

THE HIGH COURT OF SINDH KARACHI

M.A. No. 18 of 2023

[Maqsood Ahmed versus Securities & Exchange Commission of Pakistan & others]

Appellant : Maqsood Ahmed son of Muhammad Nazir through Ms. Fareeda Mangrio, Advocate.

Respondents 1 to 4 : Securities & Exchange Commission of Pakistan (SECP) through M/s. Syed Imran Shamsi and Syed Ebad-ur-Rehman, Advocates.

Respondent No. 5 : Khalid Latif son of Abdul Latif through Mr. Irfan Ahmed Memon, Advocate.

Date of hearings : 28-04-2025 & 27-05-2025

JUDGMENT

Adnan Iqbal Chaudhry J. - This appeal has been brought under section 34 of the Securities & Exchange Commission of Pakistan Act, 1997 [SECP Act] from an order dated 25.01.2023 passed by a Commissioner of the SECP [**impugned order**], emanating from the following proceedings:

- (a) During a dispute between the Appellant and Respondent No.5 over the transfer of controlling shares in the company to the latter, the Appellant made a complaint to the Registrar of Companies to question matters reported by Respondent No.5 in company returns filed with the SECP from 2013 to 2015. The complaint (Case No. 36/2015) was put up before the Joint Registrar of Companies, who passed order dated 17.06.2015 in exercise of powers under section 468 of the erstwhile Companies Ordinance, 1984, and de-registered/cancelled company returns filed by Respondent No.5, while referring the parties to the Court for determination of

their shareholding in the company under section 152 of the Companies Ordinance.

- (b) While the Appellant filed JCM No. 18/2015 before this Court under section 152 of the Companies Ordinance, the Respondent No.5 appealed the order of the Joint Registrar (Appeal No. 04/2015) to the Registrar of Companies under section 468(4)(a) of the Ordinance [subsequently repealed by section 464(4)(a) of the Companies Act, 2017]. That appeal was dismissed by order dated 18.11.2020 after observing that the underlying dispute was over shareholding in the company which was pending adjudication in JCM No. 18/2025.
- (c) Against the aforesaid order passed by the Registrar of Companies, the Respondent No.5 filed a further appeal to the SECP under section 464(4)(b) of the Companies Act, 2017 [previously section 468(4)(b) of the Companies Ordinance]. This appeal was allowed by the Commissioner, SECP by the impugned order dated 25.01.2023 by restoring the company returns cancelled by the Joint Registrar after observing that section 468 of the Companies Ordinance did not empower de-registration or cancellation of company returns where a factual controversy was involved.

2. At the onset, the Respondents objected to the maintainability of this appeal. They submitted that an order passed by a single Commissioner of the SECP is appealable first to the Appellate Bench of the SECP under section 33 of the SECP Act, not directly to the High Court under section 34.

3. The appeal provided by section 34 of the SECP Act is in respect of an order of the SECP “comprising two or more Commissioners or the Appellate Bench or order made under sub-section (2) of section

32B". The impugned order is neither. Therefore, I agree with the Respondents that this appeal before the High Court is not maintainable. However, I disagree that the impugned order is appealable instead to the Appellate Bench of the SECP under section 33 of the SECP Act.

4. Section 33 of the SECP Act provides:

"33. Appeal to the Appellate Bench of the Commission. - (1) Except as otherwise provided any person aggrieved by an order of the Commission passed by one Commissioner or an officer authorized in this behalf by the Commission, may within thirty days of the order, prefer an appeal to an Appellate Bench of the Commission constituted under sub-section (2):

Provided that no appeal shall lie against ----

- (a) an administrative direction given by a Commissioner or an officer of the Commission;
- (b) an order passed in exercise of the powers of revision or review;
- (c) a sanction provided or decision made by a Commissioner or an officer of the Commission to commence legal proceedings; and
- (d) an interim order which does not dispose of the entire matter."

5. While this appeal under section 34 of the SECP Act was pending, an appeal under section 33 of the SECP Act was, in fact, filed by the Appellant before the Appellate Bench of the SECP (Appeal No. 70/2023). However, that appeal was dismissed by the Appellate Bench by order dated 15.09.2023 as not maintainable in view of the bar in sub-section (5) of section 464 of the Companies Act, 2017.

6. Section 464 of the Companies Act, 2017 reads:

"464. Registrar not to accept defective documents.—(1) Where, in the opinion of the registrar, any document required or authorised by or under this Act to be filed or registered with the registrar—

- (a) contains any matter contrary to law, or does not otherwise comply with the requirements of law;
- (b) is not complete owing to any defect, error or omission;
- (c) is insufficiently legible or is written upon paper which is not durable; or
- (d) is not properly authenticated;

the registrar may require the company to file a revised document in the form and within the period to be specified by him.

(2) If the company fails to submit the revised document within the specified period, the registrar may refuse to accept or register the document and communicate his decision in writing to the company.

(3) Subject to the provisions of sub-sections (4) and (5), if the registrar refuses to accept any document for any of the reasons aforesaid, the same shall not be deemed to have been delivered to him in accordance with the provisions of this Act unless a revised document in the form acceptable to the registrar is duly delivered within such time, or such extended time, as the registrar may specify in this behalf.

(4) If registration of any document is refused, the company may either supply the deficiency and remove the defect pointed out or, within thirty days of the order of refusal, prefer an appeal—

(a) where the order of refusal has been passed by an additional registrar, a joint registrar, an additional joint registrar, a deputy registrar, an assistant registrar or such other officer as may be designated by the Commission, to the registrar; and

(b) where the order of refusal has been passed, or upheld in appeal, by the registrar, to the Commission.

(5) An order of the Commission under sub-section (4) shall be final and shall not be called in question before any court or other authority.

(6) If a document has been accepted for record and its data or any of the information contained therein or any of the supporting documents subsequently found to be defective or incorrect or false or forged, the registrar concerned may for special reasons to be recorded in writing, after obtaining such evidence as he may deem appropriate, allow the rectification in such document or allow the filing of a revised document in lieu thereof.

(7) If a document has been accepted for record and its data or any of the information contained therein or any of the supporting documents subsequently found to be defective or incorrect which is not possible of rectification or false or forged or it was accepted by mistake, the registrar concerned may for special reasons to be recorded in writing, after obtaining such evidence as he may deem appropriate cancel the recording thereof."

7. Sub-section (4) of section 464 of the Companies Act envisages the following three types of appellate orders:

(i) An order by the Registrar of Companies under clause (a), deciding an appeal from an order passed by certain officers, which had refused to register a document under the Companies Act;

(ii) An order by the SECP deciding an appeal under clause (b), from an original order passed by the Registrar of Companies, which had refused to register a document under the Companies Act;

(iii) An order by the SECP deciding an appeal under clause (b), from an appellate order passed by the Registrar of Companies under clause (a).

To all such orders, sub-section (5) of section 464 accords finality and bars further recourse. In the present case, the impugned order is of the third type *i.e.* an order by the SECP under section 464(4)(b) of the Companies Act, deciding an appeal from an appellate order

passed by the Registrar of Companies. The question is, can the impugned order nonetheless be appealed under section 33 of the SECP Act because it has been passed by a Commissioner of the SECP and section 33 provides an appeal from his order ?

8. It will be seen that the appeal provided by section 33 of the SECP Act is qualified by the words “Except as otherwise provided”. Sub-section (5) of section 464 of the Companies Act categorically provides otherwise *i.e.* an order of the SECP under sub-section (4) of section 464 of the Companies Act shall be final and shall not be called in question before any court or other authority. Section 33 of the SECP Act is so qualified because the SECP performs functions not only under the SECP Act, but also under other statutes, referred to in sections 2(1)(aa) and 20 of the SECP Act as “administered legislation”, including the Companies Act, which legislation may well prescribe a different appellate procedure. For this reason, the general provision of section 33 of the SECP Act cedes to the special provision of sub-section (4) of section 464 of the Companies Act. That special provision already provides a two-tier appellate process; first to the Registrar of Companies, and then to the SECP. To read section 33 of the SECP Act as providing a third appeal, and then section 34 as a fourth appeal to the High Court, would defeat the scheme of finality in sub-section (5) of section 464 of the Companies Act and make it redundant. Surely, that is not the intent of the legislature.

9. Therefore, given sub-section (5) of section 464 of the Companies Act, the impugned order dated 25.01.2023 passed by the SECP under sub-section (4) of section 464 of said Act, is not appealable any further, not even under section 33 of the SECP Act. With that note, this appeal is dismissed.

JUDGE

Karachi:
Signed on: 24-01-2026

*PS/SADAM