



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 20 and 23 of 2010

1. Farooq Hassan, Executive Director (Management Association of Pakistan)
2. Management Association of Pakistan

..... Appellants

Versus

Director (CL)

Securities and Exchange Commission of Pakistan Respondent

Date of hearing

29-04-11

ORDER

Present:

Appellant:

Farooq Hassan, Executive Director (Management association of Pakistan)

For the Appellant:

Badaruddin F. Vellani, Advocate

Ferzeen E. Bhadha, Advocate

Masood Hashmi

For the Respondent:

Sidney Pereira, Joint Registrar, CRO (Incharge)



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1. This order shall dispose of appeal No. 20 and 23 of 2010 filed under section 33 of the Securities and Exchange Commission of Pakistan (the “Commission”) Act, 1997 against the order dated 12-03-10 (the “Impugned Order”) passed by the Respondent.

2. Appellant No. 2 was incorporated on 09.02.67 as an association not for profit, on grant of license under section 26 of the repealed Companies Act, 1913 (the “Act”). After the repeal of the Act in 1984, the applicable provisions were section 42 of the Companies Ordinance, 1984 (the “Ordinance”) and rule 6 of the Companies (General Provisions and Forms) Rules, 1985 (the “Rules”) which prohibit the payment of remuneration for services or otherwise to its members, whether holding an office in a company or not. A complaint was received regarding affairs of Appellant No 2 which is summarized for ease of reference:
 - a) that Appellant No. 2 has been paying remuneration and financial benefits to Appellant No. 1 who is one of its directors/member. Since December 1999 Appellant No 1 has been appointed to the salaried position of Executive Director of Appellant No 2 in contravention of provisions of the Memorandum of Association of Appellant No. 2;

 - b) that Appellant No. 1 has been a nominated member of National Development Finance Corporation (“NDFC”), and by virtue of this membership has held various important positions in Appellant No. 2.

3. Appellant No 2 was asked to file comments on the complaint. On receiving the comments, the Respondent issued a show cause notice dated 29-09-09 (“SCN”) under section 506(2) read with section 476 of the Ordinance and rule



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35 of the Rules for violation of condition of license granted under section 42 of the Ordinance read with rule 6 of the Rules. Hearing in the matter was held. The Respondent dissatisfied with the response of the Appellant passed the Impugned Order and ordered Appellant No. 1 to reimburse Appellant No. 2 the amount of remuneration received from June 2007 till his resignation from the salaried office on 24-07-09. Further, the Respondent imposed penalty of Rs 20,000 on Appellant No. 2 as it was responsibility of Appellant No. 2 to ensure compliance of the applicable laws and rules.

4. The Appellants preferred the instant appeal against the Impugned Order. The counsel for Appellant No 2 argued:

- a) Appellant No 1 was one of the nominated members of NDFC from the year 1989 till 1994. From the year 1995, NDFC did not pay its annual subscription fee and ceased to be an institutional member of Appellant No 2. Appellant No 1 resigned from services of NDFC on 15-10-98. Appellant No 1 was appointed as the Executive Director (General Manager) of Appellant No 2 with effect from 23-12-99 and since then he has neither been an individual member of the Appellant No 2 , nor a nominated member of NDFC;
- b) Appellant No 1 was not an individual member of Appellant No 2 at any time. Appellant No 1 in the year 2007 applied for membership of Appellant No 2 as an individual member, however, his application was neither considered nor approved by the Executive Committee of Appellant No 2 (the "Committee");
- c) that an entry was incorrectly made in the Register of Members of Appellant No 2 and in the list of members reported with Form B for



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the years 2007 and 2008, filed with the Company Registration Office (“CRO”) Karachi in April 2008 and April 2009 respectively. This entry was not authorised by the Committee, as such, it cannot be treated as a valid entry.

5. Appellant No 1 vehemently denied that he had been an individual member of Appellant No 2. It was admitted by Appellant No 1 that he made an application for membership to Appellant No 2, however, the application was not accepted by the Committee. Appellant No 1 participated in the meeting of the Committee as an Executive Director (General Manager) of the Appellant No 2. Reference was made to the minutes of the meeting attached with the appeal and it was contended by Appellant No 1 that neither his name appeared as a member in the list of members attending the meeting nor he voted in any matter placed before the Committee.
6. The department representative stated that there is evidence of the fact that Appellant No 1 was inducted as an individual member of Appellant No 2 in the year 2007. Reference was made to: list of members reported with Form B for the years 2007 and 2008, filed with CRO, Karachi, wherein Appellant No 1 name appeared as a member; Appellant No 1 letter dated 24.7.2009 addressed to the Commission in which it had been stated that he became member of Appellant No 2 in June 2007.
7. We have heard the parties. On being inquired by the Appellate Bench (the “Bench”), the Appellants’ counsel admitted that the membership fee of Appellant No 1 was paid to Appellant No 2 and no refund has so far been made. The Bench also inquired about the status of Register of Members maintained by Appellant No 2, on which the counsel for Appellant No 2 replied that the Register of Members has not been maintained in physical form

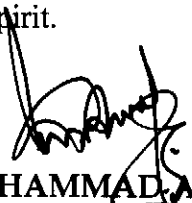


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since the year 2005. We have gone through the minutes of the Committee meeting attached to the appeal; the name of Appellant No 1 does not appear as an individual member in the minutes attached. Moreover, no evidence has come to light regarding the consideration, approval or rejection of membership of Appellant No 1 by the Committee. In terms of article 4 of the Articles of Association of Appellant No 2, the Appellant No 1 could only become an individual member after the application is submitted and subsequently the member is either elected or rejected by the Committee.

In view of the above, we are constrained to remand the case back to the Respondent department. The Respondent department is directed:

- a) to obtain the complete record of the Register of Members and minutes of meetings of Committee to establish whether or not Appellant No 1 was admitted as an individual member of Appellant No 2 by the Committee;
- b) to ascertain whether or not the procedure laid down under article 4 of Articles of Association of the Appellant No 2 has been followed in letter and spirit.


(MUHAMMAD ALI)
Chairman


(MR. TAHIR MEHMOOD)
Commissioner (CLD)

Announced on: 26th May 2011