



BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 56 of 2013

M. Nadim Anwar Khan Appellants

Versus

Deputy Director (SCD)
Securities and Exchange Commission of Pakistan Respondent

ORDER

Date of hearing

02/12/14

Present:

Appellant:

M. Nadim Anwar Khan

For the Appellant:

Mr. Farrukh Niaz

Department representatives:

Mr. Nasir Askar, Director (SCD)

Ms. Tanzila Mirza, Joint Director (SCD)

Securities and Exchange Commission of Pakistan

1. This order is in appeal No. 56 of 2013 filed under section 33 of Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 12/07/13 (the "Impugned Order") passed by the Respondent.
2. The facts leading to the case are that SME Leasing Limited (the "Company") submitted application dated 31/07/13 for appointment of Mr. Muhammad Nadim Anwar (the "Appellant") as its Chief Executive Officer ("CEO"). The department examined the application and the Appellant was not found to be fit and proper person for the post of CEO of the Company. The application was rejected by the department vide letter dated 28/12/12. The Appellant, aggrieved by the decision of the department, filed writ petition in the Honorable Islamabad High Court (the "Court") and the Court, vide order dated 23/05/13 ("Court Order") disposed of the writ petition with the observation that the department shall reconsider the Appellant for the position and if it disapproves the Appellant again then reasons for the disapproval shall be written.
3. As per the order of the Court, the department reconsidered the application for appointment of the Appellant as CEO of the Company and passed the Impugned Order, wherein, the Respondent disapproved the Appellant for the said position as he did not possess minimum 7 to 10 years work experience in a senior management position as required by clause (c) (iii) of Fit and Proper Criteria laid down in the NBFC Regulations, 2008.
4. The Appellant filed the instant appeal against the Impugned Order. The Appellant's representative argued that the Appellant has been serving in financial institutions for approximately 23 years in different capacities and



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fulfills the criteria to be CEO of the Company. The Appellant's representative provided details of the Appellant's work experience to the Appellate Bench and argued that amongst other positions the Appellant held a senior management position in Allied Bank Limited as Zonal Chief, Rawalpindi from March 1996 till October 1997 and Zonal Chief, Chakwal from July 1995 till March 1996, where he was in-charge of 31 branches and 20 branches respectively. It was further argued that, as directed by the Court in the Court Order, if the Respondent had felt that the Appellant does not fulfill the criteria to be CEO, then, detailed reasons of refusal should have been provided in the Impugned Order. However, the Respondent issued the Impugned Order without conveying detailed reasons of refusal to approve the Appellant as CEO of the Company. It was prayed that the Impugned Order may be set aside on this ground alone and the application of the Appellant may be reconsidered by the lawful authority.

5. The department representatives argued that clause (c) (iii) of Fit and Proper Criteria laid down in the NBFC Regulations, 2008 requires a CEO to have minimum experience of seven to ten years in a senior management position. Clause (c) (iii) is reproduced for ease of reference:

(c) (iii) "the chief executive should have a minimum experience of seven to ten years in a senior management position, preferably in the regulated financial services sector;"

It was argued that as per information on record, the positions previously held by the Appellant were not of senior management position, therefore, the Respondent was right in declining the application of the Company for appointment of the Appellant as CEO of the Company. Further, the Court directed the department to reconsider the application of the Appellant and in

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case of disapproval to communicate the reasons for the same to the Appellant and the Company. In compliance with the Court Order, the Respondent conveyed the decision along with reasons to the Appellant and the Company through the Impugned Order.

We have gone through the Impugned Order and intend to dispose of this appeal. The Appellant has served at senior positions as per information provided during the hearing. Further bare reading of the Impugned Order reveals that it is not a speaking order as no reasons were made out for the decision made by the Respondent as required in the light of court direction.

In view of the foregoing, we set aside the Impugned Order. The matter is hereby remanded to the Respondent department. The Head of Respondent department shall decide the application for appointment of the Appellant on merits afresh without being prejudiced by the Impugned Order within 30 days. In case of rejection, a speaking order should be passed.


Zafar Abdullah
Commissioner (SMD)


Tahir Mahmood
Chairman

Announced on: 04/12/14