



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 34 of 2015

Sialkot International Container Terminal Limited through
Company Secretary.

...Appellant

Versus

Ms. Sidra Mansur, Joint Registrar, Company Registration Office
SECP, Lahore

...Respondent

Date of hearing:

14/10/15

Present:

For Appellant:

- i. Mr. Tahir Mehmood Raja, Advocate High Court
- ii. Mr. Shaukat Ali, Management Consultant
- iii. Mr. M. Ishtiaq Lone, Chairman
- iv. Mr. Adeel Obaid, Advocate
- v. Mr. Abdul Qadir Suddle, Company Secretary

For Respondent:

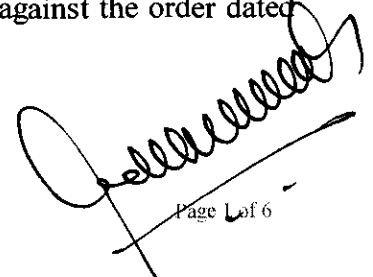
Ms. Sidra Mansur, Joint Registrar (Company Registration
Office Lahore)

ORDER

1. This order shall dispose of Appeal No. 34 of 2015 filed by the Appellant under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 30/04/15 (the Impugned Order) passed by the Respondent.


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2. Brief facts of the case are that Sialkot International Container Terminal Limited (the Company) was incorporated on 16/10/12 as a public limited Company. Mr. Zulfikar Ahsan was appointed first CEO of the Company and Mr. Abdul Qadir Suddle was appointed as Company Secretary vide online filing of Form 29 dated 30/10/12 under the signature of Mr. Asif Khan. As per Form 29 dated 09/10/12 following eighteen subscribers were declared as first directors:

Sr. No.	Name of Director/ subscriber
1	Mr. Aamir Imtiaz Dar
2	Mr. Aamir Munir Malik
3	Mr. Abdul Qadir Suddle
4	Mr. Abdul Waheed Usman Punjwani
5	Mr. Asif khan
6	Ch. Jhang Sher
7	Mr. Ghulam Sarwer
8	Mr. Haseeb Ahmed Bhatti
9	Mr. Khalid Jhangir
10	Mr. Mansoor Sabir Suddle
11	Mr. Muhammad Bilal Lone
12	Mr. Muhammad Ishtiaq Lone
13	Mr. Muhammad Siddique Butt
14	Mr. Qaiser Mehmood Shiekh
15	Mr. Rehman ul Haq
16	Mr. Tasawer Hussain
17	Mr. Usman Ul haq
18	Mr. Zulfikar Ahsan

3. The Company enhanced its paid up capital and filed a Form-III dated 27/03/2014 under signatures of Mr. Zulfikar Ahsan. However, new/further shares were not allotted to the existing shareholders of the company except Mr. Rehman Ul Haq. The detail of allotment is as under:

Sr. No.	Name of Director
1	Mr. Muhammad Imtiaz Ahmed
2	Mr. Ehsan ul Haque
3	Mr. Muhammad Sikandar

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4	Mr. Nayyer Abbas
5	Mr. Khalid Mehmood Dar
6	Mr. Zafar Iqbal
7	Ms. Adeeba Parveen
8	Rana Dilshad Ahmed Tahir
9	Mr. Rehman ul Haq
10	Mr. Hameed Akhtar Chadda
11	Mr. Muhammad Farhan Suddle
12	Mr. Nasir Khan

4. In the instant case primarily there were two parties who contested the matter before the Respondent with adverse claims of management and directorship of the Company. First Party was Mr. Zulfikar Ahsan and others, who filed complaints with the Respondent and Second Party was Mr. Muhammad Ishtiaq Lone and others who responded to the complaints. The Impugned Oder has been challenged by the Second Party. As per the record, multiple returns with respect to appointment, re-appointment and retirement of directors, election of directors and appointment of Chief Executive Officer (CEO) of the Company have been filed by the parties. Few relevant but disputed filings by the parties are as under:

S. No	First Party(Mr. Zulfikar Ahsan and others)	Second Party(Mr. Muhammad Ishtiaq Lone and others)
1.		On 27/03/14 Form 27, 28 and 29 were filed intimating that the first election of directors were held during first AGM of the Company on 28/02/14 and twelve directors were elected.
2.		Another Form 29 dated 06/02/15 was filed showing that Mr. Zulfikar Ahsan has been retired from the post of CEO with effect from 28/02/14 and Mr.

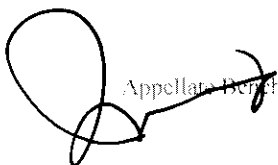


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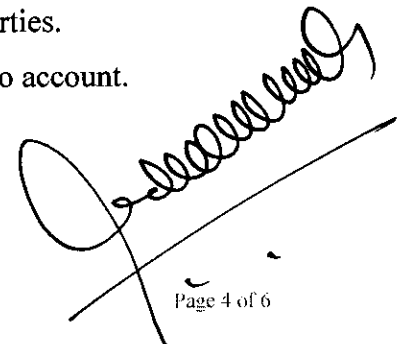
		Muhammad Ishtaiq Lone has been appointed as CEO of the Company.
3.	On 12/01/15, Mr. Haseeb Ahmad Bhatti and Mr. Zulfikar Ahsan filed complaints with the Respondent vide their letters dated 09/01/15 against Mr. Abdul Qadir Suddle and Mr. Muhammad Ishtaiq Lone.	The complaints were forwarded for comments of the Company Secretary vide this office letter dated 22/01/15.
4.	On 17/02/15 M/s. Zafar and Associates (on behalf of Mr. Zulfikar Ahsan) also filed Form 27, 28 and 29 dated 28/02/14 about first AGM held on 28/02/14 and of election of thirty directors.	On 05/02/15, the company again filed Form 27, 28 and 29 showing that 13 out of 18 directors have been elected as directors with effect from 28/02/14, under the signatures of Mr. Muhammad Ishtaiq Lone.

5. The Appellate Bench (the Bench) has pursued the record and observed that all the disputed filings were made by few initial directors of the Company. Without going into the merits of the case, the Bench is of the view that important aspects have not been taken into consideration by the Respondent, although such facts were necessary for the just adjudication of the matter. In our view the Respondent was required to do the following:

- i. Verification of on line filing authorization on behalf of the Company.
- ii. The parties should have been called together for hearing of the case.
- iii. Reasons of delay filing should have been asked from the parties.
- iv. Internal control of the Company should have been taken into account.


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- v. Procedure and requirements of online filing with respect to retirement or appointment of directors/CEO should have been discussed in view of the present case.
 - vi. Procedure and requirements of Accounts filing should have been discussed in view of the present case.
6. We find it appropriate to highlight fundamental principle of criminal justice system wherein, mere registration of criminal case cannot be taken as evidence against someone unless proven guilty by the court of competent jurisdiction. Furthermore being apex corporate regulator and custodian of corporate and securities laws it is the responsibility of the Securities and Exchange Commission of Pakistan to ensure implementation of all the requirements contained in such laws and the protection of systems established thereunder like "On line return filing". On line filing system is based on highly sophisticated technology therefore filing through said system should have been treated as authenticated and reliable. Further, it should have been protected from any fraudulent or unauthorized use. In the present case parties have provided different returns through online filing which prima facie established their authorization to operate through online system, however, there was need to probe into the matter with respect to misuse of said authorization. In present case misuse of authorization could have been determined if online filing account of the Company was used or operated by the ex-director or ex-CEO after their retirement.
7. During the hearing proceedings before the Respondent few affidavits of directors were produced by one party to establish the claim; however affidavits were not verified by the Respondent by calling the persons sworn affidavits, therefore no reliance could be made on such affidavits. Furthermore the Respondent was required to decide the allegations regarding oppression and mismanagement of the Company however, responsibility was transferred/shifted to the courts without discharge of Respondent's own statutory duty which is neither desirable nor permitted by law. Further, the issue related to shareholding should also have been decided by the Respondent as per available record and procedure.

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8. In view of the above discussion and observations, we find it appropriate to remand the case to the Respondent to consider and evaluate the case by calling both the parties along with relevant record and witness to support their claims. All parties having disputes are also directed through this order to settle their issues before the Respondent to avoid any legal consequences. Therefore the Impugned Order dated 30/04/15 is set aside and matter is remanded to the Respondent to decide it afresh within sixty days of this order. Without prejudice to the aforesaid observations and discussion the Respondent is at liberty to demand any document from the parties for just and equitable conclusion of the matter.

9. Parties to bear their own cost.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Zafar Abdullah)
Commissioner (SCD)

Announced on: **04 NOV 2015**