



**BEFORE APPELLATE BENCH NO. III**

**In the matter of**

**Appeal No. 35 of 2004**

1. Punjab Oil Mills Limited  
120-E/1, Gulberg-III, Lahore
2. Izaz Illahi Malik  
Chief Executive  
Punjab Oil Mills Limited
3. Mian Fazl-i-Ahmed  
Director  
Punjab Oil Mills Limited
4. Tahir Jahangir  
Director  
Punjab Oil Mills Limited .....Appellants

Versus

1. Director (Enforcement), SECP
2. Imran Bhatti  
274-P, Model Town, Lahore.....Respondents

Date of Impugned Order

December 07, 2004

Date of hearing of appeal

February 17, 2005

Present:

Imran Anjum Ali, Advocate for the Appellant

Mubasher Saeed Joint Director & Saleem Daredia Joint Director for Respondent No.1

Khurram Raza, Advocate for Respondent No. 2



## **ORDER**

1. This order will dispose off appeal No.35 of 2004 filed under sub-section (1) of section 33 of the Securities & Exchange Commission of Pakistan Act, 1997 by Punjab Oil Mills Limited ('Company') and two of its directors and the chief executive against the order dated 07-12-2004 ('Impugned Order') passed by Director (Enforcement).

2. Brief facts leading to this appeal are that Mr. Imran Bhatti, Respondent No.2 herein, had filed a complaint with the Commission against the Company for not transferring certain shares in his name. Mr. Imran Bhatti (hereinafter referred to as the 'Complainant') had allegedly purchased 140,000 shares of the Company through the clearing house of the Lahore Stock Exchange. Out of these 140,000 shares, he lodged 5,000 shares with the Company with the requisite documents and transfer deeds, however the Company refused to transfer the shares on the ground that it had received a legal notice from the owners of the said shares stating that they had not sold these shares. The Commission issued a notice dated 06-07-2004 to the Company and its management under section 74 read with section 476 of the Companies Ordinance, 1984 ('Ordinance') to show cause why action may not be taken against them for violation of the provisions of the Ordinance. Stating the facts, the Company in its reply informed that two of its associated companies Teejay Corporation (Pvt.) Ltd. (TCL) and Hala Enterprises Limited (HEL) had obtained financial facility from Trust Modaraba in 1994. In addition to various collaterals, the sponsor directors of the Company also provided their shares in the Company as security. TCL and HEL went in default and the Trust Modaraba filed separate recovery suits before Modaraba Tribunal against TCL and HEL which were decreed in favour of Trust Modaraba. Subsequently, the parties arrived at a compromise and the decree of Modaraba Tribunal was modified accordingly by the High Court. In the meanwhile, Trust Modaraba had apparently created a further lien on the shares



pledged with it in favour of Allied Bank Limited against some financial arrangement between them. These shares were sold by Allied Bank Limited (ABL) and were subsequently bought by the Complainant. The sponsor directors filed a suit against Trust Modaraba and ABL before the Banking Court Lahore, which was pleased to pass a restraining order dated 07-07-2003. However, on 20-11-2004 the Banking Court returned the plaint filed before it so that it could be filed before the Modaraba Tribunal Punjab as the issue was triable by the Modaraba Tribunal. The Company took the plea before the Director (Enforcement) that these were disputed shares and the matter was sub judice before a court of law. The Director (Enforcement) vide his order dated 07-12-04 rejected the arguments presented by the Company and its directors and imposed a total penalty of Rs.290,500/- on the Company, its chairman, vice chairman, chief executive and director under sub-section (2) of section 74 of the Ordinance. He further directed the Company under section 473 of the Ordinance to transfer the shares in the name of the Complainant. Hence this appeal by the Appellants.

3. The matter came up for hearing before the Bench on 17-02-05. Mr. Imran Anjum Ali, counsel for the Appellants asserted that when the Impugned Order was passed by Director (Enforcement), a stay order passed by the Modaraba Tribunal was in effect. He informed the Bench that after the Banking Court returned the plaint filed before it on 20-11-2004 the suit was then filed before the Modaraba Tribunal which passed a stay order on 23-11-2004, much before the Impugned order was passed by Director (Enforcement) on 07-12-2004. He stated that the Impugned Order had therefore been passed in violation of the stay granted by the Modaraba Tribunal. He prayed that the impugned order deserved to be set aside on this ground alone. On the merits, he contended that on arriving at a compromise, the Modaraba was liable to release the sponsor shares. Placement of these shares with ABL was without notice, knowledge and consent of the Appellants. He further argued that ABL disposed off the shares without any notice to TCL, HEL or the Appellants as owners



of the shares or to the Modaraba as a trustee of these shares. He stated that sale of the shares was in utter disregard to morality and law. ABL had no right to sell these shares because there was no default at all by TCL, HEL or appellants vis-à-vis ABL, having no lien on the shares. He argued that the sale of the sponsor shares by ABL was in violation of the Contract Act, 1872 and the Complainant could not demand the transfer in his name as the right of the transferee could not be better than that of the seller. He contended that fact of violation by ABL has been acknowledged by Modaraba and it has communicated this violation to TCL and HEL and has taken up this issue of unlawful sale. He argued that the impugned order did not take into account the peculiar circumstances of the case and the determination is therefore erroneous in law. He stated that the Complainant's remedy did not lie against the Company rather it laid against the person who sold him the disputed shares. He prayed that the impugned order may be set aside.

4. Mr. Mubashar Saeed and Saleem Daredia, Joint Directors appeared on behalf of Director (Enforcement) and defended the order. Their contention was that the order has been passed in accordance with the law as section 31 of Securities & Exchange Ordinance, 1969 ('SE Ordinance') provides that a person who holds shares without fraud and for a lawful consideration and without notice that the title of the person from whom he has derived his own title was defective, shall hold such certificates and all rights attached thereto free from any defect of title of prior parties. They stated that the Company could only refuse to transfer the shares for which it was entitled to refuse under section 74. However, the reasons given by the Company were not valid and cogent. Mr. Mubasher stated that the shares were bought by the Complainant at the floor of the Stock Exchange for lawful consideration and without any knowledge of the defect in the title. They stated that the Director was not aware of the stay order passed by the Modaraba Tribunal on 23-11-2004 when he passed the impugned order. He prayed that the appeal may be dismissed.



5. Mr. Khurram Raza, counsel for the Complainant stated that when the Company refused to transfer the shares in the name of the Complainant, there was no suit pending nor was there any stay order. He contended that in any case the stay order passed by the Banking Court or the Modaraba Tribunal did not affect the transfer of shares in the name of the Complainant as he had already bought these shares and lodged them for transfer before the stay was granted. He stated that the stay granted by the court did not bar the Company itself from transferring the shares. He also relied on section 31 of the SE Ordinance to argue that the Complainant was a bona fide purchaser and had acquired the shares without fraud or notice of the defect in the title of the seller.

6. We have heard the parties in detail. Sub-section (1) of section 31 of the SE Ordinance provides as follows:

31. ***Securities acquired in good faith.***- (1) *A person who, without fraud and for a lawful consideration, becomes the possessor of a certificate of an equity security, scrip, debenture, debenture stock or bond, and who is without notice that the title of the person from whom he derived his own title was defective shall hold such certificate and all rights attached thereto free from any defect of title of prior parties and free from defences available to prior parties among themselves.*

The law with good reason provides that a person, who without fraud and notice of any defect in the title of the seller becomes possessor of shares, holds such shares free from any defect in the title. The superior courts have given further sanctity to transactions conducted on the floor of the market or through the system of the stock exchange, and rejected any defect in the title of possessors who have acquired shares on the floor. The two important issues therefore in our view which will decide the outcome of this case is (a) whether the shares were bought by the Complainant



through the system of the Stock Exchange and according to its rules and regulations and (b) whether a stay order was in effect when the impugned order was passed.

7. The second issue seems to be quite clear and undisputed. A stay order passed by the Modaraba Tribunal was in effect when the impugned order was passed by Director (Enforcement). A copy of the order was provided to the Bench by the counsel for the Appellants. He has however admitted that the Director was not made aware of the stay order at the time of the last hearing held in the case on 24-11-2004. Mr. Khurram Raza, counsel for the Complainant has stated that the stay granted by the court did not bar the Company itself from transferring the shares. We cannot agree to this line of argument. The Company cannot be expected to violate the order of the court granted in its favour. The directions given by the Director (Enforcement) to the Company to transfer the shares in the name of the Complainant therefore are against the stay order granted by the Modaraba Tribunal.

8. On the first issue, we inquired from the counsel for the Complainant on the date of hearing whether the shares were bought by the Complainant through the system of the exchange. The counsel was however unaware of the exact nature of the transaction and promised to provide the details, which he did subsequently vide his letter dated 01-03-2005. The Enforcement & Monitoring Department was also instructed to obtain the necessary information from Lahore Stock Exchange. Lahore Stock Exchange (LSE) in its reply dated 01-03-2005 informed that the transaction was not effected through its system and was in fact a Broker to Broker transaction. Moreover, according to LSE, as per data retrieved from their Ultra Trade System no transaction was recorded in the entire month of April 2003 in the shares of the Company. The counsel for the Complainant also confirmed that the Complainant had purchased the shares from Mian Nusrat-Ud-Din, member LSE who had in turn purchased the shares from Dossani Securities (Pvt) Ltd, also a member of LSE. The purchase price by the Complainant was paid by cash, whereas Mian Nusrat-Ud-Din



had paid Dossalani Securities by cheque. These details were confirmed by Mian Nusrat-Ud-Din to LSE also. It is therefore clear that the purchase transaction by the Complainant was not effected through the system of the Exchange.

9. As for the issue of applicability of section 31 of the SE Ordinance, we are of the view that whether a person has acquired the shares without fraud and notice of defect, are questions of facts, and can only be answered after taking evidence. The Complainant may very well be a bona fide purchaser and if so should be given the benefit provided by law. However, in the peculiar circumstances of the instant case, we feel this issue needs to be decided by the court which has already taken cognizance of the dispute. Any finding on this issue by the Commission may result in conflicting judgments, which should be avoided at all costs. Since the dispute regarding these shares is already sub judice before the Modaraba Tribunal, the Complainant is advised to become a party in the said suit. Even otherwise, the impugned order could not have been passed when the stay order of the Modaraba Tribunal was in effect. In view of the foregoing, we set aside the Impugned Order passed by the Director (Enforcement). The appeal is disposed off.

**(Shahid Ghaffar)**  
Commissioner

**(Etrat H. Rizvi)**  
Commissioner

Announced in Islamabad on May 12, 2005