



BEFORE
RECONSTITUTED APPELLATE BENCH NO. III

In the matter of

Revision No. 3 of 2004

Syed Moonis Abdullah Alvi & 7 others
Pakland Cement Limited
Dewan Centre,
3A Lalazar Beach Hotel Road
Karachi.....Petitioners

Versus

Executive Director (Enforcement & Monitoring) SEC.....Respondent

Present:

Barrister Muhammad Ahmed Saeed, Advocate for the Petitioners

Mr. Mubasher Saeed, Joint Director (EMD) SEC for Respondent



ORDER

1. The management of Pakland Cement Limited filed the present revision petition under section 484 of the Companies Ordinance, 1984 (the 'Ordinance') against the order dated 08-01-2004 (the 'Impugned Order') passed by Executive Director, (Enforcement & Monitoring). The petitioners also sought interim relief and prayed for the suspension of the Impugned Order till the final decision by the Appellate Bench.

2. Facts of the case are that the Executive Director issued a direction under sub-section (1) of section 472 of the Ordinance to the management of Pakland Cement Limited to transfer the shares lodged with the company by different members of Karachi Stock Exchange (G) Limited within fifteen days of the date of the Impugned Order. The petitioners not being satisfied with the Impugned Order filed the present petition before the Appellate Bench. The petition was initially fixed on 12-04-04 for hearing when Barrister Ahmed Saeed appearing for the petitioners contended that the company is making efforts to settle the complainants. He produced evidence whereby majority of the shares had been transferred to the complainants. He prayed that the petitioners may be granted time to settle all issues. In view of the statement of the counsel, the petitioners were granted 30 days time to reach an amicable settlement. In the meanwhile, the Enforcement & Monitoring Department was directed not to take any action against the petitioners under section 495 of the Ordinance.

3. The case was re-fixed on 26-05-04 when the counsel sought further time to transfer the remaining shares according the directions in the Impugned Order. He informed the Bench that management of Pakland Cement had been taken over by the Dewan Group and the new management was making its best efforts to transfer the remaining shares. The petitioners were granted another 30 days by the Bench. Further,



the counsel was advised to file amended title to the petition and substitute the names of the new management as petitioners.

4. The petition was finally heard on 28-09-04. Mr. Ahmed Saeed, the counsel for the petitioners stated that out of total complaints against the company forwarded by Karachi Stock Exchange involving approximately 2.6 million shares, the Company has transferred majority of shares. He stated that the only shares remaining were those shares which had been pledged by Pakland and Saadi with Prudential Discount & Guarantee House Ltd and First Capital Securities, and had been illegally sold by these two companies. He argued that both these companies were required to deposit the pledged shares with the trustees under the scheme of arrangement approved by the High Court, but have failed to do that despite repeated reminders by the Company. He pleaded that it was unfair to demand transfer of these shares which had been illegally sold by these two companies, and, unless these companies met their legal obligation under the scheme of arrangement, the transfer would amount to rewarding them for their illegal act. Furthermore, the company would suffer double jeopardy as it still owes the loan to these two companies. He stated that if these companies deposited the said shares with the trustees, Pakland would transfer the shares to the persons who bought the shares from these two companies. He argued that section 74 of the Ordinance required the company to register only valid transfers and not such transfers which the company was entitled to refuse. Consequently, the direction issued by the Executive Director under section 472 of the Ordinance to transfer all shares lodged with it was not a valid direction.

5. We have heard the counsel for the petitioner in detail and also perused the documents placed before us. Although we agree with the petitioner that a general direction requiring registration of all transfers lodged with the company may not be consistent with section 74 of the Ordinance read with section 31 of the Securities &



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

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Exchange Ordinance, 1969, however the petitioners have no valid reason to refuse the registration of transfer to bona fide purchasers. The Hon'ble Sindh High Court in its judgment dated 06-03-1999 in suits 116 to 118 of 1998 has also held the same. Despite this fact, the petitioners have been evading the registration of transfers on the ground that the persons, who have lodged the shares for transfer, are not bona fide purchasers. In this regard, we are of the firm opinion that those persons, who have bought the shares on the floor of a stock exchange, should be deemed to be bona fide purchasers. Although we appreciate the argument that Prudential Discount & Guarantee House Ltd and First Capital Securities may have acted against the terms of the scheme of arrangement by selling these shares instead of depositing them with the trustees as ordered by the Hon'ble High Court, however, bona fide third parties cannot be punished for the acts of these two companies. The petitioners are free to seek legal remedies against these two companies in a court of competent jurisdiction. We therefore order the petitioner to register all such transfers of shares, which were brought by bona fide persons on the floor of the stock market.

(SHAHID GHAFAR)
Commissioner

(ETRAT H. RIZVI)
Commissioner

Announced in Islamabad on **November 30, 2004**