

**Appellate Bench Orders**  
**Order in the matter of Appeal No. 19, 27 & 28 of 2001**

**In the Matter of**

**Appeal No. 19, 27 & 28 of 2001**

**Order Sheet**

**1. Fifth hearing held on 1st March, 2002:**

These appeals came up for hearing for the fifth time on Friday 1st March, 2002, at 10:30 a.m. whereat the following persons attended:

**For the Appellants**

**Appeal No. 19 of 2001:[Mian Nisar Elahi, Appellant]**

1. Faisal Hussain Naqvi, Advocate, counsel for the Appellant;

**Appeal No. 27 of 2001:[Mr. Tanveer Malik, Appellant]**

1. 1. Mr. Faisal Hussain Naqvi, Advocate, counsel for the Appellant;

**Appeal No. 28 of 2001:[Mr. Iftikhar Shafi, Appellant]**

1. Mr. Iftikhar Shaffi, Appellant, appeared in person.
2. Mian Mumtaz Abdullah, an authorized representative of the Appellant.
3. Mr. Asad Hameed, an authorized representative of the Appellant.

**For Respondent Nos. 1 & 2:(Mr. Abdul Rehman Qureshi and Mr. Aamer Masood):**

1. Mr. Aamir Masood, Director (S-III), Securities Market Division, SEC
2. Mr. Aly Osman, Joint Director (S-III), Securities Market Division, SEC

**For Respondent No. 3:(Lahore Stock Exchange):**

1. Mr. Aamir Zareef Khan, Deputy Secretary (Legal) Lahore Stock Exchange
2. Mr. Arif Saeed, of Hassan & Hassan Advocates, counsel of Lahore Stock Exchange (LSE)

**For Respondent No. 4:(Mr. Muhammad Iqbal Khawaja):**

1. Mr. Asad Ullah Javed, Advocate, counsel for the Respondent No. 4
2. Mr. Omer Iqbal, authorized representative of Mr. Muhammad Iqbal Khawaja

**For Respondent No. 5:(Mr. Naeem Anwar):**

Non-presence

**2. Review petition against the order of the Appellate Bench for condonation of delay in filing of appeals filed by Mr. Asad Ullah Javied, Advocate for Respondent No. 4**

2.1 Mr. Asad Ullah counsel for Mr. Muhammad Iqbal Khawaja presented his arguments in support of his review petition against the order of the Appellate Bench, whereby delay in filing of Appeals was condoned vide order dated 28 December, 2001 without providing an opportunity of hearing. He drew the attention of the Bench to the Honourable Supreme Court Order wherein it was stated that the matter should be decided on the merits of the case. Further it has been argued that the delay was condoned without affording an opportunity of hearing. The counsel submitted that the Bench has discretionary powers to condone the delay, which was required to be exercised judiciously.

2.2 The counsel for the Appellant, Mian Iftikhar Shafi objected to the review petition filed by Mr. Asad Ullah Javied, Advocate being a frivolous application and meant to hamper the proceedings of the Honourable Bench. Mr. Faisal Naqvi, counsel for Mian Nisar Elahi and Tanveer Malik objected to the application: since the applicant was not party to the proceedings at the time when the order for condonation was passed, the plea for opportunity of hearing is not maintainable; further, the scope of review is restrictive and such pleas cannot be entertained in review petition.

2.3 Having considered the arguments of the parties the Bench is of the view that the delay in filing of appeals was condoned by the Bench in the interest of justice and keeping in view the recommendation of the Honourable Supreme Court, that a lenient view with respect to limitation should be taken. In any event review jurisdiction is mainly limited to enable a forum to correct its own errors, which have inadvertently been occasioned and could not be invoked for rectifying improper appreciation of legal or factual aspects or for removing alleged procedural defects. No cogent reason has been provided for the Bench to overturn its earlier decision. The review petition is, therefore, not allowed.

**3. Application for impleading of necessary parties filed by LSE Respondent No. 3**

3.1 Mr. Arif Saeed, of Hassan & Hassan Advocates, counsel for LSE, filed application for impleading of Miss Sonia Nisar and Diamond Industries as necessary and proper parties in Appeal No.28 of 2001, to serve the ends of justice and to enable this Honourable Bench for effective and conclusive settlement of all questions involved in the Appeal. The learned counsel further submitted that the two possess material evidence related to unfair trade practices and fraudulent acts of the Appellant. The counsel orally requested the Bench for impleading of KSE as well.

3.2 Mian Mumtaz Abdullah the representative for Appellant objected to LSE's application being irrational and unqualified since names of a number of persons have been quoted in the impugned order. However, impleading of all those persons would not only delay the speedy disposal of the instant Appeal but would also further

complicate the issues.

3.3 3.3 The LSE's counsel was asked as to whether these parties were impleaded at the initial stage to which the Appellant answered in the negative. However, it was asserted by him that impleading of parties can be done at any stage, if considered appropriate and necessary. Since the LSE's counsel has not been able to convince the Bench as to the necessity of impleading these parties at this stage, the LSE's counsel has requested withdrawal of the said application with permission to file again at a later stage. Request is allowed. Application is disposed off accordingly.

#### **4. Applications for extension of time to file para wise comments by Respondent Nos. 2 & 3**

4.1 The Counsel for Mian Iftikhar Shafi submitted a list dated 28 January, 2002 before the Bench for providing documents which were not legible or incomplete. The Respondent stated that all documents on which reliance has been placed in the impugned order have already been provided. However, as far as paragraph "B" of the list is concerned, stating details of documents not legible, the same shall be provided soon. The Counsel for Mian Nisar Elahi and Tanveer Malik also adopted the same list.

4.2 The Bench was informed that Respondent No.2 had filed its parawise comments in Appeal no. 28 of 2001. However, LSE's counsel submitted that they would prefer to file all the replies together as the substance of all the Appeals is related to each other. Since the Appellant, Mian Iftikhar Shafi, alone had intimated his intent of not amending the Appeal at this stage, the other two Appellants were asked as to their intent to amend their respective Appeals. The counsel for Mian Nisar Elahi and Tanveer Malik stated that on receipt of the clear, legible and complete copies of the documents as per the said list, they would submit amended Appeals.

4.3 The following time table shall be strictly adhered to as agreed between the parties:

- (a) Documents as per paragraph "B" of the said list to be provided by the Respondent No.2 by Tuesday 5 March, 2002.
- (b) Appellants, Mian Nisar Elahi and Tanveer Malik, shall file the amended Appeals within two weeks of the receipt of the aforesaid documents to the said Appellants.
- (c) Replies to the amended Appeals shall be submitted by the Respondents within two weeks from the date of filing of the amended Appeals.

#### **5. Application for rectification of order sheets, etc.**

(a) Request has been made by Mr. Arif Saeed, counsel for LSE that in paragraph 2.6 of the order of the fourth hearing held on 24 January, 2002, the words 'interest bearing escrow account' may kindly be rectified to read as 'interest bearing account of LSE.' Attention was also drawn to letter dated 13 February, 2002 making a similar request to the Bench. The counsel has submitted that it was overlooked by him at

the time of the hearing. Rectification, therefore, to this effect is allowed.

(b) Misc Application No. 8-28 of 2001)

An application for rectification of the order, recording of proceedings, announcement of orders has been submitted today before the Bench for and on behalf of the Appellant, Mian Iftikhar Shafi, which shall be taken up by the Bench at a later date, as considered appropriate.

**(M. ZAFAR-UL-HAQ HIJAZI)**

Commissioner

**( N.K. SHAHANI )**

Commissioner