

THE HIGH COURT OF SINDH, KARACHI

Misc. Appeal No. 53 of 2022

[Clover Pakistan Ltd. v. Executive Director, Supervision Division, SECP]

Appellant : Clover Pakistan Limited through Mr. Muhammad Anas Makhdoom, Advocate.

Respondent : Executive Director, Supervision Division (Onsite Department), SECP through Syed Imran Ali Shamsi, Law Officer, SECP.

Date of hearing : 28-06-2022

Date of order : 28-06-2022

ORDER

Adnan Iqbal Chaudhry J. - The events/orders leading to this appeal before this Court have been set out in the order dated 16-06-2022. In short, this appeal under section 34 of the Securities and Exchange Commission of Pakistan Act, 1997 [SECP Act] is from the order of the Deputy Registrar of the Appellate Bench of the SECP, declining to register an appeal under section 33 of the SECP Act on the ground that the same is not maintainable.

2. Under section 34 of the SECP Act an appeal lies to the High Court **“in respect of an order of the Commission comprising two or more Commissioners or the Appellate Bench or order made under sub-section (2) of section 32(B)”**. Since the order impugned is that of the Deputy Registrar of the Appellate Bench and not of the Appellate Bench itself, a question arises to the maintainability of this appeal as well. On day-one, learned counsel for the Appellant had submitted that there is authority for the proposition that the order of the Registrar of the Appellate Bench can be treated as an order of the Appellate Bench itself. However, I have since come across The Securities and Exchange Commission of Pakistan (Appellate Bench Procedure) Rules, 2003 which negate that proposition.

3. Rule 8 of the Securities and Exchange Commission of Pakistan (Appellate Bench Procedure) Rules, 2003, provides as follows:

“8. Presentation and scrutiny of memorandum of appeal by Registrar. – (1) The Registrar shall endorse on every appeal the date on which he has received the appeal under rule 4, or deemed to have been presented under that rule, and shall sign an endorsement to that effect.

(2) If, on scrutiny, the appeal is found to be in order by the Registrar, it shall be duly registered and given a serial number.

(3) If an appeal on scrutiny is found to be defective by the Registrar and the defect noticed is of formal nature, the Registrar may allow the appellant to rectify the same in his presence and if the said defect is not of formal nature, the Registrar may allow the appellant such time to rectify the defect as he may deem fit. If the appeal has been sent by post and found to be defective, the Registrar may communicate the defects to the appellant and allow the appellant such time to rectify the defect as he may deem fit.

(4) If the appellant fails to rectify the defect within the time allowed in sub-rule (3), the Registrar may, for reasons to be recorded in writing, decline to register such memorandum of appeal and communicate the decision to the appellant within seven days thereof.

(5) An appeal against the order of the Registrar under sub-rule (4) shall be preferred to the Appellate Bench within fifteen days of receiving of such order and the decision of the Appellate Bench thereon shall be final.”

Thus, under Rule 8(5) of said Rules, an appeal is also provided to the Appellate Bench from the order of the Registrar of said Bench passed under Rule 8(4). Under Rule 2(1)(j), the Registrar includes a Deputy Registrar performing functions of the Registrar.

4. Learned counsel for the Appellant and learned legal adviser representing the SECP both submit that the appeal provided under Rule 8(5) appears to be confined, as per Rule 8(4), to an order which declines to register an appeal for failure to rectify a defect, and not to an order which declines to register an appeal as not maintainable. Learned counsel for the Appellant further submits that the Registrar has no power to decide the maintainability of an appeal. But even if said Rules were to be so interpreted, that would still not bring an

order passed by the Registrar within the ambit of section 34 of the SECP Act so as to appealable before this Court.

5. Rule 8(4) of the aforesaid Rules is the power of the Registrar to decline registration of an appeal. Even if that power is qualified, the order that is eventually passed is one declining to register an appeal. Thus, when Rule 8(5) provides an appeal “against the order of the Registrar under sub-rule (4)”, the remedy envisaged is against an order that has declined to register an appeal regardless of the reasons assigned for passing such order. The intent is not, and cannot be, to limit the appeal to an order that declines registration only on a certain set of reasons. It is then for the Appellate Bench to decide whether the appeal ought to be registered or not.

6. For the foregoing reasons, the remedy of the Appellant against the order passed by the Deputy Registrar of the Appellate Bench is before the Appellate Bench itself by way of an appeal provided under Rule 8(5) of The Securities and Exchange Commission of Pakistan (Appellate Bench Procedure) Rules, 2003. At this juncture, learned counsel for the Appellant prays that since the Appellant had approached this Court with *bonafides*, relief may be provided for the intervening period failing which the inspectors appointed by the SECP will implement the investigation order in question. The appeal is dismissed with the observation that for a period of 7 days no coercive action shall be taken against the Appellant in furtherance of the investigation order.

JUDGE