



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

### Appeal No. 06 of 2024

Dilawar Company (Private) Limited (Defunct Company) through its member Malik Aamir Ali Khan Noon

..... Appellant

versus

Registrar of Companies, SECP

..... Respondent

### Date of Hearing(s):

January 02, 2026  
November 03, 2025  
May 08, 2025  
July 09, 2024

### Present:

#### For the Appellant:

1. Mr. Wajahat Ali Mian, Authorized Representative/Counsel
2. Mr. M. Ali Shahab, Counsel

#### For the Respondent:

1. Mr. Zubair Ahmed, Assistant Director, Corporate Registry Department, SECP
2. Mr. Muhammad Awais Khan, Management Executive, Corporate Registry Department, SECP

## ORDER

1. This Order shall dispose of Appeal No. 06 of 2024 filed by Dilawar Company (Private) Limited (Defunct Company) through its member namely; Mr. Malik Aamir Ali Khan Noon (the "Appellant"), against the Order dated September 01, 2022 (the "Impugned Order") passed by the Registrar of Companies, SECP (the "Respondent") under Section 425 of the Companies Act, 2017 (the "Act").



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### BRIEF FACTS OF THE CASE

2. Brief facts of the case are that the Defunct Company was incorporated on July 29, 1957, under the Companies Act, 1913 (“Act of 1913”), with its principal object being the operation of a cinema business. The Defunct Company had an authorized capital of Rs. 500,000/- and a paid-up capital of Rs. 309,000/-, divided into 309 paid-up ordinary shares of Rs. 1,000/- each. According to the last *Form-E* filed by the Defunct Company for the year 1996, the shareholding position was as under:

S. No.	Name of shareholders	No. of shares
1.	Hamid Ali Khan Noon	173
2.	Malik Aamir Ali Khan Noon	40
3.	General Khadim Hussain	12
4.	Ch. Sarwar Khan	10
5.	Begum Allah Ditta	10
6.	Ch. Ashraf	7
7.	Rana Sultan Khan	6
8.	Nasim Akhtar	5
9.	Nadia Begum	5
10.	Ch. Sultan Khan	5
11.	Iftekhar Khan	3
12.	Ch. Muhammad Hussain	3
13.	Amina Begum	3
14.	Daulat Khatoon	3
15.	Dr. Gul Muhammad	3
16.	Qudsia Begum	2
17.	Muhammad Farooq	2
18.	Malik Sana Muhammad	2
19.	Malik M. Ayub Khan	2
20.	Malik M. Raza Khan	2
21.	Malik Rab Nawaz	2
22.	Ch. M. Iqbal	2
23.	Ch. Allah Yar	2
24.	Ch. Atta-ur-Rasul	2
25.	Mirza Naeem Baig	2
26.	Malik Safdar Hassan	1
<b>Total</b>		<b>309</b>

3. Due to long-standing non-compliance with statutory filing requirements and discontinuation of business activities, the Registrar, after completing all legal formalities, struck-off the name of the Defunct Company from the register of companies under Section



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439 of the Companies Ordinance 1984 (the “Ordinance”), with its dissolution duly notified in the Official Gazette on February 08, 2006. Subsequently, in the year 2019, the Defunct Company, through its member namely; Mr. Malik Aamir Ali Khan Noon, submitted an application under Section 425(9) of the Act seeking restoration of the Defunct Company’s name to the register of companies, primarily asserting that the Defunct Company has an immovable property i.e. *Dilawar Cinema* and associated land situated in Bhalwal, District Sargodha. In support, the Appellant relied upon unaudited accounts, electricity bills, land revenue record (*Fard*), and affidavits of the members. Alongside the application, *Form-A* for the year 2019 was also submitted, purporting a revised shareholding structure comprising of Mr. Malik Aamir Ali Khan Noon holding 254 shares, Mrs. Safia Noon holding 10 shares, and the remaining 45 shares distributed among 14 other shareholders. During the course of hearing, the Appellant was asked to submit certain documents including:

- i. Proof of asset i.e. copy of *Fard* of the stated land;
- ii. Copy of death certificate of Mr. Hamid Ali Khan Noon;
- iii. Succession certificate of Mr. Hamid Ali Khan Noon;
- iv. No objection letters from the other legal heirs of Mr. Hamid Ali Khan Noon;
- v. Duly executed transfer deeds of shares; and
- vi. Copies of shares scrips held by the current shareholders.

The Appellant submitted all the above-mentioned documents except the succession certificate of Mr. Hamid Ali Khan Noon and no objection letters from his legal heirs. Consequently, the Respondent concluded the hearing and in exercise of powers under Section 425(9) of the Act, passed the Impugned Order declining the restoration of the Defunct Company.

4. It is pertinent to mention here that the instant appeal was earlier placed before a regular bench, wherein hearings were conducted on July 09, 2024 and May 08, 2025. Upon conclusion of the proceedings, the learned Members of the Bench arrived at divergent conclusions. In view of the difference of opinions, and in terms of Rule 17(6) of the Securities and Exchange Commission of Pakistan (Appellate Bench Procedure) Rules,



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2003, the appeal was placed before a larger bench for hearing and adjudication afresh. Accordingly, the matter was re-fixed before the larger bench on November 03, 2025. However, before the appeal could be decided, the term of office of the learned Members constituting the larger bench expired. Consequently, the appeal was placed before this Bench, which is now seized of the matter for hearing and final adjudication in accordance with law.

### SUBMISSIONS OF THE APPELLANT

5. The Appellant preferred the instant appeal, *inter alia*, on the following grounds:
- i. The Impugned Order suffers from a clear non-application of mind, as it failed to consider and address and give findings regarding the Appellant's asset, which was central to the applicability of Section 425(8) of the Act.
  - ii. Section 425(8) of the Act expressly provides that the provisions of Section 425 of the Act shall not apply to any company possessing known assets or liabilities, and such company must instead be proceeded against through winding-up proceedings.
  - iii. Sufficient documentary evidence was produced to establish the existence of an immovable property (*Dilawar Cinema* and adjoining land in Bhalwal, District Sargodha) as the Company's asset, including *Fard*, Mutation, unaudited accounts, and affidavits of ownership.
  - iv. The Respondent himself required the production of *Fard* and Mutation, which were duly provided. Therefore, the Impugned Order's observation that ownership was unproven was erroneous and unsupported by record.
  - v. If the Respondent had any doubt about the authenticity of titled documents, he could have verified them independently, but in the absence of any contrary evidence, Section 425(8) was fully attracted and restoration was mandatory. Reliance was placed on *Combined Ginnery (Pvt.) Ltd. v. Registrar, 2007 CLD 1234 (Lahore)* and *Chaudhri Khadim Hussain v. SECP, 2021 CLD 663*



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(Islamabad), wherein it was held that where a company owns a known asset, it cannot be struck off and may only be subjected to winding-up proceedings if any ground thereof is attracted.

- vi. The Appellant further submitted that the Respondent's observation regarding significant changes in the shareholding structure from 1996 to 2019 was entirely irrelevant, as the issue before the Respondent was restoration based on ownership of assets, and not the Appellant's internal structure, which could be dealt with under separate provisions of the Act.
- vii. The requirement for a succession certificate in respect of the late shareholder and director, Mr. Hamid Ali Khan Noon, was misplaced and without legal basis, as he had transferred his shareholding to Mr. Aamir Ali Khan Noon during his lifetime, therefore, there is no need to submit the same.
- viii. No statutory notice, as mandated under Section 439 of the Ordinance, was ever received, nor was any opportunity of hearing provided to the Appellant prior to striking off its name from the register of companies, thereby rendering the same unsustainable in law. Reliance was placed on *M/s. Zahooria Builders (Pvt) Ltd v. The Registrar of Companies, SECP, 2008 CLD 1312 (Karachi)*, wherein it was held that without service of statutory notice on the company the order for striking off the name of the company is bad in law and cannot be sustained.
- ix. The Appellant argued that a public notice had been published in widely circulated national newspapers concerning its restoration, and no objections were received in response, therefore, requiring no-objection certificates from shareholders was both unnecessary and irrelevant.
- x. The Impugned Order was non-speaking in nature, devoid of any cogent reasoning or reference to the relevant legal provisions and facts available on record, and was therefore not sustainable in law.
- xi. Lastly, the Appellant prayed for setting aside of the Impugned Order.



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### SUBMISSIONS OF THE RESPONDENT

6. In response to the Appellant submissions, the Respondent, *inter alia*, submitted that:

- i. The Company persistently failed to comply with statutory filing requirements, as evident from only intermittent filings of *Form-E* for the years 1978- 1982, and later in 1996. Since no statutory filings were made by the Company after the year 1996, it appeared that the Company had discontinued its business operations. Accordingly, the Registrar issued notices dated June 03, July 12, and August 31, 2004, in pursuance of Section 439 of the Ordinance, calling upon the Company to show- cause as to why its name should not be struck off the register of companies, however, no reply was submitted by the Company.
- ii. In the absence of any reply from the Defunct Company, the Registrar duly published notices in the Official Gazette under Sections 439(3) and 439(5) of the Ordinance on December 29, 2004, and February 08, 2006, respectively, thereby fulfilling all procedural and legal requirements before striking-off the Company's name from the Register of Companies.
- iii. The Respondent argued that the Appellant claimed that the Defunct Company has ownership of immovable property, however, no title deed, registered sale agreement, or legally admissible ownership document was submitted, and the *Fard-e-Milkiyat* provided was insufficient to establish ownership, as the name appearing on it i.e. *Dilawar Company Limited*, did not correspond exactly with the Company's registered name i.e. *Dilawar Company (Pvt.) Limited*.
- iv. The electricity bills and utility documents provided were not in the name of the Company, nor was any credible proof of possession, ownership, or active business operations on the purported property provided.
- v. Significant and unsubstantiated alterations in the Company's shareholding and directorship occurred between 1996 and the time of filing of application for restoration without supporting affidavits, indemnity bonds, or consents from



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other shareholders or directors, thereby rendered the claimed ownership and control structure doubtful.

- vi. It was argued that the Appellant failed to produce any share scrips, shareholder register, bank statements, or income tax returns to corroborate its claims regarding shareholding and continued corporate existence.
- vii. Succession certificate or family tree of the deceased majority shareholder, Mr. Hamid Ali Khan Noon, who held 224 shares (approximately 73% of the total shareholding) was not provided despite repeated requests. Without confirmation of succession and consent from his legal heirs, restoration could not be deemed “just and proper” under Section 425(9) of the Act.
- viii. The Impugned Order is a speaking order, duly reasoned and passed in accordance with the applicable legal provisions, addressing all deficiencies and evidentiary shortcomings in the Appellant’s case.
- ix. It was lastly submitted that as the ownership of the property, claimed to be the asset of the Company, remains unsettled and the available record does not conclusively establish that the land belongs to the Company, therefore, restoration of the Company’s name in such circumstances would neither be legally justified nor “just and proper.” It was contended that such restoration could give rise to uncertainty, legal complications, and possible prejudice to the rights of other stakeholders or third parties.

### ANALYSIS OF THE BENCH

7. The Bench heard both parties at length and carefully examined the record, the Impugned Order, and the relevant documentary and legal material placed before it. It is observed that the Defunct Company was incorporated under the Act of 1913, and the name appearing in the revenue record (*Fard*), i.e., “Dilawar Company Limited,” corresponds with the name reflected in the Certificate of Incorporation bearing No. 6 P.R. of 1957-1958 dated July 29, 1957. Under the legal regime prevailing at the time of incorporation, specifically under



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Section 6 of the Act of 1913, it was not mandatory for a company limited by shares to include the word "Private" in its name.

***"6. Memorandum of Company limited by Shares***

*In the case of a company limited by shares:-*

*(1) the memorandum shall state:-*

*(i) the name of the company with "Limited" as the last word in its name; ..."*

Accordingly, the variance in nomenclature between "Dilawar Company Limited" and "Dilawar Company (Private) Limited" does not amount to a material discrepancy. The *Fard* being in consonance with the Certificate of Incorporation, therefore, suggests that the Company owned immovable property within the meaning and scope of Section 425(8) of the Act.

8. It is further observed that while deciding the application for restoration of the Defunct Company, the Respondent did not properly appreciate the provisions of Section 425(8) of the Act, which clearly provides that:

***"425. Registrar may strike defunct company off register. ...***

***(8) the provisions of this section shall not apply to a company which has any known assets or liabilities, and such company shall be proceeded against for winding up...."***

We hold that this provision embodies a legislative safeguard preventing the striking-off of companies possessing known assets or liabilities, ensuring that such companies are instead subjected to winding-up proceedings. The rationale underlying this provision is that where tangible property or identifiable obligations exist, the company continues to possess legal and commercial existence warranting protection under due process. Thus, before refusing restoration under Section 425(9) of the Act, the Respondent was legally obliged to determine whether the Defunct Company held any known asset and should have conducted such enquiries as he deemed fit to that effect. However, notwithstanding the fact that the *Fard* was duly submitted before the Respondent, as acknowledged in paragraph 8 of the Impugned Order, the Respondent neither conducted any enquiry to ascertain the authenticity of the said title document nor provided any cogent reason for its non-acceptance.



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9. It is pertinent to note that, at the time of final hearing, the authorized representative appearing on behalf of the Appellant placed on record, a copy of the *Fard* dated December 29, 2025, duly attested by the *Patwari Halqa, Mandi Bhalwal*, bearing *Khewat* No. 109, *Khatooni* No. 274, and *Khasra* Nos. 19 and 21/2, in support of the contention that the Defunct Company owned immovable property, namely land measuring 8 *Kanals* situated at *Mouza Chak VIII Shumali, Tehsil Bhalwal, District Sargodha.*, which is a sufficient evidence that there is an asset in the name of the Defunct Company. In such circumstances, striking off the name of the Defunct Company from the register of companies under the then section 439 (8) of the Ordinance , now 425 (8) of the Act , is not plausible.

10. It is also pertinent to mention here that the Hon'ble Lahore High Court in case titled "*Combined Ginnors (Pvt.) Limited v. Registrar, Securities and Exchange Commission of Pakistan, Lahore*" reported as *2007 CLD 1234* held that:

*"5. ...company being in possession of known assets in the form of said immovable property the said provisions of section 439 enabling the Registrar to struck off the name of the company from the Register were not applicable. In the presence and availability of substantial immovable assets it is otherwise just and proper that the name of the company be restored to the Register."*

11. Nevertheless, it is important to note that the Hon'ble Islamabad High Court in case titled "*Chaudhari Khadim Hussain and another v. Securities and Exchange Commission of Pakistan and another*" reported as *2021 CLD 663* interpreted Section 439(9) of the Ordinance as having two-fold meaning and application, first, the Registrar is required to conduct such enquiries as he deems fit to satisfy himself whether a company owns any assets or has liabilities before recommending its restoration; and second, the Securities and Exchange Commission of Pakistan (the "Commission"), upon receiving such recommendation, must independently assess whether it would be "just and proper" to restore the company to the register, taking into account all attending circumstances, including the company's compliance record and delay in filings. Relevant excerpts from the cited judgment are reproduced below:

*"21. ...Section 439(9) of the 1984 Ordinance gives the power to the Registrar/respondent No.2 to make "such inquiries as he may deem fit" before moving the Commission to have the name of a company restored in the register of companies; such inquiries would be for the Registrar to satisfy*



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*himself that the company does indeed own assets or has any liabilities. In the order dated 24.10.2018, respondent No.2 appears to have been satisfied that R.C.S. owns immovable property. Section 439(9) does not make it obligatory for the Commission to restore a company to the register merely because the Registrar has moved the Commission for such restoration. The Commission has to satisfy itself that "it would be just and proper" to restore the company to the register. It is at this stage that the lapse on the part of R.C.S. in inordinately delaying the filing of its statutory returns including the belated filing of Form-29 showing the change in the shareholding of R.C.S. would become relevant for the Commission whether or not to restore the said company to the register of companies."*

12. Further, it is pertinent to mention here that the Respondent, while exercising jurisdiction under Section 425(9) of the Act is vested with all powers that a Court enjoys while adjudicating an application for restoration under Section 425(6) of the Act. The scope of authority available under this provision is, therefore, not confined to a mechanical or administrative review, rather, it empowers the Respondent to examine the matter on merits and pass such orders as are necessary to secure the ends of justice. For ease of reference the relevant statutory provision is reproduced hereunder:

***"425. Registrar may strike defunct company off register. ...***

*(9) If due to inadvertence or otherwise the name of any company which has any assets and liabilities or which has been in operation or carrying on business or about whose affairs any enquiry or investigation may be necessary has been struck off the register, the registrar may, after such enquiries as he may deem fit, move the Commission to have the name of the company restored to the register and thereupon the Commission may, if satisfied that it will be just and proper so to do, order the name of the company to be restored and shall exercise the powers of the Court in the manner provided in sub-section (6)."*

13. As regards the contention of the Appellant that no statutory notice was ever served upon the Defunct Company prior to the striking-off of its name, we observe that publication of the requisite notice in the Official Gazette under Section 439(3) of the Ordinance constitutes valid service in law and satisfies the statutory requirement of notice. The Hon'ble Lahore High Court in "*Tahir Umar v. Sun Colour Garments and others*" reported as **2005 CLD 1177** has held that even if a company does not receive personal notice from the Registrar, it shall be deemed to have been duly served once such notice is published in



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the Official Gazette. Relevant extract from the judgment is reproduced below for ease of reference:

*"8. ...the Registrar got published notices in the Gazette inviting objections to the striking off the Company name. Such notices were published twice in the official Gazette. Once under section 439(3) of the Ordinance and again on 16-8-2002 under section 439(5) thereof whereafter the Company stood dissolved. The petitioner may not have received personal notice from the Registrar but he is deemed to have been served with notice by publication."*

14. We find that the basic question before the Respondent for determination was not the, *inter se*, distribution of shares among the heirs of the deceased shareholder but whether the Defunct Company, as a distinct legal entity, possessed an identifiable asset that warranted protection from being struck-off under Section 439(8) of the Ordinance (now Section 425(8) of the Act). For ease of reference, prayer of the application filed by the Appellant before the Respondent for restoration of the Defunct Company is reproduced below:

*"In view of the above, it is requested that the order striking off the name of the Company from the Register of Companies be set aside and the name of the Company be, accordingly, restored in the records of the CRO."*

15. While the Respondent's concern regarding the verification of shareholding and succession appears to have been guided by procedural caution, we are of the considered view that the same were ancillary and could not supersede the core statutory enquiry, namely, the determination of the Defunct Company's continued existence through ownership of an asset. The Respondent's approach, though procedurally cautious, appears to have placed emphasis on formal aspects rather than on the substantive legal requirement envisaged by the statute, thereby necessitating a re-evaluation of the matter in accordance with law.
16. With regard to the issue of shareholding, the record reveals that the last valid statutory return (*Form-E*) filed by the Defunct Company with the Commission was for the year 1996. Accordingly, the shareholding structure reflected therein constitutes the legally recognized ownership position of the Defunct Company. Any purported alteration in the shareholding pattern or directorship made subsequent to the dissolution of a company, whether through *Form-A* or any other document, is of no legal effect, as a dissolved company ceases to possess corporate personality or capacity to transact, issue, or transfer shares. We therefore,



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hold that the shareholders recorded in the 1996 return are the lawful owners of the Defunct Company for all purposes connected with the restoration proceedings.

17. There is no cavil to say that the Impugned Order cannot be sustained, as it was premised primarily on the non-filing of statutory returns by the Defunct Company, and no finding was recorded therein with regard to the ownership of any asset by the Defunct Company. The material on record indicated that the existence of such asset was not duly taken into consideration by the Respondent while passing the Impugned Order. Consequently, the omission to consider a material and relevant fact went to the root of the matter, rendering the Impugned Order and the original order of striking off legally unsustainable.

### **DECISION OF THE BENCH**

18. Accordingly, the appeal is allowed, the Impugned Order as well as the original order of striking off passed by the concerned Registrar are set aside, and the Respondent is directed to restore the Defunct Company in accordance with law as it stood on the date it was struck off and dissolved. The concerned Registrar shall, after restoration of the Defunct Company, record any change in the Register of Members strictly on the basis of valid and appropriate legal evidence and in accordance with the applicable provisions of the Act and Companies Regulation, 2024. In cases involving deceased shareholders, such changes shall be effected upon production of a succession certificate or a declaration by a court of competent jurisdiction, to the satisfaction of the concerned Registrar.

19. The appeal is disposed of in the above terms with no orders as to costs.

(Muzafar Ahmed Mirza)  
Commissioner

(Zeeshan Rehman Khattak)  
Commissioner

Announced on:

**12 JAN 2026**