



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 20 of 2001

Mr. Tariq Baig
Managing Director,
Tariq Glass Industries Limited

...Appellant

Versus

Executive Director (SM) Securities and Exchange
Commission of Pakistan

...Respondent

Date of Hearing 24/08/15

Present:

For the Appellant:

Nemo

For the Respondent:

- (i) Mr. Nasir Askar, Director (SMD)
- (ii) Mr. Muhammad Farooq, Joint Director (SMD)

ORDER

1. This order is in appeal No. 20 of 2001 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (SECP Act) against the order (the Impugned Order) dated 25/07/01 passed by the Respondent.



Securities and Exchange Commission of Pakistan

SECP

2. The instant matter is regarding tendering of gain by Mr. Tariq Baig (Appellant) chief executive of M/s Tariq Glass Industries Limited (Company). Facts of the case are that the Appellant was directed on 26/06/95, by the then Corporate law Authority, to tender Rs.2,860,000 to the Federal Government, on account of gain made by him in terms of section 224(1) of the Companies Ordinance, 1984 (Ordinance), as neither he tendered the amount of said gain to the issuer nor the issuer raised demand thereof, within the period prescribed in section 224(2) of the Ordinance.
3. The Appellant agitated against the directive dated 26/05/95 requested for an opportunity of personal hearing. Several opportunities of hearing were provided to the Appellant and hearings in the matter were held on 21/03/97, 20/10/97, 27/10/00, 10/11/00 and 12/06/01. The Appellant and his representatives contended that:

- (i) Sale was made out of previous holding purchased on 20/3/93, hence, there is period of more than six months between the shares purchased and sold. Further, the Purchase transaction of 280,000 shares was made with Pakistan Libya Holding Company (PLHC under an Agreement dated 25/10/93). The shares were held by PLHC as under-writer of the issue since 1984. The party further stated that the previous management was required under buyback agreement dated 17/10/82 to repurchase these shares within three years from the date of subscription, but the old management failed to honour the buy-back agreement, therefore, PLHC filed a suit in the High Court of Sindh against the company as well as old management. In the meantime the new management agreed to purchase these shares at a rate of Rs.10 per share under an agreement dated 25/10/93. The party claimed that as these shares were purchased under an agreement, therefore, in accordance with the explanation given in section 224(1) of the Ordinance, the transaction is exempted from the application of provisions of tenderable gain of the Ordinance.



Securities and Exchange Commission of Pakistan

SECP

4. The Respondent dissatisfied with the response of the Appellant held that no discrimination can be made between previous holding and newly purchased shares. Further, documents provided by the party suggested that neither the buy back agreement made by previous management nor the agreement entered into by the Appellant held on 25/10/93 fell within the ambit of proviso given in section 224(1) of the Ordinance, as none of them was made in satisfaction of debt previously contracted. Moreover the agreement made by the Appellant with PLHC out of court is entirely dissimilar with that made by outgoing management with PLHC. However, their plea of making of payment of Rs.600,000 for 60,000 shares of the issuer to M/s Pak Libya Holding Company (Pvt.) Limited on 14/11/93 was accepted. The amount of tenderable gain had been calculated on 220,000 shares instead of 280,000 in the light of Rule 16(a) of the companies (General Provisions and Forms) Rules, 1985. The Appellant was accordingly, directed to tender Rs.2,260,000 to the Commission as provided in section 224(2) of the Ordinance.
5. Aggrieved of the Impugned Order the Appellant preferred an Appeal before the Appellate Bench through Appeal No. 20 of 2001. The Appellate Bench vide Order dated 25/04/02 disposed of the Appeal and upheld the Impugned Order.
6. The Appellant preferred an Appeal before the Lahore High Court, Lahore through Commercial Appeal No. 8 of 2002. The Honourable Court through Order dated 20/04/15 remanded the matter to the Appellate Bench with the following observation:

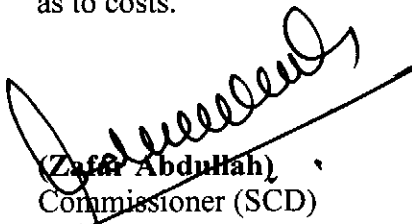
“In this view of the matter, this Appeal is remanded to Respondent No. 2 (“Appellate Bench”) with direction to decide the matter in view of the law laid down by the Honorable Supreme Court of Pakistan in Securities & Exchange Commission of Pakistan Vs. First Capital Securities Corporation Limited and another. (PLD 2011 SC 778). Till the decision of the matter no coercive action shall be taken against the Appellant...”



Securities and Exchange Commission of Pakistan

SECP

7. The Supreme Court of Pakistan in the above-referred judgment of Securities & Exchange Commission of Pakistan versus First Capital Securities Corporation Limited and another cited at PLD 2011 SC 778 has stated that the tenderable gain is the property of the Company and shall not vest in the Commission.
8. The Appeal was fixed for hearing by the Appellate Bench on 24/08/15. The Appellant's Counsel Mr. Shehryar Kasuri (Counsel) had submitted a request for adjournment earlier which was not granted while the representatives of the Respondent were present at the hearing. The Counsel prior to the hearing had further submitted in writing that in his absence his letter dated 21/08/15 be placed before the Bench on the date of the hearing, wherein, it was submitted that the Appellant strongly contends that no gain was tenderable by him in terms of section 224 of the Ordinance, however, as a gesture of goodwill and to put the matter to rest, following the principle laid down by the Supreme Court of Pakistan in PLD 2011 SC 778, the Appellant has tendered the alleged gain amounting to Rs2,260,000 to the Company on 01/06/15. Documentary proof in this regard was submitted to the Bench. Therefore, there is no issue remaining in the instant appeal.
9. In view of the fact that gain has already been paid to the Company, we are of the view that the matter has reached finality and the said appeal is now dismissed with no order as to costs.


(Zaffar Abdullah)
Commissioner (SCD)


(Tahir Mahmood)
Commissioner (CLD)

Announced on: 02 SEP 2015