

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

S.E.C.P. Appeal No.01 of 2013

Mubarak Textile Mills Pvt. Ltd

Versus

Director (Enforcement) Head of Department Securities &
Exchange Commission of Pakistan & others

Date of Hearing: 31.05.2016
Appellant by: Mr. Imran Shafique, Advocate,
Respondents by: Mr. Shahzad Ali Rana, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant appeal under Section 34 of the Securities and Exchange Commission of Pakistan, Act, 1997 ("the SECP Act"), the appellant impugns;

- (i) Order dated 31.01.2012, passed by respondent No.1 (Director (Enforcement), Head of Department Securities and Exchange Commission of Pakistan), under Section 231 of the Companies Ordinance, 1984, whereby "Inspectors" were appointed to scrutinize and inspect all the records and books of accounts of the appellant, and to submit a report on the operations of the company.
- (ii) Order dated 11.09.2013, passed by the learned Appellate Bench-III, SECP in Appeal No.2/2012 titled M/s Mubarak Textile Mills Vs. Director (Enforcement), whereby the appellant's appeal against the said order dated 31.01.2012, was dismissed.

2. Learned counsel for the appellant submitted that although the appellant company has not been liquidated, it is no longer a going concern, and is not carrying out any commercial operations; that the appointment of an inspector would not serve any useful purpose, since presently the appellant company is not transacting any business; that the appellant company used to operate a 'knitting unit', and had been regularly filing its audited accounts/reports; that the inspectors appointed by the Securities and Exchange Commission of Pakistan ("SECP") were given wide ranging and unlimited powers to inspect the records of the appellant company; that the impugned orders were passed without giving an adequate opportunity of hearing to the

appellant; and that the appellant's appeal was dismissed by the learned Appellate Bench of the SECP with malafide intention.

3. On the other hand, the learned counsel for the respondents submitted that on account of this litigation, the respondents have not been able to carry out an inspection of the records of the appellant company; that under Section 33 of the SECP Act, no appeal lies against an administrative order issued by the SECP; that the order dated 31.01.2012 was in-fact an administrative direction, which was not appealable before the learned Appellate Bench of the SECP; and that there was no legal infirmity in the orders impugned in the instant appeal. Learned counsel for the respondents prayed for the appeal to be dismissed so that an inspection of the appellant company's books of accounts and records may be carried out by the inspectors appointed, vide order dated 31.01.2012.

4. I have heard the arguments of the learned counsel for the parties and perused the record with their able assistance.

5. The order dated 31.01.2012 was passed by the SECP under Section 231 of the Companies Ordinance, 1984. This order was issued after the SECP examined the annual accounts of the appellant company for the years of 2009, 2010 and 2011, which showed that the auditors had given an adverse report to the effect that the financial statements do not give a true and fair view of the financial position of the appellant company. In the said order, it was observed that the appellant company had sold its fixed assets having an actual value of Rs.108.425 Million and a book value of Rs.23.720 Million for an amount of Rs.13.836 Million only, through a negotiated transaction. Although, in the AGM dated 31.10.2009, permission was given to sell obsolete/idle assets comprising of dyeing and finishing machinery and other related assets for the repayment of bank loans and other liabilities, but the appellant company disposed of the entire plant and machinery having a book value of Rs.100.290 Million, which was in breach of the authorization granted in the AGM. Furthermore, the sale of the said assets took place beyond a period of one year after the AGM dated 31.10.2009, which was

in violation of S.R.O. No.1227/2005. These factors necessitated the issuance of the order under Section 231 *ibid* for the inspection of the appellant company's books of accounts and record.

6. Vide letter dated 31.01.2012, the inspection officer appointed by the SECP called upon the appellant company to provide the documents and information set out in the said letter.

7. Aggrieved by the order dated 31.01.2012, the appellant company filed an appeal under Section 33 of the SECP Act. The hearing of the appeal was adjourned on a few occasions at the instance of the appellant. Finally, vide order dated 11.09.2013, the learned Appellate Bench-III of the SECP, dismissed the said appeal.

8. Section 231 of the Companies Ordinance, 1984, mandates that the books of accounts etc of every company shall be open to inspection by *inter-alia*, any officer authorized by the SECP, where considered necessary, for reasons to be recorded in writing. A duty has been caste on every Director, Officer and an employee of the company to give all assistance to the officer making the inspection, and to produce before him all such records, books of accounts, statements, information or explanation relating to the affairs of the company which the inspection officer may require.

9. In the case of Ofspace (Pvt.) Limited Vs. Federation of Islamic Republic of Pakistan (2012 CLD 923), it has been held that the exercise of powers under Section 231 of the Companies Ordinance, 1984, by the SECP were administrative in nature and limited to inspection and conducting of preliminary inquiry into the affairs and accounts of a company. There was no requirement regarding the issuance of a show cause notice before passing an order under Section 231 *ibid*. In the event, after compliance is shown by a company with an order under Section 231 *ibid*, the SECP intends to take any adverse measures against a company, the issuance of a show cause notice and an opportunity of hearing would be essential. In the case at hand, the appellant company could not challenge the order dated

31.01.2012, passed by the SECP under Section 231 of the Companies Ordinance, 1984, simply because prior to the passing of the same, a show cause notice had not been issued.

10. Section 33 of the SECP Act, *inter-alia*, provides that an appeal shall lie to an Appellate Bench of the SECP against an order of the SECP, passed by Commissioner or an officer authorized in this behalf by the SECP. The proviso to the said Section 33 bars an appeal against an administrative direction given by a Commissioner or an Officer of the SECP. As the order dated 31.01.2012 was an administrative order, an appeal against the same could not be filed under Section 33 of the SECP Act. As mentioned above, in the case of Ofspace (Pvt.) Limited Vs. Federation of Islamic Republic of Pakistan (supra), it was held that an order under Section 231 of the Companies Ordinance, 1984, is administrative in nature. Therefore, I am of the view that the learned Appellate Bench of the SECP was correct in holding that the appeal against the order dated 31.01.2012, was not maintainable. Furthermore, I fully endorse the following observations made by the learned Appellate Bench in its order dated 11.09.2013:-

"...It is important to emphasize that it is to prime responsibility of the Commission as regulator to collect information for effective enforcement of the laws being administered by it. In the absence of such information, the Commission cannot be expected to make fair and impartial decisions. It is, therefore, extremely important for the regulatees/ concerned persons to fully cooperate for provision of such information. The legislature being fully cognizant of the critical importance of this provision of information to the Commission prescribes and ascribes not only special status to the inspectors but also recommends severe consequences for non-provision of information including punishment for a term which may extend to one year under Section 232(1) of the Ordinance..."

11. I may hasten to add with dismay that it has been more than four years since the passing of the order under section 231 of the Companies Ordinance, 1984, and till date no inspection of the appellant company's records has taken place. The learned counsel for the respondents submitted that on account of the pendency of this appeal, the Order dated 31.01.2012 was not implemented. The record shows that at no stage had this Court suspended the operation of the said Order dated 31.01.2012. The

respondents ought not to have stayed their hands simply because the appellant had filed an appeal before this Court. Mere filing or pendency of an appeal does not operate as a stay of proceedings or as a suspension of the order against which an appeal is filed, unless a specific stay or injunctive order is passed. Reference in this regard may be made to the law laid down in the cases of Shah Wali Vs. Ghulam Din (PLD 1966 SC 983), Mst. Irshad Begum Vs. Mst. Gul Farasha (2003 YLR 724), Agro Dairies (Pvt.) Limited Vs. Agricultural Development Bank of Pakistan (2004 CLD 232), and Naeem Ullah Khalid Vs. Dr. Hafiz Mushtaq Ahmed (2007 YLR 1418).

12. For the foregoing reasons, the appeal is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2016

(JUDGE)

APPROVED FOR REPORTING

Qamar Khan*

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