



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 36 of 2014

Khadim Hussain Chaudhary

...Appellant

Versus

1. Punjab Cooking Oil Private Limited
2. Deputy Registrar SECP, Lahore

...Respondents

Dates of hearing:

03/02/15, 06/04/15, 18/05/15,
14/10/15

Present:

For Appellant:

Mr. Kamran Arshad, Advocate High Court

For Respondents:

- i. Nemo (on behalf of Respondent No.1)
- ii. Mr. Muhammad Hasan Zaidi, Deputy Registrar (Company Registration Office, SECP, Lahore) (on behalf of Respondent No.2)

ORDER

1. This order shall dispose of Appeal No.36 of 2014 filed by the Appellant under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the orders dated 31/03/11 and 30/06/14.

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2. The Appellant filed a complaint/representation dated 25/07/08 with the Securities and Exchange Commission of Pakistan (the Commission) wherein he alleged that without his knowledge and consent his name was illegally incorporated as director of Punjab Cooking Oil (Pvt) Limited (Respondent No.1) through Form-29 and Form A for the years 2000, 2001 and 2002. The Appellant further submitted that since March, 1997 to November 2006 he never visited Pakistan, therefore it was not possible for him to become a director of Respondent No.1. The Appellant also filed a Writ Petition No.11349/08 before the Lahore High Court Lahore (the Court), which was disposed off on 14/06/10 with direction to Commission to decide the representation dated 25/07/08 of the Appellant strictly in accordance with law. In view of the direction, the Joint Registrar of Company Registration Office Lahore (the JR) received a representation by the attorney of the Appellant. Thereafter the JR asked the Respondent No.1 and its directors through letters and reminders to answer the representation filed by the Appellant however, no reply was received. In view of aforementioned facts the JR concluded that in the absence of any reply from the Respondent No.1, alleged fake returns of Respondent No.1 cannot be examined and cancelled. The JR further stated that Section 468 of the Companies Ordinance 1984 (the Ordinance) is also not applicable to the case in hand and the relief claimed by the Appellant is beyond his jurisdiction. Therefore, the representation of the Appellant was dismissed vide order dated 31/03/11(First Order).
3. The Appellant filed another Writ Petition No.7257/14 before the Court which was disposed of vide order dated 18/03/14 with the observation that the Appellant may avail the remedy before the Commission in accordance with law. Thereafter, the Respondent No.2 considered the submissions of the Appellant and concluded vide order dated 30/06/14 (Second Order) that in absence of representation of the Respondent No.1 and its directors he cannot determine the validity or otherwise of the alleged fake Form 29 and Form A, therefore said alleged fake Forms cannot be cancelled.
4. The Appellant filed Appeal against impugned First and Second Orders before the Appellate Bench (the Bench). Appeal under Section 33 of the Act was registered on 11/08/14. Several



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hearing were conducted in the instant appeal, however the Appellant never appeared before the Bench. The Appellant, instead of appearing before the Bench, filed a Writ Petition No. 12336/15 before the Court with the prayer to direct the Bench to decide the pending appeal as soon as possible. The Court vide its order dated 27/04/15 directed the Bench to decide the appeal with three months from the receipt of the order. In compliance of the Court order, hearing in the appeal was fixed on 18/05/15 however, Appellant Counsel requested adjournment, which was granted.

5. Thereafter hearing of Appeal was fixed on 14/10/15 which was attended by the Appellant and Respondent No.2. The Appellant reiterated the earlier stance that the Appellant never remained as a director of the Respondent No.1 and he never contested the election of director. The Appellant Counsel prayed to set aside the orders dated 31/03/11 and 30/06/14, with further prayer to declare that the Appellant had no concern with the Respondent No.1 as director.
6. The Respondent No.2 denied the claim of the Appellant and submitted a latest Form 29 dated 31/07/15 through which the Appellant has resigned as director of the Respondent No.1. The said Form 29 was duly executed by the Appellant and the Chief Executive Officer of the Respondent No.1. Furthermore the said Form was also attested by the High Commission of Pakistan in London. In view of the latest Form 29 the Respondent No.2 prayed to dismiss the appeal.
7. We have gone through the record which revealed that in the instant matter, the Appellant has taken a consistent stance that he never served as director of the Respondent No.1 therefore, all returns depicting the name of the Appellant as director of Respondent No.1 are fake. The Appellant Counsel reiterated the same stance during the hearing before the Bench. However, the Appellant Counsel has not denied or rebutted the latest Form 29, which clearly establish that act of resigning by the Appellant which in fact is an admission that he was the director of the Respondent No.1 and now has resigned from his office. Therefore resignation of the Appellant through the latest Form 29, prima facie establish



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that all the previous Returns of Respondent No.1 depicting the name of Appellant as director were also accurate and true.

8. In the view of the aforesaid fact, it is evident that the Appellant has not come with clean hands to seek the remedy under Section 33 of the Act. The First and Second orders were passed in accordance with the law and circumstances of the case. We find no reason to interfere with the impugned orders therefore, the appeal is hereby dismissed.

9. Parties to bear their own cost.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Zafar Abdullah)
Commissioner (SCD)

Announced on: **27 OCT 2015**