainant is not present before the Appellate Bench to defend himself, the appeal may be allowed in his favour. The learned counsel also referred to the minutes of a meeting of the joint committee of the Commission and the Stock Exchanges held on 18 October, 2000 which refers to a decision whereby Mr. M. Ajmal Khan, a member of the Islamabad Stock Exchange (ISE) was made liable for the replacement of 646,700 fake shares of Dhan Fibres Limited along with additional claim of 10,500 shares. However, after deliberations, it was unanimously accepted that an amount of Rs. 4,000,000/= be paid by Mr. M. Ajmal Khan to Mr. Haroon Kapadia towards full and final settlement of the dispute; ISE would ensure compliance and, in case of failure, would initiate proceedings against Mr. M. Ajmal Khan in accordance with its regulations.

7. The Appellant counsel conveyed the willingness of his client, the Appellant, to satisfy the claim of the Respondent provided the entire matter relating to the fake shares of Dhan Fibre Limited is resolved so that he is not subjected to any future claims. He emphasized that Mr. M. Ajmal Khan has not complied with the decisions of the joint committee thus far and no resolution appears to be in the offing.

8. The Appellant's counsel further argued that the impugned order has ignored the provisions contained in Rule 26(a) of the "rules for ready delivery contracts" that clearly states:

"a member who has received payment against delivery of necessary documents, either on his own account or on behalf of his constituent, shall be personally responsible to the member to whom the same are delivered for their title, regularity and genuineness;

Provided that the documents are lodged with the company for registration by or on behalf of the purchaser within two years from the date of the receipt of such documents, or if the books of the company are closed earlier for any entitlement then, upto said period of book closure."

He indicated that since the complainant purchased these shares on 21 May, 1996, the complainant's claim is time barred and his client, Mr. Kapadia, cannot be made liable on this account.

9. Mr. Aamer Masood of the Securities Markets Division of the Commission was of the view that the Appellant's liability to his client is not contingent on satisfaction of his claim against Mr. M. Ajmal Khan. He further stressed that "in case of fraud or bad faith," an investor's claim should not be treated as time barred as spelt out in Rule 26(a) of the "rules for ready delivery contracts."

10. Mr. Hizbullah Siddiqui, Joint Director, Enforcement Division of the SEC was of the view that the dispute would be resolved once the deal for transfer of a stake in the corporate brokerage house of Mr. M. Ajmal Khan to Mr. Haroon Kapadia is forthcoming as discussed in the joint committee meeting which is likely to materialize in view of the expiry of the tax incentives at the end of the current financial year.

11. We have carefully considered the arguments of Appellant's counsel and the officers of Commission at length. We see no merit in the objection raised by the Appellant's counsel that the Commission has no jurisdiction to interfere in the matters pertaining to an investor's claim. We are of the considered opinion that the Commission, being an administrative and regulatory authority of the stock exchanges and securities related business, is vested with both executive and judicial powers; its prime objective being to protect the rights of investors and address the pivotal issues of integrity of financial intermediaries that mainly comprise the stock brokers. We concur with observation made in the impugned order that rule 26 of the KSE rules for ready delivery contracts are applicable to transactions disputed between the members of the KSE alone and, therefore, this matter merits resolution by the Commission. While there may be some weight to the objection of the Appellant's counsel regarding non-presence of the complainant to defend this Appeal, we opine that in exercising quasi-judicial powers, such a technicality cannot per se override the overwhelming objective of market conduct and maintaining investor confidence. It is abundantly clear that ISE has failed to effectively ensure compliance of the decisions of joint committee as recorded in the minutes of meeting held on 5 February, 2000 and 18 October, 2000. It is also clear that each member is responsible to his client and such relationship bears no nexus with his claim from any other member or his constituent. Accordingly, we see no reason as to why the claim of the Respondent should not be settled by the Appellant. However, the Securities Markets Division of the Commission needs to put in place a mechanism to appropriately tackle all issues relating to the fake shares of Dhan Fibres Limited.

12. In light of the above and after hearing the Appellant's counsel, the representative of the Executive Director and Mr. Hizbullah Siddiqui, we do not find any justification to interfere with the impugned order. The Appeal is accordingly rejected.

Announced : 29 June, 2001

(N.K. SHAHANI)
Commissioner
(Securities Markets & Insurance)

(Abdul Rehman Qureshi)
Commissioner
(Company Law)