

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

SECP Appeal No.02 of 2023.

M/s Shaukat Marwat Estates & Builders (Pvt.) Ltd *and others*
Versus
Securities and Exchange Commission of Pakistan *and others*

SECP Appeal No.03 of 2023.

M/s Shaukat Marwat Group of Companies (Pvt.) Ltd *and others*
Versus
Securities And Exchange Commission of Pakistan *and others*

Appellant by : Barrister Muhammad Sohaib Arshad.
Respondents by : M/s Shahzad Ali Rana, Hasnain Raza and
Syeda Muneeza Fatima, Advocates.

Date of Hearing : 06.05.2024.
SAMAN RAFAT IMTIAZ, J.

1. Through the instant judgment, I propose to decide the above mentioned cases as similar questions of law and facts are involved between the same parties.

Facts in SECP Appeals No.2 of 2023 and 3 of 2023 filed under Section 34 of the Securities & Exchange Commission of Pakistan Act, 1997 (“SECP Act”):

2. The Appellants in [(i) M/s Shaukat Marwat Estates & Builders (Pvt.) Ltd.; (ii) Shaukat Ullah Marwat; and (iii) Bakhmal Bibi]; and the Appellants in SECP Appeal No.3 of 2023 [(i) M/s Shaukat Marwat Group of Companies (Pvt.) Ltd.; (ii) Shaukat Ullah Marwat; and (iii) Bakhmal Bibi] have assailed their respective Orders dated 02.05.2023 (“**Impugned Orders I and II**”) passed by the Respondent No. 3 [Appellate Bench, Securities and Exchange Commission, of Pakistan] whereby Appeals No. 27/2022 and 29/2022 respectively filed by the Appellants were dismissed.

3. The facts, as per the Memos of Appeals, are that the Respondent No.2 [Securities and Exchange Commission of Pakistan through its Executive Director (Adjudication)] issued Show Cause Notices No. Adj-II/84/22/IAN-1669/2021-725 (**Show Cause Notice I**) and Adj-II/84/22/IAN-1668/2021-724 (**Show Cause Notice II**) dated 13-07-2021 under Section 84(2) of the Companies Act, 2017 (“**Companies Act**”) to

the Appellants alleging therein that the companies have taken illegal deposits and had been running a social media campaign in this regard. Detailed replies were filed on behalf of the Appellants wherein many objections including the objection of jurisdiction were raised. However, the Respondent No.2 passed the Orders-in-Original dated 18-03-2022 and imposed a harsh penalty of Rs. 10 million on the Appellant No.1 in SECP Appeal No.2 of 2023 and Rs. 50 million on the Appellant No.1 in SECP Appeal No.3 of 2023. Being aggrieved of the Orders-in-Original dated 18-03-2022 passed by the Respondent No.2, the Appellants filed appeals before the Respondent No.3. The Respondent No.3 dismissed the appeals vide the Impugned Orders I and II dated 02-05-2023.

Arguments

4. The learned counsel for the Appellants [M/s Shaukat Marwat Estates and Builders (Private) Limited and M/s Shaukat Marwat Group of Companies (Private) Limited (**collectively referred to as the “Companies”**)] submits that Show Cause Notices were issued in both the connected matters on 13.7.2021 under Section 84 of the Companies Act alleging that an advertisement and material appearing on the Companies’ websites indicate that the Companies have invited/received deposits from the public. The replies dated 30.8.2021 were sent on behalf of the Companies in each of the appeals where under the position taken was that the violation of Section 84 of the Companies Act was unintentional and that only two payments worth Rs. 200,000/- and Rs. 150,000/- were received by each of the Companies.

5. In these Appeals, however, the stance taken by the Appellants firstly is that the amounts received fall within the exception to the definition of ‘deposit’ as given in the explanation to Section 84(1) of the Companies Act particularly the exception for an advance against sale of goods or provision of services in the ordinary course of business as the advertisements were for bookings in construction schemes and as such penalty could not be imposed. The learned counsel for the Appellants has candidly conceded that this ground was not taken earlier but submits that since it is a legal ground the Appellants cannot be barred from relying upon it at this stage. In this regard the learned counsel for the Appellants has relied upon *Muhammad Yousaf and others versus Trustees of the Port of Karachi through Estate Manager and others*, 2020 YLR 578 to submit

that a pure question of law can be taken up at any stage.

6. Secondly, the learned counsel for the Appellants submits that there was an investigation that was undertaken under Section 257 of the Companies Act during pendency of the proceedings pursuant to the Show Cause Notices which culminated in a report under Section 262 of the Companies Act. The learned counsel for the Appellants submits that pursuant to such report the Respondent may initiate action under Section 264 of the Companies Act if it is of the opinion that the conditions stipulated in sub-sections (a) to (g) of Section 264 of the Companies Act exist. However, for the said purpose the Respondent must apply to the Court. On the contrary, according to the learned counsel for the Appellants, the Respondent without applying to the Court imposed penalties against the Appellants under Section 84(1) of the Companies Act. The learned counsel in support of his contentions placed reliance upon *Messrs Pakistan Housing Authority Foundation versus The Commissioner Inland Revenue Appeal and others*, 2022 PTD 1263, *Messrs Hilal Chemical, Lahore versus Commissioner Inland Revenue Appeal-II, Lahore*, 2020 PTD (Trib.) 465, *AKD Securities Limited versus Securities and Exchange Commission of Pakistan*, 2019 CLD 583, *Additional Collector of Customs versus Muhammad Hussain*, 2016 PTD 2748, *NEXT Capital Limited versus Director/Head of Department Market Surveillance and Special Initiative Department Securities and Exchange Commission of Pakistan*, 2016 CLD 1597, *In the matter of Show Cause Notice issued to Habib Bank Limited*, 2013 CLD 812, and *In the matter of Show Cause notice issued to Adeel and Nadeem Securities (Private) Limited*, 2012 CLD 987.

7. The learned counsel for the Respondents relied upon *Raza Abdul Aziz Al-Rafee Vs. Appellate Bench SECP*, 2016 CLD 1077.

8. Arguments advanced by the learned counsel for the parties have been heard and record perused.

9. The learned counsel for the Appellants was asked to read the Show Cause Notices dated 13.7.2021. It is noted that the allegation made against the Appellants therein was that is the Companies are informing the public to invest in investment plans of different amounts and maturity periods by promising them a minimum return ranging from 3 to 9 percent on their investments. In response to the Show Cause Notices, the

Appellants sent Replies dated 30.8.2021 in which it was admitted that the advertisements were for investment offering 3% and 9% profits. The learned counsel for the Appellants could not identify any paragraph whereby it was submitted by the Appellants that the advertisements were for bookings in construction schemes as submitted before this Court. In fact the learned counsel for the Appellants was asked to refer to the impugned advertisement which too does not refer to investment in any construction scheme rather it categorically speaks of investment of various amounts and the returns that may be earned. The contents of the advertisements leave no doubt that the said advertisements do not fall within any exception of the definition of “deposits” under Section 84(1) of the Companies Act.

10. The argument made on behalf of the Appellants with reference to Section 264 is misconceived. While it is true that the Commission may apply to the Court if from any report made under Section 262 the Commission is of the opinion that the conditions stipulated in sub-sections (a) to (g) of Section 264 of the Companies Act exist. However, such application to the Court is only for the action to be taken by Court as per clauses (i) to (iv) under Section 264 of the Companies Act and not for imposition of penalty under Section 84 *ibid*.

11. In view of the foregoing, the intent appeals are **dismissed** being without merit.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on this 3rd June, 2024.

JUDGE