



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No.24 of 2016

Pakistan Oilfields Limited

...Appellant

versus

Executive Director, Corporate Supervision Department,
Securities and Exchange Commission of Pakistan

...Respondent

Date of Hearing 13/07/16

Present:

For the Appellant:

- (i) Syed Asad Haider, Senior Manager (Legal), Pakistan Oilfields Ltd
- (ii) Khalid Nafees Siddiqui, Chief Financial Officer, Pakistan Oilfields Ltd

For the Respondent:

- (i) Abid Hussain, Executive Director (CSD)

ORDER

1. This order is in appeal No. 24 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 21/04/16 (Impugned Order) passed by the Respondent.
2. Brief facts of the case are that section 204A of the Companies Ordinance, 1984 (Ordinance) states that listed companies shall have independent share registrar possessing such qualifications and performing such functions as may be specified by the Securities and Exchange Commission of Pakistan (Commission). The Commission while exercising the powers conferred under section 506B of the

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Ordinance read with section 204A of the Ordinance directed all the listed companies vide its Circular 44 of 2015 (Circular) to ensure compliance with the requirements of section 204A(2) and the Balloters and Transfer Agents Rules, 2015 (BTA Rules) by appointing the share registrar registered under the BTA Rules. Moreover, all listed companies were required to comply with the aforesaid direction by 31/12/15. It was, however, observed that Pakistan Oilfields Limited (Appellant) had not complied with direction given by the Commission by not appointing the share registrar within the time prescribed under the Circular.

3. Show Cause Notice dated 19/01/16 (SCN) was served to the Chief Executive of the Appellant. The Appellant was directed in terms of the aforesaid provision to make good the default and ensure compliance with the provisions of the Ordinance and the Circular within 30 days from the date of the SCN. The Appellant submitted reply to the SCN vide letter dated 16/02/16. In order to provide an opportunity of hearing, the matter was fixed for 24/03/16. Mr. Sultan Mazhar Sher, Advocate and Syed Asad Haider, Sr. Manager (Legal) of the Appellant, appeared before the Respondent as authorized representatives of the Appellant on the date of the hearing. They reiterated the reasons for not appointing share registrar submitted by the Appellant vide its letter dated 16/02/16.
4. The Respondent directed the Appellant to make good the default within 60 days from the date of direction by appointing the share registrar registered under the BTA Rules to ensure compliance with the provisions of the Ordinance.
5. The Appellant preferred the instant appeal on the following grounds:
 - (i) The Respondent has not appreciated that the Appellant had appointed a share registrar, namely Noble Computer Services (Pvt.) Ltd from 2008 until 2013. On 18/02/13, the share registrar informed them that it has discontinued its services with effect from 15/02/13 citing the then prevailing economic conditions, rising cost of operations and increasing risk factors. Resultantly, the Appellant had to suffer and go



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through the cumbersome exercise to retrieve the entire data of shareholders from the office of share registrar. Therefore, the appointment of the share registrar by the Appellant only caused great inconvenience to the Appellant rather than any convenience to it or its shareholders. All the functions mentioned by the Respondent are not out of the ordinary from the normal course of business and the same functions are presently being performed very efficiently and without complaint by the Appellant. The functions as stipulated in the Impugned Order do not have any nexus with bringing transparency in the working of the listed company as under the Ordinance and the Listing Regulations including the Code of Corporate Governance, extensive processes and disclosures are required. The Regulator needs to weigh the practicality and implications of such requirements against hard and fast enforcement of the same. Even if the functions of the share registrar as mentioned in the Impugned Order are accepted; such functions would have no relevance for the Appellant which has only around 0.48% shares in physical form of its total shares. The majority of other physical shares are of its parent company which do not fall within the intent and purpose of section 204A(2) of the Ordinance.

- (ii) The Commission is also seeking the revision of the mandatory requirement to have a share registrar and leaving it optional for companies to appoint a share registrar under the Draft Companies Bill 2015. It is a well settled principle in law recognized by the Courts in Pakistan that benefit of change in law should be passed to any person affected. The law as yet is still in draft form; however, in view of the proposal to make the appointment of share registrar optional and the issues raised, the Commission may reconsider the enforcement of section 204A of the Ordinance.
- (iii) The inclusion of the requirement of a share registrar for listed companies was made in the Ordinance through Finance Act 2007. It has already been laid down by the Apex Court of Pakistan in cases titled Mir Muhammad Idrees vs. Federation of Pakistan, PLD 2011 Supreme Court 213 following the judgment in Sindh High Court Bar Association vs. Federation of Pakistan PLD 2009 SC 879, that an amendment in law through a Money Bill (if it does not fulfill the requirements of the Constitution relating to the Money Bill) under Article 73 of the Constitution of Islamic Republic of Pakistan 1973, is ultra vires thereof, thus without legal effect. Accordingly, the



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Regulator should abstain from mechanical enforcement of a provision that has the taint of illegality.

6. The Respondent rebutted the arguments of the Appellants on the following grounds:

- (i) Provisions of section 204A of the Ordinance require that listed companies shall have independent share registrar possessing such qualifications and performing such functions as may be specified by the Commission. The Appellant has not complied with the aforesaid provisions even after SCN was served, wherein, the Chief Executive was directed to make good the default and ensure compliance of the Ordinance and Circular 44 of 2015 within 30 days from the date of the said notice. The said direction was not complied with within the prescribed timeline. The Respondent, however, vide its order dated 21/04/16 directed the Chief Executive of the Company to make good the default within 60 days of the said direction. Appointment of independent share registrar should be viewed as an element of transparency in dealing with the matters relating to shareholders rather than an additional cost to the Appellant and above all it is a mandatory provision of the law to be complied with by listed companies.
- (ii) The appointment of share registrar is a mandatory requirement for all listed companies irrespective of its functions. There is no relaxation or exemption envisaged under section 204-A(2) of the Ordinance. The Companies bill is still in the draft stages and, therefore, cannot be considered at this stage.
- (iii) There is no decision of the Court on record on the amendments made in the Ordinance.

7. We have heard the parties i.e. Appellant and Respondents.

8. The Appellant has argued that the appointment of the share registrar caused great inconvenience to the Appellant and only 0.48% of the shares are in physical form of its total shares in the Appellant, therefore, it is not necessary to appoint a share

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registrar. The functions are not out of the ordinary course of business and the practicalities should be taken into consideration rather than the enforcement of the law. The Appellant has further argued that the inclusion of the requirement of a share registrar for listed companies was made in the Ordinance through Finance Act 2007 and that an amendment in law through a Money Bill is ultra vires the Constitution and without any legal effect. Moreover, it has been proposed in the Draft Companies Bill that the appointment of share registrar be made optional rather than mandatory which should be taken into consideration. The Respondent on the other hand has argued that section 204A(2) is a mandatory requirement of the law and the appointment of share registrar helps improve transparency in respect of matters related to shareholders in a company.

9. Section 204A(2) of the Ordinance provides that, "*Listed companies shall have an independent share registrar possessing such qualifications and performing such functions as may be specified by the Commission.*" We are of the view that section 204A(2) of the Ordinance is an absolute requirement of the law which all listed companies must comply with regardless of whether they deem it necessary or not. It is also vital in improving transparency within a company in matters related to shareholders and protecting their interests.

10. Section 2 of the Securities and Exchange Commission of Pakistan (Amendment) Act, 2013 (SECP Amendment Act) has amended section 5 of the SECP Act as follows:

"(5) No act, proceeding or decision of the Commission shall be invalid only by reason of the existence of a vacancy or defect in the constitution of the Commission".

Further, section 4 of the SECP Amendment Act states "Anything done, actions taken, orders passed, instruments made, notifications issued, agreement made, proceedings initiated, processes or communications issued, powers conferred, assumed or exercised by the Commission as defined in clause (g) of Section 2 of the said Act or its employees as defined in clause (k) of Section 2 thereof in terms of amendments

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made through this Act, on or after 19th December, 1997 and before the commencement of this Act, shall be deemed to have been validly done, made, issued, taken, initiated, conferred, assumed and exercised and the provisions of this Act shall have and shall be deemed to have had effect accordingly.”

In view of above, any amendments made through the Finance Acts have now been regularized through the SECP Amendment Act.

11. The Appellant's argument pertaining to the changes proposed in the law relating to the appointment of share registrar in Draft Companies Bill has no relevance to the instant case as it is not the law currently in force.

12. 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.

A handwritten signature in black ink, appearing to be 'Fida Hussain Samoo', is written above the name.

(Fida Hussain Samoo)
Commissioner (Insurance)

A handwritten signature in black ink, appearing to be 'Zafar Abdullah', is written above the name. A long horizontal line is drawn across the signature.

(Zafar Abdullah)
Commissioner (SCD)

Announced on: **01 AUG 2016**