



BEFORE

RECONSTITUTED APPELLATE BENCH NO. III

In the matter of

Appeal No. 31 of 2003

Trade Station Securities (Pvt) Ltd.
through its Chief Executive
Mr. Khurram Shahzad
118 GT Road, opposite Gate No.6 UET
Baghbanpura, LahoreAppellant

Versus

1. Commissioner (Company Law) SEC
2. Joint Registrar of Companies, SECRespondents

Date of Impugned Order

July 24, 2003

Date of Hearing of Appeal

October 28, 2003

Present:

For the Appellant

Mr. Imran Aziz Qureshi
Advocate High Court

For the Respondent

Mr. Munawar Bhatti, Joint Registrar



ORDER

This order will dispose off the present appeal No.31 of 2003 filed under sub-section (1) of section 33 of the Securities & Exchange Commission of Pakistan Act, 1997 ('Act') by Trade Station Securities (Pvt) Ltd. (the 'Appellant') against the Order dated July 24, 2003 (the 'Impugned Order') passed by Commissioner (Company Law).

1. Brief facts leading to this appeal are that the Company Registration Office, Lahore received some information that the Appellant was carrying on unauthorized business. An officer was deputed by the concerned Registrar to gather additional information in this regard. The information revealed that the Appellant Company was dealing among others, in (i) foreign currencies, (ii) futures & commodities trading, (iii) inviting deposits from the general public for investment in its trading business, (iv) investment advisory business, (v) forex investment advisory business, and (vi) financial brokerage services. As the business being carried out by the Appellant Company was not authorized by its memorandum of association, the Registrar requested the Commission for grant of sanction under clause (b) of section 309 of the Ordinance to present a winding up petition before the Hon'ble High Court in terms of clause (f) of section 305. An opportunity of hearing was provided to the Appellant by Commissioner (Company Law). However, not being convinced by the contention raised by the Appellant, he granted the said sanction vide the Impugned Order. The Appellant has preferred this appeal before us under section 33 of the Act against the Impugned Order.
2. Mr. Imran Aziz Qureshi appearing on behalf of the Appellant contended that the Impugned Order was without any legal justification as there was no concrete evidence available against the Appellant. He stated that the Joint Registrar had failed to produce any documentary or oral evidence in support of his request for



sanction. He stated that the pamphlet/brochures relied upon by the Commissioner was not published or distributed by the Appellant. He argued that the evidence relied upon by the Commissioner in order to reach a decision was not in accordance with the provisions of Qanoon-e-Shahadat. He asserted that the proceeding before the Commissioner (Company Law) were prejudged as the Chairman of the Commission had previously stated in a new conference that the Commission had decided to take action against the Appellant. In support of this contention he produced a clipping of a news item.

3. Mr. Qureshi further contended that the Appellant was not carrying out any illegal or unauthorized business as it has been a dormant company ever since its incorporation. He stated that the business of the Appellant could not be launched because of financial constraints. He stated that the Appellant does not even have a bank account.
4. Mr. Munawar Bhatti, Joint Registrar appearing on behalf of the Commissioner and the Joint Registrar, Companies contended that the Impugned Order was not appeal-able under section 33 of the Act as it was a sanction and not an order. He argued that the matter was sub-judice before the Hon'ble High Court and therefore the Appellate Bench should not entertain the appeal. He further asserted that the provisions of Qanoon-e-Shahadat do not apply to the instant proceedings. He stated that the pamphlet/brochures produced before the Commissioner was that of the Appellant and was obtained from its office. Mr. Bhatti stated that the action of grant of sanction by the Commissioner was taken on the basis of the report of the Registrar.
5. We have heard both the parties and considered their arguments. In the first instance, we do not agree with the preliminary objection of Mr. Munawar Bhatti that the Impugned Order is not appeal-able before the Appellate Bench under section 33 of the Act because it is just a sanction and not an order. It is our view



that it is an order of the Commission passed by one Commissioner granting a sanction to the Registrar, and therefore appeal-able before the Appellate Bench under section 33 of the Act. We also do not agree that the Appellate Bench should not hear an appeal against the order granting a sanction for the reason that the winding up petition has been presented and is pending before the High Court. As the winding up petition has been presented by the Registrar and the sanction has been granted by the Commission, in our view the Appellate Bench of the Commission has the authority to reconsider, revise or rescind such a decision and order the withdrawal of the petition with the permission of the Hon'ble High Court at any time before a winding up order is passed, if sufficient reasons exist for such a decision. The Appellant therefore cannot be denied a statutory right of appeal on this ground alone.

6. We now come to the grounds of appeal stated by the Appellant. We cannot agree with the contention of the Appellant that no evidence has been presented before the Commissioner against the Appellant. The Commissioner has relied upon the report presented by the Registrar, which has been prepared from different sources. These include pamphlet/brochure of the Appellant, agreement form, visit to the Appellant's place of business, meeting with Appellant's representatives and other general information. We have also examined the pamphlet/brochure which was relied upon by the Commissioner. The brochure details the forms of businesses being carried out by the Appellant, including (i) dealing in foreign currencies, (ii) futures & commodities trading, (iii)) inviting deposits from the general public for investment in its trading business, (iv) investment advisory business, (v) forex investment advisory business, and (vi) financial brokerage services. We do not find any weight in the Appellant's assertion that this pamphlet/brochure may have been published by some person not associated with the Appellant. The Appellant's argument that the real author of this pamphlet is someone else and that person should have been called or produced in the proceedings before the Commissioner is an attempt to waste our



time. The brochure presents the Appellant as the proponent of the brochure and contains the details of the Appellant including its registered address. It was therefore for the Appellant to rebuff such evidence against it, which it failed to do and not for the Commission to go on a wild goose chase to find the person who may have published the brochure to settle some kind of score with the Appellant or its management.

7. We have also examined the news clipping produced before us by the Appellant's counsel in support of his argument that the decision to file winding up against the Appellant had been made up before granting it with an opportunity of hearing. The news clipping refers to proposed action against certain public listed companies for not holding their annual general meeting on time and does not relate to the Appellant or the business being carried out by it. In any case, if indeed there was such a report of proposed action against companies doing illegal business, this does not mean that those parties would be condemned unheard. The Appellant was issued a show cause notice and provided with sufficient opportunity to present its point of view, which it did. More importantly the order of the Commissioner is a reasoned order and is based on facts and evidence produced before him. In our view therefore, it is hardly possible in such circumstances to argue that it was a predetermined decision.

In light of the submissions of the parties and the above findings we uphold the order of the Commissioner (Company Law). This appeal is accordingly dismissed.

(ETRAT H. RIZVI)
Commissioner (Specialized Companies)

(SHAHID GHAFAR)
Commissioner (Securities Market)

Islamabad
Announced: October 30, 2003