



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 10 of 2019

- (i) KASB Invest (Pvt.) Limited
- (ii) Mr. Amer Maqbool
- (iii) Mr. Farrukh S. Ansari
- (iv) Mr. Syed Shahid Owais
- (v) Mr. Liaquat Mahmood Shah
- (vi) Mr. Rashid K. Siddiqui
- (vii) Mr. Aftab Afroze Mahmoodi
- (viii) Mr. S.M. Rehmanullah
- (ix) (From (ii) to (viii) All directors of M/s. KASB Invest (Pvt.) Limited)

...Appellants

versus

The Registrar Modaraba Companies and Modarabas, SECP

...Respondent

Dates of hearing:

December 12, 2019, March 5,
2020, July 23, 2020 & August
12 and 17, 2021

Present:

For the Appellants:

Muhammad Mahmood Ali, Advocate High Court

For the Respondent:

1. Ms. Bushra Aslam, Registrar Modaraba
2. Mr. Shahid Mahmood, Additional Director
3. Mr. Ibrar Saeed, Additional Director (Adjudication-II)

ORDER

1. This Order shall dispose of Appeal No.10 of 2019 filed by the above-mentioned eight Appellants under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997(SECP Act) against

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Securities and Exchange Commission of Pakistan

Order dated January 22, 2019 (the Impugned Order) passed by the Registrar Modaraba Companies and Modarabas (the Respondent) under Section 20 of the Modaraba Companies and Modaraba (Flotation and Control) Ordinance, 1980 (Ordinance). As the Impugned Order has not been passed against the M/s. KASB Invest (Pvt.) Limited, it therefore, has no right to file this Appeal. Accordingly name of the M/s. KASB Invest (Pvt.) Limited, appearing in the title of this order may be considered as removed.

2. The brief facts of the case are that an enquiry into the affairs of KASB Modaraba (KASBM), First Prudential Modaraba (FPrM) and First Pak Modaraba (FPM) was conducted under section 21 of the Ordinance. The enquiry report dated April 18, 2018 (the Report) highlighted violations of the modaraba regulatory framework committed by M/s. KASB Invest (Pvt.) Limited (the Modaraba Company) and its Board of Directors and officers. As per the Report, FPrM and KASBM shared rent expenses for premises used as their head office and in this regard Rs. 4.679 million were paid by the FPrM from June 2015 to December 2017. This was a violation of Regulation 9(3) of Part-IV of the Prudential Regulations for Modarabas, issued vide Circular No. 4 of 2004 dated January 28, 2004, which requires that the Modaraba Company shall provide office space for the Modaraba free of any charges. Furthermore, the Report also stated that in violation of the direction issued vide Order dated October 28, 2010 passed by the Registrar Modaraba, M/s. KASB Invest (Pvt.) Limited has not acquired 10% statutory holding of the FPM and the FPrM within a period of two years of the order. It is important to mention here that vide order dated October 28, 2010 management and control of FPrM and FPM was transferred to the Modaraba Company. As per record the Modaraba Company took over the charge of the affairs of both FPM and FPrM in November, 2014, however, despite lapse of considerable time, the Modaraba Company failed to acquire 10% statutory holding of FPrM and FPM.
3. In view of the above, a Show Cause Notice dated November 5, 2018 (the SCN) was issued to the Appellants. Written reply of the SCN was submitted by the Appellants on November 30, 2018, whereas, hearing in the matter was held on December 14, 2018. The Respondent concluded the SCN proceedings and imposed a fine of Rs. 10,000/- on each of the Appellants for the contravention of Regulation 9(3) of Part-IV of the Prudential Regulations for Modarabas and also directed the Modaraba Company to immediately reimburse the amount of rent of Rs. 4.769 million, charged to FPrM and submit a time-bound plan duly approved and signed by the board of directors, within a period of 30 days of the date of the Impugned Order. The Respondent had further directed the Modaraba Company to immediately take measures to acquire the requisite statutory holding of FPM and FPrM failing which the Modaraba Company would be liable to the penal provisions under section 32 of the Ordinance.



Securities and Exchange Commission of Pakistan

4. The Appellants preferred the instant Appeal against the Impugned Order. Hearing in the matter was held before the Appellate Bench (the Bench) on 12/08/21, wherein, the Respondent raised the preliminary objection regarding maintainability of Appeal under section 33 of the SECP Act. The Bench asked the Counsel to respond to the objections raised by the Respondent, however, the Counsel was not prepared to argue on the maintainability of Appeals, therefore, in the interest of justice, the Bench adjourned the matter for re-hearing on 18/08/21. On 18/08/21 the Counsel appeared before the Bench and referred to section 2(g) and section 3 of the SECP Act, to construct the argument that although the Appeals had been filed under section 33 of the SECP Act, before the Appellate Bench, however, the Bench being a part of the Securities and Exchange Commission of Pakistan (the Commission) can transfer an Appeal for adjudication before the appropriate forum. In this regard the Counsel has relied upon a case law cited as 1982 SCMR 673, wherein, it has been held that *".....mentioning of a wrong provision in a pleading (which otherwise is flawless) would not, normally render it invalid."* The Counsel also relied upon case cited as 1994 SCM 1555 wherein it has been held that *on technical non-observance of procedural laws and rules, relief should not be denied. Furthermore, it was also held that "Court can allow conversion of proceedings of one kind into another and correction of misdescription in the tile of proceedings – Mention of a wrong provision of law cannot be considered fatal to the grant of relief if it is otherwise available under the law to an aggrieved party."* The Counsel also relied upon case laws cited as PLD 2014 Sindh 574 and PLD 2006 Karachi 664 in which the aforementioned rulings are provided.
5. The Bench has perused the record and considered the arguments of the parties. In view of the arguments put forth by the Counsel and case laws cited, it appears that it has been conceded that the Appeal has been filed before the incorrect forum under incorrect provisions. The Bench noted that in the instant Appeal, the Counsel was required to assist the Bench regarding consequences of filing of Appeal before the incorrect forum, however, he only advanced arguments and cited case laws on mentioning of incorrect provisions in pleadings, which have no bearing on this issue.
6. The Bench has examined the matter of imposition of fine under Section 32 of the Ordinance for violation of Regulation 9(3) of Part-IV of the Prudential Regulations for Modarabas and direction to the Appellants to comply with direction contained in order dated October 28, 2010 passed by the Registrar Modaraba. The Bench has noted that section 32 of the Ordinance under which the Impugned Order was passed, clearly prescribes a special procedure and provision to file appeal before the



Securities and Exchange Commission of Pakistan

Commission, however, the Impugned Order has been assailed through the instant Appeal. In our view the Appellants had an appropriate forum and provision of Appeal under Section 32(2) of the Ordinance, therefore, adjudication of instant matter under Section 33 of the SECP Act cannot be allowed.

7. In view of the above, we hereby dismiss this Appeal being non-maintainable under Section 33 of the SECP Act.

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(Sadia Khan)
Commissioner

A handwritten signature in blue ink, appearing to read 'Farrukh Hamid Sabzwari'.

(Farrukh Hamid Sabzwari)
Commissioner

Announced on: 29 NOV 2021