



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

M.A. No. 45(14)def/ABR of 2023

&

M.A. No. 45-1(14)def/ABR of 2023

1. M/s. Jamhex Company (Private) Limited
2. M/s. Nitrokimya

...Applicants

Versus

Appellate Bench Registry

...Respondent

Date of hearing:

June 22, 2023

Present:

For the Applicants:

1. Barrister Shahzad Javed Panni (*for Jamhex Company (Private) Limited in M.A. No. 45(14)def/ABR of 2023*)
2. Barrister Usman Mughal (*for Nitrokimya in M.A. No. 45-1(14)def/ABR of 2023*)

For the Respondent:

Raja Farukh Ahmad (Additional Joint Registrar), Appellant Bench Registry, SECP

ORDER

1. This Order shall dispose of M.A. No. 45(14)/def/ABR of 2023 filed by M/s. Jamhex Company (Private) Limited (the "Applicant No. 1) against the deficiency letter dated May 05, 2023 (the "Impugned Letter") issued by the Additional Joint Registrar, Appellant Bench Registry, (the



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“Respondent”) under rule 8 of the Securities and Exchange Commission of Pakistan (Appellate Bench Procedure) Rules 2003 (the “Rules”); and M.A. No. 45-1(14)/def/ABR of 2023 filed by M/s. Nitrokimya (the “Applicant No. 2”) for impleadment of Applicant No. 2 as a party in the appeal filed by Applicant No. 1 against the order passed dated March 03, 2023 passed by the Executive Director-CRD, SECP (the “Order in Original”).

2. The brief facts of the case are that Applicant No.1 filed an appeal on April 07, 2023 under section 33 of the SECP Act, 1997 against the Order in Original. That, on April 20, 2023, the Respondent received an application from Applicant No. 2 through Barrister Usman Mughal (Authorized Representative) that they are in receipt of a letter from Applicant No. 1 whereby it has been informed that an appeal has been filed against the Order in Original. It was contended by the party that they have not received any notice with respect to the appeal filed by the Applicant No.1 before the Appellate Bench (the “Bench”), whereas, Applicant No. 2 is a necessary party to the said appeal. After initial and detailed scrutiny of the appeal filed by Applicant No. 1, the Respondent vide the Impugned Letter, *inter alia* advised Applicant No. 1 to implead Applicant No. 2 as a necessary party in the said appeal. Applicant No. 1 in its response dated May 17, 2023, denied the same. The Respondent, once again, vide letter dated May 29, 2023, apprised Applicant No. 1 that Applicant No. 2 is a necessary party, therefore, for a just and equitable decision in the matter, it is imperative to implead Applicant No. 2 as a respondent in the appeal. The Applicant No. 1 vide letter dated June 07, 2023, again denied the same and requested Respondent to fix the matter as an objection case before the Bench.
3. The Applicant No. 1 has preferred this objection application *inter alia* on the grounds that Applicant No. 2 has no *locus standi* to file the application for impleading them as a respondent in the subject appeal. The Applicant No. 1 has additionally expressed that the appeal has been filed against the Order in Original passed by the Executive Director, CRD (ED, CRD) who has been impleaded as a sole respondent in the appeal. Applicant No. 1 argued that the grievances of Applicant No. 2 have already been addressed through the Order in Original, therefore, they do not qualify as an aggrieved party and should not be included as a party in the appeal. The Applicant No. 1 has also highlighted that the law necessitates a person to be an aggrieved party in order to serve as either the appellant or respondent in the appeal. The Applicant No. 1 has further stated that previously the Bench in a similar matter had not allowed a party to be impleaded as a respondent, and in this regard, reliance



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is placed on the order of the Bench dated December 23, 2020 in the matter of Mrs. Farida Rehman and another vs M/s. IGI Holdings Limited.

4. The authorized representative of Applicant No. 2 argued that the appeal filed by the Applicant No. 1 is a continuation of the Order in Original which entitles the Applicant No. 2 to appear and defend the said appeal before the Bench as a necessary party in the matter. The Applicant No. 2 in support of its argument relied on the decisions of Hon'ble Superior Courts rendered in *PLD 1975 SC 463* and *2023 MLD 24 Balochistan*.
5. The Respondent, while rebutting the grounds and arguments put forth by Applicant No. 1, contended that Applicant No. 2 submitted an application to the Respondent for impleadment as a party in the appeal filed by Applicant No. 1 against the Order in Original. It is imperative that this application is not left undecided, considering the contentions involved. The Respondent further asserted that upon initial scrutiny of the appeal and the Order in Original, it becomes evident that the inclusion of Applicant No. 2 as a necessary party to the appeal is warranted due to the fact that the present appeal is a continuation of the preceding round of litigation concluded through the Order in Original and Applicant No. 2 was part of the original proceedings, therefore, the Bench may not be able to render a just and equitable decision of the instant appeal without hearing both the Applicants. It was also contended by the Respondent that the law mandates that an individual must be an aggrieved party solely for the purpose for being an appellant, whereas this requirement is not necessary for respondents to be involved in the appeal. The Respondent has also submitted, that for the purpose of fair adjudication and to avoid multiplicity of proceedings which may result in conflicting judgments, Applicant No. 2 be allowed to be impleaded as a party to the appeal. The Respondent, while defending the Impugned Letter, also stated that Applicant No. 2 is a proper and necessary party and without impleading it as a respondent in the appeal the issues and questions involved in the appeal cannot be effectively and completely adjudicated upon. The Respondent therefore, requested to implead Applicant No. 2 as a necessary party to the appeal in light of the above-mentioned circumstances.
6. The Bench has heard the arguments of respective parties and perused the record. At the outset, the Bench posed a question to the authorized representative of Applicant No. 1 that whether the lower court appears itself before the appellate forum when an appeal is preferred against an order of a lower court; and whether ED, CRD would be solely competent to defend the Order in Original had



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an appeal been filed by the Applicant No. 2 against the Order in Original. In response thereof, the authorized representative of Applicant No. 1 did not give a direct answer and reiterated his earlier stance. The Bench does not find the response of the Applicant No. 1 convincing and based upon cogent reasoning. The Bench is of the view that the principle of *audi alteram partem*, which translates to “hear the other side” or “let the other side be heard” is a fundamental tenet of procedural fairness ensuring that individuals are given a fair opportunity to present their case, challenge evidence, and respond to arguments. It upholds the principles of justice, due process, and the protection of individual rights. The order of the Bench relied upon by Applicant No. 1 is distinguishable on facts. Denying to implead Applicant No. 2 as a necessary party/respondent to the appeal would undermine the principle of dispensing justice. Furthermore, the Bench is of the view that to avoid multiplicity and delay of proceedings Applicant No. 2 shall be impleaded as a party to the appeal. It is also viewed that Applicant No. 2 remained part of the proceedings and to ensure the continuity of proceedings is warranted to make the same as a party to the appeal. The Bench is of the view that if decision of the appeal filed by Applicant No. 1 is made without hearing Applicant No. 2, then rights of the latter shall be infringed. Therefore, Applicant No. 2 is a necessary party to the appeal in light of the aforementioned facts and principles laid down by the Hon’ble Superior Courts.

7. In view of the foregoing, the Bench hereby directs Applicant No. 1 to implead M/s. Nitrokimya (Applicant No. 2) as a respondent in its appeal and file amended Form-A and Form-B (memorandum of appeal), as prescribed in the Rules with all necessary documents within fifteen (15) days commencing from the date of this order, failing which the appeal shall not be registered. The Bench further directs the Respondent, that upon submission of amended documents by Applicant No. 1 and satisfaction of the Respondent thereof, appeal of Applicant No. 1 against the Order in Original shall be duly registered. **Disposed of.**

(Abdul Rehman Warraich)

Commissioner

(Akif Saeed)

Chairman/Commissioner

Announced on: **25 AUG 2023**