

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

C.P. D-2468 of 2010

M/s Tri Star Power Limited

Versus

Securities &amp; Exchange Commissioner of Pakistan &amp; others

BEFORE:

**Mr. Justice Mushir Alam, CJ**  
**Mr. Justice Muhammad Shafi Siddiqui**

Date of Hearing: 18.12.2012

Petitioner: Through Mr. Haseeb Jamali Advocate

Respondent No.1: Through Mr. Ijaz Ahmed Advocate

Respondent No.3: Through Mr. Tariq Qureshi Advocate

**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.**- The controversy involved in this petition is the suspension of trading of share of the petitioner company, which action was taken by respondent No.1 the Securities & Exchange Commission of Pakistan (SECP) in pursuance of Section 9(7) of Securities & Exchange Ordinance, 1969.

2. Very briefly the history of the litigation is that the petitioner received a show cause notice dated 15.8.2003 issued by respondent No.1 under subsection (b) of Section 309 read with section 305 of Companies Ordinance, 1984 inquiring as to why the request of Additional Registrar for initiating winding up proceedings be not granted under the Companies Ordinance as the petitioner company has closed down its business since 2001. In pursuance of the said show-cause notice an order dated 02.5.2005 was passed by respondent No.1 in terms whereof directions were issued to initiate winding up proceedings against the

petitioner company. As against this the petitioner filed an appeal bearing No.15 of 2005 before the SECP, Appellate Bench, Islamabad. It appears that during the pendency of that appeal before the Appellate Bench of the SECP, the SECP vide its letter dated 26.02.2009 was pleased to communicate the managements of all the three Stock Exchanges of Pakistan to suspend the trading of shares of the petitioner company for a period of 60 days, which action was taken in pursuance of section 9(7) of Securities & Exchange Ordinance, 1969.

3. While the appeal before the Appellate Bench was pending in respect of winding up directions, the petitioner filed C.P. bearing No.334 of 2009 challenging suspension advices of shares as referred above. Such petition came up for hearing before the Division Bench of this Court and vide order dated 03.04.2009 the bench was pleased to suspend the said order till final decision of the petitioner's appeal before the Securities & Exchange Commission of Pakistan, Appellate Bench with direction to dispose of the same within shortest possible time.

4. The said appeal No.15 of 2005 pending before the Appellate Bench was then disposed of vide order dated 08.09.2009 in terms whereof it was observed that no interference was required in the impugned order (winding up process), passed by the Executive Director of Securities & Exchange Commission of Pakistan, and the same was upheld.

5. It is contended by learned counsel for the petitioner that the said order dated 08.09.2009 was challenged by way of filing Misc. Appeal No.4 of 2009 under section 34 of the Securities & Exchange Commission of Pakistan Act, 1997, which appeal till date is pending adjudication. Learned counsel for the petitioner submitted that the respondent No.1 through Registrar of Companies filed winding up petition being J.M.

No.41 of 2009 and on 11.08.2010 the learned Single Judge of this Court was pleased to allow the said winding up petition which order was challenged by way of filing Misc. Application and the same was suspended by order dated 13.8.2010 by the learned Single Judge in view of the fact that the Additional Registrar of the Companies while obtaining orders on winding up petition has concealed the fact that the petitioner has challenged the order of the Appellate Bench of SECP in terms of Misc. Appeal No.4 of 2009.

6. Learned counsel submitted that after passing of the order dated 13.08.2010 in terms whereof the order of winding up of the company was suspended, the respondent once again on the same date i.e. 13.8.2010 issued orders for the suspension of the trading of shares of the petitioner company under section 9(7) of the Securities & Exchange Ordinance, 1969. It is this order which is impugned in this petition.

7. Learned counsel submitted that passing of the impugned order is harsh as the petitioner's Misc. Appeal No.4 of 2009 which is now re-numbered as 74 of 2010 is pending adjudication and in view of such pendency the suspension of the trading of the shares of the petitioner is unjustified and the equity demands that unless and until the controversy is finally resolved, the order in the nature of impugned order, shall cause prejudice and rights and interest of the petitioner company shall be affected and their credibility and reputation shall be at stake.

8. On the other hand learned counsel for the respondent argued that the company is not functioning since 2001 and they have not complied with the undertaking given before the Appellate Bench in terms whereof they were required to submit audit report from 2002 to 2007 and also to call for AGMs. Learned counsel for the respondent No.1 further argued that it would rather be justified to protect interest of public at large by saving them from purchasing the shares of the petitioner company who

has lost its substratum and not in operation since 2001. Learned counsel further submitted that not only the Securities & Exchange Commission of Pakistan but now its Appellate Bench as well directed the Additional Registrar of the Companies to initiate winding up proceedings and hence there are concurrent findings of two forums.

9. Mr. Ijaz Ahmed further argued that the learned single Judge of this Court was also pleased to pass order for winding up of the petitioner, which orders though were suspended by the learned Single Judge on an application filed through misrepresentation though the application is pending adjudication.

10. We have heard the learned counsel for the parties and perused the record.

11. It is admitted fact that a petition for winding up of the petitioner company bearing J.M No.41/2008 and Misc. Appeal No. 04/2009 now renumbered as 74/2010 are pending adjudication. Both these petition/appeal respectively involve the question as to whether the petitioner is liable to be wound up or otherwise. Previously, in the earlier round of litigation when the petitioner filed C.P. No. D-1334/2009 there were no findings of the appellate Bench. At present there are findings of two forums below which create a different situation to the one available to the petitioner in the first round. Since a substantial right of petitioner was subjudiced in the Appeal No.15/2005 before the Appellate Bench therefore, the Division Bench of this Court was pleased to suspend the operation of the order and the trading of shares were restored. Presently there are findings of the Appellant Bench against the petitioner which are subject matter of Misc. Appeal No.04/2009 now renumbered as 74/2010. The miscellaneous appeal was kept pending under objection and the petitioner did not obtain any orders for suspension of the orders of Appellate Bench of SECP.

12. We are mindful of the fact that the personal interest of the petitioner must yield place for the public interest and it is on this consideration the impugned order was passed. We are also conscious of the fact that any finding on merit of this case might cause prejudice to the right and interest of either party.

13. We therefore, in view of above facts and circumstances, dismiss the petition with direction that the pending petition for winding up as well as the Miscellaneous Appeal No. 04/2009 (renumbered as Misc. Appeal No. 74/2010) filed by the petitioners shall be taken, if not disposed as yet, at the earliest and shall be decided as early as possible. The petitioner however may prefer an application for suspension of impugned order in those proceedings and any findings of this order shall not influence the learned single Judge who is dealing with the merit of the case.

**Judge**

**Chief Justice**