



BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 23 of 2004

Hashimi Can Company Ltd.
B-24 Textile Avenue, SITE
Karachi Appellant

Versus

1. Commissioner (Securities Market)
SEC IslamabadRespondent No.1
2. Central Depository Company of Pakistan Ltd.....Respondent No.2

Date of Impugned Order June 10, 2004

Date of Hearing March 8, 2005

Present:

Mr. Asif A. Mufti & Mr. Shafqat Raza for the Appellant

S.M. Aly Osman, Joint Director for the Respondent No.1

Mr. Rasool Hooda for Respondent No.2



ORDER

1. This appeal has been filed by Hashimi Can Company Ltd. (the 'Appellant') under section 33 of the Securities & Exchange Commission of Pakistan Act, 1997 against an order dated 10-06-2004 (the 'Impugned Order') passed by Commissioner (Securities Market Division).

2. Brief facts of the case are that the Appellant shares are listed on the Karachi Stock Exchange (G) Ltd. The Central Depository Company (CDC) had declared the shares of the Appellant as eligible securities under Regulation 5.1 of the CDC Regulations however, the Appellant, along with several other companies had failed to join the CDC. This fact was intimated to the Commission by the CDC vide its letter dated 16-02-2004. Commissioner (Securities Market) issued notices to all these companies including the Appellant and also provided them an opportunity of personal hearing. The Commissioner vide the Impugned Order, gave directions to all these companies under sub-section (4) of section 9 of the Securities & Exchange Ordinance, 1969 to join the CDC by 30-09-2004. The Appellant not being satisfied with the impugned order has preferred this appeal before the Appellate Bench.

3. On the request of the Appellant, the hearing in this appeal was fixed in Karachi on 08-03-2005, when Mr. Asif A. Mufti, Director Finance of the Appellant along with Mr. Shafqat Raza from Rao & Company the statutory auditors of the Appellant, appeared before us. Mr. Mufti contended that the Appellant company was going through a financial constraint and was not able to afford the extra cost of joining the CDC. He stated that the Appellant company was trying to cut costs and has in that regard reduced its work force from 700 to just 120. He stated that the Appellant company has not been able to pay any worthwhile dividend to its shareholders in the



last many years. He further contended that only 12% of the Appellants shares were being held by small share holders and the remaining 88% were with the management and NIT. Resultantly there was no significant public interest involved in joining the CDC. He stated that in the last five years, no substantial transfer of Appellant's shares had taken place. He therefore prayed that the Appellant may be exempted from joining the CDC and the direction given to the Appellant vide the impugned order be set aside.

4. Mr. Aly Osman appearing on behalf of the Commissioner stated that the listing of companies on the stock exchange is voluntary, however once they are listed, they are required to follow the stock exchange listing regulations, which have the backing of law as they are approved by the Commission. Clause 32(1)(ff) of the Listing Regulations require that a listed company may be de-listed, suspended or placed on the defaulters list if it refuses to join the CDC. Besides, joining the CDC is for benefit of the investors and the company also as it reduces the hassle as well as the costs. Mr. Rasool Hooda appearing on behalf of CDC informed that the total annual cost of joining the CDC has been drastically reduced from previous years. The annual fee for a company like the Appellant is just Rs.17,000/-, which is less than Rs.1,500/- per month. The one time security deposit is Rs.12,500/-, which is refundable.

5. We have heard the parties and are of the opinion that the Appellant has no plausible reason to refuse joining the CDC. For a listed company of its size, it cannot argue that the cost of joining the CDC will drain its resources. It is apparent that the CDC has reduced the annual costs to a bare minimum and the benefits of joining the CDC to the investors, shareholders and even the companies cannot be underestimated. The Appellant is the only company which has so far refused to join the CDC and has filed an appeal in this regard out of more than 40 companies that were directed to join the CDC. It is clear that once the companies decide to list their securities on a stock exchange, they must comply with the listing regulations in letter and spirit. The Appellant is therefore required to join the CDC under the Listing Regulations and cannot refuse without facing the consequences of such refusal specified in Clause



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32(1)(ff). Furthermore, the Appellant has now been directed by the Commission also to join the CDC. We therefore find no merit in the arguments presented by the Appellant and therefore uphold the directions given to it vide the impugned order.

(ETRAT H. RIZVI)
Commissioner

(SALMAN ALI SHAIKH)
Commissioner

Announced in Islamabad on March 14, 2005