



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 89 of 2016

Muhammad Abdul Mateen Director/Shareholder

...Appellant

Versus

(i) Arif Karim, CEO Protech Leather Apparel (Pvt) Ltd

(ii) Shaukat Hussain, Registrar of Companies

...Respondents

Date of Hearing: 29/12/16

### Present:

#### Appellant:

1) Mr. Abdul Mateen, Appellant

#### For the Appellant:

2) Mr. Riasat Ali Gondal, Advocate Supreme Court

3) Mr. Muhammad Adnan Rana, Personal Secretary

#### For the Respondent No.1:

1) Mr. Asad Javed, Advocate

#### For the Respondent No.2:

1) Mr. Muhammad Siddique, Executive Director (CCD)

2) Mr. Shaukat Hussain, Registrar of Companies (CCD)

## ORDER

1. This Order is passed in the matter of appeal No. 89 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan (Commission) Act, 1997 (SECP)

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Act) against the order (Impugned Order) dated 17/08/16 passed by the Respondent No.2.

2. The brief facts of the case are that M/s. Protech Leather Apparel (Private) Limited (Company) filed a Circular dated 24/06/13 in terms of section 86 of the Companies Ordinance, 1984 (Companies Ordinance) and Form III dated 29/08/13 with the Registrar concerned (Assistant Registrar), which was examined and accepted. Subsequently, Mr. Abdul Mateen (Appellant), a member director of the Company filed a complaint with the Assistant Registrar challenging the above Circular filed by the Company. The Assistant Registrar after providing an opportunity of hearing to both the parties passed Order dated 19/01/16 and cancelled the recording of both returns and the Company was given an opportunity in terms of proviso to section 468 of the Ordinance read with Regulation 11(2) of the Companies (Registration Offices) Regulations 2003 (Regulations) to file a revised Circular under section 86(3) dated 24/06/13 and a revised Form-III dated 29/08/13 containing particulars of allotment as per the Register of members maintained by the Company failing which both returns would be rejected under the relevant provisions of law. In pursuance of the Order dated 19/01/16, Deputy Registrar of Companies passed Order dated 01/03/16 against the Company for failing to submit revised Circular under section 86(3) dated 24/06/13 and Form-III dated 29/08/13 and as a consequence, refused to accept Circular dated 24/06/13 and Form-III dated 29/08/13 and as a consequence, Form-A made up to 31/10/13 and Form-A made up to 31/10/14 was also cancelled in terms of section 468 of the Ordinance read with Regulation 11 of Regulations and the Company was advised to file revised Form-A made up to 31/10/13, Form-A made up to 31/10/14 and Form-A made up to 31/10/15 within 15 days.

3. The Respondent No.2 examined the appeal in terms of section 468(4) of the Ordinance by the Company and hearing in the matter was held on 18/07/16 when Mr. Asad Javed

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appeared on behalf of Mr. Arif Karim, CEO of the Company (Respondent No.1) and reiterated his submissions made earlier. It was held by the Respondent No.2 that the Order passed by the Honourable Lahore High Court in Writ Petition 20811 of 2015 in the matter of *Biotech Energy (Pvt) Ltd vs. Securities and Exchange Commission of Pakistan* was very relevant to the facts of the instant case, wherein, the Honourable Court spelled out the role of Registrar and power of the court in terms of section 152 of the Ordinance and in the instant case, after allotment of shares to the Respondent No.1, effect on register of members had already been made; therefore, the High Court is the competent forum for rectification of members' register in terms of section 152 of the Companies Ordinance. Furthermore, it was held by the Respondent No.2 that Assistant Registrar did not have the power to adjudicate on the matter of fake signatures on Circular filed under section 86 of the Ordinance and as such competent forum for this purpose is also the relevant court. Therefore, the Respondent No.2 remanded the case to the Dealing Registrar with an advice to re-examine the case and decide in the light of court cases and relevant provisions of the Companies Ordinance.

4. The Appellant preferred the appeal on the following grounds:

- a) Sections 21 and section 28 of the Companies Ordinance read with Rule 3 of the Companies (General Provisions and Forms) Rules, 1985 were not followed in true spirit, whereby, Appellant was not made aware of any alteration in Memorandum of Association of Companies and Appellant should have been informed as well as his accord taken on resolutions as per para 60 of Articles of Association of the Company. Sections 92 and 94 of the Companies Ordinance laid down the procedure of increase in Authorized Share Capital. However, Appellant was not made aware of any increase in Authorized Share Capital and neither was he called in Extra Ordinary General Meeting, Board of Directors Meeting, nor his right to provide any dissenting notes were taken as a consequence. Furthermore, minutes of any of the meetings, attendance and

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resolutions relating to sections 21, 28, 86, 92 and 94 do not have any of the signatures of the Appellant.

- b) As a result of the above alterations mentioned in paragraph 4(a), the Respondent No.1 did not comply with section 86 of the Companies Ordinance and issued himself 15,000 shares without offering and serving notice to existing members in proportion to the existing shares held by each member which is also the violation of provision 17 of Articles of Association. The Appellant complained about the submission of forged documents to the Registrar to cancel such documents under Rule 11 of Companies (Registration Offices) Regulations, 2003 (Regulations) as well as under the powers of section 468 of the Companies Ordinance. It was only after a rigorous investigation, Circular, Form III and relevant Form A of 2013 and 2014 were cancelled, however, no documents and evidence was provided by the Respondent No.1 as requested by the Assistant Registrar which shows the deceitful intent of the Respondent No.1. The Impugned Order must be set aside and Orders dated 19/01/16 and 01/03/16 be restored.

5. The Respondent No.1 rebutted the arguments of the Appellant as follows:

- a) The Honourable Appellate Bench has no jurisdiction to entertain or hear the appeal against the Order dated 17/08/16 passed by the Respondent No.2 under the provisions of Section 468(4)(a) of the Companies Ordinance. The Respondent No.2 has neither passed any Order of refusal nor has upheld the Order of the Assistant Registrar impugned before him. Therefore, the provisions of section 468(4)(b) of the Ordinance are not attracted to the instant case. The Respondent No.2 has not passed the Order dated 17/08/16 being 'one Commissioner of the Commission' or an 'officer authorized in this behalf by the Commission', therefore, the appeal is not maintainable under section 33 of SECP Act.
- b) The appeal is not maintainable under the relevant provisions of the law as the Appellant has raised issues which were originally never raised in his purported complaint and in any case the Appeal has failed to raise or plead any reason or ground disclosing any

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illegality or errors into the findings given in the Impugned Order. The Respondent No.2 accepted the plea of the Respondent No.1 stating that it is established that the Assistant Registrar had no jurisdiction to entertain the purported complaint of the Appellant or to take cognizance on the complaint of the Appellant in any manner. Furthermore, after division of the properties and assets pursuant to the Family Settlement Agreements/Arrangements, the Appellant has no right or interest in the Company, except that he is only an ostensible shareholder of 2,450 shares against which the Appellant had already received the sale consideration of these shares from the Respondent No.1. Furthermore, it is denied that any fake financial statements were ever prepared and rather it is the Appellant who had appended with the Appeal, fictitious and fabricated statement of accounts which were never prepared by the Company or by any duly appointed auditors of the Company.

6. The Respondent No.2 rebutted the arguments of the Appellant as follows:
- a) The decision by the Registrar of Companies has been taken in light of the Order passed by the Honorable Lahore High Court in *Writ Petition 20811 of 2015* in the matter of *Biotech Energy (Pvt.) Ltd vs. SECP* which spells out the role of Registrar and powers of Court under section 152 of the Companies Ordinance. After allotment of shares made on 31/07/13 and notified through Form III dated 09/08/13, the effect on Register of members lies with the High Court, which is the competent forum. Furthermore, the Assistant Registrar is also not competent to adjudicate upon the allegation of fake signatures on Circular filed under section 86 of the Companies Ordinance. Therefore, the case was remanded back to the Assistant Registrar to re-examine the case and decide the matter afresh in the light of court cases and relevant provisions of the law.
  - b) In pursuance of Order of Registrar of Companies dated 17/08/16, a letter dated 31/08/16 has been issued by the Assistant Registrar to the Appellant, wherein, he was advised to approach the competent court with reference to his grievance regarding

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dilution of shareholding percentage, under section 152 of the Ordinance for rectification of the Register of Members of the Company.

7. We have heard the parties i.e. the Appellant and the Respondents. The Appellant has argued that there was non-compliance of section 86 of the Ordinance and the Circular dated 24/06/12 and Form III dated 29/08/13 filed by the Respondent No.1 were cancelled in terms of section 486(1)(a) of the Ordinance read with Regulation 11 of the Regulations as the Company had failed to provide the required information/documents including but not limited to the relevant Board resolutions, evidence of dispatch/receipt of Circular by the Complainant. The Respondent No.1 has argued that the appeal is not maintainable before the Appellate Bench in terms of section 33 of the SECP Act. Furthermore, the Respondent No.1 argued that the Assistant Registrar had no jurisdiction or any authority to cancel the returns filed by the Company and there was no violation of section 86 of the Ordinance and the Company nor the Respondent No.1 forged any documents. The Respondent No.2 agreed with Respondent No.1 that the Assistant Registrar is also not competent to adjudicate upon the allegation of fake signatures on Circular filed under section 86 of the Companies Ordinance and must approach the competent court under section 152 of the Ordinance for rectification of the Register of Members of the Company. Furthermore, the Respondent No.2 argued that the Assistant Registrar has already complied with the direction of the Respondent No.2 through his letter dated 31/08/16.
8. Section 468(4) of the Companies Ordinance provides that, *"If registration of any document is refused, the company may either supply the deficiency and remove the defect pointed out or, within thirty days of the order of refusal, prefer an appeal..."*. We are of the view that only a company can lodge an appeal in terms of section 468(4) of the Ordinance. In the instant case, we are of the view that the appeal is maintainable as the Appellant is not a company but a director and shareholder who aggrieved by the Order of the Respondent No.2 filed an appeal in terms of section 33 of the SECP Act.

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9. Reliance is placed on the judgement of *Biotech Energy (Pvt) Ltd vs. Securities and Exchange Commission of Pakistan* in WP 20811 of 2015 passed by the Honourable Lahore High Court, wherein, it was held that, “*Under Section 152 of the Ordinance, power is given to this Court to rectify the register of members and that provision further shows that a similar power was not, and could not have been intended to be conferred on the Registrar under section 468 of the Ordinance*”. Reliance is also placed on the Sindh High Court judgment of *Shipyard K. Damen International v. Karachi Shipyard & Engineering Works Ltd* cited at 2003 CLD 309, wherein, it was held that, “*...Civil Court is considered competent to resolve the complicated and disputed question arising therefrom. For instance issues relating to shares and rectification of share register under section 152 of the Companies Ordinance...*” In light of the aforementioned judgments, we concur with Respondent No.2 that any dispute relating to facts, forged signatures and other evidence can only be addressed by a competent court in terms of section 152 of the Ordinance if the Appellant seeks to rectify register of members of the Company as the Respondent No.2 does not have jurisdiction to rule on family disputes or allegations of fraud.
10. In view of the foregoing, the Impugned Order is upheld with no order as to costs.

(Fida Hussain Samoo)

Commissioner (Insurance)

(Zafar Abdullah)

Commissioner (SCD)

Announced on:

**04 APR 2017**

