



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
(Enforcement & Monitoring Division)

[Islamabad]

Before Rashid Sadiq, Executive Director

IN THE MATTER OF
M/S Saadi Cement Limited

Number and date of notice	No.S/U-1634/EM/265/2002 dated July 17, 2002
Date of final hearing	October 16, 2002
Present	Mr. M. M. Abdullah, Director (Project)

Order

Under Section 74 of the Companies Ordinance, 1984

This order shall dispose of the proceedings initiated against M/s Saadi Cement Limited (the “Company”) and its directors including the Chief Executive of the Company under the provisions of Section 74 of the Companies Ordinance, 1984 (the “Ordinance”) through show cause notice dated July 17, 2002.

The Company

2. The Company was incorporated under the Companies Ordinance, 1984 as a public company limited by shares in 1994. The shares of the Company are listed on



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the Karachi and Islamabad Stock Exchanges. The authorized share capital of the Company is Rs. 3,000 million divided into 300 million ordinary shares of Rs. 10 each. The paid up shares capital of the Company is Rs. 1,850 million divided into 185 million ordinary shares of Rs. 10 each. The object for which the Company was established and its powers are contained in its Memorandum and Articles of Association. The Company is principally engaged in manufacturing and marketing of Cement. The project of the Company is located at Kamilpur, Near Hattar, District Haripur, N.W.F.P. The Company has 2,632 shareholders comprising individuals, joint stock companies, public sector institutions, financial institutions etc. as per pattern of shareholding annexed to the Directors' Report on the accounts for the year June 30, 2002. Associated companies, directors and their spouses hold 44% of the paid up capital. This indicates that there is a substantial public interest in the shares of this Company. The Board of Directors of the Company as per its latest annual report for the year ended June 30, 2002 comprises of as follows:

1. Mr. Tariq Mohsin Siddiqui, Chief Executive
2. Mr. Shamim Mushtaq Siddiqui, Director,
3. Mr. Muhammad Salim Arif, Director
4. Mr. Jameel Ahmed Siddiqui, Director
5. Mr. Ishtiaq Ahmed Khan, Director
6. Mrs. Ghazala Mustafa, Director
7. Miss. Seema Tabassum, Director
8. Syed Majeedullah Husaini, Director



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Background Facts

3. In order to fully appreciate the issue in hand, it is necessary to glance the relevant background facts of this case. Mr. Mohammad Saleem Ghory, a member of the Karachi Stock Exchange (hereinafter referred to as the “Complainant”), has filed a complaint to the Commission vide his letter dated April 24, 2002 regarding contravention by the Company of the Companies Ordinance, 1984 in relation to transfer of his shares. According to the complaint, the Complainant had bought 50,000 shares (hereinafter referred to as the “Shares”) of the Company, which were delivered to him by the clearing house of the Karachi Stock exchange (the “KSE”). These Shares were lodged with the Company along with all requisite documents and duly executed instruments of transfer on January 29, 2002 for transfer in his account in the Central Depository Company of Pakistan Limited (the “CDC”). The Company acknowledged the receipt of these Shares vide its receipt number 755 dated January 29, 2002. According to the complaint, the Complainant received a letter from the Company on April 16, 2002 i.e. after 76 days, asking him to deposit the relevant documents to the Commission of Enquiry, constituted by the Company for verification of *bona fide* purchaser. His grievance is that according to law these Shares were required to be transferred to his account in the CDC within five working days. The Complainant has also provided to the Company a certificate from the KSE confirming that the said Shares were purchased by the Complainant against payment



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through clearing house in accordance with the rules and regulations of the KSE. The Complainant also appeared before me and submitted all relevant supporting documents / record in his possession in support of his claim of the Shares including a certificate from KSE that he is a *bona fide* holder of the Shares.

4. The aforesaid complaint was forwarded to the Company vide this Commission's letter dated May 02, 2002 with the advise to the Chief Executive of the Company to take appropriate necessary action for the redressal of the grievance of the Complainant on priority basis. No response was received from the Company in spite of subsequent reminders on May 8, 15, 23, and 31, 2002. Neither the Company redressed the grievance of the Complainant nor did it even give any comments to the Commission's several communications. The unresponsive attitude of the Company was a cause of concern for the Commission because on the one hand the Company was not transferring the Shares without any justification and valid reasons and on the other hand, there was no response to the Commission's enquiries. The Enforcement and Monitoring Division has examined this matter and it appeared that the Company has *prima facie* contravened the provisions of Section 74 of the Ordinance by not transferring the Shares within five days as stipulated under proviso to Sub-section (1) of Section 74 of the Ordinance. In view of the above, it was decided to initiate proceedings under the Ordinance against the Company and its directors.



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Jurisdiction

5. The Commission brings this action pursuant to the provisions of Sub-Section (2) Section 74 of the Ordinance read with Section 476 of the Ordinance. The powers under the aforesaid provisions have been delegated to the undersigned through S.R.O. No. 386(1)/2002 dated June 18, 2002

Show Cause Notice

6. A notice dated July 17, 2003 under the aforesaid provisions of the Ordinance was served on the Company and all its directors including the Chief Executive calling upon them to show-cause and to appear before the undersigned on July 26, 2002 to explain as to why penalty may not be imposed on them for the contravention of the mandatory provision of Sub-section (1) of Section 74 of the Ordinance.

Submissions of the Company and its Directors

7. The Company acknowledged the receipt of show cause notice through its letter July 20, 2002. The Company vide its letter dated July 24, 2002, admitted that the Complainant did lodge the Shares for transfer with the Company through CDC,



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however, it was unable to accede to his request as the ownership of the Shares was disputed. It was also stated that the Shares were returned to the Complainant on July 17, 2002. It was further submitted that the Shares were out of the lot of disputed shares disposed of by Mr. Muhammad Rashid Jamal, a defaulted member of the KSE. It was further informed that the Company had gone before the honourable Sindh High Court in inter-pleader suit, requesting the Court to issue guidance and to determine the rightful ownership and the honorable Sindh High Court has directed the Company to honour *bona fide* purchase transactions. In order to determine the *bona fide* of purchase transactions of each claimant, out of this disputed lot, the Company has appointed a Commission of Enquiry, comprising of a lawyer and a Chartered Accountant to receive directly the claims from various claimants and to recommend to the Company only those transactions, which were *bona fide* in nature and free from any fraudulent dealings. It was also informed that the Commission of Enquiry would submit its report shortly for implementation of the decisions of the honorable Sindh High Court. The Company vide its letter dated July 25, 2002 requested for adjournment of the hearing in the 2nd week of August 2002, as the authorized director to represent the matter was busy in urgent and critical matter. The hearing, therefore, was adjourned and re-fixed on August 22, 2002. The Commission of Enquiry, however, could not submit its report even after lapse of considerable time.



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8. Subsequently, the case was fixed a number of times, the final hearing was held on October 16, 2002 on which date, Mr. M. M. Abdullah, director (Project) of the Company appeared on behalf of the Company and its directors and repeated the same arguments as were earlier communicated by the Company in response to the show cause notice.

The Law

9. Before proceeding to decide this case, I consider it necessary to advert to the provisions of the Ordinance, which have *prima facie* been violated by the Company. Sub-section (1) of Section 74 requires that every company shall within forty five days of the application for transfer of shares complete and have ready for delivery the certificates of all shares and unless sent by post or delivered to the person entitled thereto, within that period, shall give notice of this fact to the shareholders immediately thereafter in the manner prescribed. Proviso to sub-section (1) of Section 74 provides that the company shall, within five days after an application is made for the registration of the transfer of any shares, debentures or debenture stock to a central depository, register such transfer in the name of the central depository. The provision of Sub-section (2) of Section 74 of the Ordinance provides per day fine in case of delay in transfer of shares by a company. The provisions of Section 77 of the Ordinance provides that the directors of a company shall not refuse to transfer



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any fully paid shares unless the transfer deed is, for any reason, defective or invalid.

The company is also required to notify within five days, where transferee is CDC, the defect or invalidity to the transferee, who shall after the removal of the defect or invalidity be entitled to re-lodge the transfer deed with the company.

Judgments of Honorable Sindh High Court

10. In the case in hand, the Company approached the honorable Sindh High Court for guidance of the Court in determining the rightful ownership of shares disposed by KSE on suspension of its members namely Mr. Muhammad Rashid Jamal. The honorable High Court of Sindh has decided this case on December 14, 1998 as under:-

Quote

“The provisions of Section 31 of the Securities & Exchange Ordinance, 1969 are very clear and are reproduced below:

31. **Securities acquired in good faith.**- (1) A person who, without fraud and for a lawful consideration, becomes the possessor of a certificate of an equity security, scrip, debenture, debenture stock or bond, and who is without notice that the title of the person from whom he derived his own title was defective shall hold such certificate and all rights attached thereto free from any defect of title of prior parties and free from defenses available to prior parties among themselves.



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(2) A Stock Exchange may regulate the documentation, procedures and guarantees required to transfer property in securities and the effects thereof on the respective rights and liabilities of the parties and such regulations, if approved by the Commission, shall constitute binding and enforceable terms and conditions of contracts effected on the exchange, shall govern the rights and liabilities of the parties thereto, and shall govern the rights and liabilities with respect to transfers of shares on its books of the issuer of listed securities notwithstanding any provisions to the contrary contained in the Contract Act, 1872 (IX of 1872), the Negotiable Instruments Act, 1881 (XXVI of 1881), the Transfer of Property Act, 1882 (IV of 1882) or the Companies Ordinance, 1984, or any other law for the time being in force.

A plain reading of Section 31 would show that once a person acquires a share for lawful consideration then he becomes entitled to have the share transferred in his name and indeed on the basis the entire structure of the Stock Exchange rests, not only in Pakistan but in rest of the world it is obvious that there is here more than meets the eyes as regards the conduct of holders. Be that as it may but if the holders are in any way aggrieved with the conduct of the Broker then it is for the Holders to initiate proceedings against the Broker rather than interfere with the working of the Stock Exchange. In so far as the plaintiffs are concerned, it is apparent that they are bound to transfer the shares, valid Transfer Deeds for which are lodged with them and the fact that they resisting to do this under the cover of a legal opinion only goes to show that perhaps they have some interest in not transferring the shares. It is obvious that such conduct is reprehensible and cannot be permitted in so far as trading on the Stock Exchange is concerned. As far as the plaintiffs fear that they may be stopped from trading on the Stock Exchange or that they may be added with any liability in the event that the shares are transferred to the wrong person. It is obvious that this is only an ephemeral fear and under the law no liability attaches to them if they have acted bona fide. As far as their fear of being stopped from trading on the Stock Exchange Mr. Mehmood Mandviwalla has stated before me that if the plaintiffs transfer the shares as per Rules of KSE and as per provisions of Section 31 Securities and Exchange Ordinance, 1969 then the KSE will take no adverse action against the plaintiff. I, therefore, find no merit in these suits and direct that KSE will withdraw their notice/letter-dated 09.02.1998 with immediate effect and that the plaintiff will transfer the shares as listed below against Suit numbers mentioned to bona fide purchasers”

Unquote



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11. The Company went into appeal against the aforesaid decision and the Division Bench of the honorable Sindh High Court decided the said appeal on November 28, 2001 as under:-

Quote

“From a bare perusal of the above portion of the judgment of the learned single Judge, which is the operative portion of the judgment it is revealed that it had nothing to do with the applicants. They were not at all adversely affected by the observation made above. The aforesaid portion contained direction to respondent No.1 for transfer of shares to bona fide holders of transfer deeds / documents. In case the Appellants had some interest in the shares which were to be transferred by Respondents No. 1 to the holders of the transfer deed / documents then they could lodge their objections with the Karachi Stock Exchange and in case of any adverse action could have approached the relevant forum for redress of their grievance but they could not challenge the aforesaid Judgments by way of these appeals.

Upon the above discussion, these appeals are not maintainable and do not merit consideration. Accordingly, these appeals are dismissed in limine along with the listed applications”.

Unquote

Conclusion



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12. I have heard the complainant and Mr. M. M. Abdullah, who represented the Company and its directors in these proceedings and have also perused the voluminous documents placed before me by both the company and the complainant. As the honorable Sindh High Court has already decided the issue of disputed shares, therefore, I do not consider it necessary to deliberate on this issue any further. The judgments of the honorable High Court of Sindh are clear and unambiguous and do not require the company to constitute any Commission of Enquiry to determine *bona fide* purchasers of the shares. These judgments in fact clearly provide a direction to transfer shares to *bona fide* purchasers for which the Court has given guideline on page 6 of its order dated December 14, 1998:

Quote

“it is apparent that they (the Company) are bound to transfer the shares, valid transfer deeds which are lodged with them and the fact that they are resisting to do this under the cover of a legal opinion only goes to show that perhaps they have some interest in not transferring the shares”.

Unquote

The provisions of Section 31 of the Securities and Exchange Ordinance, 1969 provides that a person who, without fraud and for a lawful consideration, becomes the possessor of a certificate of an equity security and who is without notice that the title of the person from whom he derived his own title was defective shall hold such



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certificate and all rights attached thereto free from any defect of title of prior parties and free from defenses of prior parties among themselves. The Company, therefore, should have transferred the Shares in favour of the Complainant as his *bona fide* was established without any doubt from the certificate of KSE that he has purchased those shares through its clearing house for lawful consideration. I do not agree to the plea that the matter was sub-judice because of the reason that the Court has already given its judgment and the appeal of the company has also been dismissed by the Division Bench of the honorable High Court of Sindh. Moreover, I have not found any thing in the said judgments authorizing the Company to constitute a Commission of Enquiry.

13. What emerged from the above discussion is that the Company has not complied with the Court order and instead constituted a Commission of Enquiry to determine *bona fide* purchasers. It is noted with great concern that after lapse of a considerable period of time, the Commission of Enquiry has not been able to make out a report. This clearly shows that the company intends to prolong this issue on one pretext or the other and the directors might have some interest in not transferring the Shares lodged by the Complainant.



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Order

14. The Company has not pointed out any defect or invalidity in the instruments of transfer lodged by the Complainant and instead has asked him to lodge the Shares with the Commission of Enquiry. These Shares were returned to the Complainant on July 17, 2002. As the Company has not been able to justify the return of the Shares without transferring the same to CDC in the account of Complainant, therefore, the Company has committed default under Sub-section (1) of Section of Section 74 of the Ordinance. The Company's unresponsive attitude towards Commission's communications, constitution of Commission of Enquiry for determining *bona fide* purchasers without any legal authority clearly manifest that the Company is deliberately and intentionally avoiding transfer of the Shares to CDC. The Company and its directors have not only acted contrary to law but also flouted the clear direction of the honorable High Court of Sindh to transfer the shares in favour of those who have bought such shares for lawful consideration. The delay in transfer of the Shares attracts the penal provisions of Sub-section (2) of Section 74 of the Ordinance, which provides fine of Rs. 100 for every day during which default continues. As the directors including the Chief Executive have not been able to justify the default, therefore, they all are liable under the aforesaid penal provision. I, however, taking a lenient view impose a token fine of Rs. 10,000/- (Rupees ten



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thousands only) on the Company and its Chief Executive instead of imposing per day fine on each of the Company and every director of the Company.

15. The Company and its Chief Executive, Mr. Tariq Mohsin Siddiqui are directed to deposit the fine amounting to Rs. 10,000/- each, aggregating to Rs. 20,000/- (Rupees twenty thousands only) in the designated bank account of Securities and Exchange Commission of Pakistan, maintained with Habib Bank Limited within 30 days of the date of this Order and furnish a receipted challan to the Securities and Exchange Commission of Pakistan.

16. As the Company has returned the Shares to the Complainant, therefore, I hereby direct the Complainant to lodge the Shares with the Company and the Company is directed to transfer the Shares within 5 days of the application to CDC in the account of the Complainant as provided under proviso to Sub-section (1) of Section 74 of the Ordinance. This direction is being given under Section 473 of the Ordinance non-compliance of which shall render the directors of the Company liable for punishment under Section 495 of the Ordinance.

RASHID SADIQ

Executive Director (Enforcement & Monitoring)

Announced
April 11, 2003
ISLAMABAD