



BEFORE APPELLATE BENCH

In the matter of

Appeal No. 52 of 2011

Mr. Khushi Muhammad, Chief Executive Officer
of Adam Jee Plastic Industries (Pvt) Limited

..... APPELLANT

Versus

Joint Registrar of Companies (CRO, Faisalabad)
Securities and Exchange Commission of Pakistan

..... RESPONDENT

ORDER

Date of hearing

19-05-11

Present:

For the Appellant:

Muhammad Anwar Bhatti, Advocate

Mr. Kashif Dildar Bhatti, Advocate

Mr. Tanveer Hussain, Advocate

Mian Zafar Iqbal, Advocate

For the Complainant

Mr. Hashim Raza, Raza & Associates

For the Respondent Department:

Muhammad Siddique, Registrar of Companies



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1. This order shall dispose of appeal No. 52 of 2011 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 (the "SECP Act") against the order dated 11-02-11 (the "Impugned Order") passed by the Respondent.
2. Ms Asma Raza filed a petition on behalf of Adamjee Group (the "Complainant") for cancellation of the Certificate of Incorporation of Adam Jee Plastic Industries (Pvt.) Limited (the "Company"). In the said petition it was stated that the Complainant is a well known industrial group established in the year 1960 and is a well diversified conglomerate comprising of around twenty companies having renowned business name in the country. The Complainant had adopted the trademark 'Adamjee' in the year 1960 and since then it has extensively and continuously been used for all its services and products manufactured in Pakistan. The 'Adamjee' trademark has become the distinctive property of the Complainant and none else. The 'Adamjee' trademark was also registered by the Complainant's counsel on 24-12-04. Hearing in the petition was held. The Respondent, after hearing the parties, held that the Company was in contravention of section 37 of the Companies Ordinance, 1984 (the "Ordinance") and directed the Company to change its name within 30 days of the date of the direction.
3. The Appellant has preferred the instant appeal against the Impugned Order. The Appellant's counsel contended that:
 - a) The Complainant gave no power of attorney to Ms. Asma Raza to file the petition before the Commission. The power of attorney, dated 06-11-10, was to appear before the Registrar of Copyrights and not before the Respondent. Similarly, the power of attorney, dated 07-08-10, was to appear before the Registrar of Trademarks. Finally, the power of



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attorney issued on 09-02-11, was issued after the hearing took place before the Respondent, therefore, the Complainant's counsel had no power to defend the case before the Respondent.

- b) The Complainant could not challenge the name of the Company after a lapse of three years of the incorporation of the Company. It was argued that section 33 of the SECP Act only allows thirty days for filing of an appeal.

5. The department representatives argued that:

- a) The Complainant's counsel filed different power of attorneys issued by the Complainant. The power of attorney dated 09-02-11 was specifically in favor of the Complainant's counsel to act, appear and plead cases before the Commission on behalf of the Complainant.

- b) Section 38 of the Ordinance empowers the Registrar for issuance of direction within three years of incorporation of a company registered through inadvertence or otherwise with a name which is in contravention of section 37 of the Ordinance. The Company was incorporated on 14-02-08; hence, the direction to change the Company's name was within the time frame prescribed under section 38 of the Ordinance.

6. We have heard the parties. Before going on to the merits of the appeal, we would like to discuss the objection of the Appellant regarding the presence of the Complainant's counsel in the hearing before the Appellate Bench. The perusal of the record of the appeal reveals that the Complainant's counsel made an application to present arguments before the Appellate Bench. We allowed the Complainant's counsel to attend the hearing in terms of rule 17(4)



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of the Securities and Exchange Commission of Pakistan (Appellate Bench Procedure) Rules 2003.

On the merits of the case, the perusal of the power of attorney, dated 09-02-11, in favor of the Complainant's counsel to act, appear and plead cases before the Commission on behalf of the Complainant shows that the Complainant agreed to "*ratify whatever the Advocates or their substitute shall do in the premises*". Further, reliance is placed on doctrine of ratification qua the power of attorney as embodied in section 196 of the Contract Act, 1872, which has been reproduced for ease of reference:

"196. Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority."

We also place reliance on case titled *Babu Muhammad Aslam vs Mst. Rehana Parveen (P L D 1989 Peshawar 185)* where it was held that "*ratification in law is equivalent to previous authority and it relates back to the time of inception of the transaction and has complete retroactive efficacy. Subsequent ratification tantamounts to a prior command of an act done in the name of a party who ratifies*". In view of the foregoing, the argument of the Appellant's counsel that since the power of attorney dated 09-02-11 was issued to the Complainant's counsel after the hearing before the Respondent took place, therefore, the Complainant's counsel acted without authority is, baseless

In terms of section 38 of the Ordinance, the Registrar may issue direction to a company, within three years of the date of registration of the company, to



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change its name if it is in contravention of section 37 of the Ordinance. Section 38 of the Ordinance is reproduced for ease of reference:

38. "Rectification of name of a company:- A company which, through inadvertence or otherwise, is registered by a name in contravention of the provisions of section 37,-

(a) may, with the approval of the registrar, change its name: and

(b) shall, if the registrar so directs, within thirty days of the receipt of such direction, change its name with the approval of the registrar:

Provided that the registrar shall, before issuing a direction for the change of name, afford the company any opportunity to make representation against the proposed direction:

Provided further that no direction under clause (b) shall be issued after the expiration of three years from the date of registration of the company or registration by its new name, as the case may be."

[Emphasis added]

In the instant case, the Company was incorporated on 14-02-08 and the direction to change the Company's name was made on 11-02-11, which was within the time frame prescribed under section 38 of the Ordinance. The Appellant counsel's reliance on section 33 of the SECP Act is misplaced as it provides for filing of appeal before the Appellate Bench against the order of a Commissioner or an officer authorized in this behalf by the Commission.



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In view of the above, we do not see any reason to interfere with the Impugned Order. The appeal is dismissed. Parties to bear their own cost.

(MUHAMMAD ALI)
Chairman

(MR. TAHIR MAHMOOD)
Commissioner (CLD)

Announced on: 14th July 2011