



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter or

Appeal No. 06(15)/Misc/ABR/2024

Muhammad Kumail

..... Appellant

Versus

Deputy Director, Licensing Division, SECP

..... Respondent

Date of Hearing:

May 08, 2025

Present:

For the Appellant:

Mr. Syed Kafeel Abbas, Authorized Representative

For the Respondent:

Nemo

ORDER

1. This Order shall dispose of Appeal No. 06(15)/Misc/ABR/2024, fixed for preliminary hearing to decide its maintainability under Section 33 of the Securities and Exchange Commission Act, 1997 (the Act), filed by Muhammad Kumail (the Appellant), against the Order dated April 22, 2024 (Impugned Order) passed by the Deputy Director, Licensing Division, SECP (the Respondent) under Rule 7(2)(aa) of the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003 (the Rules) read with Clause (iii) and (iv) of Fit and Proper Criteria, Schedule IX of the Non-Banking Finance Companies and Notified Entities Regulations, 2008 (the Regulations).



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2. Brief facts of the case are that the Appellant was nominated by Postex Financial Services (Private) Limited (the Company) for the position of Chief Executive Officer (CEO). Accordingly, an application for appointment of Appellant as CEO was submitted before the Respondent on November 27, 2023. The Respondent, vide email dated December 06, 2023, raised objections regarding the Appellant's eligibility, specifically citing an alleged deficiency in the requisite seven years of cognate experience in top or second-to-top tier management positions. In response, the Company submitted that the Appellant had held substantive positions such as Management Executive, Assistant Registrar, and Deputy Registrar at SECP, in addition to his ongoing role at the Company which collectively encompassed core responsibilities aligned with executive functions at a Non-Banking Finance Company. The Company further stated that the Appellant has professional recognition granted to him by the globally renowned CFA Institute. The Respondent, being unsatisfied with the submissions of the Appellant, proceeded to decline the appointment of the Appellant as CEO vide Impugned Order.
3. The Appellant has assailed the Impugned Order primarily on the ground that it has been passed in complete disregard of the binding precedent laid down by learned Appellate Bench (the Bench) in **2016 CLD 1569**, which categorically held that *"mere reliance on the absence of 7 to 10 years of senior management experience under clause (c)(iii) of the Fit and Proper Criteria in the NBFC Regulations, 2008, is insufficient for disqualifying a candidate, and that failure to provide adequate reasoning renders such an order non-speaking and liable to be set aside"*. The Appellant further submitted that since the term "senior management" has not been defined in either the Rules or the Regulations, the criteria for determining fitness and propriety of a CEO remains open to interpretation. In support thereof, the Appellant placed reliance on **PLD 2023 Lahore 334**, which held that *"undefined statutory terms may be construed in light of their dictionary meanings"*. The Appellant further contended that the Respondent arbitrarily introduced an extraneous and unlegislated standard in his email dated December 11, 2023, by insisting that the proposed CEO must have held either top or second-to-top positions for a minimum period of seven years, an interpretation unsupported by the express language of the Regulations, which merely requires experience in a senior management position. The Appellant argued that this fictional requirement is contrary to the letter and spirit of the applicable legal framework. The Appellant stated that his prior designation as Management Executive at SECP falls squarely within the ambit of a management cadre employee, as per Clause



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1A(1)(s) and Section 4.2.8 of SECP's Human Resource Manual, and that this experience, when combined with his other roles in the Company, satisfies the regulatory threshold. The Appellant contended that the term "cognate," used in clause (c)(iv) of Schedule IX of the Regulations, refers to relevant knowledge, skills, and abilities in line with the professional activity concerned and in this regard, the Appellant has over thirteen years of regulatory and managerial experience which should have sufficed to establish his eligibility. The Appellant also submitted that qualification and experience must be assessed cumulatively under clause (c)(iv), and it is manifestly unjust to deny appointment solely on the basis of an alleged deficiency thereof. The Appellant further contended that the Respondent failed to appreciate the Appellant's experience in the financial technology sector particularly with start-ups like the Company and his demonstrated capacity for strategic, regulatory, and investment leadership. The Appellant also relied on **2014 CLD 664** and **2010 SCMR 1301**, which held that "*discretion vested in a statutory body must be exercised judiciously, reasonably, and without arbitrariness, and that failure to do so vitiates the decision-making process*". The Appellant asserted that the Respondent failed to apply his mind while arriving at a conclusion and disregarded the Appellant's entitlement to an interview as required under clause (c)(iv) of Schedule IX of the Regulations.

4. The Appellant further argued that the Impugned Order is entirely devoid of reasoning and lacks the basic attributes of a speaking order as required under Section 24-A of the General Clauses Act, 1897. The Appellant also stated that the Impugned Order contravenes the principle of fairness enshrined in Article 4 of the Constitution, which obligates public functionaries to act in accordance with law and to uphold the rights of individuals without discrimination or arbitrariness. In support of his submissions on maintainability, the Appellant presented certain judicial precedents, which includes **2004 PTD (Trib.) 752**, it was held that "*an "order" is a conclusive and authoritative decision that differs from a request or advisory direction*", thus the Impugned Order being a definitive rejection constitutes an appealable act. In **PLD 1986 Lahore 237**, the Court adopted a broad interpretation of the term "order" to include "*any formal decision that resolves legal disputes or questions of law*". In **2013 CLD 1965 (Sindh)**, it was clarified that an advisory communication merely guiding a party to approach another forum does not amount to an order. The Appellant submitted that this contrasts with the present case where the Impugned Order conclusively determines the Appellant's rights and is thereby appealable. In **2017**



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CLD 1237 (Islamabad) the Court held that “both final and interlocutory decisions are covered under the term “order” in Section 34 of the SECP Act, 1997, and unless explicitly barred, the right of appeal remains available”. Similarly, in *2017 CLD 218 (SECP)*, it was held that “a decision denying a license was not a mere administrative direction and held it to be a conclusive determination of rights”, which is directly relevant to the rejection faced by the Appellant. In *PLD 2021 Lahore 186* the principle of *ubi jus ibi remedium* was recognized that every right must have an accompanying remedy. In *2022 MLD 638*, it was held that “an aggrieved person has an unfettered right to challenge adverse decisions before a competent forum”. The Appellant submitted that these precedents affirm that the Impugned Order is an appealable order because it adversely affected the Appellant’s rights and career prospects, and therefore, the present appeal is legally maintainable.

5. The Bench has heard the Appellant at length and perused the record. Upon careful consideration of the record and submissions made, the Bench is of the view that while the Commission is empowered to assess the competence and capability of a proposed CEO and to refuse such appointment if found non-compliant with the applicable regulatory framework, such refusal must be well-reasoned. The Bench is of the opinion that the Impugned Order, in its form and substance, is merely a communication or opinion of the Respondent and does not qualify as an “order” within the contemplation of Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997, thereby rendering the present appeal not maintainable in its current form.
6. In view of the foregoing, the matter is referred to the Executive Director, Licensing and Registration Division for reconsideration and disposal in accordance with law after providing the Appellant a meaningful opportunity of hearing in terms of clause (c)(iva) of Schedule IX of the Regulations.

(Abdul Rehman Warraich)
Commissioner

(Mujtaba Ahmad Lodhi)
Commissioner

Announced on:

19 JUN 2025