



Securities and Exchange Commission of Pakistan  
NIC Building, Jinnah Avenue  
Islamabad

Before

Nazir Ahmed Shaheen  
Executive Director (Registration)

In the matter of M/s Pak Panther Spinning Mills Limited

Appellant	Dr Mahboob Hasan Rana  Mr. Rashid Sadiq, FCA, appeared on behalf of Appellant
Respondent	M/s Pak Panther Spinning Mills Limited  Mr. Zahid Latif GM (Finance) of the Company, appeared on behalf of Respondent
Date of notice	29 <sup>th</sup> December, 2010
Date of hearing	20 <sup>th</sup> January, 2011

**ORDER**

**Under Section 78-A of the Companies Ordinance, 1984**

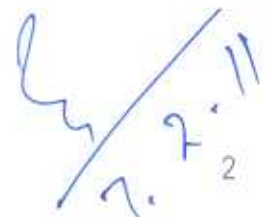
This Order shall dispose of the proceedings initiated against M/s Pak Panther Spinning Mills Limited (the "Company") on the appeal of Dr. Mahboob Hasan Rana, resident of Z-938/2, Phase III, Defence Housing Authority, Lahore (the "Appellant") under the provisions of Section 78-A of the Companies Ordinance, 1984 (the "Ordinance")

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7.2.11

2. Brief facts of the case are that the Appellant made an application regarding refusal of transfer of shares of the Company in his name. He requested the registrar concerned to direct the Company to transfer the shares in his name. The registrar concerned advised the Appellant to approach Securities and Exchange Commission of Pakistan (the "Commission") under section 78-A of the Ordinance, for redressal of his grievance. Accordingly, the Appellant filed an appeal under section 78-A of the Ordinance before the Commission. The Appellant said that he purchased 1,001,151 shares from Mr. Muhammad Iqbal, Chairman of Board of Directors of the Company (the "transferor") and made payment against them in US Dollars. These original share certificates were handed over by the transferor to the Appellant/transferee. Out of these shares, the Appellant lodged 50,000 shares bearing certificate Nos. 80032-80531 and having distinctive numbers 8002831-8052830 with M/s Corplink (Private) Limited (the "Share Registrar") vide letter dated September 23, 2010. The Share Registrar vide its letter dated September 30, 2010 refused the transfer of shares on behalf of Company without notifying any defect or invalidity.

3. A copy of said appeal was forwarded to the Company for its comments. The Company intimated vide letter dated November 12, 2010 that it is under process of demerger, and it has applied to National Bank of Pakistan (the "NBP") for its formal approval in this regard. The Company also referred clause 26 of Shareholders' Agreement dated April 08, 2010 made between the shareholders of the Company, which reads as under:-

"All the assets of the company will remain intact with both units and no party will be allowed to sell or dispose of any major asset without written permission of the other party until the formal legal bifurcation of the company is completed. Any liability incurred by any party after the date of division will be sole liability of that party and the said party will keep the other party indemnified of any loss resulting from such liability".

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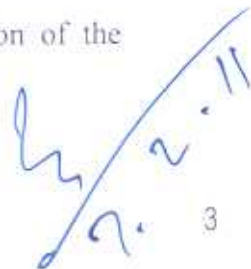
4. The Company took plea that any change in shareholders' structure will jeopardize the whole demerger process. The Company also intimated that it has not refused the transfer of shares but has only delayed the process of transfer of shares till the final outcome of the demerger process.

5. The comments received from the Company were forwarded to the Appellant. The representative of the Appellant stated vide letter dated December 13, 2010 that the transfer of shares by the respondent Company was refused without notifying any defect or invalidity in the transfer deed as required under section 77 of the Ordinance. This is a clear violation of provisions contained in the Ordinance and Articles of Association of Company. The representative of Appellant referred the provisions of the said section 77, which specifically provide that the directors of the Company shall not refuse to transfer any fully paid shares unless the transfer deed is, for any reasons, defective or invalid. He further stated that the respondent claimed vide letter dated November 22, 2010 that it has not refused transfer of shares while on the other hand, the Share Registrar vide letter dated September 30, 2010 said that the Chief Executive of the respondent Company had instructed them not to transfer shares lodged with them, which is *malafide* on the part of Chief Executive.

6. Before, I move into the merit of the case, it is imperative to go through the relevant provisions of law. Section 78-A of the Ordinance, in this regard reads as under:-

"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."

7. Further clauses 11 and 12 contained in Articles of Association of the Company relating to transfer of shares, are reproduced as under:-

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"11. The Directors shall not refuse to transfer any fully paid shares unless the transfer deed is defective or invalid. The Directors may also suspend the registration of transfer prior to the determination of entitlement or rights of the shareholders by giving seven days previous notice in the manner provided in the Ordinance. The Directors may decline to recognize any instrument of transfer unless duly stamped instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer."

"12. If the Directors refuse to register a transfer of shares, they shall within thirty (30) days after the date on which the transfer deed was lodged with the company send to the transferee and the transferor notice of the refusal indicating the defect or invalidity to the transferee, who shall after removal of such defect or invalidity be entitled to re-lodge the transfer deed with the company."

8. In order to comprehend the issue, hearing in the matter was fixed on January 6, 2011. However, the respondent Company requested for adjournment but Appellant/transferee and transferor appeared on the said date. The transferor submitted while interpreting clause 26 of the Shareholders' Agreement that the shares are the instruments of ownership and not assets. The transferor intimated that he was running a separate unit namely "Unit II" with a labour force of 500 persons and the said unit required funding, for which the shares were sold to the Appellant. He further requested that there is no bar in Articles of Association regarding the transfer of shares and therefore, request of the Appellant might be accepted. The said hearing was further adjourned on the request of respondent.

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9. The hearing was again conducted on January 20, 2011. The representative of both parties appeared. The representative of Appellant repeated its stance conveyed earlier vide letter dated December 13, 2010 i.e:-

- a. No proper reason for refusal to transfer the shares was provided;
- b. Refusal to transfer of shares is violation of provisions of sections 77 and 78 of the Ordinance and article clause 11 and 12 of Articles of Association; and
- c. Clause 26 of the Shareholders' Agreement did not bar transfer of shares.

10. The representative of the respondent submitted that the transferor should have brought this transaction into the notice of the respondent before lodging of transfer of shares. He further stated that though 'Substantial Acquisition Law' is not applicable in the instant case, yet it is a major transfer of shares and it should have been brought into the notice of the respondent as demerger process of the respondent Company was in pipeline and the transfer of the shares might have some adverse effect on it, as transferor might also be guarantor of some loans. He repeated the Company's earlier stances as conveyed vide letters dated November 12, 2010 and November 22, 2010 regarding the Shareholders' Agreement. In reply to query, he informed that the Shareholders' Agreement is neither executed nor has been registered till yet. He further informed that the NBP had imposed a condition that the Company would not make any change in its corporate structure or transfer its management or sell major ownership or create in any manner, any change, lien or encumbrance on assets of the Company in favour of any other party without prior approval of the NBP and that the Company would advise NBP of the changes (if any) in the constitution, BOD/address of the Company.

11. Taking into consideration the arguments of the both the parties, articles 11 and 12 of Articles of Association of the Company; scheme of law as enunciated in sections 77 and 78 of the Ordinance and version of the respondent with reference to the NBP (being creditor of the Company), I am of the considered view that the law does not give discretionary powers to the directors to refuse any shares. The directors must have regard

  
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to only those considerations which the Articles of Association or provisions of law, on their true construction, permit them to consider. Any refusal based on extraneous or other consideration is totally unjustified. The shareholders are free to transfer their shares subject to restrictions contained in Articles of Association. However, no such restrictions are provided in the Articles of Association. As regard the Shareholders' Agreement, clause 26 does not restrict transfer of shares by any of the shareholders to any person including the Appellant, rather it imposes bar on sale of assets of the Company and shares cannot be termed as assets of the Company. Even otherwise the Shareholders' Agreement has not yet been executed and registered and therefore, has no application and cannot be enforced. The representative of the respondent was advised to convey the observation of the NBP within a week time which he failed to do. Even the respondent Company's stance that the NBP has restricted the change of management would have least effect on the share transfer.

12. Keeping in view the position stated above, appeal is accepted and the Appellant is advised to re-lodge transfer of shares and the directors of the Company are directed to register transfer of the shares within fifteen days thereof positively.

13. I have also noted during the course of arguments that land of the Company shown in the Shareholders' Agreement is in the names of three shareholders and not in the name of the Company which is a clear violation of section 209 of the Ordinance. The registrar concerned is, therefore, advised to take cognizance of the said violation of the Law.

  
(Nazir Ahmed Shaheen)  
Executive Director (Registration)

Announced at Islamabad  
7<sup>th</sup> February, 2011