



BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 9 of 2004

Lahore Stock Exchange (Guarantee) Limited
Karachi..... Appellant

Versus

1. Commissioner (Securities Market),
Securities and Exchange Commission of Pakistan
Islamabad

2. Pakistan National Shipping Corporation
PNSC Building, M.T. Khan Road,
Karachi..... Respondents

Date of Impugned Order - 16-3-2004

Date of hearing - 24-6-2004

Present

1. Mr. Arif Saeed, Advocate High Court &
Mr. Ahmad Hassan Khan for the Appellant
2. Syed Aamir Masood, Director SEC for Respondent No.1
3. Mr. Arif Saeed for Respondent No.2



ORDER

1. Lahore Stock Exchange (Guarantee) Limited has filed this appeal under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated March 16, 2004 (“Impugned Order”) passed by the Commissioner, Securities Market.
2. Brief facts leading to this appeal are that on July 12, 2002, Pakistan National Shipping Corporation Limited (“PNSC”) filed applications for de-listing from both Lahore Stock Exchange (Guarantee) Limited (“LSE”) and the Islamabad Stock Exchange (“ISE”). Subsequently on August 16, 2002, PNSC filed a petition before the Securities and Exchange Commission of Pakistan (the “Commission”) under Section 9(6) of the Securities and Exchange Ordinance, 1969 (“1969 Ordinance”). After repeated reminders by the Commission with respect to providing a decision on the said application, the LSE on January 13, 2004 wrote to the Commission informing it of its decision that PNSC should de-list only in strict accordance with the LSE’s Listing Regulations which requires a company’s majority shareholders to purchase the shares of all its minority shareholders.
3. The petition filed under section 9(6) of the 1969 Ordinance was heard by the then Executive Director (Securities Market) who rejected the same vide his order dated April 14, 2003 (“First Order”). However, PNSC was directed that, conditional upon it taking active measures to rectify a default under the Karachi Stock Exchange (“KSE”) Listing Regulation 32(1)(b) and avoiding placement on the Defaulters Counter at the KSE, PNSC may file a fresh petition before the Commission. PNSC complied with the First Order and consequently filed a fresh petition with the Commission which was accepted by the Commissioner



(Securities Market) vide the Impugned Order. The present appeal has been filed by LSE against the findings of the Commissioner in the Impugned Order. The appeal was heard by the Appellate Bench on 24-6-2004.

4. Mr. Arif Saeed, Advocate High Court appearing on behalf of the LSE argued that PNSC's application for de-listing was based on the justifications that there was insignificant trading volume in PNSC's scrip at the LSE's exchange, that PNSC had sustained heavy accumulated losses and that it needed to cut financial expenditure.
5. With respect to the insignificant trading volumes in PNSC's scrip, the counsel for LSE argued that in the secondary market the same was dependant on the performance of the company along with various other factors. It could be that with changing conditions the volume of trade in PNSC's scrip may increase. As regards the heavy accumulated losses, the counsel alleged that these were due to flagrant mismanagement, the outcome of which should not be to punish the investors and shareholders at the LSE. As for lowering the expenditure, the counsel highlighted the Executive Director's observation made in paragraph 11 of the First Order which reads as follows:

"Moreover, the proposed de-listing of the Company from the LSE and ISE poses serious implications for investors, as the savings from de-listing may not be commensurate to the adverse effect that it may have on the ordinary shareholders."

Furthermore, he highlighted the fact that, in the subsequent year, the loss has now been turned into a substantial profit thereby negating the said reason for de-listing.



6. The counsel further argued that the grounds used for de-listing were wholly unjustifiable as PNSC in its application for de-listing did not take into consideration the protection of investors as required by Section 9(5) of the 1969 Ordinance and was only in the interest of PNSC itself. He stated that the regulations for voluntary de-listing were approved by the SEC. In this regard the LSE was bound by the said regulations. He argued that the SEC was jurisdictionally incapable of promulgating new law by extending the scope of de-listing on the grounds that it was non-comprehensive.
7. The counsel also pointed out that contrary to the Commissioner (Securities Market) stand on increased technologies in the securities market marginalizing the issue of geographical proximity of investors to any one particular exchange, the Commissioner (Securities Market) himself had passed an order under Section 10 of the 1969 Ordinance requiring Hubco to list on both the LSE and the ISE on *inter alia* the ground that by doing so investors in the northern areas of Pakistan would be capable of trading in that company's shares. As such, the geographic proximity of an exchange to its investors was crucial and therefore de-listing from any one exchange would be adverse to both public interest and protection.
8. The counsel for LSE also argued that the Impugned Order was bad in law and therefore liable to be struck down on the fact that it wrongly invoked Section 58 of the Companies Ordinance, 1984. In this regard, he stated that the said section referred to the requirement of approval by the company in a general meeting of any changes in the contract and not the prospectus of the company. The inclusion of the LSE exchange was not a contractual term.
9. In response to the allegations put forward by the LSE, Director (Securities Market) on behalf of Commissioner began by arguing that Section 9(5) of the 1969 Ordinance empowered the LSE to accept or reject an application for de-



listing only on the ground of investor protection. It was clear in this respect that a stock exchange was not in a position to step into the shoes of the company's board. As such, the LSE's disagreement with the reasons put forth by the company were unwarranted and unjustifiable. Furthermore, the issue of investor protection fell squarely on the shoulders of the LSE and not for the company to safeguard and decide.

10. Director (Securities Market) reiterated the stand of Commissioner that with the advent of technology and the existence of stock exchange members' branch offices located throughout Pakistan, investors within the geographical proximity of the LSE would still be able to realize the value of their investments in PNSC's scrip and do so without incurring extra charges. In this regard it was also argued that the then Executive Director (Securities Market) elaborated on investor protection in the First Order as to encompass;

“...adequate disclosure of information, greater transparency, timely holding of Annual General Meetings, payment of dividends, etc.”

The existence of PNSC's scrip on the KSE would ensure investor protection in accordance with the then Executive Director (Securities Market) statement above. The First Order rejected the petition of PNSC purely on the ground that at the time PNSC was in violation of the KSE's Listing Regulations and its ongoing listing at the KSE was in doubt.

11. In so far as the issue of geographic proximity and Commissioner's direction to list Hubco on the LSE and the ISE, the Director (Securities Market) argued that the same was irrelevant to this case as Section 10 of the 1969 Ordinance requires there to be a “public interest” for a company to be listed on a stock exchange, and that too only after consultations with the particular stock exchange and the



company that the Commission can so direct. However, Section 9(5) of the 1969 Ordinance leaves no doubt as to the company having the right to de-list from any exchange as a consequence of a commercial decision.

12. Mr. Arif Saeed appearing on behalf of PNSC stated that it has been wrongly alleged that PNSC was on KSE's defaulter's list when the earlier application for de-listing was moved by it. He clarified that only a notice had been received by PNSC from KSE. He stated that the reason for rejection of PNSC's earlier application for de-listing by Executive Director (SM) was that if PNSC was de-listed from LSE and ISE as applied by it and later on KSE also de-listed it, then the investors would end up suffering. Mr. Saeed informed the Bench that there was not even a single investor who was dealing in PNSC share through LSE and ISE. He further informed the Bench that the total number of shares of PNSC with the public investors was only 7 million shares and not 78 million shares as alleged by LSE. He further argued that the interest of the investors was protected as PNSC would remain listed on KSE.

13. We have heard the parties and perused the evidence on record and are of the considered opinion that the LSE is duty bound by law to either approve or reject an application for de-listing solely on the ground of investor protection and for such purpose, may impose conditions on the company whilst de-listing. Voluntary de-listing in the LSE's Listing Regulations require that certain shareholders of a company purchase the shares of all other shareholders. This then necessarily entails a company's complete de-listing from all stock exchanges. PNSC has not shown any such intention. However, the 1969 Ordinance does envisage the establishment of more than one stock exchange and therefore, Section 9(5) of the 1969 Ordinance must be read keeping in mind a situation where companies wish to remain listed on one (or more) stock exchanges and seek de-listing from the remaining stock exchange(s). This



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interpretation cannot be termed a promulgation of new law as it encompasses the situations already catered for in the LSE's Listing Regulations. What however is to be considered is the protection of investors with respect to the circumstances of each case. We agree with Commissioner's decision that with the presence of KSE members' branch offices situated around Pakistan and the relative ease of mobility of shares through the Central Depository System to the KSE, investors closely situated to Lahore and Islamabad will be in a position to keep trading in the shares of PNSC and without further charges. Furthermore, LSE's argument with regards to harm being caused to investors if PNSC is de-listed from LSE is not supported by the fact that no investors are currently dealing in PNSC's share through LSE or ISE.

14. We do agree with the LSE that Section 58 of the Companies Ordinance, 1984 is not applicable in the present case and PNSC is not required to obtain the approval of the company in general meeting in order to de-list from LSE. This does not mean that PNSC cannot de-list from LSE at all as has been argued by LSE's counsel, nor does this make the Impugned Order bad in law or liable to be struck down. LSE is therefore directed to de-list PNSC from its exchange within fifteen (15) days of receipt of this order. This appeal is dismissed accordingly.

(ABDUL REHMAN QURESHI)
Commissioner

(ETRAT H. RIZVI)
Commissioner

Announced in Islamabad on July 30, 2004