

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.319 of 2023

Plaintiff : Maxco (Pvt.) Ltd. through Mr Omer Memon
Advocate

Defendant : Securities & Exchange Commission of
Pakistan through M/s Syed Ebadur Rehman,
Law Officer along with Shahrukh Arfani,
Additional Joint Director and Imran Ali Shamsi,
Additional Joint Director, SECP

- 1) For hearing of CMA No.3786/2023
- 2) For Final Arguments

Date of Hearing : 01.06.2023

Date of Judgment : 23.08.2023

JUDGMENT

Jawad Akbar Sarwana, J.: This is a Suit for Declaration and Injunction filed by the Plaintiff, a private limited liability company incorporated under the Companies laws of Pakistan (hereinafter referred to as "the Plaintiff") against the Defendant, the Securities and Exchange Commission of Pakistan (hereinafter referred to as ("SECP").

2. The brief facts of the case are that essentially, SECP initially declined to issue both manual and electronic certified copies of Plaintiff's statutory forms filed by the Plaintiff Company with SECP; and to grant access to the Plaintiff Company to its company page on SECP's web-portal. Further, SECP had posted on its web portal, qualifications/remarks in relation to Plaintiff Company, namely that "Currently Company is under DISPUTE CASES" (Annexure "K" on page 299 of Part-I of the Suit file). Aggrieved by SECP's commissions and omissions, the Plaintiff Company filed this suit praying for the following relief(s):

"PRAYER

- (i) Declare that the blocking of the Plaintiff's online portal access by the Defendant is illegal and unwarranted.
- (ii) Declare that the Plaintiff is entitled to file its statutory forms online and direct the Defendant to update the records as per the information submitted by Plaintiff.
- (iii) Suspend the blocking of online access and grant injunction restraining the Defendant, its officers, or any person(s) or body acting under or through them from taking any adverse actions against the Plaintiff.
- (iv) Permanently restrain the Defendant from interfering with or causing any hindrance in the business of the

Plaintiff (including jeopardizing the settlement of the Plaintiff with the banks and/or revival of operations by the Plaintiff) during the pendency of the proceedings in the instant suit and/or any other pending litigation between the parties including J.C.M. No.27 of 2022.

- (v) Costs of the Suit.
- (vi) Any other relief which this Hon'ble Court deems appropriate in the facts of the case."

3. SECP filed its Written Statement and Counter-Affidavit to Plaintiff's CMA No.3786/2023 on 06.04.2023, whereafter the Additional Registrar (O.S.) listed the matter in Court for Examination of Parties/Settlement of Issues on 18.05.2023. On 26.05.2023, during the stage of Examination of Parties/Settlement of Issues and hearing of CMA No.3786/2023 (Plaintiff's Interlocutory Application seeking orders from the Court to restrain SECP from harassing Plaintiff, taking adverse action against Plaintiff and restore access to SECP's online portal), the Court passed the following ad-interim Order:

"Counsel for Plaintiff Company contends that once costs are paid to SECP for obtaining certified copies of statutory forms, the SECP cannot deny such request made by the company. He relies on Messrs. Biotech Energy (Pvt.) Ltd. through Chief Executive and 2 Others v. Securities and Exchange Commission of Pakistan through Additional Registrar and Another, 2018 CLD 383. Counsel further argues that at best the SECP when issuing certified copies of documents may select and mention on such certified copies of the documents any one of the qualifications / remarks provided under Regulation 20 of the Companies (Registration Offices) Regulations, 2018¹. But SECP cannot simpliciter

¹ Regulation 20 of the Companies (Registration Offices) Regulations, 2018 provides:

“Section 20. Issuance of copies of documents.—(1) The registrar concerned shall, on the application of a person, cause copies of documents required to be filed, recorded, registered with or a certificate or order issued or register as maintained by the registrar under the Act on payment of such fee as provided in the Seventh Schedule.

(2) The copies to be issued under sub-regulation (1) may contain the qualifications or remarks under the particular circumstances including but not limited to the following:-

- (a) copy of this document is being issued on the request of the applicant, however this office does not take responsibility of its genuineness and correctness of the contents thereof as there is a dispute among the member/shareholders/directors regarding the information contained in the return/parties are in litigation in the Court and the matter is pending adjudicating/ there is a complaint and the matter is still not resolved/ there is an investigation or inquiry by (the Commission/NAB/FIA, etc.) and is pending finalization;
- (b) copy of this document is being issued on the request of the applicant, however, this office does not take responsibility of its genuineness and correctness of the contents thereof as the information contained in the document is pending compliance requirements or has been forwarded to the concerned Ministry for clearance/NOC and reply of which is still awaited;

refuse to provide the Plaintiff Company, manual and electronic copies of the documents after payment of usual costs. The Plaintiff Company alleges that SECP has no powers to post on its intranet the qualification / remarks: "Currently Company is under DISPUTE CASES". Plaintiff Company argues that it is/was in process of availing finance facilities and SECP's omissions / commissions have delayed obtaining of such facilities

Law Officer and Additional Joint Directors of SECP are present in Court submit that there is an on-going shareholder dispute prevailing between the members of the Company. Further, SECP has initiated winding up proceedings against the Plaintiff Company in the High Court of Sindh at Karachi, i.e., JCM No.27/2022. SECP, submits that being the Regulator, it is required to safeguard the interests of the public dealing with companies incorporated and/or registered under the Companies laws of Pakistan. SECP further submits that it is empowered under Regulation 20 of Companies (Registration Offices) Regulations, 2018 to inform those who seek information about a company by way of obtaining certified copies of statutory documents filed by the company with SECP to insert qualifications / remarks on such certified documents. With regards to granting access to the online portal of the Plaintiff Company with SECP, the latter contends that where the Regulator is informed about shareholders disputes or winding up proceedings are underway against the company, SECP blocks access to the online portal. The objective is to mitigate complications which may arise out of e-filings which may be uploaded by the competing management of the company. SECP contends in such situations (shareholders disputes, etc.) that there is no fetter for statutory forms to be filed by the Company manually, which are received by SECP in the normal course. Further, as and when an application for statutory forms of such companies is applied manually, SECP on payment of usual costs makes the same with qualification / remarks available to the applicant. Thus, SECP submits that all its acts and dealings with the Plaintiff Company are in accordance with law.

After sometime during arguments, Syed Ebadur Rehman, Law Officer SECP along with Shahrukh Arfani Additional Joint Director and Imran Ali Shamsi Additional Joint Director SECP, frankly conceded that the Defendant, SECP, has no objection to issue manually certified copies of relevant Forms sought by the Plaintiff which was applied by way of Application dated 22.02.2023 (available at Page-301) subject

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- (c) copy of this document is being issued on the request of the applicant, however, this office does not take responsibility of its contents as there are certain discrepancies in the documents as filed; or
 - (d) certified to be true copy of the documents as filed by the company, however, this office accepts no responsibility as to the correctness of the contents given in the document.

(3) if a certified copy of any document has been issued and, subsequently, it is found that the document was liable for rectification or cancellation under section 464 of the Act or the certified copy was otherwise, issued inadvertently or by mistake, the registrar concerned may revoke or cause to be revoked, certification thereof and may recall or cause to be recalled, the certified copy so issued."

to the caveat that the said forms will bear any one of the qualifications / remarks provided under Regulation 20 of the Companies (Registration Offices) Regulations, 2018. Further, in future, SECP shall entertain requests for forms in respect of the Plaintiff Company by way of manual application only and not online. Additionally, the Plaintiff Company will not have access to SECP's web-portal until either settlement of the shareholders dispute or conclusion of the winding up proceedings. SECP has no objection to disposal of the suit in these terms.

Plaintiff Counsel accepts SECP's offer except for one point (discussed herein below). Meanwhile, SECP undertakes to provide manual copies of the relevant Forms applied by the Plaintiff Company vide application dated 22.02.2023 duly certified by the Regulator bearing the qualifications/remarks thereon in terms of Regulation 20 of the Companies (Registration Offices) Regulations, 2018.

Because of the concession offered by the Officers of SECP today, and accepted by Counsel of the Plaintiff Company, the Plaintiff Company has secured almost all reliefs as prayed subject to the terms of SECP's compromise recorded herein. Counsel for the Plaintiff Company submits that he has one grievance only against SECP. He alleges that as per Regulation 20 (above) SECP has no powers to publish qualification / remarks on its intranet webpage that "Currently Company is under DISPUTE CASES" (Annexure "K" to the Plaint at page 299 of the Suit file). SECP submits that the Registrar of Companies reserves the right to post such qualifications / remarks online on its web-portal."

4. During the hearing on 26.05.2023, learned Counsels agreed that the only issue left in the Suit on which parties are at variance was in respect of SECP's qualifications/remarks that "Currently Company is under DISPUTE CASES" published electronically on Plaintiff Company's web-page on SECP's web-portal (Annexure "K" to the Plaint at page 299 of the Suit file). Accordingly, the Court settled the following issue and listed the matter for final arguments on 01.06.2023:

"ISSUES

1. *Whether under the Companies Act and its Rules and Regulations framed thereunder the Registrar of Companies, SECP is empowered to publish qualification / remarks on its intranet webpage relating to the Plaintiff Company that "Currently Company is under DISPUTE CASES"?*
2. *What should the decree be?"*

5. Plaintiff's Counsel submitted that SECP'S remarks, "Currently Company is under DISPUTE CASES", which have been uploaded online on SECP's web portal in relation to the Plaintiff's Company's profile, are openly

accessible to everyone and create a negative impression in the market. Counsel contended that the information uploaded by SECP is also misleading as there is no dispute in the Company. He argued that the SECP has no authority to pass such remarks on its website concerning the Company and that the same is also detrimental to the reputation of Plaintiff.

6. Defendant's Law Officer submitted that the image appearing on page 299 of the Suit file (Annexure "K" to the Plaint) is a screenshot of the digital portal set up for banks which is part of a joint venture project between the SECP and the State Bank of Pakistan ("Central Bank"). He contended that only banks have access to the digital portal through a special dashboard, and no one else except banks can access the database. Defendants further submitted that the remarks "Currently Company is under DISPUTE CASES", only appear on the bank portal dashboard enabling the banks to have a complete mirror image of records as maintained by SECP. The digital portal aims to create a 1-window digital website for ease of business, and promote digitalisation and transparency. The digital portal enables users to conduct due diligence online without seeking physically certified copies of statutory documents. Through this portal, onboarded banks can access and verify company information directly from SECP's records, considerably reducing the turn-around time for opening of a corporate bank account or for availing other banking services. The facility aims to help banks in carrying out due diligence of their corporate customers without manual verification. Currently, statutory documents of private limited, public limited and companies licensed under section 42 of the Companies Act (not-for-profit objects) have also been made available in the portal. The data of foreign companies and limited liability partnerships is likely to be soon linked with the portal. Subsequently, the SECP will discontinue the issuance of certified true copies in physical form. The portal is also keeping in line with Pakistan's Joint Task Force (JTF) for the Financial Action Task Force ("FATF") to further bolster supervisory cooperation and interoperability, inter alia, in Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing (AML/CFT/CPF). He submits that the qualifications/remarks provided on SECP's digital portal can only be accessed by the bank and it has the right to post whatever qualification it deems fit.

7. Heard Counsel and Law Officer of SECP.

8. At present, any member of the public who wishes to obtain information on a company by way of a certified copy of a statutory form of a company incorporated in Pakistan may manually file an application supported by a challan evidencing payment of usual costs and obtain a certified copy of the statutory

form from SECP. In the event that a company for which an applicant is seeking information is facing any issue which may entail SECP flagging such issue to the applicant, then the current regulations in force enable SECP, when manually issuing a certified copy of such statutory form, to insert a qualification/remark. This power is granted to SECP under Regulation 20 of the Companies (Registration Offices) Regulations, 2018. Regulation 20 enables SECP to continue issuing manual copies of statutory forms subject to qualifications/remarks as provided under Regulation 20. At present, the qualifications or remarks allowed to be mentioned on the certified copy of the statutory form issued by SECP include, but are not limited, to the following:

- (a) copy of this document is being issued on the request of the applicant, however this office does not take responsibility of its genuineness and correctness of the contents thereof as there is a dispute among the members/shareholders/directors regarding the information contained in this return/ parties are in litigation in the Court and the matter is pending adjudication/ there is a complaint and the matter is still not resolved/ there is an investigation or inquiry by (the Commission/ NAB/ FIA, etc.) and is pending finalization;
- (b) copy of this document is being issued on the request of the applicant, however this office does not take responsibility of its genuineness and correctness of the contents thereof as the information contained in the document is pending compliance requirements or has been forwarded to the concerned Ministry for clearance/ NOC and reply of which is still awaited;
- (c) copy of this document is being issued on the request of the applicant, however this office does not take responsibility of its contents as there are certain discrepancies in the documents as filed; or
- (d) certified to be true copy of the document as filed by the company, however, this office accepts no responsibility as to the correctness of the contents given in the document.

9. In the present case, it appears that SECP, instead of opting to assign any one of the above-mentioned four qualifications/remarks to the Plaintiff Company on its digital portal, created its own category of qualifications/remarks. The qualification/remark that “Currently Company is under DISPUTE CASES” is not mentioned in the Companies (Registration Offices) Regulations, 2018.

10. Law Officer of SECP was unable to point out any regulation and/or provision of law which grants SECP powers to label a statutory form arbitrarily on the Bank’s SECP dashboard and/or SECP’s digital portal for banks, as it pleases between different types of persons seeking information. SECP was also not able

to justify and/or submit any plausible explanation to this Court as to why the remarks “*Currently Company is under DISPUTE CASES*” should popup on the bank’s computer screen when the bank is conducting an online search merely examining a complete mirror image of records of SECP; whereas no such qualification or remark is indicated to a person who may be conducting a manual search at the Company Registrar’s Office (“CRO”) of the SECP. SECP cannot insert two different qualifications/remarks for the same company differently depending on the person accessing the information and the mode of access. SECP cannot pick and choose its qualifications/remarks depending on whether the general public requests the statutory information or a bank accesses through SECP’s digital portal. The qualification/remark must be the same in both cases. For example, if a Director of a Company is under inquiry by the Federal Investigation Agency (“FIA”), then a certified copy of Form-29 should mention the qualification/remark as the one that is available in relation to issuing a certified copy of a statutory form, i.e. in this case, the following qualification/remark:

“The copy of this document is being issued on the request of the applicant; however, this office does not take responsibility for its genuineness and correctness of the contents thereof as there is an inquiry by FIA which is pending finalisation.”

In the above example, if a bank is seeking the same information through SECP’s digital portal, it will be absurd, if SECP decides that in case of banks accessing its website for the same Company (equivalent to conducting a manual company search), SECP should insert any other qualification/remark (as none will be available to those conducting a manual search) and even otherwise such qualification/remark will be different from the one mentioned in the manual certified copy.

11. This is precisely what SECP appears to have done in the present case with the remark “*Currently Company is under DISPUTE CASES*” uploaded on SECP’s dashboard/digital portal being accessed by banks. According to the Written Statement filed by SECP, the Regulator claims in paragraph 11 of the Written Statement that:

“due to the management dispute within the company, the company’s file has been marked as ‘currently is under Dispute case.’ The number of complaints has been filed by one of the Directors of the Company namely Mr. Zubair Gillani (Director and shareholder holding 20% shares), alleging various management issues in the company. “

Thus for all purposes, the matter with the Plaintiff Company appears to suggest a shareholders dispute. However, instead of uploading a qualification/remark in terms of Regulation 20(a) on its digital portal, SECP has

uploaded an entirely new and arbitrary qualification/remark. SECP's qualification/remarks must be consistent regardless of who is accessing the company information and how.

12. Article 25 of the Constitution of Pakistan reads as follows:

“Article 25. Equality of citizens. (1) All citizens are equal before law and are entitled to equal protection of law. . . .”

13. The doctrine of equality, as contained in Article 25 of the Constitution of Pakistan, requires that every citizen be accorded equal treatment with similarly situated persons. It appears that SECP's current protocol discriminates between the general public and banks obtaining the same information in respect of the same company.

14. There is also another aspect of the matter. Justice demands that rights in the physical world and the digital/virtual world should be the same and at par with each other. Yet currently, SECP appears to be maintaining two different sets of standards for qualifications/remarks. One scheme of qualifications/remarks is meant for manual filers who obtain statutory forms in hardcopy format and may have any of the four qualifications/remarks mentioned by SECP on such certified copy of the Company. In contrast, banks that access the same company information through SECP's portal may have a different qualification/remark. To this end, a Company should have some assurance that the information of the Company which SECP will share with anyone about their company will not vary depending on the platform used to obtain such information. Those accessing information manually or through the digital/virtual world pertaining to the same company should have exactly the same result/information/consequences of such request made from SECP irrespective of whether such request is made manually or electronically by banks through either SECP's dashboard or digital portal. SECP's dissemination of company information needs to be the same across both platforms: manual and digital/online.

15. Article 4 of the Constitution of the Islamic Republic of Pakistan reads as follows:

“Article 4. Right of individuals to be dealt with in accordance with law, etc. (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.”

16. In the case of Niaz and Others v. Abdul Sattar and Others, PLD 2006 SC 432, the Supreme Court of Pakistan observed as follows:

“By Article 4 of the Constitution, it is the inalienable right of every citizen to enjoy the protection of law and to be treated in accordance with law and in particular no action detrimental to the life, land, liberty, body, reputation or property of any person shall be taken except in accordance with law. Article 14 of the Constitution also guarantees the dignity of man and subject to law, the privacy of home.”

17. Given the above, it appears that the modus operandi adopted by SECP is contrary to Article 4 of the Constitution of Pakistan. as the current operations of SECP discriminate how the company information is acquired, i.e. manually or digitally as well as by banks and the public. Clearly, there should be no discrimination between the two regimes. Regardless of whether the request for company information is sought by a member of the public or digitally/online through a bank’s dashboard accessing SECP’s digital portal, the qualifications/remarks should match each other.

18. Finally, Regulation 20 of the Companies (Registration Offices) Regulations, 2018, requires a request for information on a statutory form to be qualified in a particular manner when any of the conditions set out in (a) to (d) are in effect. In such a situation, whether the information is sought by the member of the public or the bank or manually or electronically, be it through the dashboard or digital portal, the manner and mode of dealing with such request if there is any qualification or remark is set out in Regulation 20. It is a well-settled principle of interpretation of statutes that if a method is prescribed to do a thing in a particular manner, it must be followed in letter and spirit.² When the Regulation specifically requires a public functionary, such as SECP, to act in a particular manner, it must act in that manner.³ The Courts have all the power to see whether the statutory body acted in that manner or not. A particular procedure is prescribed for dealing with specified situations. Therefore, SECP should follow that procedure alone. This was enunciated by the Privy Council too, “that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”⁴ Accordingly, in the case at hand, SECP cannot assign any qualification/remark on Plaintiff’s Company on either SECP’s dashboard or digital portal other than what is provided under Regulation 20 of the Companies (Registration Offices) Regulations, 2018.

² *Chaudhry Shujat Hussain v. The State*, 1995 SCMR 1249.

³ *State Life Insurance Corporation of Pakistan through Chairman and Another v. Director-General, Military Lands and Cantonments, Rawalpindi and Others*, 2005 SCMR 177.

⁴ *Muhammad Akram v. Mst. Zainab Bibi*, 2007 SCMR 1086, and *Nazir Ahmed v. King Emperor*, 1936 SCC Online PC 41.

19. Before parting with the discussion, it is notable that Regulation 20 (2) also states that the qualifications or remarks under the particular circumstances mentioned in items (a) to (d) “are not limited to” these items. The phrase “including but not limited to the following” thus ensures that whatever examples are given in the Regulation are not exclusive but representative, which counters the general common law rule of legal construction that when some items are listed but others are omitted, the presumption is that those items omitted are done so intentionally. While the Regulations provide some room (read: discretion) to the Regulator to come up with qualifications or remarks other than those that are mentioned in Regulation 20(2) (a) to (d), even so, such qualifications or remarks must also be similar in description, purpose and consistent with the overall intention of Regulation 20. Regulation 20 does not give any grounds to SECP to generate two different qualifications or remarks for the same situation. Even if SECP has to come up with a qualification or remark, it needs to be consistent. The qualification or remark to describe the circumstance must be the same across the platform, be it SECP’s manual, dashboard, or digital portal. Finally, the wording of the remark or description cannot be different for banks accessing SECP’s dashboard or digital portal and the public conducting a physical manual search on the same Company at the CRO’s office as in the present case.

20. In view of the above discussion, it is clear that the Registrar of Companies, SECP is not empowered to publish qualifications/remarks on its dashboard and/or its digital platform for banks relating to the Plaintiff Company that “Currently Company is under DISPUTE CASES” as the same is contrary to law and SECP’s regulations framed under the Companies Act, 2017. Consequently, SECP is directed to immediately remove the said remarks from its dashboard/digital portal accessed by banks or other entities and replace such qualifications/remarks with any of the qualifications/remarks that may be assigned to the Plaintiff Company under Regulation 20 of the Companies (Registration Offices) Regulations, 2018.

21. For removal of doubt, it is clarified that the Interim Order passed in CMA No.3786/2023 on 26.05.2023 is hereby confirmed as recorded in this Judgment.

22. This suit is decreed in the above terms with no order as to costs.

Karachi;
Dated: 23.08.2023

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