

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

C.P. No.D-5684 of 2024

M/s Chiragh Commodities
Versus
Federation of Pakistan & others

| Date | Order with signature of Judge |
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1. For orders on Misc. No.25249/24
2. For orders on Misc. No.25250/24
3. For orders on Misc. No.25251/24
4. For hearing of main case.

Dated: 22.11.2024

M/s Tariq Hussain and Muhammad Absar Hussain for petitioner.

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Through the instant petition petitioner has impugned the judgment dated 15.08.2024 passed by the Deputy Director of Adjudication, State Bank of Pakistan, Banking Services Corporation (Bank) in terms whereof the complaint filed by Foreign Exchange Operations Department, State Bank of Pakistan Banking Services Corporation (Bank) against the petitioner under section 12(1) of Foreign Exchange Regulations Act, 1947 read with Foreign Exchange Rules, 1952 was allowed and a penalty of Rs.268,530,000/- was imposed upon the petitioner. However, during course of the arguments and perusal of the record reveals that the petitioner has surrendered itself to the jurisdiction under the hierarchy of 1947 Act by filing appeal under section 23-C available at page 47 of the file. Thus, what manifestly clear is that the petitioner intends to seek a waiver as to the conditions prescribed by board for security at the time of hearing appeal is unlawful and the action is contrary to the fundamental rights of the petitioner and its directors and that it was so adjudged to be in violation

of the fundamental rights by a Bench of Lahore High Court, which conclusion be followed by this this Court in the C.P. No.D-1863 and D-2902 of 2024.

We have heard the learned counsel and at the very outset pointed out that the orders referred by the learned counsel are ad-interim orders and not the final conclusion. Indeed, in C.P. No.D-3066 of 2024 (M/s Pak Terry Mills Pvt. Ltd. (Petitioner) VS Fed. of Pakistan and Others) this Court on the same set of facts and law this Court has already decided securing the amount of penalty to be not in violation of fundamental right as the appeal before the Board was filed under the relevant law which required the appellant or the petitioner to secure the amount by way of deposit of cash. Relevant part of the order in the above referred petition is reproduced as under:-

“5. If the proposed question / argument is considered as violation of fundamental rights then the litigation involving finances will never be secured. Summary chapter trial imposes condition even during trial but was not adjudged as violative of fundamental rights. So are the cases covered under FIO 2001 where leave is inevitable to contest the suit. Case of Searl IV Solution (Pvt.) Ltd.¹ is a prime example where the Hon’ble Supreme Court restricted right by compelling the litigant to deposit 50% of the tax calculated by authorities. The statute has restricted hearing subject to deposit. On this count, the argument that the fundamental right of the petitioner has been infringed by virtue of an order which required them to deposit the amount in terms of the relevant law i.e. Section 23,C(4) of the Foreign Exchange Regulation Act, 1947, is not convincing; more importantly the relevant law is not challenged before us in this petition and for no reason we should continue to proceed for a challenge when the law itself was not challenged. The ad-interim order passed in C.P. No.D-1075/2024 (another Constitution Petition not fixed before us) by this Court also does not suggest any law of the nature as under discussion was challenged, nor is that binding on this Bench being ad-interim order; hence no interference is required. Pre-requisites of appeals, requiring leave, security, or deposits, do not violate the right to fair trial and due process. When legislature can give right of appeal, it can attach conditions with such appeal. Courts in both Pakistan and India have upheld these mechanisms as consistent with constitutional principles, provided they are reasonable,

¹ 2018 SCMR 1444 (Searl IV Solution (Pvt.) Ltd. & others vs. Federation of Pakistan & others)

uniformly applied, and not excessively onerous. These measures strike a balance between preventing frivolous litigation and ensuring access to justice, thereby upholding the principles of fairness and due process, especially in financial matters. Needless to say that fair trial and due process is to be adopted as per the relevant statute/law and Constitution, not otherwise.”

The law is clear and no interference is required as the petitioner has lost the case before adjudicating authority in terms of the judgment referred above and it is only the Appellate Board which under proceedings required the petitioner / appellant to deposit the amount. Appeal, for the purposes of re-appreciating the evidence and record, is considered as continuation of trial but financial restriction/condition for the appellate stage is the lawful / statutory cap as legislated. Appeal is a creation of statute, and although right of appeal is a fundamental right but conditions attached could not be deemed to be unconstitutional.

In view of above we of the view that the statute itself has restricted hearing subject to deposit and if the proposed question / argument is considered as violation of fundamental rights then the litigation involving finances will never be secured. The petition is thus dismissed in limine along with listed applications and the petitioner is liberty to pursue his appeal that it has filed before the Board subject to depositing the amount in terms of the relevant law i.e. Section 23,C(4) of the Foreign Exchange Regulation Act, 1947.

Chief Justice

Judge