

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Date	Order with signature of Judge(s)
------	----------------------------------

Present:
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Agha Faisal

C.P. No.D-763 of 2013

Haji Ghani Haji Usman.....Petitioner

Versus

Securities and Exchange Commission
of Pakistan & Others.....Respondents

C.P. No.D-505 of 2013

Arif Habib Corporation Limited.....Petitioner

Versus

Securities and Exchange Commission
of Pakistan & Others.....Respondents

Date of hearing 23.10.2019

Mr. Rabel Z. Akhund, advocate for the petitioners.
Mr. Muhammad Umer Lakhani, advocate for the respondent Nos.1 &
2/Securities and Exchange Commission of Pakistan.
Mr. Ishrat Zahid Alvi, Assistant Attorney General.

Muhammad Ali Mazhar, J.: In both the above petitions the petitioners have challenged the respective orders passed by the Appellate Bench, Securities and Exchange Commission of Pakistan on 02.11.2012, in Appeal No.70 of 2011 titled Haji Ghani Haji Usman versus Director, Securities and Exchange Commission of Pakistan against order dated 06.10.2011 and the in appeal No.68 of 2011, titled Arif Habib Corporation Limited versus Director (MS & CI Department), Securities and Exchange Commission of Pakistan against order dated 15.09.2011.

2. At the very outset learned counsel for the respondents as well as the learned Assistant Attorney General raised the issue of maintainability and pointed out Section 34 of the SECP Act, 1997, wherein the right of appeal is provided to the court, referred to in part II of the Ordinance, in respect of an order of Commission comprising two or more commissioners or the Appellate Bench or order made under sub-section (2) of Section 32B. According to the definition clause the reference to the court is a reference to the Company Bench of High Court, constituted by the Chief Justice of the High Court, as provided under Sections 7 and 8 and of the Companies Ordinance, 1984 and the same is maintained vide the Companies Act, 2017.

3. Learned counsel for the petitioners argued that since urgent interim orders were sought against the impugned orders, therefore, instead of availing right of appeal as provided under statute, he filed Constitution petitions because in the proviso provided under Section 34 of the SECP Act, 2017, it is clearly mentioned that admission of appeal shall not per se operate as a stay and nor shall any stay be granted therein unless the Commission has been given an opportunity of hearing.

4. Though the aforesaid proviso is attached with subsection (4) of Section 34 of the SECP Act, 2017, but it does not mean in any way that High Court may not have power to grant the stay but the question of interim order could have been considered after notice to the parties. In any event the inclusion of the aforesaid proviso does not give any vested right to an aggrieved person not to avail the right

of appeal and file a Constitution petition under this apprehension that no stay will be granted by the High Court in the appeal.

5. It is also ground reality that both the petitions are pending since 2013 and at this stage we do not want to non-suit the petitioners on this ground of maintainability. After arguing at length, the petitioners' counsel requested that these petitions may be converted in to appeals and the office be directed to place the same before Company Bench for consideration. Learned counsel for the SECP on this proposal raised no objection, however, he submitted that the same may be subject to all just exceptions.

6. In view of the above situation, both the petitions are converted into Miscellaneous Appeals and office is directed to assign numbers to both the appeals and fix the same before the learned Company Bench of this Court for treating the appeals under Section 34 of the SECP Act, 1997.

JUDGE

JUDGE