

Appellate Bench Orders
Order in case of M/s Umer Fabrics Limited.

April 09, 2001

BEFORE THE
APPELLATE BENCH NO. 1

M/s. Umer Fabrics Limited..... Appellants

Versus

Commissioner (Enforcement)

Securities and Exchange Commission of Pakistan..... Respondent

Present:

1. Raja Mohammad Akram, Sr. Advocate
2. Mr. Aftab Ahmad, Director of the company
3. Mr. Farrukh Afzal, Director of the company..... On behalf of the Appellants

Mr. Ashfaq Ahmad Khan, Additional Registrar..... On behalf of the Respondent

Date of hearing: March 29, 2001

**IN THE MATTER OF M/S UMER FABRICS LIMITED – APPEAL UNDER
SECTION 33 OF THE**

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN ACT, 1997

ORDER

This is an appeal by M/s. Umer Fabrics Limited against the order of the Commissioner (Enforcement), Securities and Exchange Commission of Pakistan, appointing Mr. Qamar-ul-Islam, FCA of M/s. Sidat, Hyder, Qamar & Co., Chartered Accountants, Lahore as Inspector under section 265 of the Companies Ordinance, 1984 to investigate into the affairs of the company and to submit a report to the Commission within a period of sixty days of the date of the impugned order.

2. The appeal came up for hearing on March 29, 2001 and Raja Muhammad Akram, Senior Advocate, while arguing on behalf of the company reiterated the points mentioned in the appeal. His main thrust was that the following sweeping statement:

“Prima facie it appears that the affairs of the company are being conducted to defraud members, not being managed in accordance with sound business principles and members are being deprived of reasonable return by making transactions to the disadvantage of the company.”

made by the learned Commissioner (Enforcement) in his order, is neither substantiated by the record of the company nor it is in accordance with the specific provisions of section 265 (b)(vi) of the Companies Ordinance, 1984. It appears to be detrimental to the interests of the shareholders whose interest it purports to be protected. The counsel further submitted that the company is managing and operating a spinning unit despite the adverse business climate of the last one-decade, particularly in textile sector and it is regarded as one of the successful corporate entities in business. This business repute has been earned and protected by transparent and prudent business practices and with a dedicated orientation of protecting the interest of the company as well as its shareholders. He presented facts and figures which manifest continuous improvements and increase in profit of the company even in the most depressed economic condition.

3. In fact, the Commission had initiated action in March 1999 on the complaint of a Joint Secretary of the Karachi Stock Exchange (Guarantee) Limited wherein the business prudence of an investment amounting to Rs. 120.9 million in the shares of the Muslim Commercial Bank Limited (MCB) was doubted and questioned. This investment worked out to 50% of the paid up capital of the company and over 30% of its total equity. The market value of the said investment at the end of financial year 1998 decreased to Rs. 58.440 million reflecting an erosion of about 52%. The short term borrowings of the company during the year had increased from Rs. 298 million to Rs. 443 million on which the company had to pay huge interest of Rs. 105 million as compared to dividend received by it on the investment which amounted to Rs. 3.44 million only.

4. Another observation made by the said Joint Secretary was that the shares acquired by the company were not purchased through the Stock Exchange and it was a result of a private deal. According to the daily Quotation Sheet dated October 21, 1997 of Karachi Stock Exchange, 577,500 shares of Muslim Commercial Bank were traded on the Stock Exchange on the above mentioned date. Besides, the rate on that particular date as per daily Quotation Sheet varied between Rs. 44.50 to 48.25 per share and closed at Rs.47.90 per share, whereas the company through a private deal purchased these shares at a price of Rs. 49.90 per share causing a loss to the company and its shareholders.

5. The appellants' Counsel rebutted these allegations on the following grounds:

(a) the object of an investigation is to discover something, which is not apparently visible. In this case Balance Sheet of the company discloses all the material facts. Thus the investigation is not justified.

(b) a person like a Joint Secretary of the Karachi Stock Exchange who has no interest in the affairs of the company had no locus standi to approach the Commission for investigation.

(c) the facts to be determined as a result of investigation were already disclosed sufficiently and there appears no justification to enter into a fishing expedition or to undertake an investigation as a result of which possibly some case could be made out against the company and its management.

(d) merely because certain companies are said to form a group and there are transactions among these companies, it can not be presumed that these transactions were mala fide or that they were entered into with a view to defraud or to act in a manner detrimental to the company's members or other concerns.

(e) the order should not adversely affect the interest of the shareholders as the adverse impact of investigation on the company cannot be ignored.

(f) majority of shares of the company are held by such shareholders who are well conscious to watch their interest and to manage affairs of the company in prudent manner.

(g) as regards the transaction pertaining to purchase of shares outside the Karachi Stock Exchange, the Counsel argued that it is permissible and it is in accordance with the established practices and is not violative of any provisions of law on the subject.

6. Mr. Ashfaq Ahmad Khan, Additional Registrar, appearing on behalf of the then Commissioner (Enforcement) repeated almost the same grounds on the basis of which impugned order for investigation into the affairs of the company was made. He was of the view that the decision of the Board of Directors of the petitioner company was neither prudent nor transparent but he could not indicate any provision of law which was violated by the directors while making investment in the capital of MCB.

7. After hearing both appellants and representative of the respondent and also having examined the documents produced before us, we have come to the conclusion that the investment made by the appellant company is based on long term objectives and that too after exhaustive analysis backed by prudent business considerations. According to the record made available to us, the appellant company purchased these shares as a jumbo lot @ Rs. 49.67 per share when the market rate on the date of transaction was ranging from Rs. 45.50 to Rs. 48.25. It is also evident that investment in the stock market is a risky business and as a common practice no one can determine the future trend of the market. Apart from these, there is no complaint from any one of the shareholders challenging the decision of the directors of the company.

8. Apart from the above stated position, the appellant company is still possessing these shares and gaining reasonable return on its investment. According to the available data, the company has earned a dividend amounting to Rs. 14.244 million during the last three years and also 526,980 bonus shares were issued to it. A reasonable return on this investment is also expected during the current year as accounts for the year ended December 31, 2000 are yet to be placed before the members in the annual general meeting in June, 2001.

9. The company has earned after tax profit of Rs. 63.82 million, Rs.99.64 million, Rs. 46.74 million and Rs. 59.11 million during the last four years from 1996 to 1999 respectively and it has paid dividend @ 15%, 15%, 20% and 40% during the year 1997 to 2000.

10. Under such a situation, adverse affect of the investigation order on the reputation and business of the company cannot be ignored.

11. In view of the above reasons, we accept the appeal and set aside the order dated January 22, 2001 passed by the then Commissioner (Enforcement)

Announced : April 9, 2001

(N.K. SHAHANI)
Commissioner
(Securities Markets & Insurance)

(M. Zafar-ul-Haq Hijazi)
Commissioner