



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- II

Adjudication Division

IN THE MATTER OF

MR. MUHAMMAD ASHRAF
CEO/DIRECTOR OF M/S. BAITULLAH HAJJ COMPANY (PRIVATE) LIMITED

Show Cause Notice	No. Adj-II/502/06/IAN/80/Onsite/2023-24 dated May 29, 2024	
Date of hearing	June 13, 2024	Adjourned
	July 11, 2024	Mr. Muhammad Ashraf, CEO/Director Mr. Rashid Naeem, Company Secretary Mr. Muhammad Abdullah, Lawyer
	August 22, 2024	Mr. Muhammad Ashraf, CEO/Director Mr. Rashid Naeem, Company Secretary (Authorized Representative)

ORDER UNDER SECTION 76 READ WITH SECTION 502 OF THE COMPANIES ACT, 2017

This Order shall dispose of the adjudication proceedings initiated by the Securities and Exchange Commission of Pakistan (the "**Commission**") through Show Cause Notice No. Adj-II/502/06/IAN/80/Onsite/2023-24 dated May 29, 2024 (the "**SCN**") issued to **Mr. Muhammad Ashraf, CEO/Director** (the "**Respondent**") of M/s Baitullah Hajj Company (Private) Limited (the "**Company**") having registered office at Al-Waris Complex, Opposite Cath Church, Near Munir Chowk, Civil Hospital Road Gujranwala, Punjab, under section 76 read with section 502 of the Companies Act 2017 (the "**Act**").

2. The facts leading to the issuance of the SCN are that it was transpired from the investigation of the Company that the Respondent had transferred his 2000 shares in the Company to each of his two daughters namely Ms. Shahzadi Ashraf and Ms. Naheed Tasneem on December 28, 2019, without notifying the board and without offering the said shares to the members in proportion of their respective existing shareholding. Thus, the then members of the Company were, *prima facie*, deprived of their first right of acceptance/refusal of sale offer. The details of transfer of shares to Shahzadi Ashraf and Naheed Tasneem in 2019 is as follows:

Transferor/Transferee	Documents Submitted	Number of shares
Mr. Muhammad Ashraf to Ms. Shahzadi Ashraf (Daughter of Muhammad Ashraf)	Sale Deed and Share transfer deed dated December 28, 2019	2,000
Mr. Muhammad Ashraf to Ms. Naheed Tasneem (Daughter of Muhammad Ashraf)	Sale Deed and Share transfer deed dated December 28, 2019	2,000

3. Section 76 of the Act is reproduced below for reference:

"76. Restriction on transfer of shares by the members of a private company.—

(1) Notwithstanding anything contained in section 75, a member of a private company desirous of selling any shares held by him, shall intimate to the board of his intention through a notice.

(2) On receipt of such notice, the board shall, within a period of ten days, offer those shares for sale to the members in proportion to their existing shareholding:

Provided that a private company may transfer or sell its shares in accordance with its articles of association and agreement among the shareholders, if any, entered into prior to the commencement of this Act:

Provided further that any such agreement will be valid only if it is filed with the registrar within ninety days of the commencement of this Act.

(3) The letter of offer for sale specifying the number of shares to which the member is entitled, price per share and specifying the time limit, within which the offer, if not accepted, be deemed



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as declined, shall be dispatched to the members through registered post or courier or through electronic mode.

(4) If the whole or any part of the shares offered is declined or is not taken, the board may offer such shares to the other members in proportion to their shareholding.

(5) If all the members decline to accept the offer or if any shares are left over, the shares may be sold to any other person as determined by the member, who initiated the offer.

(6) For the purpose of this section, the mechanism to determine the price of shares shall be such, as may be specified."

4. Accordingly, an SCN was issued to the Respondent calling upon to furnish his submissions in writing within fourteen (14) days of the date of the SCN, as to why penalty may not be imposed on him for contravening the aforesaid provisions of the law. Further, hearing in the matter was fixed for June 13, 2024. However, the Consultants on behalf of the Respondent vide letter dated June 11, 2024 requested an adjournment as Mr. Muhammad Ashraf had proceeded to performing Hajj. Meanwhile, the Respondent submitted reply to the SCN vide letter dated July 04, 2024 alongwith a copy of Family Settlement Deed signifying gift of such shares to his two daughters. The relevant contents of the letter as reproduced below for reference:

"With respect to your contention regarding contravention of provision of section 76 of the Companies Act 2017 regarding not giving the notice for intimation to Board of Directors regarding showing desire to selling shares it is explained that questioned shares were not sold rather Mr. Muhammad Ashraf chief Executive officer (hereafter referred as "CEO") transferred 2000 shares each to his real daughters Mrs. Shahzadi Ashraf and Mrs. Naheed Tasneem and such shares transferred on account of family settlement without any consideration by CEO.

It is also pertinent to mention here that transfer of such shares did not result in dilution of voting right of other members of the company except the voting right of Mr. Muhammad Ashraf who willfully gifted such shares.

Therefore, CEO did not contravene the provision of section 76 of the said act as such section used the word 'selling the share' whereas CEO did not sell the shares rather he transferred such shares as gift to his daughters.

Family settlement deed regarding transfer shares as gift by CEO to his daughters is attached as evidence as transfer as a result of family settlement being gifted to real daughters by CEO."

5. In view hereof, second hearing opportunity was granted and the matter was fixed for July 11, 2024, that was attended via video link by the Respondent himself, however Mr. Rashid Naeem, Company Secretary and Mr. Muhammad Abdullah, Lawyer accompanied him for assistance, wherein the aforementioned written submissions were reiterated. Further, the Respondent requested time to furnish evidence of compliance and requested for another hearing opportunity. Thereafter, the Respondent furnished another response vide letter dated August 01, 2024 and provided a copy of the Board Resolution dated December 28, 2019 resolving his willful transfer of 2000 shares each to his two daughter and without any consideration and as part of family settlement, relevant extracts of which are as under:

"BOARD RESOLUTION

With respect to requisite of board resolution we attached that board resolution of transfer of share which was passed as that time which duly signed by directors."

6. Further, the Respondent alongwith Mr. Rashid Naeem, Company Secretary (as his "**Authorized Representative**") attended the requested hearing on August 22, 2024 and stressed upon that the



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Respondent had transferred the stated number of shares to his two daughters on account of family settlement. Upon being inquired about the existence of the Sale Deed on record that reveal the sale of the shares without complying in contravention of Section 76 of the Act, they sought time to respond in writing and then submitted a letter dated August 22, 2024, relevant extracts of which are as under:

“With respect to query regarding transfer of share on account of family settlement it is explained that although transfer deed previously submitted to your good office but such transfer deed only prepared for the purpose of assign the value to the share to represent matters in FBR and other related institutions but factually such share transfer without any consideration on account of family the deed of which already provided to your good office.”

7. I have gone through the facts of the case, record available with this office and verbal arguments and written submissions given by the Respondent and his Authorized Representative and have observed that:

- a) The fact of the matter is that the Respondent had already provided a sale deed of shares dated December 28, 2019 wherein 2000 shares were stated to have been sold to each of his aforementioned two daughters;
- b) The evidence of Family Settlement Deed (Memorandum Recording Family Settlement) submitted by the Respondent with letter dated July 04, 2024 mentions “July 04, 2024 1:22:29 PM” as the Issue Date and time of the E-stamp that clearly evidences it to be dated after the shares transfer transaction date and issuance of the SCN. The actual shares transfer transaction, in connection to the already submitted sale deed of shares dated December 28, 2019, had executed in December 2019;
- c) The Respondent’s second response letter dated August 01, 2024 enclosing a copy of the Board Resolution dated December 28, 2019 showing resolution of his willful transfer of 2000 shares each to his two daughter and without any consideration and as part of family settlement is again contradictory to the previously submitted sale deed of shares dated December 28, 2019 against which the shares transfer had already occurred. This raises serious concerns regarding the role of the Company’s Board of Directors, specifically their fiduciary duty, who, as per provided duly signed resolution, had approved to transfer of shareholding to Respondent’s two daughters without any consideration and as part of family settlement whereas the sale deed of shares dated December 28, 2019, had already existed on the record made available to this office.
- d) Upon being inquired specifically that Respondent later on vide letter dated August 22, 2024 confessed to have executed the said sale deed of shares but for the purpose of assigning the value of shares to FBR and other related institutions. However, the justification provided by the Respondent in this connection that infact these shares were transferred without any consideration and on account of family settlement has not been found to be plausible. Rather, it clearly establishes the unconcealed contradiction that has been displayed by the Respondent, while taking conflicting stances in response to the SCN, as explained above.
- e) As far as the stance taken by the Respondent is concerned that such transfer of shares did not result in dilution of voting right of other members of the company except for the voting right of the Respondent who had willfully gifted such shares, it is noted that the Respondent has failed to prove that the shares were transferred as a willful act of gift in light of the previously submitted sale deed of shares. Moreover, the SCN was issued to the Respondent for contraventions of Section 76 of the Act and not for diluting the voting rights of other members of the Company, therefore, the Respondent’s argument holds no merit.



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8. In view of the foregoing, it is clearly established that this transfer of shares made by the Respondent in the year 2019 is not in accordance with Section 76 of the Act, which attracts the penal provisions of Section 502 of the Act. Relevant provisions of which are reproduced below:

“502. Penalty where no specific penalty is provided.

If a company or any other person contravenes or fails to comply with any provision of this Act or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, for which no punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be liable to a penalty of level 3 on the standard scale.”

9. Therefore, I, in exercise of the powers conferred upon me vide SRO 1546 (I)/2019 dated 6th December, 2019 hereby impose a penalty amounting to **Rs. 100,000/- (Pak Rupees One Hundred Thousand Only)** under Section 502 of the Act for the established violation of section 76 of the Act on the Respondent.

10. The Respondent is further directed to deposit the aforesaid penalties in the account of the Commission being maintained in the designated branches of MCB Bank Limited or United Bank Limited within 30 days of the receipt of this Order and furnish Original Deposit Challan to this office.

11. This order is being issued without prejudice to any other action that the Commission may initiate against the Company in accordance with law on matters subsequently investigated or otherwise brought to the knowledge of the Commission

(Hammad Javed)

HOD / Additional Director
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Date of Order: December 13, 2024