

Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Preliminary Hearing of Chenab Limited

No.12(8)Misc/ABR/16

1. Mian Muhammad Latif, CEO
 2. Mian Muhammad Javaid Iqbal
 3. Muhammad Naeem
 4. Muhammad Faisal Latif
 5. Muhammad Farhan Latif
 6. Muhammad Zeeshan Latif
 7. Mst. Shahnaz Latif
- (All directors of Chenab Limited)

Appellants

Versus

The Registrar Appellate Bench, SECP

Respondent

Dates of hearing:

03/08/16 &

21/09/16

Present:

For Appellants:

1. Mr. Badar Muneer Bashir, Advocate High Court
2. Mr. Taimoor Zafar, Advocate

ORDER

1. This order shall dispose of an appeal, filed against the decision dated 23/06/16 (Impugned Decision) whereby registration of appeal under section 33 of Securities and Exchange Commission of Pakistan Act, 1997 (the Act) against the order dated

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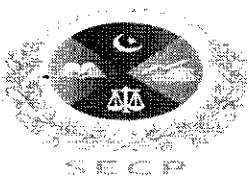
27/04/16 (Original Order) passed under section 265 of the Companies Ordinance, 1984 (the Ordinance) was denied.

2. Brief facts of the case are that the Appellants filed an appeal before the Appellate Bench (the Bench) under section 33 of the Act, however, registration of appeal was denied against the Original Order whereby inspector was appointed to investigate the affairs of Chenab Limited (the Company). The registration of appeal was denied on the ground of prohibition contained in the proviso of section 33 of the Act, which states that the administrative directions of a Commissioner or an officer of the Commission cannot be challenged or questioned in appeal under section 33 of the Act.
3. The Appellants filed an appeal against the Impugned Decision before the Bench on the ground that it is established law that the merits as well as maintainability of any matter or petition has to be decided by the competent authority and in present case competent authority was the Bench. The Respondent was under obligation to place the appeal before the Bench, however, the Respondent has over stepped its authority by deciding the maintainability of appeal. The Appellants has also taken the ground that the Respondent has wrongly assumed that the Original Order is administrative in nature. During the preliminary hearing of this appeal, the Appellants Counsel (the Counsel) further argued that section 33 of the Act prohibits appeal against an administrative direction given by a Commissioner or an officer of the Commission whereas in present case the Commission (Securities and Exchange Commission of Pakistan) has appointed inspector under section 265 of the Ordinance, therefore appeal against the Original Order is maintainable.
4. We have heard the Counsel and perused the record. The Appellants main plea with respect to maintainability of appeal is that the Original Order is not administrative in nature and the Respondent has wrongly and without jurisdiction denied the registration of appeal. The Bench has read carefully the contents of Original Order which pertains to the investigation into the affairs of the Company, therefore, no

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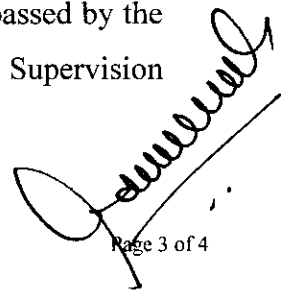
interference could be made in the operation of the said order because it is purely an administrative order.

5. Further, the investigation order does not implicate Company or its directors, Chief Executive for any charge / violation of applicable law; rather it is only a fact finding exercise. The Respondent has denied the registration of appeal on a single ground, however, in view of section 33(1) (a) and (d) of the Act, the appeal against the Original Order is not maintainable on two grounds i.e. no appeal shall lie against an administrative direction given by a Commissioner or an officer of the Commission or against an interim order which does not dispose of the entire matter. Order of the investigation is interim in nature and does not dispose of the matter.
6. The Commission, being a Regulator has responsibility to safeguard the interest of all the stakeholders and ensure the compliance of relevant laws. In certain cases, to know the real facts with regard to compliance of relevant laws by the companies it has to proceed under section 265 of the Ordinance. The Original Order has been passed after fulfillment of prerequisites, necessary to invoke section 265 of the Ordinance and due consideration has been given to the Appellants stance. Moreover, in a case cited as PLD 2010 Supreme Court 946 (Attock Refinery Ltd vs. Executive Director), it has been held by the Honourable Supreme Court of Pakistan that "... the mere appointment of an investigator does not "dispose of the entire case" and "... the Appellate jurisdiction of the Courts under the said provision is not to be invoked (in the context of the present case) until the investigators have done their job of investigating the affairs of the company."
7. The Counsel also argued that section 33 of the Act prohibits appeal against an administrative direction given by a Commissioner or an officer of the Commission whereas in the present case the Commission (Securities and Exchange Commission of Pakistan) has appointed inspector under section 265 of the Ordinance, therefore appeal against the Original Order is maintainable before the Bench. This argument does not support the case of Appellants because the Original order was passed by the officer of the Commission i.e. Executive Director (Corporate Supervision

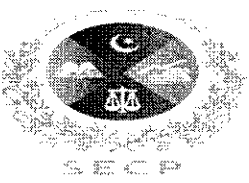


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Department) in exercise of powers conferred vide notification SRO.1003/(I)/2015 dated 15/10/15.

8. In view of above, the Appellants have failed to make out a case fit for interference of the Bench and registration of appeal under section 33 of the Act, therefore, we hereby dismiss the appeal in limine, without order to cost.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Zafar Abdullah)
Commissioner (SCD)

Announced on: 23 SEP 2016