



BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 24 of 2003

1. Quice Food Industries Limited
Suit No.B-6, Rahat Jo Dero,
Tariq Road, PECHS, Block-2
Karachi

2. Mr. Muhammad Afaq Shamsi
Chief Executive Officer
Quice Food Industries Limited

3. Mr. Iqbal Shahid
Company Secretary
Quice Food Industries LimitedAppellants

Versus

Executive Director (EMD) SEC.....Respondent

Date of Impugned Order

June 27, 2002

Date of Hearing

October 22, 2003

Present for the Appellants

1. Mr. Muhammad Afaq Shamsi
2. Muhammad Asim



ORDER

Through this order we intend to dispose off appeal No. 24 of 2003 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by Quice Food Industries Limited (“Company”), its chief executive and company secretary against the order dated June 27, 2002 passed by Executive Director (Enforcement & Monitoring).

1. The Appellants had initially filed the appeal in August 2002 before the Appellate Bench Registry. However, as they failed to remove the deficiencies identified to them despite repeated reminders, the said appeal was not registered by the Registry and returned in March 2003. The Appellants then filed the instant appeal after a lapse of 4 months in July 2003, which were fixed for hearing on October 22, 2003 however no one appeared before the Bench on the said date. The appeal was accordingly dismissed for non-prosecution. The Appellants then filed an application for restoration of appeal, which was accepted by the Bench. The appeal was consequently fixed for hearing on December 11, 2003 at Company Registration Office, Karachi when Mr. Muhammad Afaq Shamsi, CEO and Mr. Muhammad Asim, director appeared on behalf of all the appellants.

2. The facts of the appeal are that Deutsche Bank on behalf of its client KASB Premier Fund Limited, had filed a complaint with the Commission against the Company through its letter dated April 16, 2002 regarding non-receipt of 100,000 shares lodged with the Company on September 2000 for transfer in the name of its client. 400,000 shares were originally deposited by Deutsche Bank with the Company on the said date, out of these 300,000 shares were returned by the Company on September 19, 2001 after a lapse of about one year.

3. Sub-section (1) of Section 74 of the Ordinance requires that every company shall within forty-five days after the application for the registration of the transfer of any such shares, complete and have ready for delivery the certificate of all shares, transferred and,



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unless sent by post or delivered to the person entitled thereto, within that period shall give notice of this fact to the shareholder immediately thereafter in the manner prescribed.

4. As the Company failed to return 100,000 shares sent for transfer in the name of KASB Premier Fund Ltd contrary to the requirements of aforesaid provisions of the Ordinance, a show cause notice dated June 18, 2002 was issued to the Company, its Directors including Chief Executive, its Chief Accountant and Company Secretary. After having given them an opportunity of hearing, the Executive Director (EMD) imposed a fine of Rs.26,500/- each on Company, its chief executive and the company secretary, calculated at the rate of Rs.50/- per day after admissible period of 45 days under sub-section (2) of section 74 of the Ordinance. Not being satisfied with the Impugned Order, the Appellants have filed this appeal before the Appellate Bench.

5. The Appellants argued that the default was not willful or aimed at getting any gain nor have the Appellants made any gain from this delay in transferring the shares. They stated that KASB Premier Fund Ltd had also not suffered any loss because of the delay in the transfer. They stated that in any case the shares had been transferred by the Company before the Order was passed by the Executive Director (EMD) and this fact was brought into his knowledge at the hearing, which fact has been recorded in the Order also. The Appellants pleaded that their appeals may be accepted and the penalties imposed by the Executive Director (EMD) may be set aside.

6. The Enforcement & Monitoring Department in their reply to the appeals have stated that the Appellants have admitted that the Company failed to deliver the shares by the time provided in the Ordinance. Therefore it has committed a default of sub-section (1) of Section 74. The Executive Director (EMD) is empowered to impose a fine upto the prescribed amount on the Company and every officer of the Company who is knowingly a party to the default under sub-section (2) of Section 74 read with sub-section (1) of Section 476 of the Ordinance. They argued that the return of shares after a lapse of one year and seven months is a serious violation of the Ordinance and the Company did not give a justifiable excuse for such a lengthy delay. The fact that the transfer of 100,000 shares has



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finally been made does not justify condonation of violation of mandatory requirements for a continuous period of one year and seven months prior to this.

7. We have considered the arguments of both sides. Section 74 of the Ordinance requires that every company must, within 45 days of the application for registration of the transfer of shares, complete and have ready for delivery the certificates of those shares. It is an admitted fact that a violation of section 74 of the Ordinance has indeed been committed by the Appellants as the Company failed to return 100,000 shares sent for transfer in the name of KASB Premier Fund Ltd contrary to the requirements of aforesaid provisions of the Ordinance. We cannot accept the argument of the Appellants that this delay in transferring of shares was not aimed at getting any gain nor have the Appellants made any gain and therefore the penalty should be set aside. A delay of one year and seven months compared to 45 days requirement is a serious violation of the Ordinance. However, keeping in mind that the shares had been transferred before the adjudication of the matter by the Executive Director (EMD), we reduce the penalty to Rs.13,250/- on each of the Appellants, calculated at the rate of Rs.25 per day instead of Rs.50/- per day after admissible period of 45 days under sub-section (2) of Section 74 of the Ordinance. The, Company, its Chief Executive and Company Secretary are directed to deposit the fine aggregating to Rs.39,750/- (Rupees Thirty Nine Thousand Seven Hundred and Fifty) in the designated bank account of Securities and Exchange Commission of Pakistan.

This appeal is disposed off accordingly.

(M. ZAFAR UL HAQ HIJAZI)
Commissioner
(Professional Services & Policy)

(ETRAT H. RIZVI)
Commissioner
(Specialized Companies)

Islamabad
Announced: December 31, 2003