



BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 31 of 2004

1. Mr. Amir Rasheed,
503-C, Faisal Town,
Lahore

2. Ch. Muhammad Sarwar
174, H-I, Wapda Town,
LahoreAppellants

Versus

1. Lahore Stock Exchange (Guarantee) Ltd,
Through its Managing Director

2. Mian Muhammad Asif,
Ex-Member, Lahore Stock Exchange

3. Director (SMD) SEC.....Respondents

Date of Impugned Order September 03, 2004

Date of Hearing(s) November 30, 2004
December 22, 2004

Present:

Mr. Amir Mahmood, Advocate for the Appellant

Mr. Amir Zareef Khan for Respondent No. 1

Mr. Abid Hussain for Respondent No. 2

Mr. Murtaza Abbas, Assistant Director SEC for Respondent No. 3



ORDER

This appeal No. 31 of 2004 was filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by Mr. Amir Rasheed and Ch. Muhammad Sarwar (Appellants No.1 & 2 respectively) against the order dated 03-09-2004 passed by Director (SM).

2. Brief facts leading to this appeal are that the Appellant No.1 had been buying & selling various securities in the Lahore Stock Exchange (G) Limited ("LSE") through Mian Muhammad Asif (Respondent No.2 herein), a member and broker of the LSE (Respondent No.1 herein) at the relevant time. According to the Appellants, Appellant No.1 had been dealing with Mr. Waseem Pirzada who was an agent and incharge of the office of Mian Asif. Mr. Waseem Pirzada induced Appellant No.1 to introduce other persons to invest in this business through their brokerage house and therefore Appellant No.1 introduced Appellant No.2, a cousin, who issued two cheques worth Rs.16 lakhs to Mr. Pirzada, through Appellant No.1, for purchasing shares of Hub Power Co. However, these cheques were issued in the name of some brokerage house named Charter House on the instructions of Mr. Pirzada, who stated that Charter House was a branch of Mian Asif brokerage house. After a few days, Mr. Pirzada issued three cheques of the said Charter House to the Appellants for a total amount of Rs.1,639,900/-, which purportedly included profit made on the investment made by the Appellants. However when the Appellants approached the Bank for encashment of these cheques, the staff of the Bank, by just looking at these cheques informed the Appellants that these cheques could not be encashed due to non-availability of funds in the said account. The Appellants thereafter approached the LSE on several occasions but they allegedly could not get any relief. The Appellant then filed a writ petition before the Hon'ble Lahore High Court, in which they also made the Commission a party. The counsel for the Commission informed the High Court that if the Appellants filed an application under section 21 of the Securities & Exchange Ordinance, 1969, the Commission would entertain their complaint and dispose off the matter as early as



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

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possible. That writ petition was therefore disposed off by the Hon'ble Court vide its order dated 23-06-2004 with directions that the Commission should take due proceedings and dispose off the matter within 40 days. Thereafter in pursuance of Hon'ble High Court's order, proceedings were held before Director (SM) (Respondent No.3 herein), and an order dated 03-09-2004 was passed by him whereby he rejected the claim of the Appellants. The Appellants being aggrieved by this order have preferred this appeal before the Appellate Bench.

3. The case was initially fixed for hearing on 30-11-2004, but was adjourned as the representative appearing on behalf of Mian Asif did not possess a proper power of attorney. It was later re-fixed and heard on 22-12-2004. During the arguments presented by Mr. Amir Mahmood, counsel for the Appellants it was noted by the Bench that a proper enquiry under section 21 of Securities and Exchange Ordinance, 1969 has not been conducted by the Commission, as directed by the Hon'ble High Court. The Bench enquired from the representative appearing on behalf of Director (SM) whether an order for inquiry under section 21 was passed by the competent authority. It transpires that no order was passed and the proceedings conducted by the Director were not under section 21 of the Ordinance.

4. The Appellant Bench has taken a serious note that instructions of the Hon'ble High Court have not been followed in letter and spirit. The matter is therefore remanded back to the Securities Market Division for an independent enquiry under section 21 of the Ordinance in compliance of the order of High Court. The competent authority in this regard is directed to order an inquiry under section 21, and appoint an independent inquiry officer within 10 working days of the date of this order.

(ABDUL REHMAN QUERSHI)
Commissioner

(ETRAT H. RIZVI)
Commissioner

Announced in Islamabad on December _____, 2004