BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 53 of 2019

1. Dr. Habib-Ur-Rehman
2. Dr. Manzoor H. Qazi
3. Mr. Muhammad Zahid
4. Dr. Muhammad Salim Khan
5. Mr. Shafquat Ali Chaudhary
6. Mr. Shah Naveed Saeed
7. Mr. Qasim Farooq Ahmad
8. Dr. Samea Kauser Ahmad
9. Syed Ilyas Ahmed
10. Prof. Dr. Shoab Ahmed Khan

Appellants

Versus

The Executive Director (CSD), SECP.

Respondent

Date of hearing: September 24, 2020

Present:

For Appellants:

Mr. M. Javed Panni

For Respondent:

1. Mr. Amir Saleem, Joint Director (Adjudication-I), SECP.
2. Ms. Zohra Sarwar Khan, Joint Director (Adjudication-I), SECP.

ORDER

1. This Order shall dispose of Appeal No. 53 of 2019 filed by Dr. Habib-Ur-Rehman and 9 other directors (the Appellants) of M/s. Shifa International Hospital Limited (the Company) against Order dated June 20, 2019 (the Impugned Order) passed by the Executive Director, CSD (the

Respondent) under Section 218 read with Section 219 and Section 479 of the Companies Act 2017, (the Act).

2. The brief facts of the case are that the Company's annual audited financial statements of June 30, 2017 (the *Accounts)* revealed that Rs.109.332 million has been received as security deposits from employees and customers. The Company was advised to provide breakup of security deposit from customers and employees. The Company informed that Rs. 22.55 million has been received from employees as security deposit. A show-cause notice dated January 17, 2019 (the SCN) was issued to the Appellants. The reply of the SCN was received on January 28, 2019, whereas, hearing in the matter was held on February 7, 2019. The Respondent concluded the SCN proceedings and passed the Impugned Order. The Respondent issued a warning to the Appellants and directed the chief executive officer of the Appellant to deposit the deductions made from the employees' salaries in the manner prescribed in Section 218 of the Act.

3. The Appellants have filed this Appeal inter alia on the grounds that as per the employment contract the amounts deducted from salaries of new employees were withheld for a short period of six months and as per employment contract the Company was authorized to utilize such amounts. The Appellants stated that the Company had a policy to pay back amounts withheld from employees upon completion of one-year service or termination of services if the period is shorter.

4. The Appellants stated that the Respondent had ignored legal interpretation of the term "security deposit" and has merely relied on a non-legal interpretation, which is against the general accepted principles of law. The Appellants stated that the amount withheld from employees' salaries was to defray any medical expenses to which the employees may not be entitled to in the initial period of six months of service, therefore, it is neither a "security" nor a "deposit" as explicitly mentioned in section 218 of the Act.

5. The Appellants submitted that the Impugned Order has been passed without legal authority and an inadvertent categorization of head of account does not attract Section 218 read with section 219 of the Act. The Appellants further stated that the Company has rectified the wrong classification of the account in the annual accounts for the year ended June 30, 2018.

6. The Respondent has rebutted the grounds of Appeal and stated that in view of sub-section (1) of section 218 of the Act, the Company was required to deposit all moneys or securities deducted from employees in a special account within 15 days however, it failed to do so. The Respondent stated that the Appellants have admitted that amounts deducted from salaries of the employees were withheld as security, owing to a contract of service. The Respondent submitted that the Impugned Order does not restrict the nature of said amount and plain reading of Section 218 of the Act transpires that all moneys in pursuance of contracts of service is required to be kept in separate bank account. The Respondent stated that the Impugned Order has been passed in exercise of powers conferred through notification, S.R.O 751 (I)/2017 dated August 2, 2017. The Respondent stated that the Appellants have admitted that the Impugned Order has been passed due to wrong head of account and subsequent rectification wrong head.

7. The Appellate Bench (the Bench) has heard the parties and perused the record. The Appellant's representatives and the Respondent's representatives reiterated their grounds of appeal and rebuttal thereof. The Bench is of the view that deduction from employees' salaries should have been treated as per applicable requirements of Section 218 of the Act, however, in this case the Appellants have failed to adhere to the relevant laws. The Bench has no doubt that in case of a conflict between conditions contained in the employees' contract of service and requirements of the Act, the Act shall prevail. Therefore, we are of the view that the Company was not authorized to utilize the amounts withheld from the employees unless serving a notice of breach of contract to its employee.

8. The Bench rejects the Appellants' argument regarding "security deposit" because the term has been used in Section 217 of the Act whereas, the SCN was issued under Section 218 of the Act. The Bench has perused Section 218 of the Act, which is related to "money and securities deposited with a company by its employees in pursuance of their contracts of service", therefore, the Appellants' arguments regarding "security deposit" are irrelevant. The Bench has also examined the contents of the Appeal, which revealed that the Appellants have also admitted that amounts were withheld from the employees' salaries. The Bench is of the view that in this case the Company has deducted amounts from the employees' salaries to meet medical expenses of new employees during initial six months of their job, therefore, Section 218 of the Act is applicable in this case because such deduction falls under the subject "moneys" used in Section 2018 of the Act.

9. The Bench has perused notification, S.R.O 751 (I)/2017 dated August 2, 2017 (the SRO), which authorize the Director, CSD to adjudicate matters pertaining to Section 218 of the Act. However, as per the SRO, in absence of the Director, CSD, powers under Section 218 of the Act are delegated to the Executive Director, CSD. The Bench has examined the record, which shows that at the time of issuance of the SCN and passing of the Impugned Order, there was no Director in CSD, therefore, the powers delegated to the Director were duly exercised by the Respondent. The Bench is of the view that a change of head of account from "security deposit" to "retention money" is a mere change in nomenclature, however, it does not change the essence of money received as security. Therefore, the Appellants cannot be exonerated from the default, unless requirements of Section 218 of the Act are not complied, which includes deposit of money received from employees in a special account to be opened in a scheduled bank or in the National Saving Schemes. The Bench is of the view that the Appellants have failed to meet the requirements of Section 218 of the Act, therefore, any subsequent compliance, if any, does not exonerate the Appellants from the consequences of non-compliance.

10. The Bench is of the view that the Respondent has already taken a lenient view and instead of imposing a penalty of Level 1 and recovering the loss sustained by employees, only a warning has been issued to the Appellants and the Chief Executive Officer of the Company has been directed to deposit the deduction made from the employees' salaries in a manner prescribed in Section 218 of the Act. Therefore, keeping in view the *Doctrine of Restrain*t, we hereby dismiss this Appeal without any order as to cost.

(Farrukh Hamid Sabzwari)
Commissioner (SCD-PRDD)

(Shaukat Hussain)
Commissioner (INS,C&CD)

Announced on: 12 JAN 2021.