



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 19 of 2008

Ms Surriyah Rafiq-
75-B Amirabad Model Colony
Malir Town,
Karachi.....

Appellant

Versus

Director (S.M.D)
Securities and Exchange Commission of Pakistan
NIC Building Jinnah Avenue, Islamabad.

..... Respondent

Date of Hearing

11-8-08

ORDER

Present:

For the Appellant:

Suriyya Rafiq

For the Respondent:

Amir M. Khan
Director (SMD)



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

1. This order will dispose of appeal No. 19 of 2008 filed by Ms. Surraiya Rafiq (the "Appellant") against the order dated June 9, 2008 ("Impugned Order") passed by Joint Director, Securities Market Division ("Appellant")
2. Ordinary shares of Habib Bank Limited ("HBL") were offered to general public by Privatization Commission, Government of Pakistan (the "Offerer"). Share subscription applications in this regard were invited by the Offerer from general public through bankers to the offer. Global Securities Pakistan Limited, ("GSPK") was appointed as consultants to the public offer by the Offerer. GSPK furnished a list to the Securities and Exchange Commission of Pakistan (the "Commission") containing particulars of such applicants who submitted more than one applications for subscription of shares of HBL in violation of Section 18-A of the Securities and Exchange Ordinance, 1969 ("Ordinance"). The name of the Appellant was also appearing in the said list. The information and documents furnished by the GSPK indicated that two applications bearing No. 6-42-946 and No.7-1034-6 were submitted in the name of the Appellant through bank account No. 129718 maintained with Habib Metropolitan Bank Limited, Textile Plaza Branch, Karachi and bank account No.071-007956-01-7 maintained with Bank Al Habib Limited, Malir Hall Branch, Karachi respectively. The documents further revealed that both applications were submitted under the same name with same NIC number, father's name, address and signature. The Commission called a written explanation on the issue from the Appellant. The Appellant in her response admitted submission of multiple applications stating the reason of unawareness of the relevant provision of the law. The Appellant also requested that her mistake be condoned and subscription money be refunded or shares be allotted to her.
3. A show cause notice ("SCN") was thereafter issued to the Appellant by the Commission under section 18A of the Ordinance calling upon the Appellant to show cause why the application money should not be confiscated for the violation



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

of said section. The Appellant responded to the show cause notice and maintained the stance earlier taken when called upon to explain. The Appellant was also given an opportunity of hearing in which, she admitted to have made multiple applications due to ignorance of law.

4. The Respondent passed the Impugned Order, whereby, her request to refund the subscription money or shares of HBL was rejected and subscription money of the both applications was confiscated under sub-section (2) of Section 18-A of the Ordinance.
5. That the Appellant dissatisfied with the Impugned Order has preferred the instant appeal. The Appellant appeared before us and stated that she was unaware of the fact; that making multiple applications may lead to confiscation of application money under section 18A of the Ordinance. The Appellant stated that she was a student and had only made two applications both of which were successful. The Appellant accepted that she did not read the application form before filing it and requested that a lenient view be taken in the instant case.
6. Section 18A of the Ordinance states as follows:

18(A) Prohibition of making fictitious and multiple applications for new issues.-

"(1) No person or any other person on his behalf shall make a fictitious application or submit more than one application for shares of companies offered to the public.

(2) In case of contravention of the provisions of subsection (1), the application money shall be liable to confiscation:

Provided that no action under this sub-section shall be taken without giving the applicant an opportunity of being heard.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

7. We would like to address the issue of confiscation of the application money generally before dealing with the Appellant's case. In our view, section 18A is prone to two interpretations. The first one is that money received against all applications may be confiscated where there is more than one application. The other interpretation is that application money in excess of one application ought to be confiscated. The second view is also supported by the following dicta; narrated in Principles of Statutory Interpretation by Justice. G.P Singh , Seventh Edition at page 632 by Lord Esher, MR ,who while formulating the settled rule of construction of penal section observed:

"If there is reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions we must give the more lenient one."

8. We are of the considered opinion that in cases of multiple applications the application money for one application or the shares (if the application is successful) should not be confiscated.
9. Moreover, where an investor proves/establishes that he/she has acted in bona fide manner or that the contravention was not committed knowingly and willfully, the subscription money for all applications ought to be returned or the person be given the shares for one application if he/she was successful and returned the application money for the rest. It is unlikely that in cases of a bona fide mistake there is likely to be more than two or three applications. On the other hand, where an investor fails to prove/establish the action of making more than one application was bona fide, the subscription money or the shares of one application may be given, if successful and the rest of application money must be confiscated.
10. We have heard the Appellant and have gone through the record. We are of the view that the Appellant did not act in bona fide manner and the contravention was



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

committed knowingly as I willfully as the instruction is clearly laid down on the form and has been extensively advertised in newspapers. Moreover, the Appellant, made more than one application through two accounts maintained at two different banks. The making of two applications from two different accounts, when the Appellant could have submitted the application from one account shows that the act was done knowingly and willfully and was attempted to defeat the provision of law.

11. In view of the above, we hereby modify the Impugned Order and direct that the shares against one application should be given to the Appellant and second application money should be confiscated.

(MR. RAZI-UR-REHMAN KHAN)

Chairman

(S. TARIQ. A HUSAIN)

Commissioner (L.D)

Announced on: 27-8-08