



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 14 of 2013

Col (R) Muhammad Ishtiaq Khan,

CEO/Director in Elixir Laboratories (Pvt.) Ltd

...Appellant

Versus

Commissioner, Company Law Division (CLD),

Securities and Exchange Commission of Pakistan

...Respondent

Date of hearing

04/09/13

### ORDER

#### Present:

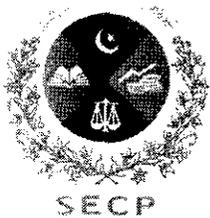
#### For the Appellant:

Muhammad Saad Khan, Advocate High Court

#### For the Respondent: (through video link)

Mr. Bilal Rasul, Director (Enforcement)

Mr. Hammad Javed, Deputy Director (Enforcement)



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1. This order is in appeal No. 14 of 2013 filed under section 33 of the Securities and Exchange Commission of Pakistan (the “ Commission”) Act, 1997 (the “SECP Act”) against the order dated 20/02/13 (the “Impugned Order”) passed by the Respondent.
2. The facts leading to this case are that the Commission ordered for investigation into the affairs of the Elixir Laboratories (Private) Limited (the “Company”) vide its letter dated 15/11/11 under section 263 of the Companies Ordinance, 1984 (the “Ordinance”) in light of the complaint from one of the company’s directors namely Mrs. Ayesha Nadeem (the “ Complainant”). Investigation was conducted by M/s Hameed Chaudhry and Co. Chartered Accountants, Lahore. The Company initially received a preliminary copy of the investigation report and subsequently a final copy of the investigation report was forwarded by the Commission to the Company vide letter dated 06/06/12 in light of the provisions of section 269 (a) (2) of the Ordinance. Subsequently, after a period of almost six months, the Company received a letter dated 27/11/12 stating that the Commission had delegated its powers and the powers of functions of Registrar of Companies to Mr. Bilal Rasool, Director (Enforcement)/Additional Registrar of Companies for the specific purpose of looking into the affairs pertaining to the Company vide *SRO 1388(I)/2012 dated 26/11/12*. The Company filed a review appeal before the Commission stating that Mr. Bilal Rasool, is a close friend of one of the relatives of the Complainant and consequently due to conflict of interest and for the purpose of impartiality, Mr. Bilal Rasool may not be delegated such responsibility of looking into the affairs of the Company.
3. The Respondent returned the review appeal vide the Impugned Order stating that the order was passed by the Commission as a body comprising of five Commissioners and the application cannot be entertained for review in terms of the delegation of powers approved by the Commission in terms of regulation 7 of the Securities and



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Exchange Commission of Pakistan (Conduct of Business) Regulations, 2000. Furthermore, the issuance of *SRO 1388(I)/2012 dated 26/11/12* being administrative in nature does not attract the provisions of section 484 of the Ordinance. Moreover the proviso to section 33(1) of the SECP Act restricts the opportunity of appeal/review/revision in matters concerning any administrative decision. The 'review appeal', therefore, was not tenable. It was further noted by the Respondent with serious concern that on several occasions, the Company had submitted reservations on the appointment of officers of the Commission assigned to the subject case which may tantamount to delaying tactics on part of the Company.

4. The Appellant has preferred to file the instant appeal against the Impugned Order. The Appellant's counsel argued that the Appellant is not contesting the order of Commission to look into affairs pertaining to the Company. The concern of the Appellant is with respect to Mr. Bilal Rasool, Director (Enforcement), who has been delegated the powers by the Commission to look into the affairs of the Company. Mr. Bilal Rasool is a close friend of one of the relatives of the Complainant and in view of section 17(1) of the SECP Act, Mr. Bilal was required to disclose his interest in this matter. In view of the interest in the matter declared by Mr. Bilal Rasool in his email dated 07/12/12, the work be assigned to any other officer of the Commission. Reliance was placed on *PLD 2012 SC 1* to show that that even the presumption of bias against a judge is sufficient and it was argued that Mr. Bilal Rasool should disassociate himself from the case.
5. The department representative on behalf of Mr. Bilal Rasool stated that there is no interest of Mr. Bilal Rasool in the matter. The email referred by the Appellant's counsel does not in any way show the personal interest of Mr. Bilal Rasool in the matter. The word 'acquaintances' has been interpreted out of context in the email and does not suggest that Mr. Bilal Rasool has acquaintance with the relative of the





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Complainant. Mr. Bilal Rasool also rebutted the allegation of interest in the matter and called upon the Appellant's counsel to name the person with whom the 'acquaintances' is alleged. It was also brought to the notice of the Appellate Bench (the Bench") that the management of the Company had earlier made reservations on two other officers of the Commission.

It was further contented that the delegation by the Commission cannot be challenged before the Bench as it is an administrative decision taken by the Commission. The Appellate Bench under section 33(1) of the SECP Act can only hear appeal against the orders passed by a Commissioner or an authorized officer of the Commission and not against the orders of the Commission.

6. We have heard the parties and have gone through the record and section 17 of SECP Act on the subject is reproduced for ease of reference:

**17. Notification of Interest by others.-** (1) *Where a person who, in the course of,-*  
*(a) performing a function, or exercising a power, as a delegate of the Commission,*  
*(b) performing functions or service as an employee, or*  
*(c) performing a function or services in any capacity by way of assisting or advising the Commission, the Board, any committee or any delegate of the Commission, is required to consider a matter in which he has an interest, such person shall forthwith give to the Commission a written notice stating that he is required to consider the matter and has an interest in it and setting out particulars of the interest.*

*(2) The person referred to in sub-section (1) shall also declare his interest in accordance with the said sub-section whenever it is necessary to avoid the conflict of interest.*

Emphasis added



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Section 17(1) of the SECP Act requires the officers of the Commission to disclose any interest in the matter placed before them during performance of their functions. The officers are also required to give the Commission a written notice setting out particulars of their interest in any matter that comes during the performance of their duties. In the instant case, however, no allegation of particular interest in the matter has been alleged. The accusation of acquaintance with the relative of the Complainant without even naming the relative is far-fetched. The Appellant's counsel was asked repeatedly about the providing proof of the alleged acquaintances; however, neither the name nor the relationship was stated, let alone proved. The allegations on Mr. Bilal Rasool are an attempt to abuse the process of adjudication under the garb of provision of law. We see no basis to require Mr. Bilal Rasool to comply with the requirements of section 17(1) of SECP Act.

The Appellant's counsel has relied on *All Pakistan newspaper society and others vs. Federation of Pakistan and others* cited at *PLD 2012 SC 1* to show that that even the presumption of bias is sufficient and Mr. Bilal Rasool should disassociate from the case. We would like to reproduce the relevant extract of the judgement:

“.....As held in *Asif Ali Zardari v. The State (PLD 2001 SC 568)*, bias is said to be of three different kinds:--

(a) *A Judge may have a bias in the subject-matter which means that he is himself a party or has direct connection with the litigation, so as to constitute a legal interest.*

*A 'legal interest' means that the Judge is 'in such a position that a bias must be assumed'.*





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(b) *Pecuniary interest in the cause, however, slight, will disqualify the Judge, even though it is not proved that the decision has in fact been affected by reason of such interest. For this reason, where a person having such interest sits as one of the Judges the decision is vitiated.*

(c) *A Judge may have a personal bias towards a party owing to relationship and the like or he may be personally hostile to a party as a result of events happening either before or during the trial. Whenever there is any allegation of personal bias, the question which should be satisfied is - "Is there in the mind of the litigant a reasonable apprehension that he would not get a fair trial?" The test is whether there is a 'real likelihood of prejudice', but it does not require certainty.' 'Real likelihood' is the apprehension of a reasonable man apprised of the facts and not the suspicion of fools or 'capricious persons'.*

*Firstly, Mr. Bilal Rasool does not have a legal interest as has been defined in the judgment as he neither himself a party or has direct connection with the litigation. Secondly, he has no pecuniary interest in the case. Lastly, accusation of acquaintance with the relative of the Complainant without even naming the relative by the Appellant shows that Mr. Bilal Rasool does not have a personal bias towards a party owing to relationship. Hence, in our opinion there is no real likelihood of prejudice by Mr. Bilal Rasool.*

We are also cognizant of the fact that the Appellant has challenged before the Bench the operation of *SRO 1388(I)/2012 dated 26/11/12* issued by the Commission, authorizing Mr. Bilal Rasool to look into the affairs of the Company. The Bench under section 33(1) of the SECP Act is mandated to hear appeal against the orders passed by a Commissioner or an authorized officer of





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the Commission, as such, the orders/ directions of the Commission are not appealable before the Bench.

Before parting with the orders, we would like to observe that the Commission has delegated its powers and functions to the officers of the Commission in terms of section 10 of SECP Act. The Commission has a strict evaluation system through its *operating manuals, standard operating procedures* and *codes of ethics* and the officers working with the Commission are evaluated and judged with respect to their, competence, professionalism and integrity. The leveling of allegations against the officers of the Commission without any proof is unacceptable, since the officers are discharging the functions of the Commission in a *quasi-judicial* capacity. Further on previous occasions, the Appellant has objected to two officers of the Commission and the objections raised are also found without basis and frivolous.

The ability of Mr. Bilal Rasool to complete the assignment impartially and without any *bias* is beyond doubt. The appeal is dismissed with no order as to cost.

(Mohammad Asif Arif)  
Commissioner (Insurance)

(Amtiaz Haider)  
Commissioner (SCD)

Announced on: 01/10/13