



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 27 of 2006

1. Mr. Amir Rasheed

2. Mr. Ch. Muhammad Sarwar

...Appellants

Versus

1. Lahore Stock Exchange (Guarantee) Limited through its Managing Director

2. Mian Muhammad Asif, Ex-Member, Lahore Stock Exchange

3. Mr. Waseem Pirzada, Ex-Member Lahore Stock Exchange

4. Mr. Imtiaz Haider, Director, Securities Market Division ...Respondents

ORDER

Date of hearing

09/03/15

Present:

For the Appellants:

Mr. Amir Rasheed in person

For the Respondents:

Mr. Inamullah on behalf of Respondent No. 1

Mr. Abid Hussain on behalf of Respondent No. 2

Department Representative:

Ms. Asima Wajid, Deputy Director



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1. This order shall dispose of appeal No. 27 of 2006 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 ("SECP Act") against the order dated 27/01/06 (the "Impugned Order") passed by the Respondent No. 4.
2. The brief facts of the case are that Mr. Amir Rasheed (the "Appellant No.1") and Ch. Muhammad Sarwar (the "Appellant No.2") filed an application under section 21 of the Securities and Exchange Ordinance, 1969 against the Lahore Stock Exchange (Guarantee) Limited (the "Respondent No.1") & Mian Muhammad Asif (the "Respondent No. 2). The Application was filed in pursuance to order dated 23/06/04 passed by the Honourable Lahore High Court, (the "Court") in Writ Petition No. 11467/2003 under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. An enquiry was conducted pursuant to order dated 27/12/04 passed by Appellate Bench No. I in Appeal No.31/04 against order of the Director (SMD) dated 03/09/04. An independent enquiry officer was appointed by orders of the Commissioner (SM). The Enquiry Report dated 28/09/05 (the "Report") was sent to all parties and a hearing was conducted on 06/01/06. Mr. Amir Mahmood represented Appellant No.1 and No.2 and Mr. Abid Hussain represented Respondent No.2 in the said hearing.
3. The Respondent No. 4 dissatisfied with the response of the Appellants held that the Respondent No.2 is not liable for acts done by the Respondent No.3 in his personal capacity and outside the authority of the Respondent No.2. The Respondent No. 3 made himself liable for giving shares/money, therefore, liability vests upon the Respondent No.3, individually and personally. The Respondent No. 4 relied on the observation of the Enquiry Officer concluded in following Para 35 of the Report:
"it appears that Mr. Waseem was liable to pay to Complainants in his personal capacity."



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4. The Respondent No. 4 further held that:

- (a) The Respondent No.1 has handled claim of the Complainants in accordance with its powers enunciated in its Articles, Rules and Regulations to entertain such complaints of investors against member/broker and adjudicate upon such disputes. Therefore, rejected the prayer of the Appellants that there were legal discrepancies, as well as, violations of law and directions of the Commission were committed by the Respondent No.1.
- (b) The objections of the Appellants against the Respondent No.1 and 2 are baseless and without any conclusive documentary evidence and that the Appellants also failed to establish any nexus between the Charter House and the Respondent No.2.
- (c) The Respondent No.3 has accepted all liability on him, and was main party responsible in his personal and individual capacity in dealings with the Appellants. Therefore, the Respondent No.1 is freed of any obligation as proceedings done on his part were under rules and regulations without any prejudice & bias.
- (d) The scope of private transactions between the Appellants and the Respondent No.3 falls out of jurisdiction of the Commission. Since, there no longer exists a relationship of agency between the Respondent No.2 and Respondent No.3. Therefore, the Respondent No.3 not being regulatee of the Commission cannot be directed to make good this loss, where he has absconded and whereabouts are not known to anyone. The only remedy may be available to the Complainants against the Respondent No.3 is through the courts, as this is matter of private transactions between the Respondent No.3 with the



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Appellant No.1 and the Appellant No.2, without knowledge of the Respondent No.2, thus outside jurisdiction of the Commission.

5. Being aggrieved of the Impugned Order, the Appellants preferred the instant appeal on following among other grounds:
- (a) The Respondent No. 1 miserably failed to act as a frontline regulator and taking any immediate action against Respondent No. 2 to protect the interest of numerous investors. The Respondent No. 1 kept on allowing Respondent No. 2 to work as a broker till 2001, although he had ceased to be a member of the Stock Exchange by virtue of Rule 3 (c) (iv) of the Securities and Exchange Rules, 1971 ("S & E Rules"), as well as, was guilty of committing fraud with investors under section 17 (a) (b) (c) and (d) of the Ordinance, 1969 ("Ordinance").
 - (b) The Respondent No. 1, while concealing from the Appellants, malafidely cleared Respondent No. 2 in 1998 and 2003 from the liability against the Appellant No. 2, in sheer violation of rule 17 (1) & (2) of the Brokers and Agents Registration Rules, 2001 ("2001 Rules"). As Respondents has admitted in their reply to Court that Respondent No. 3 was incharge/agent of Respondent No. 2's house, as well as, whole amount of Rs. 1,639,900/- was also admitted to be taken by him at that time. Therefore, he could not have dealt with the investors in his own name, and notwithstanding any such dealings, Respondent No. 2 was solely responsible for all the acts and dealings of his agents/staff.
 - (c) The Respondent No. 1 failed to take any action against Respondent No. 2 as it employed a number of unauthorized/unregistered agents, to the detriment



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of the interests of the investors, in sheer violation of rule 13 of the 2001 Rules.

- (d) The Respondent No. 1 miserably failed to apply the law of implicit agency on the staff of Respondent no. 2, under the provisions of Contract Act, 1872. The Respondent No. 4 has wrongly held that the illegal acts of Respondent no. 3 required ratification of Respondent No. 2. Rather the law is that Respondent No. 2 was legally required to immediately repudiate the acts of his agents/staff, otherwise, he will be held responsible for the acts of his agents/staff under the law of implicit agency. Which he did not do at all, despite having full knowledge of the illegal acts of his staff.
- (e) The Respondent No. 1 violated the provisions of section 18, 21 (4) and 22 (1) of the Ordinance, of non- providing, making false statements, concealing, misguiding, and withholding of true information from the Commission, whenever, it was called to do so.
- (f) The Respondent No. 2 violated rule 4 (4) of the S & E Rules by non-transmitting transactions confirmation slips to the Appellants a number of times, and also unauthorizedly sold 120,000 shares of Hub Power Company of Appellant No. 2.
- (g) The Respondent No. 2 also committed all the fraudulent acts and inducements mentioned under section 17 (a), (b), (c), and (d) of the Ordinance, with the Appellants, and thus are liable under section 22 of the Ordinance, as well as, for the return of the shares or amount of the Appellants.



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- (h) The Respondent No.2 purchased and sold the shares of Appellant no. 2 in such a manner so as to deprive him of his investments and in fact utilized the funds for their own advantage. By doing so, Respondent No. 2 deceived him and misappropriated the funds belonging to him, having the effect of committing fraud upon him.
- (i) The Respondent No. 4 in the Impugned Order did not consider the case laws, repeatedly relied and presented throughout the proceedings by the Appellants i.e. *PLD 1963 SC 244*, *1997 PLC 446* and *PLD 1978 Quetta 45*, wherein the principle of Implied Agency has been elaborately discussed. Wherein, it is clearly held by the superior courts that the commission of certain illegal acts by the staff of Respondent No. 2 did not require ratification but immediate repudiation by Respondent No. 2 to nullify the applicability of principle of implied agency on him.
- (j) The Respondent No. 4 in the Impugned Order failed to rely upon the handwritten note of Respondent No. 3, wherein he has discussed in detail the involvement of Respondent No. 2 in all frauds committed with various investors and other documents. These documents were relied and presented during the arguments before Respondent No. 4 and were not denied by the representative of Respondent No.2. However, a number of other documents presented and relied upon by the counsel of Respondent No. 1 during the arguments, were duly taken into consideration and discussed in the Impugned Order.
- (k) The Respondent No. 4, in the Impugned Order also failed to take into consideration the law that while desperately pursuing for recovery of their claims, the Appellants had full right to legally recover the same from any of the available staff member of Respondent No. 2 and entering into any



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contract with Respondent no. 3 did not absolve Respondent No. 2 from his individual liability against the Appellants. As against the Respondent No. 2, the Appellants had been pursuing their claim through the proper channel of Respondent No. 1, right from very first date. Therefore, holding that after failing to recover anything from Respondent No. 3, later on the Appellants started to allege their claim against Respondent No. 2, has no force or sanctity.

- (l) The name of “Charter House” was the part and parcel of Respondent No. 2 and this name was used by the staff of Respondent No. 2 as their branch, which is proved by the conduct of the staff itself by issuing the cheques in its name and also receiving the same as payment against the amount of Appellant No.2. The Respondent no. 2 also never repudiated such acts of his staff.
- (m) The Respondent No. 3 and other staff was not dealing in their personal capacity or “excessive authority”, rather it was dealing on behalf of Respondent No. 2. However, while sitting at Respondent No. 2 office, it kept on issuing the receipts of Respondent No. 2 and at the same time using the name of Charter House to deceive the Appellants.
- (n) The Respondent No. 4, in the Impugned Order also failed to take notice of the involvement of almost entire staff of Respondent No. 2 for deceiving the Appellants, and has wrongly held only Respondent No. 3 solely liable for the wrong doings.
- (o) That the law and the Court vide its order date 23/06/04 has ordained this Commission to render due and complete justice to both the Appellants against the Respondent No. 1 and Respondent No. 2. Whose mala fide



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collusion and involvement in the matter has fully been established, on merits and under the law, therefore, the instant Appeal.

6. During the course of hearing, the Appellant No. 1 reiterated the arguments and grounds of appeal. Further he placed on record numerous documents including ledger statements, hand written notes etc., to substantiate its arguments. The Appellant prayed that the Impugned Order may be set aside, Respondent No. 1 and No. 2 may be held liable of committing grave fraud and injustice to both the Appellants and also to give back their 40,000/- and 120,000/- shares of Hub Power Company or their amount individually and collectively and further prayed to initiate action against Respondent No. 1 and 2 for various violations of the law.
7. The Authorized Representative of the Respondent No.1 stated that the entire case has been lingering on for want of evidence. The claim of the Appellant being monetary in nature could only be entertained through arbitration proceedings as per the regulations of the exchange. However, since the Respondent filed its claim after lapse of considerable time therefore no relief can be granted. Furthermore, since Respondent No. 2 is not the member of the Respondent No.1 anymore, therefore no action can be initiated at its end.
8. The Authorized Representative of the Respondent no.2 stated that the Appellant has failed to substantiate a single allegation against Respondent No. 2. The payments by the Appellants to the Respondent no. 3 were mere private arrangement *inter se* parties and Respondent No. 2 has nothing to do with it. If at all the Appellants have a remedy, it is against the Respondent No. 3.
9. The Departmental Representatives reiterated the averments of the Impugned Order and stressed that the Impugned Order is a detailed and speaking order, which has



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been passed on the basis of the Report. It was further argued that the matter does not warrant any further action on part of the department on account of want of evidence.

10. We have heard the parties and perused the record placed before the Bench. It appears that the grievance of the Appellants have not been redressed even after lapse of a decade. This Bench is dismayed at the state of affairs where investors don't have any remedy despite knocking all the doors for justice. It is further evident from the plethora of record and correspondences placed before the Bench that Appellant has been denied remedy on the basis of mere technicalities.
11. The growth of stock markets hinges on the confidence of investors in the systems and process. Especially processes and systems related to redress of grievance and dispute settlement. A system where the investors have to run from pillar to post to seek justice is a system which is bound to collapse and detrimental to the economy.
12. In the instant matter, the Appellants have prayed for return of their investment which seems to be denied to them on the basis of technicalities. It is settled law that quasi-judicial forums should seek to dispense justice and not hide behind technicalities. While administering financial laws and adjudicating upon disputes which effect the integrity of financial markets *not only must Justice be done; it must also be seen to be done*. Disturbingly, considerable time has lapsed and the Appellants are not even close to getting remedy or redress of grievance.
13. Further, the Impugned Order is *prima facie* deficient in many regards. Firstly, it is silent regarding the violations of law committed by the Respondent No. 3 in connivance with the Respondent No. 2. No action has been initiated against Respondent No. 2 and 3 on the pretext that they are not the regulatees of the Commission anymore. This Bench is not in agreement with this justification, since, section 22 of the Ordinance, specifically provides that Commission can initiate action



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against any person (emphasis added) for violation of any provision of the Ordinance. Interestingly, the Impugned Order has only reduced this matter to be a mere financial dispute rather than seeking to initiate action against Respondent No 2 and 3 for violation of Ordinance and rules and regulations made thereunder, which is the primary responsibility of a regulator.

14. Secondly, it also seems that the Respondent No. 4 has not gone through the material on record in detail. The Appellant no. 1 has presented before this bench numerous documents evidencing its business relationship with the Respondent No. 2. However, the Impugned Order is silent regarding these documents and it appears that it is based on non-reading of relevant record and case law.
15. Since it is not within the mandate and authority of this Bench to go into factual controversy by sifting through the record, it is in fitness of things that the matter be remanded to the department to decide the matter afresh after appreciating all the record.
16. In view thereof, the Impugned Order is remanded to the department to decide the matter within 30 days of the date of this order by appreciating all the relevant record. Further in order to alleviate the suffering and hardship of the Appellants, the Department is directed to conduct the hearing in Lahore or conduct it through video conference (if consented to by parties) to facilitate the parties. This appeal is disposed off accordingly.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Tahir Mahmood)
Commissioner (CLD)

Announced on: **17 MAR 2015**