

## Appellate Bench Orders

### Before Appellate Bench No.1

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October 29, 2002

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### Before Appellate Bench No. 1

#### In the Matter of

#### Appeal No. 54 of 2002

Sakarwala Capital Securities  
(Private) Limited  
Corporate Member, KSE  
(Formerly Ghulam Mustafa  
Sakarwala Member KSE)

.....

Appellant

Versus

1. Commissioner (SM) SEC  
2. Abdul Ghafoor Awan

.....

Respondent

**Date of Hearing**

October 07, 2002

**Present:**

For the Appellant

1. Mr. Ghulam Mujtaba Sakarwala

For the Respondent

1. Mr. Abdul Ghafoor Awan  
2. Mr. Ikram-ul-Haq, Joint Director SEC  
3. Ms. Sumbul Naveed, Asst. Director SEC

#### Order

This matter before us arises from an appeal filed by M/s. Sakarwala Capital Securities (Pvt) Limited (the "Appellant") against an Order dated August 07, 2002 (the "Impugned Order") passed by the Commissioner (Securities Market) pursuant to a complaint ("Complaint") filed by Mr. Abdul Ghafoor Awan (the "Respondent No. 2"). The brief facts of the case are as follows:

1. The Respondent No. 2 approached the Commission through his complaint stating therein that while maintaining a CDC sub-account with the Appellant, he had deposited certain shares as 'Trust' (amanat) with the Appellant in October 1998, which was sold by him without any authorization. These shares included;

KESC           5000 shares  
PTCL           6000 shares  
Sui Southern 4000 shares

2. The Appellant while arguing the case accepted that the above stated shares were duly deposited in the sub-account of Respondent No. 2. The Appellant further contended that the Respondent No. 2 had deposited these shares as margin and as he failed to make payments against his debit balance, the Appellant was forced to sell these shares. The Appellant also stated that he tried to contact Respondent No. 2 several times before squaring up the account and tried to inform him about the debit balance. He was requested to arrange payment against his dues. After the deadline provided, Respondent No. 2's position was squared up which still resulted in the debit balance of Rs.61,985/- even after the sale of his shares.

3. The Appellant produced the Account Opening Form according to which the shares claimed to be deposited as "Trust" by Respondent No. 2 were clearly mentioned under the heading of "Deposits/ Margins" and no other receipt was available with Respondent No. 2. However, clause 6 of the terms and conditions contained in the Account Opening Form stated as "Rules and Regulations", which was referred to by the Appellant didn't contain any specific authorization given by Respondent No. 2 to the Appellant to move/ sell his shares from his CDC sub-account.

4. From the above stated position, it is evident that these shares were deposited as margin and the Appellant had no authority to move the shares of Respondent No.2 from his sub-account. The Appellant therefore acted in violation of section 24 of Central Depositories Act, 1997 ("CDC Act") which provides as follows:

*"Handling book-entry securities without authority.----(1) A participant shall not handle or authorize or permit any handling of book-entry securities entered in the sub-accounts maintained under his account without authority of the sub-account holder".*

5. The Appellant was, therefore, directed to transfer 5000 shares of KESC, 4000 shares of Sui Southern Gas Company and 6000 shares of PTCL to Respondent No.2's account.

6. Aggrieved by the Impugned Order, the Appellant has preferred this appeal before this Bench. The case was fixed for hearing on October 07, 2002 and the parties appeared and argued the case.

7. The Appellant has contended that Commissioner (SM) has erred in holding that the Appellant did not have the authority to sell the shares of Respondent No.2 as he did not consider the facts of the case in their correct perspective and failed to appreciate intention of the parties for depositing the

shares as margin. He further contended that the Impugned Order tantamount to penalizing him.

8. We have heard both the parties and examined the documents on record. The terms and conditions laid down in the account opening form empower the Appellant to dispose of the shares kept as margin with him by Respondent No. 2. However, Respondent No. 2 had not given any express instructions to the Appellant to deposit the said shares in the sub-account with CDC. The Appellant therefore, had two options when he received these shares in physical form as margin from Respondent No. 2. He could have either kept them in the physical form or transferred them in the client's sub-account with CDC. The Appellant opted to place the shares in the sub-account without any written instructions from the Respondent No. 2. This reflects good intention of the Appellant. Had the Appellant opted for keeping these shares in physical form and had subsequently disposed them off to square up the position of Respondent No. 2, there would have been no cause of complaint by the Respondent No. 2.

9. We have noted that the Impugned Order does not hold the Appellant responsible for any lapse except that he moved the shares from the sub-account of Respondent No. 2 without his express written consent in violation of section 24 of CDC Act. Although, the learned Commissioner has invoked the provisions of section 24 of CDC Act, yet we feel that the issue with regard to deposit of shares as margin to square up the position has not been decided. We are, therefore, constrained to remand the case back to Commissioner (SM) for looking afresh into the settlement of debit balance of Respondent No. 2 with the Appellant.

**( Abdul Rehman Qureshi )**  
Commissioner (Enforcement)

**( Etrat H. Rizvi )**  
Commissioner (Insurance)

Islamabad

Announced: October 29, 2002