



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 07 of 2008

(i) British Biscuits Company (Pvt.) Limited

(ii) Tariq Masoud

...Appellants

Versus

(i) Executive Director (Registration), Securities and
Exchange Commission of Pakistan

(ii) Shabir Anjim Mehdi

(iii) Shaheen Anjim Mehdi

(iv) Mahmood Anjim Mehdi

...Respondents

Date of Hearing

11/11/15

Present:

Appellant No (ii)

Mr. Tariq Masoud

For the Appellants:

(i) Mr. Babar Sattar, Partner, Ajuris, Advocates and Corporate Counsel

For the Respondents No. (i):

(i) Mr. Muhammad Siddique, Executive Director (C&CD)/Registrar of Companies

(ii) Mr. Irfan Afzal, Deputy Registrar (C&CD)

For the Respondents (ii), (iii) and (iv)

(i) Mr. Ch. Kashif Nazar

(ii) Mr. Mohammad Afzal Siddiqui, Advocate Supreme Court

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ORDER

1. This order is in appeal No. 07 of 2008 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (SECP Act) by British Biscuits Company (Pvt.) Limited (Company) (Appellant No.1) and Mr. Tariq Masoud (Appellant No.2) against the order dated 01/04/08 (Impugned Order) passed by the Respondent No.1.
2. Brief facts of the case are that an application was filed by the Respondents 2, 3 and 4 under section 263 of the Companies Ordinance, 1984 (Ordinance) before the Commission alleging therein that they are holding 23.71% shares of the Appellant/Company. The Company was managed and controlled by the father of Respondents 2, 3 and 4 namely Mr. Mohammad Yousuf Mehdi and their brother namely Mr. Mobeen Anjim Mehdi, assisted by Appellant No.2, a cousin inducted in the Company under a family arrangement. The Respondents 2, 3 and 4 are UK nationals and as they are permanently residing there; they have not been able to look after the affairs of the Company completely. The management of the Company has involved them in litigation at various levels and kept them in dark with respect to affairs of the Company. It was further alleged that the Company was charged by various government agencies and financial institutions and was also in breach of banking contracts and statutory duties. The Appellant No.2 was fraudulently and unlawfully behind all these activities and was planning a hostile takeover the Company. Further, affairs of the Company are not being conducted in accordance with the law and there is embezzlement of funds. Minority shareholders are being deprived of their lawful rights such as participation in the affairs of the Company and in its profits. Funds are being siphoned and massive irregularities are being committed to the utter detriment of the Company and its shareholders.


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3. The Appellants were directed to file their comments and after considering all the points, Respondent No. 1 passed the Impugned Order for investigation of Appellant/Company and appointed an investigating officer.
4. The Appellants have filed the instant appeal on the following grounds:
 - a) The dispute between the parties is regarding the title and ownership of the shares of the Company as opposed to the corporate mismanagement as alleged by the Respondents. The statutory requirement of 10% shareholding in order to initiate an inspection under section 263 of the Ordinance is not available with the Respondents. No prima facie case for inspection under 263 has been made out in the Impugned Order. The rectification of register rests with the court under section 152 of the Ordinance and not with the Commission. Any aspersions cast on the election of directors can only be taken up by the court under section 179 of the Ordinance. The Appellants contend that if the question of ownership of shares becomes complicated, then it can only be taken up in the court of law. That Register is the prima facie evidence, as far as transfer of shares is concerned and the register bears the name of the Appellant and not that of Respondents. Clause 8 of Table A of First Schedule of the Rules, states that the transferor shall continue to be regarded as member till such time that his name is listed in the Register. The Appellants contend that the Respondents failed to satisfy the requirements laid down in Rule 18 of The Companies (General Provisions and Forms) Rules, 1985 (Rules) and did not provide any evidence in support of the case. Instead they provided only carbon copies of the share certificates. It is contended that provisions of Qanun-e-Shahadat Order, 1984 (Law of Evidence) are fully applicable in this case and the Respondent No.1 has not applied the provisions in reaching right conclusion. The question of limitation is also involved as


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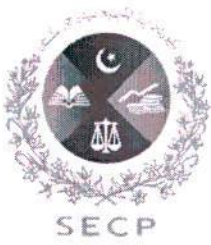
the Respondents 2, 3 and 4 have filed the application after more than a decade whereas section 181 of the Limitation Act, 1908 along with Schedule 1 provides a time frame of 3 years, where no time is prescribed. On the other hand, lack of knowledge is not a ground taken by the Respondents 2, 3 and 4 for condonation of the delay. The father of the Respondents 2, 3 and 4 filed various suits on the basis of the agreement entered between the parties; therefore, they cannot deny the existence of the sale agreement. The transfer was done in accordance with section 76 of the Ordinance, clause 8 and 9 of Table A of the first schedule of the Rules and Article 13, 25 and 26 of Articles of Association.

- b) There is no requirement of law that the director should become witness to the transfer. The disclosure requirement and manner of filing as stated in the Rule 33 were followed and it was the Commissions' duty under regulations 7, 11 and 13 of Companies (Registration Offices) Regulation 2003 (Regulations) to have communicated if there was any defect in the documents. The Registrar has failed to point out any defect in the filing of Form A and Form 29 in the last 10 years. The Respondents 2, 3 and 4 on one hand allege that they are the owners and on the other hand have not looked after the Company for the last ten years. The disputes between Mr. Mohammad Yousaf Mehdi, then then Chief Executive Officer and Mr. Mobeen Mehdi, the then director of the Company had brought the business of the Company to a grounding halt. The Company was plagued by mismanagement and was at the verge of bankruptcy at the time when the majority shareholding of the Company and its control were transferred to Appellant No.2. After assuming the control of the Company, the Appellant No.2 together with other directors of the Company assumed all the liabilities of the Company and managed to keep the Company afloat by (a) injecting large amounts of capital into the Company and paying off over-due loans, (b) reorganized its business to transform it as a profitable

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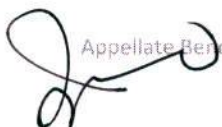


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enterprise after stabilizing the Company as a going concern, and (c) ensured that the Company is in full compliance with corporate formalities and disclosure requirements pursuant to the Ordinance and has since been filing its annual returns and other requisite forms with the Commission together with due fees.

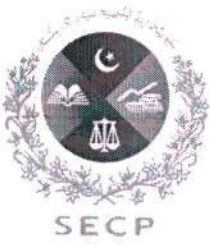
5. The Respondent No.1 rebutted the arguments as follows:

- a) The Respondent No 1 had fully understood the dispute and the Registrar concerned had also reported that there was a dispute of shareholding and management of the Company. The Respondents 2,3 and 4 were shareholders and directors of the Company from its beginning and thereafter were removed from the shareholding and directorship of the Company, therefore, it cannot be said that they were not the shareholders of the Company and not entitled for invoking the jurisdiction for investigation under Section 263 of the Ordinance. Assumption of jurisdiction under Section 263 of the Ordinance is lawful. Sufficient evidence to the satisfaction of the Respondent No.1 was provided. Further, investigation is itself a fact finding exercise and is not meant for rectification of register of members as provided under Section 152 of the Ordinance but to assist the Court in reaching the right conclusion.
- b) The Respondents No, 2, 3 and 4 had alleged that their shares had been transferred illegally. The Respondents 2, 3 and 4 had made out a prima facie good case for the investigation. At the time of hearing the Company was unable to produce the register of members so as to determine the real ownership of the shares in the Company. The shares certificates produced by the Appellants were pasted with papers and the transfer deeds were also defective as they contained blank columns, neither witnessed nor approved by the board of directors for transfer etc., therefore, the Respondent No.1


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ordered investigation of the affairs of the Company. Issuance of certified copies does not give any party exclusive right of ownership of the shareholding. Moreover, due to the dispute returns have not been accepted for registration so far. The Respondent No. 1 has acted lawfully and the Inspector has full authority to call evidence from the parties and provide the opportunity of cross examination to the other party. Proceedings before the Commission are administrative in nature, therefore, Limitation Act, 1908 and Qanoon-e-Shahadat Order, 1984 are not applicable in the instant case.

6. The Counsel of Respondent No.2, 3 and 4 rebutted the arguments of the Appellants as follows:

- (a) The Appellant No 2 has managed to be in forcible control of the Company who is conducting its business with intent to defraud the Respondents 2, 3 and 4, creditors, members, shareholders and other connected persons in a manner which is willfully oppressive and fraudulent. Further, the Appellant No.2 is dissipating its assets inter alia by clandestine sale of its valuable moveable assets including machinery, and is siphoning out its funds and has reportedly created fictitious liabilities. Appellant No. 2 presently in forcible and unlawful occupation of the Company is grossly mismanaging the affairs of the Company and is carrying out fraudulent and unauthorized business of illegal and undocumented production intermittently, thereby depriving the Government of huge revenue and by amassing huge funds out of books. The persons connected in the formation of the Company and its management are being kept out of its "management" and the Appellant No.2 presently forcibly and fraudulently connected with the Company is guilty of fraud, misfeasance and civil and criminal breach of trust and various acts of misconduct towards the Company and its

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members/shareholders. The first directors of the Company were namely (i) Mr. Mohammad Yousuf Mehdi (ii) Mr. Mobeen Anjim Mehdi (iii) Mr. Shabbir Anjim Mehdi (Respondent No.2), Mr. Mehmood Anjem Mehdi (Respondent No.4) and Mr. Tariq Masoud (Appellant No.2). Mr. Mohammad Yousaf Mehdi was the first Chief Executive of the Company. The above first directors were re-elected after the first term and re-elected for subsequent terms up to 1993. However, in 1994, Appellant No.2 was removed from the directorship of the Company and was never re-elected again. All other four directors have continued to be directors and have never been removed, resigned or replaced. Mr. Mohammad Yousaf Mehdi resigned as Chief Executive and was replaced by Mr. Mobeen Mehdi. Subsequently, Mr. Mobeen Mehdi resigned and Mr. Mohammad Yousaf Mehdi became the Chief Executive once again. As per record, he continues to be Chief Executive and has neither been removed by the Board nor was anyone appointed in his place as such by the board of directors.

- (b) The affairs of the Company are being conducted with a view to deprive the Respondents 2, 3 & 4 of their benefits and rights vested in them under the law and Corporate regulations. Minority shareholders are being deprived of their lawful rights such as participation in the affairs of the Company and in its profits. Funds are being siphoned and massive irregularities are being committed to the utter detriment of the Company and its shareholders. The Respondents 2,3 & 4 are being denied any information as to corporate and fiscal management and affairs of the Company to which they are entitled and the information is being withheld with the objective of surreptitiously tampering with the records of the Company, accounts and statutory returns. The Company has failed to hold meetings of the board of directors even though it is obliged by law to hold the meetings within the statutory period. Fabricated returns are filed without knowledge of the shareholders. Annual General Meetings (AGM) were periodically held from the inception up to

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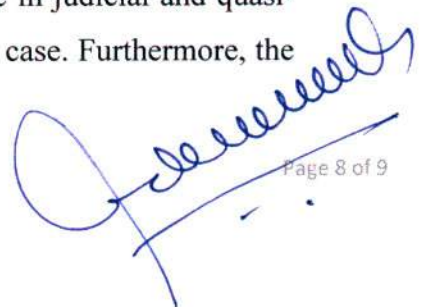
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1996. In the last AGM held on 28/06/96, elections of the directors were held and the chief executive was appointed. Thereafter, no AGM appears to have been held and none of the Respondents have received any notice in contravention of section 158 of the Ordinance. For all intents and purposes, the board elected in 1996, continues to exist until replaced by another duly elected board. The Company business and its affairs are being conducted in violation of the law and against the interests of minority shareholders.

7. We have heard the parties i.e. the Appellants and the Respondents and perused the evidence and documents provided to us.
8. The Appellants have argued that the dispute between the parties is regarding the title and ownership of the shares of the Company as opposed to the corporate mismanagement as alleged by the Respondents. Further, the question of ownership of shares can only be taken up by court and limitation period of three years had lapsed before an application was made. We concur with the Respondent No.1, however, that the Respondents 2, 3 and 4 have a genuine case which is why it should be thoroughly investigated. The issue of transfer of shares may be one aspect for which the courts have exclusive jurisdiction; however, it does not bar the Commission from investigation into other grave allegations made by the Respondents 2, 3 and 4. The Respondent No.1 cannot at face value accept every assertion made by the Appellants or the Respondents 2, 3 & 4 and must independently investigate to verify the claims. It may be noted that the Impugned Order is an administrative direction to investigate the affairs of the Company pursuant to section 263 of the Ordinance with no penal repercussions for the Appellants. Therefore, Qanun-e-Shahahdat Order, 1984 and Limitation Act, 1908 which are applicable in judicial and quasi-judicial proceedings are not applicable in the instant case. Furthermore, the


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proviso to section 33 of SECP Act states that no appeal shall lie against, "...an administrative direction given by a Commissioner or an officer of the Commission." Moreover, we have perused the judgment of the Honourable Supreme Court cited at PLD 2010 Supreme Court 946 Attock Refinery Ltd vs. Executive Director, which held that, "... the mere appointment of an investigator does not "dispose of the entire case", and, "... the Appellate jurisdiction of the Courts under the said provision is not to be invoked (in the context of the present case) until the investigators have done their job of investigating the affairs of the company. "

9. In view of the foregoing, we see no reason to interfere with the Impugned Order. The Impugned Order is upheld and the Executive Director (CCD) is directed to dispose of the matter within 60 days of this order.

10. Appeal is dismissed with no order as to costs.

Fida Hussain Samoo)

Commissioner (Insurance)

(Zafar Abdullah)

Commissioner (SCD)

Announced on: 22 DEC 2015