



**BEFORE APPELLATE BENCH NO. III**

In the matter of

**Appeal No. 04 of 2007**

Mr. Saleem Baig

..... Appellant

Versus

Yasmeen Weaving Mills Limited

.....

Respondent

Date of hearing

13-10-11

**Present:**

**For the Appellant:**

Mr. Immad. I. Malik

Mr. Qasim Rasool

**For the Respondent Department:**

Mr. Mubasher Saeed, Director (Enforcement)



## SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

1. This order shall dispose of appeal No. 04 of 2007 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 02-02-07 (the "Impugned Order") passed by the Registrar of Companies.
2. The facts leading to the case are that the Respondent availed various finance facilities from Prime Commercial Bank Limited (the "Bank") and against the said facility, the Respondent pledged various shares with the Bank as security. The Respondent, however, failed to pay back the finance facility and the Bank disposed of the pledged shares. The Appellant bought 1,697,500 shares of the Respondent from the Bank on 29-12-97 and paid a sum of Rs. 76,36,500 as full consideration of the paid shares. Chief Executive Officer ("CEO") and other directors of the Respondent filed a suit C.O.S No. 91/2000 titled *Muhammad Siddique Malik vs. Prime Commercial Bank Limited* before the Honorable Lahore High Court, Lahore (the "Court") which was subsequently dismissed as withdrawn on 21-06-04. The Appellant lodged shares with the Respondent along with all requisite documents for transfer of shares in his name. The Respondent did not accede to the request of the Appellant nor stated any reason of its refusal in sheer violation of section 77 of the Companies Ordinance, 1984 ("Ordinance").
3. The Appellant filed an appeal under section 78A of the Ordinance. Registrar of Companies forwarded the copy of the aforementioned appeal to the Respondent and hearing in the matter was held. The hearing was attended by the Appellant's counsel, who argued the matter and requested the Registrar of Companies to direct the Respondent in terms of section 78-A of the Ordinance to transfer the shares in the name of the Appellant. The Respondent



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representative failed to attend the hearing, however, the CEO of the Respondent informed through facsimile that the matter relating to affairs of the Respondent are pending adjudication before the Honorable Lahore High Court, Lahore and any interference in the matter by the Commission would be deemed as contempt of Court. The Appellant's counsel argued the matter before the Registrar of Companies, who after hearing passed the Impugned Order and disposed of the appeal filed by the Appellant with the observation that the Respondent has endorsed transfer of shares in the Appellant name on the original share certificates held by the Appellant and have also affixed stamp of the Respondent as an evidence. The Appellant name has not been entered in the Respondent's register of members; however, the remedy cannot be assailed before the Commission in terms of section 152 of the Ordinance.

4. The Appellant has preferred the instant appeal against the Impugned Order. At the outset, the Appellate Bench (the "Bench") was informed by the department representative that an order for winding up of the Respondent has already been passed by the Court in CO No 27/08 vide order dated 08-06-10 and the official liquidator has been appointed by the Court. The Appellant's representative was, however, told to present the grounds of appeal should the Bench decide the appeal on merit.

- a) The Appellant's representative argued that the Commission has sufficient powers under section 78A of the Ordinance to direct the Respondent to transfer the shares in the name of the Appellant. Section 152 of the Ordinance is a separate remedy and in cases where the facts are not disputed, orders may be passed under section 78A of the Ordinance. It was further contended that redundancy cannot be attached to a provision of law on the ground that another remedy is provided under the same law.



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- b) On the issue of limitation discussed in the Impugned Order, it was argued that the limitation starts from the lodging of the request with the Respondent for the transfer of shares of the transferor in the register of members. The Appellant lodged the request for incorporation of his name in the register of members on 10-08-06. The Appellant sent the application again on 16-10-06 and received the acknowledgement with the observation: "*Yasmeen Weaving Mills Limited has been shut down therefore the courier be sent back*". The Appellant on receiving the acknowledgment preferred an appeal under section 78-A of the Ordinance on 07-11-06, therefore, the appeal was within two months of notice of refusal as contemplated by section 78A (2) (a) of the Ordinance.
5. The department representative argued that the factum of transfer of shares in the name of the Appellant stands established as the Respondent had endorsed transfer of shares in the name of Appellant on the original share certificates. The Appellant name was, however, not entered in the Company register of members. Section 152 of the Ordinance provides the remedy where the name of the member is not entered by a company on the register of members. The power to order rectification of the register rests with the Court, as such; the Executive Director (Registration) rightly did not pass an order for rectification of the register.
6. We have heard the parties. The relevant sections are reproduced for ease of reference:



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*78-A. Appeal against refusal for registration of transfer. - (1) The transferor or transferee, or the person who gave intimation of the transmission by operation of law, as the case may be, may appeal to the Commission against any refusal of the company to register the transfer or transmission, or against any failure on its part, within the period referred to in sub-section (1) of section 78 either to register the transfer or transmission or to send notice of its refusal to register the same.*

*(2) An appeal to the Commission under sub-section (1) may be preferred-*

*a) in case the appeal is against the refusal to register a transfer or transmission, within two months of the receipt by him of the notice of refusal; and*

*b) in case the appeal is against the failure referred to in sub-section (1) within two months from the expiry of the period referred to in sub-section (1) of section 78.*

*(3) The Commission shall, after causing reasonable notice to be given to the company and also to the transferor and the transferee or, as the case may require, to the person giving intimation of the transmission by operation of law and the previous owner, if any, and giving them a reasonable opportunity to make their representation, may, **by an order in writing, direct either that the transfer or transmission shall be registered by the company or that it need not be registered by it and in the former case, the company shall give effect to the decision within fifteen days of the receipt of the order.***

Emphasis added

*(4) Before making an order under sub-section (3) on an appeal against any refusal of the company to register any transfer or transmission the Commission may require the company to disclose to it the reasons for such refusal.*



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- (5) *The Commission may, in its aforesaid order, give such incidental and consequential directions as to the payment of costs or otherwise as it deems fit.*
- (6) *If default is made in giving effect to the order of the Commission within the period specified in sub-section (3), every director and officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees, for every day after the first during which the default continues.]*

### **152. Power of Court to rectify register. - (1) If--**

- (a) *the name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members or register of debenture-holders of a company; or*
- (b) **default is made or unnecessary delay takes place in entering on the register of members or register of debenture-holders the fact of the person having become or ceased to be a member or debenture-holder;**

Emphasis added

*the person aggrieved, or any member or debenture-holder of the company, or the company, may apply to the Court for rectification of the register.*

(2) *The Court may either refuse the application or may order rectification of the register on payment by the company of any damages sustained by any party aggrieved, and may make such order as to costs as it in its discretion thinks fit.*

(3) *On any application under sub-section (1) the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or debenture-holders or alleged members or*



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*debenture-holders, or between members or alleged members, or debenture-holders or alleged debenture-holders, on the one hand and the company on the other hand; and generally may decide any question which it is necessary or expedient to decide for rectification of the register.*

*(4) An appeal from a decision on an application under sub-section (1), or on an issue raised in any such application and tried separately, shall lie on the grounds mentioned in section 100 of the Code of Civil Procedure, 1908 (Act V of 1908),--*

- (a) if the decision is that of a civil court subordinate to a High Court, to the High Court; and*
- (b) if the decision is that of a Company Bench consisting of a single Judge, to a Bench consisting of two or more Judges of the High Court.*

A mere perusal of the above provisions provide that the Commission is entrusted to hear appeals against refusal to register the transfer of shares in terms of section 78-A of the Ordinance. In terms of section 78-A (3) of the Ordinance, the Commission is entrusted with the power to “.....direct either that the transfer or transmission shall be registered by the company or that it need not be registered by it...”. A company is also given 15 days to comply with the directions of the Commission. We are not in concurrence with the views expressed in the Impugned Order that the power to order registration of transfer or transmission of shares only rests with a court in terms of section 152 of the Ordinance. The Commission may exercise this power concurrently with a court, where the issue only pertains to ordering registration of shares with the Company. In the instant case the shares



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have already been transferred in the name of the Appellant, however, transfer of shares has not been registered by the Respondent. In such like situation, the Executive Director (Registration) in terms of section 78-A (3) of the Ordinance ought to have ordered the Respondent to register the shares in the name of the Appellant. Be that as it may, an order for winding up of the Respondent has already been passed by the Court in CO No 27/08 vide order dated 08-06-10 and the official liquidator has been appointed by the Court. We would place our reliance on section 406 of the Ordinance, which has been reproduced for ease of reference:

*406. Avoidance of transfers, etc. - Except when an order to the contrary is passed by the Court,-*

- (a) every transfer of shares and alteration in the status of a member made after the commencement of winding up shall, unless approved by the liquidator, be void;*
  
- (b) any transfer of property, movable or immovable (including actionable claims), or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrance in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by or subject to the supervision of the Court or the passing of a resolution for voluntary winding up of the company, shall be void against the liquidator.*





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In view of the above, we hereby refer the matter to the liquidator, who may approve to enter the name of the Appellant in the register of members in terms of section 406(1) of the Ordinance.

(Mohammed Asif Arif)  
Commissioner (Insurance)

(Imtiaz Haider)  
Commissioner (SMD)

Announced on: 12-01-12