



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN  
APPELLATE BENCH REGISTRY

**BEFORE APPELLATE BENCH NO. II**

In the matter of

**Appeal No. 43 of 2009**

M/s Excel Financial Services (Pvt.) Ltd  
Room No 212, Siddique Trade Centre  
Main Boulevard, Gulberg  
Lahore

.....

Appellant

Versus

Executive Director (Registration)

.....

Respondent

Date of Hearing

15 September 2009

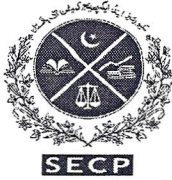
**Present:**

For the Appellant:

Umer Akram Chaudhry  
Advocate

For the Respondent Department:

Mr. Munawar Bhatti  
Joint Registrar



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ORDER

1. This order will dispose of appeal filed by M/s Excel Financial Services (Pvt.) Ltd (the "Appellant") under section 33 of Securities and Exchange Commission of Pakistan Act 1997 (the "SECP Act") against the order dated June 23, 2009 (the "Impugned Order") passed by Executive Director, Registration ("Respondent").
2. The Respondent through the Impugned Order granted sanction under clause (b) of section 309 of the Companies Ordinance 1984 ( the " Ordinance") and authorized the Registrar concerned to present a petition before the High Court for winding up of the Appellant in terms of section 305 of the Ordinance.
3. The Appellant preferred the instant appeal before us. The departmental representative sought permission to be heard first on maintainability and stated that the appeal is not maintainable under proviso (c) of section 33 (1) of SECP Act and is liable to be dismissed on this ground alone.
4. The Appellant counsel in response stated that the appeal has been preferred against the order of the Respondent made in quasi judicial proceedings. The exceptions provided in proviso to section 33 (1) of SECP Act are attracted where the appeal is against an administrative order of the Securities and Exchange Commission of Pakistan (the "Commission"). The Appellant has preferred an appeal against a quasi judicial order which was passed after hearing the parties and therefore the appeal is maintainable and can be heard by the Appellate bench (the "Bench").
5. The Appellant counsel was allowed to make submissions on merits; however, the counsel was informed that in case the Bench comes to the conclusion that the



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appeal is not maintainable then it shall pass an order without looking into the merits of the case.

6. We have heard the parties on the issue of maintainability. Section 33(1) of the SECP Act is reproduced for ease of reference:

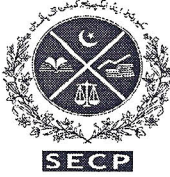
**33. Appeal to the Appellate Bench of the Commission.-** (1) Except as otherwise provided any person aggrieved by an order of the Commission passed by one Commissioner or an officer authorized in this behalf by the Commission, may within thirty days of the order, prefer an appeal to an Appellate Bench of the Commission constituted under sub-section (2)

*Provided that no appeal shall lie against ----*

- (a) *an administrative direction given by the Commission or an officer of the Commission*  
(b) *an order passed in exercise of the powers of revision or review*  
(c) *a sanction provided or decision made by a Commissioner or an officer of the Commission to commence legal proceedings; and*  
(d) *an interim order which does not dispose of the entire matter*

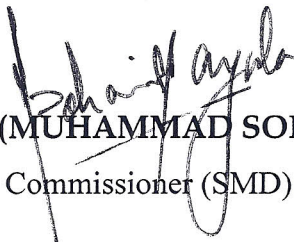
Emphasis added

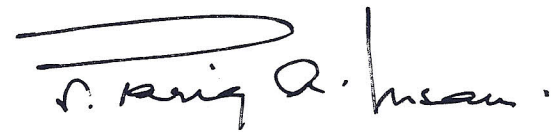
In the instant case the Respondent has granted sanction under clause (b) of section 309 of the Ordinance and has authorized the Registrar concerned to present a petition before the High Court for winding up of the Company in terms of section 305 of the Ordinance. The bare reading of proviso (c) to section 33(1) of the SECP Act leads to the conclusion that a sanction provided or decision made by a Commissioner or an officer of the Commission to commence legal proceedings is not appealable.



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7. The argument of the Appellant that the appeal has been preferred against a quasi judicial decision and not an administrative decision has also been examined in light of proviso (a) to (d) of section 33(1) of the SECP Act. We do not agree with the contention of Appellant counsel as the legislature has provided four situations where an appeal shall not lie against the orders of a Commissioner or an authorized officer of the Commission. The argument of the Appellant counsel is valid to the extent that administrative orders are not appealable, which has specifically been provided by proviso (a) of section 33(1) of SECP Act. We do not, however, agree with the argument that as opposed to administrative orders all quasi judicial orders are appealable. Proviso (b) to (d) of section 33(1) of SECP Act provides situations where quasi judicial orders passed by the Commission or its authorized officers are not appealable. In this case proviso (c) of section 33(1) of SECP Act is fully attracted as the Impugned Order grants sanction to the Registrar to file winding up of the Appellant, which is not appealable order.
8. In view of the above the appeal is hereby dismissed as not maintainable with no order as to cost.

  
(MUHAMMAD SOHAIL DAYALA)  
Commissioner (SMD)

  
(S. TARIQ ASAF HUSAIN)  
Commissioner (LD)

Announced on: 2-10-09