



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 03 of 2012

Success Industries (Pvt) Ltd Appellant

Versus

The Registrar (SECP) Respondent

Date of hearing

22/02/13

ORDER

Present:

For the Appellant:

Ch Khalid Mahmood, Advocate

Department representative:

Syed Ifikhar. H Naqvi, Joint Registrar (CRO, Multan)



Securities and Exchange Commission of Pakistan

1. This order is in appeal No. 03 of 2012 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 27/12/11 (the "Impugned Order") passed by the Respondent.
2. The facts leading to the case are that that M/s Success Industries (Pvt.) Ltd (the "Appellant") was registered on 22/01/09 with authorized capital of Rs.10 million divided into 100,000 shares of Rs. 100 each and paid up capital of Rs. 10 million divided into 100,000 shares of Rs. 100 each subscribed by following promoters:

| Sr.# | Name of subscriber | Number of shares subscribed |
|------|------------------------|-----------------------------|
| 1. | Muhammad Naeem Zaffar | 25000 |
| 2. | Muhammad Faheem Zaffar | 25000 |
| 3. | Muhammad Kaleem Zaffar | 25000 |
| 4. | Amna Zaffar | 25000 |
| | Total | 100,000 shares of 100 each |

3. The Appellant filed Form-A made upto 31/10/09 and Form 26 dated 22/05/10 both duly signed by directors of the Appellant and accepted by the office, stating the paid up capital of the Appellant as Rs.10 million divided into 100,000 shares of Rs. 100 each. The Appellant submitted an application dated 15/09/10 stating that shareholding/paid up capital mentioned in the subscriber's pages of Memorandum and Articles of Association was incorrect and a typing error and the Appellant's paid up capital was actually Rs. 10,000 constituting 100 shares of Rs. 100 each i.e. 25 shares subscribed by each subscriber, as given below:



Securities and Exchange Commission of Pakistan

| Sr.# | Name of subscriber | Number of shares subscribed |
|------|------------------------|-----------------------------|
| 1. | Muhammad Naeem Zaffar | 25 |
| 2. | Muhammad Faheem Zaffar | 25 |
| 3. | Muhammad Kaleem Zaffar | 25 |
| 4. | Amna Zaffar | 25 |
| | Total | 100 shares of Rs. 100 each |

4. The Appellant requested the Commission to rectify the mistake of paid up capital and also filed a revised Form-A made upto 31/10/09. On receipt of the application, the Commission vide its letter dated 13/10/10 and 03/11/10 informed the Appellant that it was a matter of reduction of paid up capital which falls under the jurisdiction of the Honourable High Court (the "Court") in terms of provisions of section 96 and 97 of the Companies Ordinance, 1984 ("Ordinance"), therefore, the Respondent department of the Commission could not accept the request of the Appellant. The Appellant, however, asserted vide its letter dated 20/10/10 and its counsel's letter dated 08/03/11 stated that it was a typing mistake and not a matter of reduction of capital, as such, the correction can be made by the Commission.
5. The Respondent department in order to ascertain the factual position of the matter inquired for relevant documents vide its letters dated 15/10/11 and 17/03/11. In response to the letters, the Appellant filed copies of share certificates, bank statement, annual audited accounts for the year ended 30/06/09 and 30/06/10 and income tax/wealth statements in support of their claim for rectification of paid up capital/shareholding. The Respondent department after examination of all the documents conveyed to the Appellant vide letter dated 24/06/11 that Appellant's request for rectification of paid up capital could not be pursued further. The Appellant sought an opportunity of hearing by filing an application before the



Securities and Exchange Commission of Pakistan

SECP

Honourable Lahore High Court, Multan bench, Multan (“High Court, Multan”). In compliance with the order of the High Court, Multan, the Appellant was given an opportunity of being heard on 23/12/11. At the hearing, counsel appearing on behalf of the Appellant reiterated the stance that it was a typing mistake and requested to rectify paid up capital of the Appellant.

6. The Respondent, after examining the verbal and written submissions of the Appellant held that the paid up capital and shares subscribed by each shareholder given in Memorandum and Articles of Association at the time of registration of the Appellant was neither a typing mistake nor the Respondent had the authority to rectify such mistake. The request for rectification of paid up capital, therefore, could not be acceded. Furthermore, Form-A made upto 31/10/09 (revised filed upto 11/10/10) was also rejected under the provisions of section 486 of the Ordinance.
7. The Appellant has preferred the appeal against the Impugned Order. The Appellant’s counsel contended that:
 - a) the Appellant moved an application to the Respondent department for the rectification of error of share capital and not for the reduction of share capital. The share capital can only be reduced after it has been issued. In the instant case, the share capital was not issued and the incorrect number of shares mentioned in the Memorandum and Articles of Association and Form-A was only typographical error; and
 - b) the Impugned Order observation that the application for rectification of the share capital has been made at belated stage and is an afterthought is completely without any basis. The Appellant had acted in bonifide manner and has admitted the mistake at the very outset. The intention of the Appellant cannot be called into question as no benefit has accrued to the Appellant, as result of the error.



Securities and Exchange Commission of Pakistan

8. The department representative argued that the Commission has not been entrusted the powers to reduce the capital in terms of section 96 and 97 of the Ordinance, which empowers the Court to make any reduction in capital. The plea of rectification cannot be accepted, as it is a case of reduction in the capital of the Appellant and the exclusive power in such cases rest with the Court. Form-A made up to 31/10/09 and Form 26 dated 22/05/10 both duly signed by directors of the Appellant and accepted by the office, stating the paid up capital of the Appellant as Rs.10 million divided into 100,000 shares of Rs. 100 each are conclusive evidence in respect of the share capital. The revised copy of Form A was rightly not accepted on the ground of clerical mistake after lapse of considerable period.
9. We have heard the parties and have gone through the record. Section 96, 97, 21 (1) and (2) of the Ordinance are reproduced for ease of reference:

96. Reduction of share capital.- (1) Subject to confirmation by the Court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular and without prejudice to the generality of the foregoing powers may--

(i) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

(ii) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

(iii) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the needs of the company;



Securities and Exchange Commission of Pakistan

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) *A special resolution under sub-section (1) is in this Ordinance referred to as a resolution for reducing share capital.*

97. Application to Court for confirming order.- *Where a company has passed a resolution for reducing share capital, it may apply by a petition to the Court for an order confirming the reduction.*

21. Alteration of Memorandum.- (1) *Subject to the provisions of this Ordinance, a company may, by special resolution alter the provisions of its memorandum so as to change the place of its registered office from one Province to another, or from one city or town in a Province to another, or from a part of Pakistan not forming part of a Province to a Province or from a Province to a part of Pakistan not forming part of a Province, or with respect to the objects of the company, so far as may be required to enable it—*

- (a) *to carry on its business more economically or more efficiently; or*
- (b) *to attain its main purpose by new or improved means; or*
- (c) *to enlarge or change the local area of its operations; or*
- (d) *to carry on some business, not being a business specified in its memorandum, which may conveniently or advantageously be combined with the business of the company; or*
- (e) *to restrict or abandon any of the objects specified in the memorandum; or*
- (f) *to sell or dispose of the whole or any part of the undertaking of the company; or*
- (g) *to amalgamate with any other company or body of persons.*



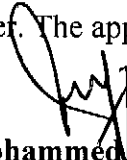
Securities and Exchange Commission of Pakistan

(2) *The alteration shall not take effect until and except in so far as it is confirmed by the Commission on petition:*

Emphasis added

The Appellant was registered on 22/01/09 with authorized capital of Rs.10 million divided into 100,000 shares of Rs. 100 each and paid up capital of Rs. 10 million divided into 100,000 shares of Rs. 100 each. The above fact was also recorded in Form-A made up to 31/10/09 and Form 26 dated 22/05/10 both duly signed by directors of the Appellant and accepted by the Respondent department. The Appellant request for rectification of Memorandum and Articles of Association to the effect that the authorized and paid up capital of the Company is reduced to Rs. 10,000 constituting 100 shares of Rs. 100 each i.e. 25 shares subscribed by each subscriber cannot be acceded to by virtue of section 96 and 97 of the Ordinance. The effect of such rectification would be reduction of capital and the power to reduce the capital rests with the Court. Moreover, the alteration in Memorandum can only be done in respect of the objects of the Company stated in section 21 (1) (a) to (g) of the Ordinance, which does not include alteration in the share capital of the Company. We do not see as to why the Appellant has been insisting on rectification resulting in reduction of capital by the Commission, when the remedy is clearly provided in section 96 and 97 of the Ordinance and the Court has the exclusive jurisdiction in the matter.

In view of the above, we do not see any reason to interfere with the Impugned Order. The appeal is dismissed with no order as to cost.


(Mohammed Asif Arif)
Commissioner (Insurance)


(Imtiaz Haider)
Commissioner (SMD)

Announced on: 22/03/13