



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 13 of 2018

Haji Muhammad Shafiq

...Appellants

Versus

1. The Registrar of Companies, Corporatization and Compliance Department,
Company Law Division, Securities and Exchange Commission of Pakistan

2. Mr. Zaigham Rashid Ghauri

...Respondents

Date of Hearing: 21/02/19

Present:

Appellant:

i) Mr. Haji Muhammad Shafiq

For the Appellants:

i) Mr. Raja Waqar Abid, Legal Counsel

ii) Mr. Raja Muhammad Khan, Legal Counsel

For the Respondent:

i) Mr. Abdul Qayyum, Joint Registrar of Companies (CCD-CLD)

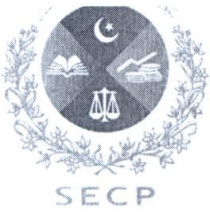
ORDER

1. This Order is passed in the matter of Appeal No.13 of 2018 filed under section 33 of the Securities and Exchange Commission of Pakistan (Commission) Act, 1997 (SECP Act) against the Letter/Order dated 08/01/18 (Impugned Letter/Order) issued by Assistant Director of the department of Respondent No.1.



Securities and Exchange Commission of Pakistan

2. The brief facts of the case are that an Application dated 25/08/17 under section 425(9) of the Companies Act, 2017 was made by Haji Muhammad Shafiq (Appellant) for restoration of name of M/s. ColdAge (Pvt.) Ltd (Defunct Company) on the Register of Companies and hearing was held in the matter on 12/10/17 and further written submissions were made by the Appellant vide letter dated 18/10/17. The Commission vide its letter dated 08/11/17 advised the Appellant to pursue the matter regarding the title/ownership of the assets pending in the Honourable Lahore High Court. The Appellant through letter dated 19/12/18 informed the Commission that he has made an application for withdrawal of its pending review in the Honourable Lahore High Court. The Application for restoration of name of the Defunct Company, however, it was rejected vide Impugned Letter/Order dated 08/01/17.
3. The Appellant preferred the instant appeal on the following grounds:
 - a) The Defunct Company was incorporated on 23/06/93 and there were two promoters who were also directors of the Company namely the Appellant and Respondent No.2. The Company was dissolved under the provisions of section 439(3) of the Companies Ordinance 1984 (Repealed Companies Ordinance) on the basis of audit certificate, declaration, resolution and affidavit stating, therein, that the Company has no assets and liabilities; therefore, the declaration was accepted. The main object of the Company was to “*carry on the business of Cold Storage*” and despite the Company having been dissolved 15 years ago, business is still being conducted in its name.
 - b) Two Civil Original Petitions under section 152 and section 153 of the Repealed Companies Ordinance were filed before the Honourable Lahore High Court. The learned Judge while issuing notice had observed “*this is an application for amendment of the Register of members on the ground that the name of the Petitioner as Chief Executive/Director of the Company had illegally been struck off by the Respondent No.2*”. Civil Original No. 14 of 2003 was filed by the Appellant contending, therein, that a false declaration has been signed, whereby, it was declared that the Defunct Company has no assets and liabilities nor carrying on any sort of business or any operation, however, the Defunct Company possesses immovable assets i.e.16 Kanal 7 Marla land. The value of its assets as per estimated balance



Securities and Exchange Commission of Pakistan

sheet for the year 31/12/00 was about Rs 6.467 million. Both the petitions, however, were dismissed and no application was filed for restoration of these two petitions by the Appellant.

- c) The amendment of Register of members under section 152 and 153 of the Repealed Companies Ordinance became infructuous as despite having assets, the Defunct Company's name was removed. Three important facts need the following consideration:
 - i. The Order under section 439(3) of the Repealed Companies Ordinance was passed without any investigation by the Registrar Office.
 - ii. Fraudulent disposal of assets and fabrication of revenue documents cognizable under criminal law of the land.
 - iii. Res-judicata principle is not applicable as the High Court petition was not adjudicated on merits.
- d) The Appellant also lodged a complaint before the Anti-Corruption Establishment Punjab and was advised to approach the Land Revenue Department. The Additional Collector District Kasur had dismissed the complaint, however, the Appellate Court and the Additional Commissioner Kasur allowed the appeal and the Impugned Mutation was set aside and the entries on the basis of the sale deed were restored.
- e) The Revision petition before the Board of Revenue, Punjab was allowed with the observation that the parties should approach the court of competent forum for redressal of their grievance if they so desire and the Appellant has approached the appropriate forum for redressal i.e. the Commission/Respondent No.1.
- f) The Appellant had earlier filed application under section 439(9) of the repealed Companies Ordinance, 1984, however, the application was not entertained due to pending decision of court litigation. Therefore, another application under section 426(3) of the Companies Act, 2017 was made to the Commission which too was disposed of vide letter dated 08/11/17, wherein, it was observed that the matter is pending before the Honourable Lahore High Court and the ownership of the land is not determined yet.
- g) The Defunct Company is still running the business of company under the Electricity Industrial Connection which was sanctioned on 30/03/94. The Respondent No.2

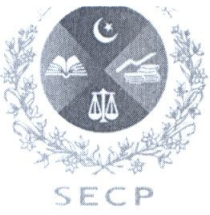


Securities and Exchange Commission of Pakistan

fraudulently removed the Appellant from the position of Chief Executive Officer (CEO) of the Company and reduced his shareholding through forged signatures. The Defunct Company has assets and, therefore, should be restored to the register of companies.

4. The Respondent No.1 rebutted the arguments of the Appellant on the following grounds:

- a) The application of striking of the name of the Defunct Company under the Companies Easy Exit Scheme 2002 (CEES) in terms of section 439 of the Repealed Companies Ordinance was filed in the year 2002 by the CEO and directors holding accumulatively 93.75% of entire shareholding, whereas, the instant appeal is filed by the Appellant holding 6.25% of the shareholding. The Appellant only had 6.25% of shareholding stake while the other Director had 93.75% shareholding in the Defunct Company. The other Directors/shareholders have not even applied for the restoration of the Defunct Company. The appeal is liable to be set aside on the grounds that the Appellant has deliberately exhausted his right for rectification of register of shareholding as petition by him in terms of section 152 of the Repealed Companies Ordinance was dismissed by the Honourable Lahore High Court on account of non-appearance by the Appellant. The Appellant has alleged that the Defunct Company is in operation and has assets, however, nothing has been brought on record to suggest that the Defunct Company is in operation and has known assets. Moreover, if for all purposes it is to be believed that the Defunct Company has been in operation, no reason whatsoever has been provided for non-filing of statutory returns during the period under default.
- b) The Appellant was a director in the Defunct Company and at the time of incorporation, the paid up share capital of the Defunct Company was Rs 20,000/- divided into 200 number of shares of rupees 100/- each and the Appellant was holding 50% of the paid up shares. Subsequently, the paid up capital was raised to rupees 40 lakhs through Form-III dated 07/05/94 whereby the Appellant was holding 2,500 number of shares 100/- each and Respondent No.2 had 37,500 number of shares of rupees 100/- each which resulted in diluting the percentage of shareholding of the Appellant from 50% to 6.25% respectively.



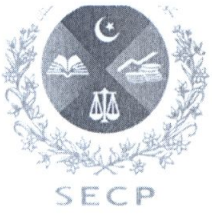
Securities and Exchange Commission of Pakistan

The shareholding position in Form-A made up to 20/12/01 filed by the Defunct Company in the office of the concerned registrar is as follows:

Sr. No.	Name of Shareholder	Number of shares	Percentage of shareholder
1.	Mr. Zaigham Rasheed Ghouree	35,500	88.75%
2.	Mr. Haji Muhammad Shafique	2,500	6.25%
3.	Mr. Kh. Muhammad Akbar	1,000	2.5%
4.	Ms. Farkhanda Akbar	1,000	2.5%

The Defunct Company was dissolved on 01/04/02 under CEES in terms of section 439(3) of the Repealed Companies Ordinance in accordance with the law. The Defunct Company was struck off from the Register of Companies after taking into consideration the documents namely 1) Declaration by the Chief Executive, 2) Certificate by the Auditor and 3) Resolution by the Board of Directors/Shareholders passed on 14/05/02.

- c) The Appellant pursued the matter in the Honourable Lahore High Court through Civil Original Petitions No.13 & 14 of 2003, wherein, the Commission was directed and ordered by the Honourable Lahore High Court to submit a factual report regarding the Defunct Company. The said petitions were dismissed on account of non-appearance of the Appellant. The Appellant also denied giving resignation from the Defunct Company, however, from the time of incorporation until its dissolution, the Appellant never approached any forum regarding redressal of his grievances i.e. dilution of shareholding, non-holding of meeting of board of directors and non-receipt of notices from the Defunct Company.
- d) The Appellant is party in pending litigation whereby a Civil Review Petition No. 256 of 2015 was filed against the order of the Honourable Lahore High Court regarding land of the Defunct Company transferred over a mutation deed. The Honourable Lahore High Court in Writ Petition No.35962 of 2015 has regarded the instant matter a civil dispute, thereby, necessitating the inclusion of determination by a civil court. The Honourable Lahore High Court not only declined to interfere into the findings of the Additional



Securities and Exchange Commission of Pakistan

Collector District Kasur but also did not find any material irregularity or jurisdictional defect in the said order. Furthermore, the Honourable Lahore High Court vide its order dated 14/10/04 had already dismissed the Appellant's petition under section 439(6) of the Repealed Companies Ordinance challenging striking off name of the Defunct Company. The Registrar office had also passed Order under section 439(6) of the Repealed Companies Ordinance in due accordance with the law when application was made. It is incorrect to suggest that the said business of the Defunct Company is still being carried on as no documentary evidence has been brought on record to date.

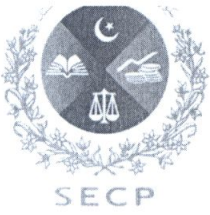
- e) The Appellant has not come to the Respondent No.1 with clean hands as the Appellant withdrew from his stance on repeated occasions and never pursued his case in diligent manner. In addition, the Appellant disputed his signatures and his resignation submitted through Form-29 with the Respondent No.1 but never challenged it in any court. The right approach to challenge the disputed facts was invocation of civil court and obtaining the declaration regarding the admissibility of the said form.
- f) A reply letter dated 19/12/17 was submitted by the Appellant in response to the department of Respondent's No.1 letters dated 22/06/17 and 08/11/17. The department of Respondent No.1 vide its letter dated 08/11/17 had advised the Appellant to "*pursue the matter regarding the title/ownership of the assets (land) pending in the Honourable Court, after which the matter shall be considered on its merits, accordingly*". The Appellant, however, through letter dated 19/12/18 informed that he has filed application for withdrawal of its pending review in the Honourable Lahore High Court and prayed to the Commission that "*the title proceedings (i.e. Restoration of the Company) may kindly be adjudicated on merits*". The Appellant was again advised vide Impugned Letter/Order to pursue the matter of ownership of the assets (land) with the Honourable Lahore High Court, which is the appropriate forum. In addition to the above, the appeal merits dismissal on account of certain material and pertinent facts being concealed from the Appellate Bench.

5. The Respondent No.2 rebutted the arguments of the Appellant on the following grounds:

Appellate Bench

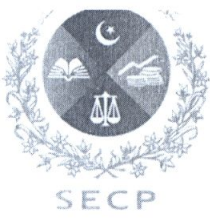
Appeal No.13 of 2018

Page 6 of 9



Securities and Exchange Commission of Pakistan

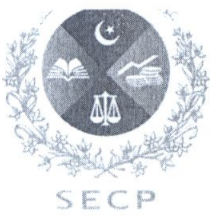
- a) The nature of business of the Defunct Company was to carry on the business of cold storage. Since the dissolution of the Defunct Company, no business has continued under the name of the Defunct Company. The Appellant was removed from the post of CEO in accordance with the provisions of Repealed Companies Ordinance. The change was filed in the office of Registrar of Companies, Companies Registration Office, Lahore in the prescribed manner on Form-29 dated 15/05/94 and the documents have also been authenticated by the Appellant. At the time of filing the documents pertaining to striking of name of the company in terms of section 439 of the Repealed Companies Ordinance, there were no fixed assets in the name of the Defunct Company and all the documents filed for this purpose were true, correct and genuine. Resultantly, the name of the Defunct Company was struck off from the Register of Companies maintained by the Commission under the Repealed Companies Ordinance.
- b) The land mentioned in the Appeal is in the ownership of Respondent No.2 since April 2002, whereas, the Revenue record report regarding change of ownership in favour of the Respondent No.2 was issued on 10/05/02 after due process. The ownership of Respondent No.2 is intact and in support of which order of Honourable High Court, Lahore and report of the Commission dated 29/03/04 can be provided.
- c) The Appellant is a chronic litigant and has filed the instant appeal with malafide intention to harass the Respondent No.2 by abusing process of the law. The Appellant has already resolved the issues with Respondent No.2 vide a compromise deed dated 10/11/04 on stamp paper of due value and a sum of Rs 1,000,000/- had been received by the Appellant as lump-sum consideration for all matters relating to the joint business of Respondent No.2 and Appellant.
6. We have heard the parties i.e. the Appellant and the Respondents. The Appellant has argued that he was removed from the position of CEO of the Defunct Company and his shareholding reduced through fraudulent means and forged signatures. Furthermore, the Appellant argued that the Defunct Company is still the owner of land, therefore it was wrongly struck off the register of Companies in 2002 in terms of section 439(3) of the repealed Companies Ordinance.



Securities and Exchange Commission of Pakistan

Furthermore, the Appellant argued that the matter was not decided on merits by the court, therefore, the doctrine of res judicata does not apply and the Appellate Bench of the Commission has jurisdiction to pursue the matter. The Respondent No.1 has argued that the Defunct Company itself applied for striking off its name from the Register of Companies. Consequently, the Respondent No.1 argued that the name of the Defunct Company was struck off from the Register of Companies after taking into consideration the documents namely; 1) Declaration by the Chief Executive, 2) Certificate by the Auditor and 3) Resolution by the Board of Directors/Shareholders passed on 14/05/02. Furthermore, the Respondent No.1 argued that any issue pertaining to reduction of shareholding and dispute in relation to assets should be pursued in a court of law and not before the Commission. The Respondent No.2 argued that the nature of business of the Defunct Company was to carry on the business of cold storage and since its dissolution, no business had continued under the name of the Defunct Company. Furthermore, the Respondent No.2 argued that the Appellant was removed from the post of CEO in accordance with the provisions of the repealed Companies Ordinance. Furthermore, the Respondent No.2 argued that at the time of striking of name of the Defunct Company, there were no fixed assets in the name of the Defunct Company and all the documents filed for this purpose were true, correct and genuine. The Respondent No.2 further argued that all outstanding issues with the Appellant had been settled and a sum of Rs 1,000,000/- has been received by the Appellant as lump-sum consideration for all matters relating to the joint business of Respondent No.2 and Appellant.

7. We are of the view that there are many contentious issues between the Appellant and Respondent No.2 as they both were the promoters and directors of the Defunct Company, however, the Defunct Company was rightfully struck off the Register of Companies in terms of section 439(3) of Repealed Companies Ordinance. The Appellant's assertion, therefore, that the Defunct Company still owns land or that he was fraudulently removed from the position of CEO and his shareholding reduced is a matter to be pursued in a court of competent jurisdiction and not before the Respondent No.1. The Respondent No.1 cannot of its own volition investigate and establish whether the Defunct Company still owns assets given the dispute between the Appellant and



Securities and Exchange Commission of Pakistan

Respondent No.2. The Appellant had initially taken up the matter in the Honourable Lahore High Court but the matter was not pursued by him and now he has returned to Respondent No.1 to adjudicate on the matter. We are of the view that when the Appellant had already approached a higher forum, he should have pursued the matter fully before the Honourable High Court.

8. In view of the above, we see no reason to interfere with the Impugned Order. The Impugned Order is upheld with no order as to costs.

Shauzab Ali

Commissioner (SMD)

Aamir Khan

Commissioner (SCD-PRDD)

Announced on: **18 MAR 2019**