

GOVERNMENT OF PAKISTAN
MINISTRY OF FINANCE, ECONOMIC AFFAIRS AND PLANNING
(Finance Division)

Islamabad, the 25th July, 2003

NOTIFICATION

S.R.O 734 (I)/2003. – In exercise of the powers conferred by sub-section (1) of section 39 of the Securities & Exchange Commission of Pakistan Act, 1997 (XLII of 1997), read with sub-section (4) of section 33 thereof, the Federal Government is pleased to make the following rules, the same having been previously published as required by sub-section (2) of section 39 of the said Act, namely:-

The Securities and Exchange Commission of Pakistan (Appellate Bench Procedure) Rules, 2003

1. Short title and commencement.—(1) These rules may be called the Securities and Exchange Commission of Pakistan (Appellate Bench Procedure) Rules, 2003.

(2) They shall come into force at once.

2. Definitions.—(1) In these Rules, unless there is anything repugnant in the subject or context,----

(a) “Act” means the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);

(b) “adjudicating authority” means a Commissioner or an officer exercising the powers of the Commission in consequence of delegation under section 10 of the Act or any other law being administered by the Commission;

(c) “appeal” means an appeal preferred under section 33;

- (d) “appellant” means a person who prefers an appeal before the Appellate Bench;
- (e) “Appellate Bench” means an Appellate Bench constituted by the Commission under section 33;
- (f) “authorized representative” means,----
 - (i) in relation to a company, a person who is either the chief executive or a director or secretary of the company or an advocate entitled to appear before High Court or a member of Institute of Chartered Accountants of Pakistan or Institute of Cost and Management Accountants and is duly authorized by the company to appear, plead and act on its behalf before the Appellate Bench;
 - (ii) in relation to the adjudicating authority or any other officer of the Commission, an officer not below the rank of a Deputy Director of the concerned division or any officer authorized by the adjudicating authority to appear, plead and act before the Appellate Bench; and
 - (iii) in relation to any other appellant or respondent, a person who is an advocate of High Court, or a member of Institute of Chartered Accountants of Pakistan or Institute of Cost and Management Accountants and is duly authorized by the appellant or respondent to appear, plead and act on his behalf before the Appellate Bench ; or
 - (iv) in relation to a director of the company, in addition to sub-clause (iii) a director representing fellow appellants or respondents and is duly authorized by the appellant or respondent to appear, plead and act on his behalf before the Appellate Bench;
- (g) “bank challan” means an original receipt issued by one of the several bank branches which are for the time being authorized by the Commission for collection of receipts or other services to the account of the Commission;
- (h) “Commission” means the Securities and Exchange Commission of Pakistan

established under section 3;

- (i) “form” means form appended to these rules;
- (j) “Registrar” means an officer of the Commission who is appointed as the Registrar of the Appellate Bench and for the purpose of these rules shall also include a Deputy Registrar performing functions of the Registrar under these rules; and
- (k) “Section” means a section of the Act.

(2) Words and expressions used in these rules, and not defined herein, shall have the meanings respectively assigned to them in the Act or any other law for the time being administered by the Commission under which the adjudicating authority has passed the order appealed against.

3. Limitation for filing appeal.—(1) Every appeal shall be filed within a period of thirty days from the date on which a copy of the order against which the appeal is preferred is received by the appellant:

Provided that the Appellate Bench may, upon an application filed in this behalf, entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within the period.

(2) Subject to anything contrary on the record the copy of the order against which an appeal is filed shall be presumed to have been received by the appellant if—

- (a) sent by courier, three days following the day it is dispatched by the Receipt and Issue department of the Commission;
- (b) sent by registered post, seven days following the date it is mailed by the Receipt and Issue department of the Commission; and
- (c) sent by hand delivery; on production of the receipt showing the date it is served on the appellant.

4. Form and procedure of appeal.—(1) A memorandum of appeal shall be presented, in the forms prescribed in Schedule to these rules, to the Registrar or shall be sent by registered post or through a recognized courier addressed to the Registrar.

(2) Every appeal shall be supported by a duly verified affidavit sworn by the appellant and by one of the appellants where there are more than one, and in case the appeal is presented by a body corporate, by one of its director or secretary or chief financial officer thereof:

Provided that the Appellate Bench or Registrar may for sufficient reasons, grant relief to any other person duly authorized by the petitioner to make and file the affidavit.

(3) A memorandum of appeal sent by post shall be deemed to have been presented to the Registrar on the day it is received by the Commission.

5. Sittings of Appellate Bench.—The Appellate Bench shall hold its sittings either at its principal seat at Islamabad in the Head Office of the Commission or any of the regional offices of the Commission, as may be deemed fit by the Appellate Bench.

6. Language of Appellate Bench.—(1) The proceedings of the Appellate Bench shall be conducted in English or Urdu.

(2) Appeal, application, representation, document or other matters contained in any language other than English or Urdu shall only be admissible where a true copy of translation thereof in English or Urdu accompanies the same and in the manner as deemed appropriate by the Appellate Bench.

7. Appeal to be in writing.—(1) Every appeal, application, reply, representation or any document filed before the Appellate Bench shall be type-written or printed neatly and legibly on one side of good quality paper of foolscap size in double space and separate sheets shall be stitched together and every page shall be consecutively numbered and filed in the manner provided in sub-rule (2).

(2) The appeal under sub-rule (1) shall be presented in four sets in a paper-book along with an empty file size envelope bearing the name and full address of the respondent and in case the respondents are more than one, then sufficient number of extra paper-books together with empty file size envelopes bearing names and full addresses of each respondent shall be furnished by the appellant.

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.

9. Fee.—(1) Every memorandum of appeal shall be accompanied with a fee provided in sub-rule (2) and any fee payable under these rules may be remitted in the form of bank challan or a bank draft in favour of Securities and Exchange Commission of Pakistan.

(2) The amount of fee payable in respect of any appeal preferred against an order of the

adjudicating authority shall be five hundred rupees.

10. Contents of memorandum of appeal.—(1) Every memorandum of appeal filed under rule 4 shall set forth concisely under distinct heads, the grounds of such appeal and such grounds shall be numbered consecutively and shall be in the manner specified in sub-rule (1) of rule 7 and shall contain no intemperate or improper language.

11. Other documents to accompany memorandum of appeal.—(1) Apart from other documents, every memorandum of appeal shall be accompanied by a certified copy of the order appealed against.

(2) Where an appellant or respondent is represented by an authorized representative, the written authorization in his favour signed by the appellant or as the case may be, respondent shall be appended to the appeal.

12. Plural remedies.—A memorandum of appeal shall not seek relief or reliefs therein against more than one order unless the reliefs prayed for are consequential.

13. Adjournments — (1) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Appellate Bench may make an order that the appeal be dismissed:

Provided that the Appellate Bench may, upon an application submitted by the appellant giving sufficient cause for his non-appearance, make an order setting aside ex parte order and restore the appeal on payment of such costs as it may, in the circumstances of the case, deem necessary.

(2) The dismissal of an appeal under sub-rule (1) shall be notified to the appellant, the adjudicating authority against whose order the appeal is preferred and other respondent, if any.

(3) The appellant or respondent seeking adjournment for a fixed date of hearing shall be required to give reasons along with evidence of his non-appearance or his authorized

representative before the Appellate Bench.

(4) Subject to the approval of the Appellate Bench any party seeking more than two adjournments shall be liable to pay a special cost in the sum of five thousand rupees if no notice is received prior to two days of hearing by the party seeking such adjournment.

14. Notice of appeal to all concerned.—Where the appeal is not dismissed under rule 14, a copy of the memorandum of appeal and paper-book shall be served by the Registrar on the adjudicating authority and respondent as soon as they are received by the Registrar, by hand delivery, or by registered post or by courier as the case may be.

15. Filing of reply to the appeal and other documents by the respondent.—(1) The respondent may file such number of copies of reply statement as is required under sub-rule (2) of rule 7 along with similar number of documents in a paper-book form with the Registrar within such time normally not exceeding fifteen days as the Registrar may specify.

(2) Every reply, application or written representation filed before the Appellate Bench shall be verified in the manner provided for in the form.

(3) A copy of every application, reply, document or written material filed by the respondent before the Appellate Bench shall be forthwith served on the appellant by the respondent.

(4) The Appellate Bench may, in its discretion, on application by the respondent or other interested party allow the filing of reply referred to in sub-rule (1) after the expiry of the period originally allowed.

16. Date of hearing to be notified.—The Registrar shall notify the date, time and venue of hearing of the appeal to all the parties in such manner as the Appellate Bench may, by general or special order, direct.

17. Hearing of appeal and decision of appeal.— (1) On the day fixed for hearing, or on any other day to which the hearing may be adjourned, the appellant shall be heard

personally, or through his authorized representative, in support of the appeal. The Appellate Bench shall then hear the respondent or his authorized representative against the appeal and in such a case the appellant shall be entitled to reply.

(2) All parties appearing before the Appellate Bench may be required to submit a summary of their arguments in writing at the conclusion of the hearing provided that the Appellate Bench shall not be bound to entertain such arguments which are included in the summary but not pressed before the Appellate Bench during the course of hearing.

(3) An appeal shall as far as possible be decided within forty-five days of its filing.

(4) The hearing of appeals under these rules shall not be public proceedings, provided that any person not being a party to the proceeding before the Appellate Bench may attend such proceedings with the prior approval of the Appellate Bench.

(5) The Appellate Bench in appeal may, *inter alia*, confirm, remand, set aside or cancel the order appealed against or enhance or reduce the penalty or make such other order as it may deem just and equitable in the circumstances of a case.

(6) If the Commissioners constituting the Appellate Bench hearing the appeal are divided in opinion, the appeal shall be placed for hearing and disposal before a larger Bench to be nominated by Chairman of the Commission.

18. Facts to be proved by affidavit.— The Appellate Bench may, at any time, for sufficient reason order that any particular fact or facts may be proved by affidavit or that the affidavit of any witness may be read at the hearing, on such conditions as it may deem appropriate.

19. Order to be signed and dated.— (1) Every order of the Appellate Bench shall be signed and dated by the Commissioners comprising the Bench who may, subject to recording

of reasons in writing, pass interim orders or injunctions in the interest of justice.

(2) The order shall be pronounced in the sitting of the Appellate Bench or at any time as the Appellate Bench may deem fit.

20. Communication of orders.—A copy of the duly signed order passed by the Appellate Bench shall be communicated to all the parties.

21. Issue of directions by Appellate Bench.—An Appellate Bench may make such orders, or give such directions, as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

22. Fee for inspection of records and obtaining copies thereof.—(1) A fee of two hundred rupees shall be charged for inspecting the records relating to pleadings of the parties available with the Registrar.

(2) A fee of twenty rupees for a page or part thereof shall be charged for providing copies of the records of an appeal before the Appellate Bench.

(3) An additional fee of two hundred rupees shall be charged for providing a certified copy of the order passed by the Appellate Bench or any other document forming part of the pleadings before the Appellate Bench.

23. Functions of the Registrar.— (1) The Registrar of the Bench shall discharge his functions under general superintendence of the Appellate Bench and shall discharge such other functions as are assigned to him under these rules or by the separate order in writing by the Appellate Bench. The Registrar shall have the custody of the records of the Appellate Bench.

(2) The official stamp of the Appellate Bench shall be kept in the custody of the Registrar.

(3) Subject to any general or special direction by the Appellate Bench, the official stamp of the Appellate Bench shall not be affixed to any order, summons or other process save

under the authority in writing from the Appellate Bench.

24. Additional functions and duties of Registrar.—In addition to the functions and duties assigned in the preceding rule, the Registrar shall also have, subject to any general or special orders of the Appellate Bench, the following functions and duties, namely:—

- (a) to receive all appeals, replies and other documents;
- (b) to decide all questions arising out of the scrutiny of the appeals before they are registered;
- (c) to require any appeal presented to the Appellate Bench to be amended in accordance with these rules or the relevant law;
- (d) subject to the directions of the Bench to fix the date of hearing of the appeals or other proceedings and issue notices thereof;
- (e) to order grant of copies of documents or proceedings to parties;
- (f) to grant leave to inspect the record of the Appellate Bench in a particular appeal case;
- (g) to dispose of all matters relating to the service of notices or other processes, application for the issue of fresh notice or for extending the time for or ordering a particular method of service on a respondent including a substituted service by publication of the notice by way of advertisement in the newspapers;
- (h) to requisition records from the custody of any adjudicating authority;
- (i) to maintain record of appeal cases received by the Appellate Bench in good order for a period of at least ten years;
- (j) to maintain a proper record of the appeals filed; and

- (k) to maintain a proper record of the records which are destroyed after completion of a period of ten years from the date of decision on an appeal.

SCHEDULE

[See rule 4(1)]

Form - A

Form-A shall be appended to the appeal by the Appellant giving the following particulars:

- (1) Title : A .B .— Appellant
versus
CD...and others Respondent(s)
- (2) Particulars of the appellant: : (a) Name of the appellant;
(b) In case of a company, address of registered office, in other cases mailing address for service of all notices;
(c) Telephone/Fax number and E-mail address, if any.
- (3) Particulars of the respondent(s) : (a) Name of the respondent(s)
(b) In case of a company address of registered office in other cases mailing address for service of all notices;
(c) Telephone/Fax number and E-mail address, if any.

Signatures of the Appellant or his authorized representative

(Name in Block Letters)

2. For use in the Appellate Bench's office:

- (a) Date of presentation before the Registrar
- (b) Date of receipt by post
- (c) Registration number
- (d) Signature of the Registrar

FORM-B

**BEFORE THE APPELLATE BENCH NO. _____
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN**

A .B .— Appellant(s)

versus

CD...and other Respondent(s)

**Appeal under section 33 of the Securities and Exchange Commission's Act 1997 (XLII of 1997)
read with section(s) (*specify the relevant provisions invoked in the appeal*).**

1. Jurisdiction of the Appellate Bench

The appellant declares that the subject matter of the appeal falls within the jurisdiction of the Appellate Bench.

2. Limitation

The appellant further declares that the appeal is within the limitation period as prescribed in section 33 of the Securities and Exchange Commission of Pakistan Act, 1997.

3. Facts of the case and the details of the orders against which appeal is preferred:

The facts of the case are given below:

(give a concise statement of facts and grounds of appeal against the specific order in a chronological order, each paragraph containing as nearly as possible a separate issue or fact).

4. Relevant provisions of law.

(Reference must be made to all the relevant provisions invoked and to be relied upon in the appeal).

5. Legal grounds

(Give all the legal grounds with reference to the law they are based upon).

6. Interim order, if prayed for

(Give here the nature of the interim order prayed for and reference to the application No. _____)

attached with the appeal in this regard).

7. Relief sought

In view of the facts mentioned in paragraphs 3,4 and 5 above, the appellant prays for the following relief: (Specify the relief(s) sought, explain the grounds for relief(s) and the legal provisions, if any, relied upon).

8. Matter not pending with any other court etc.

The appellant further declares that the matter regarding which this appeal has been made is not pending before any court of law or any other authority or any other Tribunal.

9. Details of index

An index containing the details of the documents to be relied upon is enclosed.

10. List of enclosures

Signature of the appellant/authorized representative

VERIFICATION

I, (**Name in full and block letters**) son/daughter/wife of _____

being the appellant/authorized representative of (_____) do hereby solemnly declare that the foregoing constitutes full, true and plain disclosure of all material facts and nothing has been concealed, and that the contents of paras 1-10 are true to my personal knowledge and belief.

Verified today this.....day of

Signature of the appellant/authorized representative.

Place:
Date:

[No.F.3(43)Inv.II/2002]

(MUNIR AHMAD)
Section Officer (Inv.II)

The Manager,
Printing Corporation of Pakistan Press,
Islamabad.

[for publication in the Part-II of Gazette of Pakistan (Extra-Ordinary)]