

Appellate Bench Orders
Order in the matter of Appeal No. 6 of 2001.

June 13, 2001

Before Appellate Bench No. 2

In the Matter of

Appeal No. 6 of 2001

Mr. Siddiq Moti

.....Appellant

versus

Mr. Shahid Ghaffar,

Executive Director (Securities Markets),

Securities and Exchange Commission of Pakistan,

Islamabad Respondent
No. 1

Mr. Abdul Wahab Memon, House No. 11,

High Court Road,

behind Dial Das Club,

Hyderabad.....Respondent No. 2

Date of Hearing: 13 June, 2001

Date of impugned order: 1 March, 2001

Present:

Mr. Shahzada Mazhar, Advocate

1. Mr. Khalid Waheed

2. Mr. Naeem Hussain On behalf of the Appellant

3. Syed Aamer Masood,

Director(CEL , Securities Markets),

Securities and Exchange Commission of Pakistan,

IslamabadOn behalf of Respondent No.1

ORDER

This is an appeal against the order (impugned order) dated 1st March, 2001 passed by the Executive Director (Securities Markets) of the Commission.

2. The appeal came up for hearing on 13 June, 2001. Mr. Shahzada Mazhar, Advocate appeared on behalf of the Appellant alongwith Mr. Khalid Waheed and Mr. Naeem Hussain. Respondent No. 1 was represented by Syed Aamer Masood, Director (CEL) of the Securities Markets Division of the Commission. Neither Respondent No. 2 did not enter appearance.

3. While starting his arguments, the Appellant's counsel referred to the penultimate paragraph of the impugned order whereby the learned Executive Director (Securities Markets) had "no hesitation from ordering that the shares deposited with the complainant's CDC sub-account No. 3261 as at 12 October, 2000 be immediately transferred.....to CDC investor account No. 2189" and, in doing so, appears to have exercised powers conferred under section 20(6)(b) of the Securities and Exchange Commission of Pakistan Act, 1997 without quoting the same or any other enabling legal provision. He further argued that in the event of an alleged violation of the Central Depositories Act, 1997, the offence should have been adjudicated in terms of the provisions of section 28 ibid and fine or penalty imposed. It is evident that the learned Executive Director (SM) acted without any legal support and failed to follow the prescribed procedure.

4. The Appellant's counsel, while elaborating on the grounds contained in the memo of appeal, stated that the shares in the CDC sub- account No. 3621 opened and held by Respondent No. 2 were transferred to Mr. Junaid Ali, an authorized agent of the Appellant, at the behest of one Mr. Naeem Hussain. According to him, Mr. Naeem Hussain had been instructing and dealing on behalf of the Respondent No. 2 with respect to transactions in the latter's CDC sub account No. 3621 which were duly honoured and executed by the Appellant. He tried to convince that the said Mr. Naeem Hussain was acting on the implied authority of Respondent No. 2. He further urged that the shares of CDC sub-account No. 3261 of the Respondent No. 2 were transferred to CDC sub-account No. 1034 of Mr. Naeem Hussain since both the accounts are linked and activity reports of both accounts renders credence to this fact.

5. The Appellant's counsel conceded that Mr. Naeem Hussain was not in possession of any valid authorization by Respondent No. 2 and that Respondent No. 2 had not instructed the Appellant to the sale and transfer of shares out of his CDC sub-account No. 3261 to CDC sub-account No. 1034 of Mr. Naeem Hussain.

6. The Appellant's counsel also referred to the fifth paragraph of the impugned order which states that the Commission is examining the validity of clauses included in the "CDC sub account opening form" conferring authority to the participant/broker "to transfer, freeze, move and otherwise dispose off" shares held therein. He, therefore, argued that such an authorization was recognized by the Commission as reflected in the impugned order till such a provision is reviewed and subjected to an amendment in law or CDC regulations.

7. The Appellant's counsel also submitted that the Appellant was well within his lawful authority to transfer shares from the CDC sub account by relying on paragraph 2(b) of the Respondent No. 2's CDC sub account opening form as filled up and signed in his handwriting on 10 September, 2000 that bestows irrevocable and unconditional authority to the Appellant, as hereinafter reproduced: -

"I/We hereby irrevocably and unconditionally authorize Mr. Siddiq Moti to move my shares/securities from my/our sub-account from time to time for settlement purposes with the right to dispose them off at any time without any notice to me/us and to apply the net proceeds thereof towards the adjustment of my/our outstandings that may be due from me/us, directly or indirectly to Mr. Siddiq Moti including against all my/our losses and I/We shall continue to be for liable any shortfalls."

(bold for emphasis)

In this connection, the Appellant's counsel failed to satisfy the Bench that whether the transfer of shares from the Respondent No. 2's CDC sub account was made for 'settlement purposes' as envisaged in the aforesaid authorization or it was an adjustment against his outstanding dues.

8. The representative for Respondent No. 1 submitted that the impugned order has restored the right of the investor to transfer shares from CDC sub account to his investor account that are rightfully owned by him. This has been done to protect the investor's confidence in the Securities Markets. He prayed that the order be maintained since it is incumbent on the Commission as a Regulator to restore and maintain investor confidence.

9. We have heard and carefully considered the arguments of the Advocate for the Appellant's counsel as well as the representative for Respondent No. 1. The Appellant has transferred shares from Respondent No. 2's CDC sub account by incorrectly relying upon an authorization in the CDC sub account opening form. The provision in the CDC sub account opening form expressly restricts such an authorization for purposes of 'settlement' and not for adjustment or set off with the dues of any other CDC sub account holder as resorted to by the Appellant. The Appellant incorrectly executed the instructions of Mr. Naeem Hussain on the erroneous belief that he was doing so on the implied authority of Respondent No. 2 in respect of the latter's CDC sub account. In any event the Appellant's counsel has conceded that Mr. Naeem Hussain was not lawfully authorized by Respondent No. 2 to deal with the Appellant on his behalf. It appears that Mr. Naeem Hussain, by causing the transfer to his own CDC sub account bearing no. 1034, may render him susceptible to grave legal consequences. It is abundantly clear that sale and transfer of shares out of the CDC sub account of Respondent No.2 are without any lawful authority. Therefore, the impugned order protects an investor's right to dealing with an asset owned by him and, in doing so, has appropriately addressed the pivotal cause of investor protection and maintaining confidence in securities markets.

10. In light of the above stated facts and taking into consideration the argument of the Appellant's counsel and the Representative for Respondent No. 1, we do not find any justification to interfere with the order passed by the Executive Director (Securities Markets) of the Commission. The appeal is, accordingly, dismissed.

Announced : 13th June, 2001

(N.K. SHAHANI)
Commissioner
(Securities Markets & Insurance)

(Abdul Rehman Qureshi)
Commissioner
(Company Law)