
2025 C L D 1127

[Lahore]

Efere Shams Mehmood Mirza, J

SWITCH SECURITIES (PVT.) LIMITED---Appellant

versus

**SECURITIES AND EXCHANGE COMMISSION
OF PAKISTAN and others---Respondents**

Commercial Appeal No.4350 of 2021, decided on 20th February, 2025.

CLD

Securities Act (III of 2015)---

---Ss. 64 (2) & 65 (2)---Securities Brokers (Licensing and Operations) Regulations, 2016, Cl. 60(2)(k)---Brokerage House---Terms of license, violations of---Brokerage House accepting deposits from its customers on pre-determined rate of return---Legality---Appellant (Brokerage House) assailed order passed by the Appellate Bench of Securities and Exchange Commission of Pakistan---Submission of the appellant was that the transactions entered into by it pre-date the promulgation of Securities Brokers (Licensing and Operations) Regulations, 2016 ('the Regulations 2016') and as such it could not be penalized for violation thereof---Validity---The fact that the appellant sought deposits from its customers on pre-determined rate of return was not in dispute---It was also an admitted fact that the licence of brokerage granted to the appellant did not allow it to indulge in receiving such deposits from its customers---The activities which the appellant could lawfully pursue were mentioned in the certificate of registration as broker---Section 64(2) of the Securities Act, 2015, clearly stipulates that the licence shall specify the regulated activities that a broker is committed to undertake---It was not in dispute that the appellant accepted deposits from its customers on pre-determined rate of return which activity was not mentioned in the brokerage certificate issued to it---Thus, the appellant violated the terms of its brokerage certificate and was in violation of Ss. 64(2) & 65(2) of Securities Act, 2015---The fact that the Regulations, 2016 were introduced subsequently and had no retrospective application to the activities the appellant indulged in was beside the point---Appellant, admittedly, was in violation of the terms of its brokerage license and Ss. 64(2) & 65(2) of the Securities Act, 2015 thus, the impugned order was lawfully passed against it---No interference by the High Court in the order passed by the Appellate Bench of Securities and Exchange Commission of Pakistan was made out---Appeal, filed by Brokerage House, being merit-less was dismissed. [pp. 1129, 1130] A, B & C

Usman Nasir Awan for Appellant.

Hafiz Talha for Respondent/SECP.

ORDER

SHAMS MEHMOOD MIRZA, J.---This appeal is filed under section 34 of the Securities and Exchange Commission of Pakistan Act, 1997 (the Act) to call into question order dated 08.05.2020 passed by the Appellate Bench of Securities and Exchange Commission of Pakistan (the Commission).

2. The facts of the case in brief are that the appellant is brokerage house under a license issued by the Commission. A show cause notice was issued to the appellant on 19.07.2017 under section 150 of the Securities Act, 2015 on the allegation that the appellant had received 96.995 Million from 19 Individuals under loan agreements on a pre-determined rate of return. The appellant filed reply to the show cause notice in which the allegations of violating the relevant law and rules were denied. The Commissioner/respondent No.3 passed the orders on 11.10.2017 against the appellant holding that it had violated clause 60(2)(k) of the Securities Brokers (Licensing and Operations) Regulations, 2016 (the Regulations) and sections 64(2) and 65(2) of the Securities Act, 2015. A penalty of Rs.1,000,000/- was accordingly imposed on the appellant and its license was suspended till such time repayment of deposit is made and compliance is shown to Circular No.20 of the 2016. Feeling aggrieved, the appellant filed an appeal under section 33 of the Act before the Appellate Bench which was dismissed through the impugned order.

3. The fact that the appellant sought deposits from its customers on pre-determined rate of return is not in dispute. It is also an admitted fact that the license of brokerage granted to the appellant did not allow it to indulge in receiving such deposits from its customers. The appellant, however, submits that the transactions entered into by it pre-date the promulgation of the Regulations and as such it could not be penalized for violation thereof. It is furthermore submitted that the amounts received by the appellant from its customers have since been repaid.

4. Learned counsel for the SECP, on the other hand, places reliance on sections 64(2) and 65(2) of the Securities Act, 2015.

5. Sections 64(2) and 65(2) of the Securities Act, 2015 read as under:

64(2). A license granted under this Act shall specify the regulated securities activity or activities that the regulated person is permitted to undertake and such persons shall be restricted to such regulated securities activity or activities so specified.

65(2). A regulated person that is license to indulge in a regulated securities activity shall be restricted to undertake only that activity exclusively.

6. It is the case of the appellant that resort cannot be had to the Securities Act, 2015 which contained general provisions whereas the Regulations specifically placed restrictions on the brokers from accepting deposit from their customers on the pre-determined rate of return. It was

also contended that Securities Act, 2015 did not place any specific restriction on the brokers for accepting such deposits from the customers and thus the Regulations were framed for placing a bar on such activity. It is accordingly argued that when Regulations containing specific bar were introduced subsequent to the acceptance of deposits by the appellant, the general provisions of Securities Act, 2015 could not be pressed into service for passing order against it.

7. The submissions made by the appellant have no force. The activities which the appellant could lawfully pursue were mentioned in the certificate of registration as broker. Section 64(2) of the Securities Act, 2015 clearly stipulates that the license shall specify the regulated activities that a broker is committed to undertake. It is not in dispute that the appellant accepted deposits from its customers on pre-determined rate of return which activity was not mentioned in the brokerage certificate issued to it. The appellant thus violated the terms of its brokerage certificate and was in violation of section 64(2) and 65(2) of Securities Act, 2015. The fact that the Regulations were introduced subsequently and had no retrospective application to the activities the appellant indulged in is beside the point. The admitted fact of the matter is that the appellant was in violation of the terms of its brokerage license and sections 64(2) and 65(2) of the Securities Act, 2015 and thus the impugned order was lawfully passed against it.

8. In the circumstances, this Court is not inclined to interfere in the order passed on 08.05.2020. This appeal having no merit is accordingly dismissed.

MQ/S-25/L

Appeal dismissed.

2025 C L D 1130

[Sindh]

*Before Muhammad Iqbal Kalhoro and
Muhammad Osman Ali Hadi, JJ*

PAKISTAN STATE OIL COMPANY LIMITED (PSO)---Appellant

versus

Messrs GILLANI (PVT.) LIMITED and another---Respondents

H.C.A. No.211 of 2011, decided on 6th February, 2025.

(a) Arbitration Act (X of 1940)---