



SECP

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 69 of 2006

1. Mr. S.M. Muneer
 2. Mr. S.M. Naseer
 3. Mr. S.M. Javed
 4. Mr. S.M. Pervez
 5. Mr. S.M. Tariq
 6. Mr. S.M. Tanveer
 7. Mr. Shahzad Naseer
 8. Mr. S.M. Naveed
 9. Mr. Irfan Muneer
 10. Mr. Fawad Jawed
- (Din Textiles Mills Limited) Appellants

Versus

Director Enforcement (CLD)
Securities and Exchange Commission of Pakistan Respondent

ORDER

Date of hearing

05/01/12

Present:

For the Appellant:

Mr. Rashid Sadiq

For the Respondent Department:

Mr. Abdul Rahman Laghari, Joint Director

Appellate Bench No. III

Appeal No. 69 of 2006

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1. This order shall dispose of appeal No. 69 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 30/06/06 (the "Impugned Order") passed by the Respondent.
2. Facts leading to the case are that Mrs. Sajidah Sultana (the "Complainant") lodged a complaint with the Commission vide letter dated 22/03/05 regarding non-receipt of shares from Din Textile Mills Limited (the "Company") after being held successful in the share balloting. According to the Complainant, she had submitted an application for subscription of 500 shares (the "Shares") of the Company through Habib Bank Limited, Foreign Exchange Branch, Karachi wherein she was allotted serial No.882 on 29/05/91. Since the Complainant was out of the country and could not contact the Company at that time hence, after her return, on taking up the matter with the Company; the Complainant was informed that her Shares had been transferred in the name of Mr. Muhammad Ihsan (the "Transferee") on 27/05/93. The Complainant pleaded that she has been denied her right of allotment of shares and resultantly was deprived of any dividend / bonus shares issued by the Company from time to time without any lapse on her part.
3. Show cause notice dated 11/08/05 ("SCN") was issued to the Company and its directors including the Chief Executive to explain as to why action may not be taken against them under section 74 read with section 476 of the Companies Ordinance, 1984. Subsequent to the SCN, the matter was fixed for hearing on 18/08/05. The Manager Corporate Affairs appeared on behalf of the Company and its directors / Appellants. The arguments presented were, however, not found cogent and it was held by the Commission that the Company has prima facie contravened the provisions of sub-section (1) of section 74 of the



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Ordinance. A fine of Rs. 5,000/- (Rupees five thousands only) was imposed on each director including the Chief Executive of the Company.

4. The Appellants preferred to file the instant appeal against the Impugned Order. The Appellants' counsel argued that:

- (a) the Company had allotted 500 Shares under allotment letters No. 021575-021579 dated 29/05/91 in the name of the Complainant. The said Shares were later on transferred through a verified transfer deed in the name of the Transferee through TR No. 338 dated 27/05/93. The Company has sufficient record to prove that the Complainant was once the legal owner of the Shares which were received and were subsequently sold for value at later stage. The representative of the Appellants during the SCN hearing furnished the photocopy of transfer deed along with copy of the share certificate, receipt mentioning dispatch detail and address of Mr. Ihsan to the Respondent on 18/08/05;
- (b) the issue in hand is about 20 years old. Since the allotment of Shares, the Complainant has never attempted to communicate with the Company regarding her holding and other ancillary matters such as dividend and rights shares. The Complainant informed the Company after 14 years that the alleged wrong has been done after a memory flashback reminding her that she has not received the Share certificates from the Company;

- (c) due diligence was carried out before transferring the said Shares in the name of the Transferee. The Complainant had renounced her Shares in favor of the Transferee who had the subject allotment letters with requisite signatures at the reverse as well as on the transfer deed. Moreover, the reverse of each *Transfer Deed* is stamped by Mr. Hanif Moosa, Member KSE, Code No.48;



(d) the Share certificate originally allotted to the Complainant was lost/ misplaced along with number of other share certificates for which FIR was lodged at a Police Station. The matter was also notified to the Karachi Stock Exchange Guarantee Limited ("KSE") and permission was sought from KSE to issue duplicate shares certificates which were printed and issued in the names of the shareholders / members.

5. The Respondent argued that:

(a) the Company has been asked repeatedly to furnish original documentary evidence for allotment and subsequent dispatch of Shares or any other authority letter / record of receipt obtained from the Complainant showing her signature for receipt of such Shares. The Company never furnished original transfer deed and proof for dispatch of Shares but has only provided photocopy of the aforementioned documents to the Complainant;

(b) the argument of the Company that the instant issue is 20 years old cannot be taken as a valid reason for not settling grievances of the Complainant/ shareholder;

(c) the Shares were transferred without diligently carrying out verification of the transfer deed. Copy of the transfer deed provided by the Company was defective as it did not bear any folio number, or particulars of witness and the buyer. The Company never furnished original transfer deed and any proof of dispatched Shares to the Complainant;

(d) duplicate Share certificates were printed and issued whereas the list of lost / misplaced share certificates did not contain the name of the Complainant, the



Transferee or the subject Certificate Numbers 1525-1529 originally allotted to the Complainant. Share certificates are printed once in a life in the name of original / bona fide allottee and subsequent allottee's name is recorded at its back under the head of Memorandum of Transfer. In the instant case, duplicate / re-printed Share certificates bear the name of Transferee instead of the Original allottee / Complainant.

6. We have heard the parties. Sub-section (1) of section 74 of the Ordinance has been reproduced for ease of reference:

Section 74. Limitation of time for issue of certificates;

(1) Every company shall, within ninety days after the allotment of any of its shares, debentures or debenture stock, and within forty-five days after the application for the registration of the transfer of any such shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, and unless sent by post or delivered to the person entitled thereto, within that period, shall give notice of this fact to the shareholders or debenture-holders, as the case may be, immediately thereafter in the manner prescribed, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

Provided that the company shall, within five days after an application is made for the registration of the transfer of any shares, debentures or debenture stock to a central depository, register such transfer in the name of the central depository.]



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Explanation-- The expression "transfer", for the purposes of this sub-section, means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register."

Emphasis added

Plain reading of section 74 (1) of the Ordinance reveals that the Shares certificates are required to be issued to the shareholders within 90 days of the date of allotment. There is ample evidence that the Company had allotted the Shares under allotment letters No. 021575-021579 in the name of the Complainant and the Share Certificate(s) were in fact issued. The penalty should not have been imposed on the ground that the Company failed to produce documentary evidence pertaining to receipt of the Share Certificates when the shares had been duly transferred after allotment to the Complainant in the name of the Transferee through transfer deeds. Due diligence was in fact carried out before transferring the said Shares in the name of the Transferee. The Shares were transferred to the Transferee on 27/05/93 with the signature of the Complainant. The issues related to verification of signatures or dispute relating to the fraudulent entry or omission from the register of members of the Company cannot become the subject of dispute before the Commission, as the jurisdiction to decide such issues rest with the Courts in terms of section 152 of the Ordinance;

(d) As far as the issuance of duplicate shares is concerned, the KSE through its letter dated 28/03/93 allowed the Company to print new share certificates in bulk which the Company did accordingly. The Company through an advertisement published in the Business Recorder dated 09/08/93, notified that all persons holding its share certificates can



exchange the old with the new ones and in case the exchange is being sought by a person other than the registered shareholder of the Company, all shares certificates must be accompanied by duly signed and verified transfer deed. The duplicate shares certificates were printed and were issued in the names of the Transferee only after the due process was completed.

In view of the above, the Impugned Order is hereby set aside. The appeal is accepted with no order as to cost.

(Mohammed Asif Arif)
Commissioner (Insurance)

(Imtiaz Haider)
Commissioner (SMD)

Announced on: 09/03/12