



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 12 (13)/Misc/ABR/ 2022 (Objection Case)

Haseeb Waqas Sugar Mills Limited

...Appellant

versus

Head of Department/ED-CSD, CLD, SECP and another

...Respondents

Date of hearing:

October 13, 2023

Present:

For the Appellant:

Mr. Hasham Ahmad Khan, Advocate

ORDER

1. This Order is in Appeal No. 12 (13)/Misc/ABR/ 2022 (Objection Case) filed by M/s. Haseeb Waqas Sugar Mills Limited (the "Appellant") under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "SECP Act").
2. Brief facts of the case are that the Appellant is aggrieved of the investigation order passed by the HOD, Corporate Supervision Department dated March 11, 2021 (the "Impugned Order") under section 257 of the Companies Act 2017 (the "Act"). The Appellant challenged the Impugned Order vide Writ Petition No. 23322/2021 filed before the Hon'ble Lahore High Court, Lahore arguing that the Impugned Order had been issued by the Director whereas the show-cause notice was issued by the Executive



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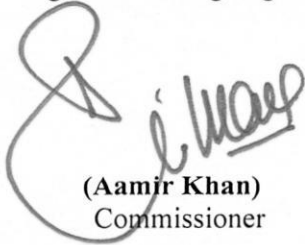
Director. The Hon'ble Lahore High Court, Lahore disposed of the aforementioned petition, directing the Appellant to pursue an appeal before the Appellate Bench as an alternate remedy.


3. Subsequently, the Appellant filed an appeal before the Appellate Bench. However, the Appellant Bench Registry, vide letter dated June 30, 2022, informed the Appellant that the appeal is not maintainable under section 33 of the SECP Act. In response thereof, the Appellant filed a Writ Petition No. 48289/2022 before the Hon'ble Lahore High Court, Lahore whereby letter dated June 30, 2022 was challenged. The Hon'ble Lahore High Court, Lahore, vide order dated October 18, 2022, while disposing of the said writ petition determined that the Registrar, Appellate Bench has no authority to determine the competence of appeal before the Appellate Bench and placed the matter before the Appellate Bench.
4. At the outset, the Appellate Bench (the "Bench") confronted the Appellant with a question of maintainability in response to which the Appellant contended that the appeal is maintainable under section 33 of the SECP Act as the order is passed by an officer of the Securities and Exchange Commission of Pakistan (the "Commission"). The Appellant further argued that it is apparent from the order dated April 27, 2021 passed by the Hon'ble Lahore High Court, Lahore in Writ Petition 23322/2021, that the Commission's counsel adopted the position that an alternate remedy of appeal against the Impugned Order is available to the Appellant under section 33 of the SECP Act. The Appellant contended that when the Appellant filed the appeal before the Bench it was astonishing for him that he received the letter from the Appellate Bench Registry whereby he was intimated that the appeal is not maintainable as the same is hit by proviso to section 33 of the SECP Act. Furthermore, the Appellant has added that the legal precedents cited by the Deputy Registrar in the aforementioned letter are not applicable to the instant Appeal. The Appellant additionally contended that the case titled 'Depilex Smileagain Foundation vs. SECP and others' (2019 CLD 861), is germane to section 29 of the SECP Act and is thus distinguishable from the case of the Appellant where Impugned Order has been passed under section 257 of the Act. Furthermore, the Appellant emphasized that the case law titled 'Attock Refinery Limited vs. Executive Director, Enforcement and Monitoring Division, SECP' (2010 CLD 774 SC), is also not applicable to the case of the Appellant.



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5. The Bench has heard the arguments and perused the record. The contention of the Appellant that the question of maintainability of the instant appeal has already been determined vide order dated April 27, 2021 passed by the Hon'ble Lahore High Court, Lahore in W.P. No. 23322/2021 is not tenable as it is evident from the subsequent order dated October 18, 2022 passed by the Hon'ble Lahore High Court, Lahore in W.P. No. 48289/2022, wherein letter dated June 30, 2022 was challenged by the Appellant, that the instant matter is placed before the Bench for decision in accordance with law.
6. The Bench maintains its consistent view that an investigation is a fact-finding exercise conducted with the aim of ascertaining the accurate state of affairs pertaining to companies, hence, the same is not appealable in view of an express bar contained in section 33 of the SECP Act. Furthermore, the Bench is of the view that order passed under section 257 of the Act is an administrative order as the same does not result in determination of rights and liabilities and is also not penal in nature *per se*. Therefore, the same is not appealable and falls within the proviso to sub-section (1) of the section 33 of the SECP Act. As far as the contention of the Appellant that the cases relied upon in the letter dated June 30, 2022 are distinguishable, the Bench is of the view that both the said judicial precedents highlight a pivotal point that *inter alia* an investigation order is an exploratory measure and not an end by itself. Thus, applicability of both the case laws in the instant matter cannot be disregarded.
7. In light of the foregoing discussion, the instant Appeal is hereby **dismissed** for being non-maintainable.


(Aamir Khan)
Commissioner


(Abdul Rehman Warraich)
Commissioner

Announced on: 03 NOV 2023