



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

### Appeal No. 70 of 2023

Maqsood Ahmed

...Appellant

versus

Commissioner-CRD, SECP and another

...Respondents

### Date of hearing:

July 20, 2023

### Present:

#### For the Appellant:

1. Mr. Imtiaz Haider
2. Mr. Nazir Ahmad Shaheen
3. Mr. Maqsood Ahmed

#### For the Respondents:

Mr. Khalid Latif (*for Respondent No. 2*)

## ORDER

1. This Order is in Appeal No. 70 of 2023 filed by Mr. Maqsood Ahmed (the "Appellant") under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "SECP Act").
2. Brief facts leading to the instant Appeal are that the Appellant is aggrieved by the order dated January 25, 2023 (the "Impugned Order") passed by the Commissioner-CRD, SECP under section 464(4)(b) of the Companies Act, 2017 (the "Act") whereby order in appeal dated November 18, 2020 passed by



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the Registrar of Companies, and order in original dated June 17, 2015 passed by the Joint Registrar were *inter alia* set-aside.

3. The instant Appeal was fixed for a preliminary hearing on the issue of maintainability of the same before the Appellate Bench (the "Bench"). The authorized representatives of the Appellant contended that the language of sub-section (5) of section 464 of the Act is similar to that of sub-section (7) of section 10, and sub-section (10) of section 16 of the Act. The authorized representatives of the Appellant argued that in terms of sub-section (5) of section 464 of the Act, only the jurisdiction of civil courts and other authorities is ousted and not that of the Bench. While advancing their arguments, the authorized representatives of the Appellant submitted that section 464(4)(b) of the Act is *pari materia* to section 480(b) of the Act where an appeal against the decision rendered under the latter, lies before the Bench under section 481 of the Act, and thus the same principle is applicable for an appeal against an order passed under section 464(4)(b) of the Act. Moreover, submitted that the definition of the term 'final' as provided in Black's Law Dictionary suggests that "*Once an order, judgment, or decree is final, it may be appealed on the merits.*". The authorized representatives argued that in the instant matter, rights of the parties are still not determined vide Impugned Order, hence the same cannot attain finality or even if the Impugned Order is deemed to have attained finality, still it is appealable before the Bench in light of the aforementioned definition and provisions of the Act. While summing up the arguments, the authorized representative of the Appellant contended that the interpretation rendering finality to an order under section 464(4)(b) of the Act in terms of sub-section (5) thereof will defeat the purposes of section 464 of the Act, as in view of sub-sections (6) and (7) thereof the registrar concerned may, after accepting a document, allow its rectification or cancel the recording, respectively, and the said orders are appealable and under sections 480 and 481 of the Act. In support of the above contentions, the Appellant has relied on the judgments of the superior courts (2022 SCMR 2073; 2021 CLD 370; PLD 2016 SC 712; PLD 2011 Peshawar 86; and 2019 PTD 25) and have *inter alia* prayed that the instant appeal may be heard on merits.
4. The Respondent No. 2 vehemently opposed the contentions of the Appellant and submitted that the instant appeal is not maintainable before the Bench in terms of an explicit bar contained in sub-section





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(5) of section 464 of the Act; and prayed that the instant Appeal is liable to be dismissed on this score alone.

5. The Bench has heard the arguments on the issue of maintainability of the instant Appeal. In order to discern upon the question that whether the instant Appeal is maintainable in the presence of express bar contained in sub-section (5) of section 464 of the Act, it would be worthwhile to first have a look the said legal provision, and the same is reproduced hereinunder for ease of reference,

***“464. Registrar not to accept defective documents.—...***

*(4) If registration of any document is refused, the company may either supply the deficiency and remove the defect pointed out or, within thirty days of the order of refusal, prefer an appeal—*

*(a) where the order of refusal has been passed by an additional registrar, a joint registrar, an additional joint registrar, a deputy registrar, an assistant registrar or such other officer as may be designated by the Commission, to the registrar; and*

*(b) where the order of refusal has been passed, or upheld in appeal, by the registrar, to the Commission.*

*(5) An order of the Commission under sub-section (4) shall be final and shall not be called in question before any court or other authority.” (emphasis provided)*

6. The Appellant has preferred the instant Appeal against the Impugned Order, passed under section 464(4)(b) of the Act [section 468(4)(b) of the *erstwhile* Companies Ordinance, 1984 (the “repealed Ordinance”)], *setting-aside* the order in appeal dated November 18, 2020 passed by the Registrar of Companies under section 468(4)(a) of the repealed Ordinance, and order in original dated June 17, 2015 passed by the Joint Registrar. It is imperative to note that section 464 of the Act, with the exception of sub-section (6) and (7) *ibid*, is almost similar to section 468 of the repealed Ordinance. Moreover, sub-section (5) of section 468 of the repealed Ordinance is identical to section 464(5) of the Act, as the former also renders finality to an order passed under sub-section (4) of section 468 thereof.

7. The contention of the Appellant that sections 464(4)(b) and 480(b) of the Act are *pari materia*, is misplaced for the reason that unlike section 480(b) of the Act, which is exclusively a remedial



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provision, the former (like section 468 of the repealed Ordinance) is an all-encompassing provision *inter alia* providing two statutory rights of appeal under sub-section (4) *ibid* before rendering finality to an order of the Commission in terms of sub-section (5) thereof. It is pertinent to mention here that two rights of appeal have been provided under section 480 of the Act and the same, unlike section 464 of the Act, does not contain any provision which can be construed as rendering finality to an order passed thereunder.

8. The analogy drawn by the Appellant between the aforementioned two provisions also suffers from misinterpretation in view of section 481 of the Act, whereunder only the orders passed under section 480 of the Act are amenable to the appellate jurisdiction of the Bench, in terms of section 33 of the SECP Act. Bare reading of section 481 of the Act reveals that it provides a further right of appeal before the Bench against the order passed under section 480 of the Act. Whereas, the two rights of appeal provided under section 464(4) of the Act are to be read in conjunction with sub-section (5) of section 464 of that Act. Had the legislature intended to provide this right, the same would have been clearly expressed in section 481 of the Act where statutory right of an appeal is available before the Bench exclusively against orders passed under section 480 of the Act.
9. Furthermore, bare perusal of section 33 of the SECP Act transpires that the use of words '*Except as otherwise provided*' appearing in the beginning of the said provision are of utmost importance as the same signify the intent of the legislature with respect to appellate jurisdiction of the Bench. The said words when read in conjunction with sub-section (5) of section 464 of the Act make it unequivocal that the right of appeal under section 33 of the SECP Act is available to an aggrieved person only where it has not been expressly taken away by the legislature which is essentially the subject matter in the instant Appeal as the same has been preferred against the final order of the Commission passed under section 464(4)(b) of the Act, which by virtue of explicit legislative dictum, shall not be called in question before any court or authority.
10. As far as the contention of the Appellant that by virtue of section 464(5) of the Act, only the jurisdiction of the civil courts and other authorities is excluded, the Bench does not find the said argument convincing in the context of the overall regime of the company law. As also highlighted by the

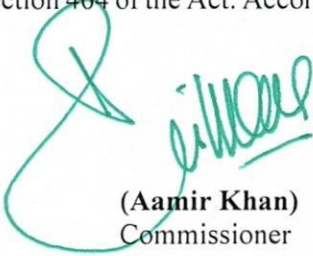




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authorized representatives of the Appellant, there are only three provisions in the Act i.e. sections 10(7), 16(10) and 464(5), where orders passed by the Commission attain finality. Owing to the nature of the subject matter that all the said provisions deal with, the legislative intent through use of words '...shall be final and shall not be called in question before any court or other authority' appears to be quite clear in the *ibid* provisions and thus the same leaves no room for any ambiguity that the connotation of the term 'final' in section 464(5) of the Act is amplified by the words 'shall not be called in question before any court or other authority'.

11. The Bench has also perused the case laws relied upon by the Appellant in support of his contention, however, we are of the view that the same bear no relevance with the matter at hand and are thus distinguishable on points of law and facts.
12. In light of the foregoing discussion, the Bench is of the view that sub-section (5) of section 464 of the Act expressly bars calling in question final order of the Commission passed under sub-section (4) of section 464 of the Act. Accordingly, the instant Appeal is hereby **dismissed** for being non-maintainable.

  
(Aamir Khan)  
Commissioner

  
(Abdul Rehman Warraich)  
Commissioner

Announced on: **15 SEP 2023**