



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 74 of 2006

Lahore Stock Exchange (Guarantee) Limited Appellant

Versus

1. Director, SMD
2. Abrar Hussain Bhatti (Complainant)
3. Tauqeer Ahmed Kaleem

..... Respondents

ORDER

Dates of hearing

11/01/12 and 16/01/15

Present:

For the Appellant:

Dr. Parvez Hassan, Advocate

Ms. Maham Naqshband

For Respondent No. 2:

Mr. Anwar Toor, Advocate

Department representative:

Mr. Tahir Mahmood Kiani, Deputy Director



Securities and Exchange Commission of Pakistan

1. This order shall dispose of appeal No. 74 of 2006 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 (the "SECP Act") against the order dated 09/08/06 (the "Impugned Order") passed by Respondent 1.
2. A complaint was lodged by Abrar Hussain Bhatti (the "Complainant") against Tauqeer Ahmed Kaleem (Ex member of the Appellant) ("Respondent 3") with the then Corporate Law Authority (the "Authority") vide letter dated 27/10/96. The Complainant alleged that he deposited Rs. 101, 450 with Respondent 3 for the purchase of the following shares:

S. No	Name of company	No. of shares	Amount (Rs.)
1.	L.T.V Modaraba	4,000	28,000
2.	Dhan Fiber	3,000	45,350
3.	Metro Life Insurance	2,000	28,100

The Complainant alleged that despite repeated reminders, the abovementioned shares were not delivered to him by Respondent 3 on the due date.

On inquiry by the Authority, the Appellant informed, vide letter dated 20/05/97, that there were seventy-five claims against Respondent 3 out of which seventy-two were settled by Respondent 3. The Appellant added that the amount received from the sale of membership seat of Respondent 3 was distributed on pro-rata basis amongst the claimants. The Appellant further added that Respondent 3 had deposited a pay order for Rs. 27, 390 in favour of the Complainant, which he could have collected from the Appellant against the claim. Respondent 1, for the purposes of internal investigation, requested comments/views of



Securities and Exchange Commission of Pakistan

the Appellant in the said matter. The Appellant, vide letter dated 13/04/01, informed that they received seventy-two complaints against Respondent 3 which were duly settled in the years 1996-1997 on part payment @33% from the sale proceeds of membership of Respondent 3. The Appellant added that the Complainant did not accept their proposal and instead filed a Writ Petition in Lahore High Court, Lahore. In response, the Complainant stated the amount recovered from Respondent 3 by sale of his membership had not been utilized and distributed by the Appellant in accordance with law and in an equitable manner. Respondent 1, after hearing the parties, held that the Appellant did not take all necessary steps to protect the small investor and failed to declare Respondent 3 as a defaulter for failing to pay the Complainant. Respondent 1 directed the Appellant to either return shares as claimed by the Complainant or give the amount deposited by the Complainant to Respondent 3.

3. The Appellant preferred appeal against the Impugned Order. The Appellant's counsel argued that:
 - a) Respondent 1 has failed to establish that under which provision of law it has assumed jurisdiction in a matter between two private parties. It was argued that civil courts determine civil liabilities and the Impugned Order may be set aside as the same is without jurisdiction and not in accordance with law;
 - b) without prejudice to the foregoing ground, in case Respondent 1 had any reasons to allege contravention of law against the Appellant, then in accordance with the established principles of natural justice he should have first investigated the matter and



Securities and Exchange Commission of Pakistan

based on the outcome of such investigation he should have issued a show cause notice (“SCN”) to the Appellant under section 7 of the Securities and Exchange Ordinance, 1969 (the “SEO”). The Impugned Order is bad in law and should be set aside as the Appellant was dragged into the proceedings without issuing a SCN;

- c) it was held in the Impugned Order that the Appellant acted in contravention of article 39 of its Articles of Association (the “Articles”) and the then clause 6.08 (a) and (b) of the General Rules and Regulations (the “Regulations”) for not declaring Respondent 3 as a defaulter. It was argued that the Articles and Regulations do not impose compulsion upon the Appellant to declare a member a defaulter. Article 39 of the Articles states:

“The Board may by a resolution passed by not less than two third of its number provided, declare a Member who fails to meet his obligations to the Clearing House to be a defaulter [...]”.

Emphasis added

Similarly, clause 6.08 (a) of the Regulations states:

“The Board may order a member who fails to meet his obligations to a member or non-member arising out of Stock Exchange transaction, to be declared a Defaulter.”

Emphasis added



Securities and Exchange Commission of Pakistan

The settled principle of the interpretation of statutes is that the word 'may' in a statute connotes discretionary power. The Appellant's counsel placed reliance on the case of *Abu Bakar Siddique v. Collector of Customs, 2004 PTD 2187 (Supreme Court)* and Maxwell on the Interpretation of Statutes, Fifth Edition, at page 234 which reads:

"May and "must"

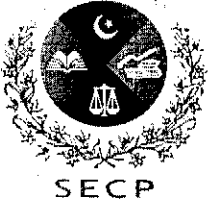
"In ordinary usage, 'may' is permissive and 'must' is imperative, and, in accordance with such usage, the word 'may' in a statute will not generally be held to be mandatory."

- d) the Appellant facilitated the sale and transfer of the membership of Respondent 3 to the Fidelity Investment Bank Limited (the "Bank"). Respondent 3 had entered into agreement with the Bank for the sale/transfer of his membership, to recover amount to settle the claims. Resultantly, Respondent 3 settled all his claims and there was no objection or dispute raised by any of the claimants except for the Complainant. The Appellant's counsel argued that Respondent 1 has erred in finding the Appellant negligent when the Appellant had obtained sufficient security in terms of the membership card and diligently followed up the claims and took all reasonable steps to facilitate the resolution of investors' complaints towards a satisfactory settlement.



Securities and Exchange Commission of Pakistan

4. The department representative argued that:
- a) the Impugned Order has been passed under section 20(6) (b) and (g) of the SECP Act vested in Respondent 1 vide S.R.O. 793(I)/2006. It was argued that the aforementioned section confers sufficient powers to the officers of the Commission to exercise jurisdiction in this matter. Further, the matter is not just between private parties but affects the capital market adversely and defeats the purpose of the aforementioned provision;
 - b) the Appellant was made party to the said matter after a detailed probing and the Impugned Order was passed after detailed and thorough perusal of facts, information and documents in hand. Comments of the Appellant were sought repeatedly regarding the said matter and it was given ample opportunity to place its defense during hearings. It was argued that the Appellant was an indispensable party to the said matter, therefore, the SCN was rightly issued by the department;
 - c) in the performance of public duties, when the word 'may' is used, it would not necessarily follow that non-compliance with the provisions of the statute will not render proceedings invalid. The word 'may', therefore, has a compulsive force in enactments which confer power on public authorities; and
 - d) the Appellant adopted deceptive tactics to compel small investors to accept part payment at rate of 33.40% against their original claims, whereas, other claimants like members of stock



Securities and Exchange Commission of Pakistan

exchanges received payments at much higher rates. A clear discrimination was made by the Appellant while settling claims and instances of the settlement were provided in para 22 of the Impugned Order.

5. We have heard the parties.

a) section 20(6) (b) and (g) of the SECP Act are reproduced for ease of reference:

(b) to maintain the confidence of investor in the securities markets by ensuring adequate protection for such investors.

(g) to take whatever action it can take, and is necessary, in order to enforce and give effect to the Act [the Ordinance, the Law of Insurance and any other law].

The Appellant is a front line regulator for capital market and one of its main functions is to provide adequate protection to investors. The Commission, being the apex regulator, provides framework within which the Appellant, the capital market intermediaries and investors may operate and has to keep check on the Appellant's omission and commissions. The aforementioned section gives jurisdiction to the Commission to look into the matter where there are regulatory non-compliances on part of the Appellant and to take necessary actions in order to maintain confidence of investors in the securities market. The Appellant's contention is, therefore, baseless and without merit;



Securities and Exchange Commission of Pakistan

- b) the Appellant has relied on section 7 of SEO which is reproduced for ease of reference:

Cancellation of registration, etc.- (1) Where the [Commission] is of opinion that Exchange or any member, director or officer of an Exchange has contravened any provision, or has otherwise neglected or failed to comply with any requirement, of this Ordinance, or of any rule, regulation or direction made or given thereunder, the [Commission] may, if it considers it necessary for the protection of investors or to ensure fair dealings or fair administration of the Exchange so to do, by order in writing-

(a) suspend for such period as may be specified in the order the transaction of any business on the Exchange;

(b) cancel the registration of the Exchange;

(c) supersede the governing body or other authority of the Exchange;

(d) [suspend or] remove the director, officer or member from his office in, or membership of, the Exchange;

Provided that no such order shall be made except after giving the governing body or other authority or, as the case may be, the director, officer or member, an opportunity of being heard.

The provisions of section 7 of the SEO were not invoked by Respondent 1, however, it does not bar Respondent 1 from proceeding against the Appellant. Section 20(6) (b) and (g) of



Securities and Exchange Commission of Pakistan

the SECP Act referred to in para 5(a) above confers ample power to the Commission to proceed against the Appellant in case of violation by the Appellant of its own articles and regulations. We further place reliance on section 22(3) of the SECP Act, which is quoted for ease of reference:

“The Commission shall, in adjudicating upon the rights of any person whose application on any matter it is required to consider in the exercise of any power or function under this Act, give the reasons for its decision after giving the person concerned a personal hearing, in addition to any written applications or submission which may be required to be made.”

Emphasis added

The aforementioned sections require that an opportunity to be heard be granted to the parties in addition to written applications or submissions. The Appellant became necessary party to the dispute when allegations were raised against it by the Complainant. Respondent 1 perused the matter in hand and the relevant documentation revealed evidence of involvement and malpractices on part of the Appellant. The instigation of the predicament was due to failure in performance of the duties of the Appellant; therefore, the Appellant was an indispensable party to the said matter. In pursuance of this, comments of the Appellant were sought repeatedly regarding the said matter and ample opportunity was provided to place its defense during hearings. We place our reliance on the case of *Manager, Jammu and Kashmir, State Property in Pakistan vs. Khuda Yar and*



Securities and Exchange Commission of Pakistan

another [PLD 1975 SC 678] where it was held that "... the principle object behind all legal formalities is to safeguard the paramount interest of justice." It was further observed in the case referred above that mere technicality unless offering an insurmountable hurdle should not be allowed to defeat the ends of justice. The Impugned Order has been passed in accordance with the aforementioned sections and after detailed and thorough perusal of facts, information/documents, hearings assertions and averments made by the Complainant and rebuttal submitted by the Appellant. The Appellant's contention is, therefore, unsubstantiated and without merit;

- c) we have gone through the case law and concur with the view of the department. The word 'may' has imperative force when used in statutes and does not excuse a person from complying with statutory provision or regulation. We place reliance on *District Board, Khunia vs. Jogesh Chandra [AIR 1943 Cal. 447]*, *State of U.P vs. Manbodhan Lal [AIR 1957 S.C 912]* and *Kajir vs. Baran Shah [PLD 1970 Quetta 19]*. It was further held in *Rangoon High Court, Government of Burma vs. Municipal Corporation of Rangoon [AIR 1930 Rang 297]* that enactments which confer power and particularly in enactments which confer power on public authorities, language of mere permission may not preclude existence of duty and further emphasized on mandatory nature of the word 'may' when a statute directs doing of an act for justice; and
- d) we have perused the letter dated 17/10/96 sent by the Appellant to the claimants which reflects usage of deceptive language in



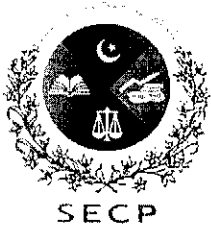
Securities and Exchange Commission of Pakistan

order to entice investors to accept pro-rata payment instead of their original share. The relevant extracts are reproduced as under:

"[...] The balance amount does not fully cover your claim received against him [...] Majority of the other investors have given their written consent to settle their claims on pro-rata basis."

We have also gone through instances of payments received by some claimants like members of stock exchange who received payment at much higher rates as compared to the Complainant. We have reproduced the instances of the settlement from para 22 of the Impugned Order, for ease of reference:

S. No.	Claimant Name	Claim Amount (Rs.)	Payment Amount (Rs.)	(%)
1	Maimoona Aurangzeb	299,925	299,925	100
2	Engr. Mazhar Rafiq	3,500	3,500	100
3	Syed Muhammad Raza Rizvi	500,320	500,320	100
4	Engr. Muhammad Amer Riaz	37,020	27,765	75
5	Attique Masson Dar	498,800	374,100	75
6	Engr. Muhammad Naveed Usman	88,000	66,000	75
7	Kh. Imtiaz Ahmed	292,000	219,000	75
8	Zafar Sadiq Sheikh	20,000	15,000	75
9	M. Tauqir Malik	1,600,000	1,200,000	75
10	Aqeel Karim Dhedhi	500,000	300,000	60



Securities and Exchange Commission of Pakistan

The Appellant had clearly adopted deceptive tactics to compel small investors to accept part payment @ 33.40% against their original claims. Had the Appellant not coerced the claimants in its letter to accept the so called pro-rata payment there would have been more complainants to claim their rightful amount. The Appellant had followed its own devised procedure without taking into account the legal provisions and had clearly been discriminated in payment amongst investors' claims.

Further, the affidavit submitted by Respondent 3 with the Appellant clearly states, '*the transfer of the membership may be withheld till all my liabilities are cleared*', but the membership of Respondent 3 was still transferred by the Appellant to the Bank and a false impression was given that Respondent 3 was free of all encumbrances. The Appellant, who was supervising this transaction, oversaw that the Complainant's claim was still unsettled as he refused to accept part payment and instead the Appellant transferred membership to the Bank without any claim on it. The Appellant had clearly failed to comply with clause III (2) of the Articles of the Appellant which is quoted for ease of reference:

"to maintain high standards of commercial honour and integrity, to promote and inculcate honourable practices and just and equitable principles of trade and business, to discourage and to suppress malpractices, to settle and decide points of practices, disputes, questions of usage, customs and courtesy in the conduct of trade and business."



Securities and Exchange Commission of Pakistan

All claims were submitted to the Appellant, payments were distributed and supervision was done by the Appellant but the Appellant had exhibited negligence in performance of its duties towards investors and in supervision of settlement of claims. The Appellant had deviated from the laid down procedure in handling the matter.

In view of the above, we see no reason to interfere with the Impugned Order. The appeal is dismissed with no order as to costs.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Tahir Mahmood)
Commissioner (CLD)

Announced on: 06 FEB 2015