



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 39 of 2005

Hashmi Can Company Limited

.....

Appellant

Versus

Director (Enforcement)

Securities and Exchange Commission of Pakistan

Respondent

Dates of hearing

28-04-11 and 29-04-11

ORDER

Present:

For the Appellant:

Hamid Idrees, Advocate

For the Respondent:

Bilal Rasul, Additional Registrar/ Director (Enforcement)



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

1. This order shall dispose of appeal No. 39 of 2005 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 10-08-05 (the "Impugned Order") passed by the Respondent.
2. On examination of the annual accounts of the Appellant for the year ended 30-06-02, it was revealed that an amount of Rs 11.890 million was payable by the Appellant to Hashmi Can Provident Fund (the "Fund"). The amount was not paid by the Appellant to the Fund in terms of section 227 of the Companies Ordinance, 1984 (the "Ordinance"). The trustees of the Fund were also required to invest the Fund in the manner prescribed under section 227(2) of the Ordinance. The trustees instead passed a resolution allowing the Appellant to withhold contributions and to pay mark up of 16% on the withheld amount. The trustees also prematurely en-cashed Defense Saving Certificates of the Fund and advanced the amount to the Appellant to make payments to its members.
3. Executive Director (EMD) of the Commission initiated proceedings against the Appellant; who besides imposing penalties directed the Appellant to pay the outstanding liability along with the mark-up in twelve equal monthly installments. The Appellant was also directed under section 227(3) of the Ordinance to pay monthly contributions to the Fund within the prescribed time. The Appellant filed an appeal against the order of Executive Director (EMD) of the Commission before the Appellate Bench (the "Bench"). The Bench, vide order dated 09-04-03, directed the Enforcement Department of the Commission to direct the Appellant through notice under section 472(1) of the Ordinance to make good the default by depositing total outstanding amount with the Fund within 30 days from the date of the notice. The



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

Appellant went into appeal before the Honorable Sindh High Court (the “Court”), which was rejected by the Court.

4. In terms of the order of the Bench dated 09-04-03, Enforcement Department of the Commission issued a notice to the Appellant under section 472 of the Ordinance. In terms of the said notice, the Appellant was asked to make good the default by depositing the total amount outstanding till date with 16% markup per annum to the Fund within 30 days from the date of the notice and produce a certificate by the auditors of the Fund for the loss incurred by the Fund due to premature encashment of Defense Saving Certificates within 15 days of the date of the notice. The Appellant filed reply to the notice and the Respondent after considering the reply to the aforesaid notice passed the Impugned Order directing the Appellant to pay the outstanding liability of the Fund as at 30-06-04 within 18 months in 6 quarterly installments starting 30-10-05 and ending 31-01-07.
5. The Appellant has preferred the instant appeal against the Impugned Order. The Appellant’s representative submitted an application signed by Munawar A Malik, Chairman-CEO of the Appellant (the “applicant”). The applicant contended that an application was moved in the Court for sale of 0.5 acre of land in order to settle the liabilities of the Fund. The Court allowed the sale of the aforementioned land under the supervision of Official Assignee vide order dated 17-05-06. The applicant requested the Bench to set aside the Impugned Order on this ground alone.
6. We have gone through the order of the Court dated 17-05-06, the relevant extract of the judgment of the honorable Court is reproduced as under:



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

"..... the company may be permitted to sell 0.5 (half Acre) of its land bearing No 8-24, situated in SITE Area, Manghopir, Karachi ad-measuring 3 Acres to enable the company to payoff it(s) outstanding dues towards the worker's Provident Fund as required in terms of section 227 of the Companies Ordinance as due to non-payment of such amount, the previous management of the company has been saddled with heavy penalties....."

The honourable judge after hearing the present and the previous management observed:

".....I would, therefore appoint the Official Assignee to sell the above noted land by calling seal bids through publication in the prominent newspaper of English, Urdu and Gujarati languages. In conducting such publication and sale the Official Assignee shall follow Rules under Order 21 CPC. Both the parties shall be at liberty to participate in the proceedings and shall provide relevant information and assistance to the Official Assignee but shall not tend to create any unnecessary hurdle and delay in the proceedings. Both the parties shall be entitled to procure better offers for the purchase of the land. The Official Assignee, after verifying the amount due and payable by the company towards the workers provident fund shall pay the same from sale (of) the proceeds and shall invest the surplus amount, if any, in some profitable Government Scheme till further orders....."

In light of the above judgment and the fact that the Appellant has not been able to pay off the liabilities towards the Fund despite the directions of the



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

Commission; the best course for recovery of the Fund in our view is by way of sale of the aforesaid property by the Official Assignee in terms of the orders of the Court dated 17-5-06.

The appeal is disposed off with no order as to cost.

(MUHAMMAD ALI)
Chairman

(MR.TAHIR MEHMOOD)
Commissioner (CLD)

Announced on: 26th May 2011