



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 88 of 2020

M/s. The Salim Habib Education Foundation

...APPELLANT

V E R S U S

1- Registrar,

Securities and Exchange Commission of Pakistan (SECP)

2- Joint Registrar,

Corporatization and Compliance Department (CCD)

Securities and Exchange Commission of Pakistan (SECP)

...RESPONDENTS

Date of hearing:

June 03, 2021

Present: (Via Video Conferencing)

For the Appellant:

Mr. Furkan Ali, Barrister at Law

For the Respondents:

Mr. Waseem Ahmad Khan, Director (CCD) SECP

ORDER

1. This Order shall dispose of Appeal No. 88 of 2020, filed by M/s. The Salim Habib Education Foundation (the “**Appellant**”), under Section 481 of the Companies Act, 2017 (the “**Companies Act**”) read with Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997



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(the “SECP Act”) against the Order dated 16-07-2020 (the “**Impugned Order**”) passed by the Joint Registrar, Corporatization and Compliance Department (CCD) (the “**Respondent No.2**”).

2. Brief facts of the case are that the Appellant is a major shareholder of Barrett Hodgson Pakistan (Private) Limited (“**BHP**”) by having ownership of 95.78% shares and, therefore, is a holding company of BHP. That the Appellant applied for an exemption from preparation of consolidated financial statements in respect of BHP under section 228(7) of the Companies Act through the letter dated 10-04-2020 (the “**Application**”). The Application was, however, rejected through the order dated 11-05-2020 (the “**Original Order**”) stating, *inter alia*, that there were no cogent reasons for granting the exemption and the Appellant was instructed to prepare consolidated financial statements.
3. The Appellant, thereafter, preferred an appeal before the Respondent No. 1 under section 480 of the Companies Act (the “**Original Appeal**”), filed on 02-07-2020. The Original Appeal was dismissed by Respondent No. 2 through the Impugned Order dated 16-07-2021. That aggrieved by the Original Order and the Impugned Order, the Appellant preferred this Appeal.
4. The Appellant preferred the instant Appeal, *inter-alia*, on the grounds that the Original Appeal was preferred before Respondent No. 1, however, the Impugned Order was passed by Respondent No. 2 which is without any lawful jurisdiction. Furthermore, the Appellant stated that the Original Order does not state that it was passed with the approval of the Executive Director (CCD-Regulations) and the Additional Registrar (Respondent No. 2) was only communicating the same. The Appellant further stated that the Original Order was passed on the assertion that the Appellant did not have any cogent reasons for the Commission to grant exemption and that it did not contain any reasons or legal justification to dismiss the Application.
5. The main argument in this Appeal relates to the fact that the Appellant had applied for exemption from preparation of consolidated financial statements in respect of BHP under section 228(7) of the Companies Act through the Application. The statutory requirement for consolidated financial statements under section 228 of the Companies Act states:

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“228. Consolidated financial statements.—(1) There shall be attached to the financial statements of a holding company having a subsidiary or subsidiaries, at the end of the financial year at which the holding company's financial statements are made out, consolidated financial statements of the group presented as those of a single enterprise and such consolidated financial statements shall comply with the disclosure requirements of the relevant Schedule and financial reporting standards notified by the Commission: ...”

6. It was noted that exemptions were granted to the Appellant upon their applications by the SECP for the previous three years i.e. exemption for consolidated financial statements in respect of BHP for the financial years ending on Jun 30 2017, June 30 2018 and June 30 2019, respectively. However, the Application of the Appellant for exemption related to consolidated financial statements for the year ending June 30 2020, along with BHP was rejected by SECP stating that there were no cogent reasons for granting the exemption and the Appellant was instructed to prepare consolidated financial statements.
7. The Respondents rebutted the arguments of the Appellant, *inter-alia*, mainly on the ground that the exemption for the previous year was granted due to financial constraints, as it appeared impracticable for the Appellant to prepare consolidated financial statements. The Respondents argued that the competent authority was of the view that no such impracticability existed for the year ending June 30 2020 and hence no exemption was granted. It was further mentioned by the Respondent during the hearing that exemptions cannot be granted each year and for indefinite number of years and cited Section 228 (7) which is reproduced below for ready reference:

“228 (7) The Commission may, on an application of a holding company, direct that the provisions of this section shall not apply to such extent as may be specified in the direction.”

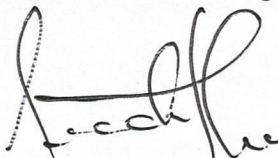
8. The Appellant filed an appeal against the Original Order which was dismissed by Respondent No.2 on the grounds that the Original Order was passed with the approval of Executive Director (CCD-Regulations) and Respondent No.2 had only communicated the decision. Further, the

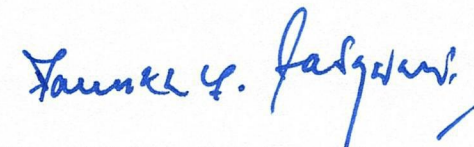


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Respondent No.2 held that the appeal filed in terms of section 480 of the Companies Act, 2017 does not fall within the jurisdiction of Registrar of Companies.

9. The Appellate Bench (the “**Bench**”) has heard the parties and perused the record. The Appellant’s representatives and the Respondents’ representative reiterated their grounds of appeal and rebuttal thereof.
10. The Bench, after reviewing the Application and the Original Order, is of the view that the Appellant was advised to follow relevant provisions of the law; and the competent authority i.e. Executive Director (CCD-Regulations) did not find valid reasons to allow the exemption for the year ending on June 30, 2020. We are of the view that the requirements laid down in the law need to be followed and complied with and any exemption from such requirements within the law may only be allowed in exceptional circumstances. For instance, where an applicant may come up with cogent reasons and the authority is satisfied that there exists such an impracticability or other valid constraints from following the deadlines provided in the law.
11. For the foregoing reasons and discussion, the Bench does not find any merit in this appeal and dismiss the same accordingly.


(Sadia Khan)
Commissioner (SCD-S&ED)


(Farrukh Hamid Sabzwari)
Commissioner (SCD-PRDD)

Announced on: 05 JUL 2021