



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

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**BEFORE APPELLATE BENCH**

In the matter of

**Appeal No. 08 of 2009**

Azgard Nine Limited

.....

Appellant

Versus

Director (Enforcement)

Securities and Exchange Commission of Pakistan .....

Respondent

Date of hearing

01-06-11

**ORDER**

**Present:**

**For the Appellant:**

Mr. Wasif Majeed, Advocate

**Complainant:**

Mr. Nazar Hussain

**For the Respondent:**

Mr. Ali Azeem Ikram, Director (Enforcement)

Mr. Tariq Ahmed, Deputy Director



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1. This order shall dispose of appeal No. 08 of 2009 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 13-02-09 (the "Impugned Order") passed by the Respondent.
2. Complaint was filed by Mr. Nazar Hussain (the "Complainant") against Azgard Nine Limited (the "Appellant") for non-conversion/ non-transfer of share in his name. The Complainant informed the Commission that 1000 shares of Nafees Cotton Mills Limited ("NCM") were purchased on 11-11-95. NCM merged into Legler-Nafees Denim Mills Limited on 29-11-03 and was renamed as the Appellant on 23-04-04. The 1000 shares of NCM were equivalent to 4050 shares of the Appellant after the merger. The Complainant lodged original shares for conversion and transfer in his name on 27-04-07 with the Appellant along with original purchase invoice duly authenticated by the stock exchange and duly verified transfer deeds. The Appellant, however, refused such transfer by stating that 4050 duplicate shares of the Appellant have already been issued to Mrs. Zuberi, as per the Appellant's record in place of 1000 shares of NCM. The original shares, transfer deeds and invoice were not returned by the Appellant to the Complainant.
3. The Appellant was asked to provide documents in order to show that proper inquiry was conducted in accordance with the section 75 of the Companies Ordinance 1984 (the "Ordinance") before issuing duplicate shares. Show cause notice dated 10-06-08 ("SCN") was issued to the Appellant, as it failed to reveal that a proper inquiry was conducted in terms of section 75 of the Ordinance. The Appellant filed reply to the SCN and hearing in the matter was held. The then Director (Enforcement), dissatisfied with the response of



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the Appellant, passed the Impugned Order and directed the Appellant to resolve the Complainant's grievance by transferring the shares and make good the loss.

4. The Appellant, dissatisfied with the Impugned Order, has preferred the instant appeal. The Appellant's counsel contended that:

- a) the Appellant received a letter dated 10-10-05 from Mr. Zafar Zuberi and Mrs. Zuberi in which clarification was sought from the Appellant regarding their shareholding. The Appellant informed them through letter dated 12-10-05 that as per the scheme of arrangement of NCM and the Appellant, Mr Zafar Zuberi (Folio No 981) was entitled to 5913 shares of the Appellant in lieu of 1460 shares of NCM, whereas, Mrs. Zuberi (Folio No 891) was entitled to 4860 shares of the Appellant in lieu of 1200 shares of NCM. Both, Mr. Zafar Zuberi and Mrs. Zuberi were asked to surrender the original shares of NCM in order to obtain the shares of the Appellant. It was further informed that in case the shares have been lost/misplaced, the following documents had to be provided to the Appellant: i) FIR regarding loss of shares; ii) Indemnity bond on non-judicial stamp paper; and iii) original copy of the newspaper in which public notice of loss of shares had been published. The register of members of the Appellant also showed Mrs. Zuberi as a shareholder of the shares in dispute. The Appellant received the aforementioned documents from Mrs. Zuberi, however, as an abundant caution, a letter was sent to the General Manager, Karachi Stock Exchange regarding the loss of shares of Mrs. Zuberi for circulation amongst its members and no claim or objection was received pursuant to the publication/circulation. The Appellant, on being satisfied that the original share certificates had been lost or



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misplaced by Mrs. Zuberi, dispatched 4050 shares in lieu of the lost shares to Mrs. Zuberi on 18-01-06.

- b) the Appellant on receipt of the complaint, responded to the Commission, stating that a reasonable inquiry was conducted before the issuance of duplicate shares to Mrs. Zuberi. The Appellant sought the required documents from Mrs. Zuberi and took all necessary measures to ensure that the shares were in fact lost, hence, the requirements of section 75 of the Ordinance were substantially complied with by the Appellant.
- c) the Impugned Order is in contravention of section 11 of the Central Depository Act, 1997 (the "CDC Act"). Mrs. Zuberi disposed of the newly issued disputed shares in the open market through the CDC account. The compliance of the Impugned Order would require the Appellant to trace, in assistance with the CDC, the disputed shares and transfer them in the name of the Complainant, which inevitably would require a variation in CDC register; which is barred in terms of section 11 of the CDC Act.
5. The Complainant stated that he was a *bona fide* holder of the shares and the transfer deeds. The shares were transferred by Mrs. Zuberi in his name and he was holding the original share certificates and transfer deeds. The original share certificates and transfer deeds were sent to the Appellant on their request. Mrs. Zuberi lodged false claim for the aforementioned shares and fraudulently got the shares transferred in her name. The Complainant prayed that the Impugned Order be upheld.



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6. We have heard the parties. The Complainant claims that he held the original shares and transfer deeds, which has not be refuted by the Appellant. In presence of original shares and transfer deeds in favor of the Complainant, Mrs. Zuberi could not have gotten the shares transferred in her name from the Appellant. Mrs. Zuberi, however, claims that she had lost the shares and the transfer deeds, while shifting from her home. The Complainant should have initiated action against Mrs. Zuberi in the court of competent jurisdiction in terms of section 11 of the CDC Act, which has been reproduced for ease of reference:

*11. Bar on rectification of central depository register\_\_Notwithstanding anything contained in section 152 of the Companies Ordinance, 1984 (XLVII of 1984), if\_*

*a) an account-holder or a sub-account holder did not consent to a transfer of any book-entry securities from, or to, his account or sub-account, as the case may be, or*

*b) the name of any account-holder or sub-account holder is fraudulently or without sufficient cause entered in, or omitted from, the central depository register, the aggrieved party may apply to the court for relief and the court may award damages to the aggrieved party but shall not order rectification of the central depository register.*

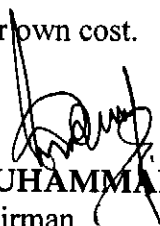
*Explanation: The expression "court" for the purposes of this section shall mean the High Court having jurisdiction over the defendant.*




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In terms of the above, the Complainant may seek appropriate remedy before the competent court. The Appellant is directed to provide the original share certificates and transfer deeds to the Complainant to enable him to proceed before the right forum. The Appellant is further directed to assist the competent court in ascertaining the facts of the case and to help resolve the grievance of the Complainant.

In view of the foregoing, the Impugned Order is set aside. Parties to bear their own cost.

  
(MUHAMMAD ALI)  
Chairman

  
(MR. TAHIR MAHMOOD)  
Commissioner (CLD)

Announced on: 14<sup>th</sup> July 2011