



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 64 of 2020

1. Muhammad Zeeshan Malik
2. Malik Muhammad Nawaz
3. Nadeem Yousaf

Appellants

Versus

Additional Joint Director, (CCD), SECP, Islamabad

Respondent

Date of hearing:

April 29, 2021

### Present:

For the Appellants:

1. Barrister Ahmed Uzair, Advocate High Court
2. Mr. Irfan Chattha, Advocate
3. Mr. Muhammad Zeeshan Malik

For the Respondent:

Mr. Mahboob Ahmad, Additional Director, CCD, SECP

## ORDER

1. This Order shall dispose of Appeal No. 64 of 2020 filed by Mr. Muhammad Zeeshan Malik, Mr. Malik Muhammad Nawaz and Mr. Nadeem Yousaf (Appellants) who are directors and shareholders of Benz Maize Products International Limited (Company). The Appeal was filed by the Appellants against the Order dated June 25, 2020 (Impugned Order) passed by the Additional Joint Director, CCD, SECP (Respondent).
2. The brief facts of the case are that Appellants filed an application under 256 of the Companies Act, 2017 (the Application) to investigate into the affairs of the Company to confirm authenticity of



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documents and for issuance of certified copies of Form 3, Form A and Form 29 confirming issuance of new shares and appointment of Mr. Muhammad Zeeshan Malik (Appellant No.1) as Chief Executive Officer of the Company. The Respondent had examined the matter and found that there is a dispute between the Appellants and other members of the Company namely; Mr. Muhammad Yousaf Malik, Mr. Malik Muhammad Riaz and Mr. Muhammad Razzaq Malik on filing of Form 3 dated 25-06-2019, which specified further allotment of shares. Furthermore, in consequent to the foregoing dispute of directorship and shareholding, two distinct sets of Form-A and Form-29 for the year 2019 were filed with CRO, Lahore notifying different paid-up capital, shareholding and directorship. In view of the facts of the case, the Respondent dismissed the Application due to lack of jurisdiction in terms of Section 126 read with Section 466 of the Companies Act, 2017 (the Act).

3. The Appellants had challenged the Impugned Order *inter alia* on the grounds that the Impugned Order is against the letter and spirit of law. The Appellants stated that the Application was not filed for determination of the shareholding or directorships rather it was made to seek intervention under Section 256 to investigate the authenticity of the claim raised by Mr. Muhammad Razzaq Malik (one of the shareholders of the Company) regarding filing of fake documents by the Company. The Appellants stated that the Impugned Order failed to discuss the prayer of the Application wherein the Appellants requested the Commission to conduct an inquiry whether the due process of law (under Section 83 of the Companies Act, 2017) has been followed or not. The Appellants submitted that the Registrar had refused to issue Form 3 to the Company on the account of the same objection by Mr. Muhammad Razzaq Malik. The Appellants further submitted that they were never granted a personal hearing which is not only contrary to Section 22(3) of the SECP Act, 1997 and Section 24(A) of General Clauses Act, 1897 but also frustrates the principles of *audi alteram partem*.
4. The Respondent had rebutted the grounds of Appeal and stated that the shareholding dispute had emerged due to filing of two distinct sets of Form-A and Form-29, therefore, in terms of Sections 126 and 466 of the Act only court had the jurisdiction to take cognizance in the matter. The Respondent stated that the Application was duly reviewed, however, the Registrar had no authority to interfere in the disputes relating to shareholding and directorship. The Respondent further stated that the Securities and Exchange Commission of Pakistan (the Commission) has no jurisdiction to carry out forensic /audit for determining the genuineness of documents, however, the documents can be produced for its forensics in accordance with Section 463 of the Act. The Respondent submitted



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that Form-A and Form-29 for the year 2019 filed by Mr. Muhammad Zeeshan Malik (Appellant No.1) specified enhanced paid-up capital, shareholding, directorship position of the Company after allotment of further shares and Form-A and Form-29 filed by Mr. Muhammad Yousaf Malik (other than Applicants) specified paid-up capital, shareholding, directorship position of the Company with no change vis-a-vis its previous shareholding position. The Respondent further stated that the Company's statutory auditors namely; M/s. RSM Avas Hyder Liaquat Nauman, Chartered Accountants vide letter dated December 7, 2009 to CRO, Lahore submitted that no further shares were issued by the Company. The Respondent stated that the instant matter is a family dispute relating to shareholding and directorship, which is beyond the purview of compliance with the provisions of Section 83 of the Act, moreover, carrying out forensic audit to confirm the authenticity of the documents and taking oral testimony, as prayed in the Application, did not fall under the jurisdiction of the Commission. The Respondent submitted that the Application was filed under Section 256 of the Act, which only specifies that while passing of an order of investigation, the Commission shall give the company an opportunity of being heard.

5. The Appellate Bench (the Bench) has heard the parties and perused the record. The Appellant's representatives and the Respondent's representative reiterated their grounds of Appeal and rebuttal thereof. The Bench is of the view that facts related to shareholding and directorship of the Company including issuance of notice under Section 83 of the Act and filing of two sets of Form-A and Form 29 depicting different pattern of shareholding are relevant facts to decide whether the Commission is empowered to take cognizance in the matter or not. The Bench has perused the relevant Sections of the Act i.e. 126 and 466, which expressly empower the court to decide matters involving addition or omissions of members or involving disputes of shareholding or directorship, therefore, the Bench has no doubt that the Respondent had no other option except to dismiss the Application. We want to add here that rectification of the register under Section 126 is not limited to addressing issues involving omission or addition of members only, rather it also involves rectification of the quantum of shareholding possessed by such members who have been omitted or added as members. Furthermore, the Bench is of the view that due to disputed facts of the case, which were required to be dealt under Section 126 and 466 of the Act, the Respondent had no ground to proceed with an investigation under Section 256 of the Act. The Bench is not inclined to accept the Appellants plea that the Respondent had violated requirement of Section 22(3) of the SECP Act, 1997 and failed to provide an opportunity of personal hearing to the Appellants while dealing with the Application. The



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Bench has perused Section 22(3) of the SECP Act, 1997, which explicitly provides the right to a personal hearing, in the event rights of the parties are adjudicated upon. However, in the instant case the Respondent had not adjudicated rights of the Appellants, rather, it is stated in the Impugned Order that only the court has jurisdiction to decide the matter involving the rights of the parties. Furthermore, the Bench believes that the Respondent had provided plausible reasoning while dismissing the Application, therefore, the requirement of Section 24-A of General Clauses Act, 1897 had been duly met.

6. In view of the forgoing, the Bench finds no reason to interfere with the merits of the Impugned Order, therefore, we hereby dismiss this Appeal, without any order as to cost.

(Sadia Khan)

Commissioner (SCD-S&ED, INS-SD, AML)

(Farrukh Hamid Sabzwari)

Commissioner (SCD-PRDD)

Announced on:

05 JUL 2021