

Before Rashid Sadiq, Executive Director

IN THE MATTER OF
M/S HAJI DOSSA LIMITED

Number and date of notice	U-1155/EM/2001-2614-2616 dated April 17, 2002
Date of hearing	April 24, 2002
Present	Mr. Muhammad Aziz Haji Dossa, Chief Executive

Order

Through this Order, I propose to decide the case pertaining to delay in transfer of shares of M/S Haji Dossa Limited, a company limited by shares and listed on the Karachi Stock Exchange (hereinafter called the "Company") in favour of Mr. M. H. Dossa.

2. The facts leading to this case, briefly stated, are that Mr. M. H. Dossa filed a complaint with the Commission against the Company for delay in transfer of 14 (fourteen) share certificates comprising 375 (three hundred seventy five) shares sent by him to the Company on June 26, 2001 and acknowledged by its Chief Executive on June 30, 2001.

3. The aforesaid complaint was sent to the Company vide this Commission's letter dated August 22, 2001 for comments. The Company acknowledged the said letter on August 25, 2001. However, it was stated that there was some family dispute over these shares and it would be resolved very shortly. No document, however, was sent by the Company to the Commission to substantiate its contention that the aforesaid shares were subject of any litigation. Thereafter, a series of letters were exchanged between the Company and the Commission. During this period, the Commission constantly persuaded the Company to transfer the shares without any further delay but the needful was not done. In the meantime, the complainant also approached the Karachi Stock Exchange. In order to redress the grievance of the complainant, the Karachi Stock Exchange also directed the Company to transfer the shares immediately. Since the Company did

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not transfer the said shares, the case was fixed for hearing on October 04, 2001, which was adjourned several times at the request of the Chief Executive of the Company. Karachi Stock Exchange also kept pursuing this matter with the Company. The Company, however, gave no response to Karachi Stock Exchange. The Commission has also drawn attention of the Company towards provisions of Section 78 of the Companies Ordinance, 1984 (the "Ordinance") with an enquiry as to whether a notice of refusal was issued by the Company in terms of the aforesaid Section and if so a documentary evidence of the same may be sent to the Commission. The Chief Executive in response stated that the said shares were disputed. He, however, could not provide any documentary evidence to substantiate his claim. It was possible for the Company to have refused the transfer of shares under Section 78 of the Ordinance in case there was any genuine dispute regarding these shares. This was not done and the Company failed to give any valid reason for withholding the shares without giving a notice of refusal as required under the law.

4. In the above circumstances, the Commission felt deeply concerned about the delay in transfer of shares without any justification and valid reasons. As the Company has *prima facie* contravened the provisions of Sub-section (1) of Section 74 and Sub-section (1) of Section 78 of the Ordinance, a notice dated April 17, 2002 was, therefore, served on the Company, the Chief Executive and the Company Secretary calling upon them to show-cause in writing within seven days of the receipt of the notice as to why the penalties as provided for in Sub-section (2) of Section 76 and sub-section (2) of Section 78 of the Ordinance, may not be imposed for the aforesaid contraventions.

5. In order to give an opportunity of personal hearing, the case was fixed on April 24, 2002. Mr. Muhammad Aziz Haji Dossa, Chief Executive and Mr. Samiuddin, Company Secretary appeared on the date of hearing. The Company Secretary took the plea that he did not receive any shares for transfer in favour of the complainant. The complainant, however, claimed that the said shares were sent to the registered office of the Company, however, the Secretary refused to take delivery and directed the representative to take the same to Mr. Muhammad Aziz Haji Dossa, the Chief Executive who took the delivery and acknowledged the receipt of the shares by signing the duplicate copy of the letter. A copy of the said letter was also placed on record by the complainant. The Chief Executive, appearing before me, admitted that he had received the said shares. He, however, stated that these shares were entrusted to him for transfer, as required under the law, at his residence where these got lost in the accumulated papers. He was asked to explain as to why a notice of refusal under Section 78 of the Ordinance was not given within thirty days of the receipt of shares. He could not give any satisfactory response to this question. He further stated that in spite of reminders, the transfer fee was not deposited by the complainant. He, however, failed to provide any documentary evidence regarding demand of transfer stamps from the complainant. The shares were deposited on June 30, 2001 for transfer whereas the issue of transfer stamp was being raised by the Chief Executive in his letter dated April 24, 2002 for the first time, i.e. after a lapse of about ten months. The Chief Executive, however, promised to transfer the shares very shortly.

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6. Before proceedings 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 after the application for transfer of shares complete and have ready for delivery the certificate 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. The provisions of Sub-section (1) of Section 77 provides that the directors of company shall not refuse to transfer any fully paid up shares unless the transfer deed is, for any reason, defective or invalid. The Companies Ordinance also provides a procedure for refusal of transfer of shares. Sub-section (1) of Section 78 provides that if a company refuses to register a transfer of any share, the Company shall within thirty days after the date on which the instrument of transfer was lodged with the company send to the transferee notice of refusal indicating reasons for such refusal. It is to be noted that the shares in listed companies are freely transferable. Where the documents for the transfer, complete in all respect, are lodged with the company, the transferee becomes entitled to be registered as a member of the company.

7. In the case in hand, the Company has not refused the transfer of shares. It is only at the time of hearing on April 24, 2002 (and through his letter dated April 24, 2002) that the Chief Executive has talked about the non-affixation of the transfer stamps. Subsequently, however, in utter disregard to the promise made by him to transfer the shares in favour of Mr. M. H. Dossa very shortly, the Company has transferred the shares in the name of Mrs. Qudsia Mohammad Hussain Dossa. This obviously is a serious violation and cannot be condoned. The Chief Executive has completely disregarded the provisions of the Ordinance. Under the circumstances, the delay in transfer of shares is considered deliberate and the Company and its Chief Executive has been found knowingly and willfully been a party to the said default.

8. In view of the above, the default attracts the penal provisions of Sub-section (2) of Section 74 and Sub-section (2) of Section 78 of the Ordinance. I, therefore, impose a fine on the Company and its Chief Executive amounting to **Rs. 30,900** (Thirty thousand and nine hundred) each calculated @ Rs. 100 per days after admissible period of 45 days under Sub-section (1) of Section 74 of the Ordinance and **Rs. 18,200** (Eighteen thousand and two hundred only) each under Sub-section (2) of Section 78 of the Ordinance. No fine, however, is imposed on the Secretary of the Company who has given an undertaking that he has not received the shares for transfer in the name of Mr. M. H. Dossa and the willful default in his case could not be established.

9. The, Company and its Chief Executive are directed to deposit the fine aggregating Rs. 98,200 (Rs. 49,100/- by the Company and Rs. 49,100/- by the Chief Executive) 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.

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10. As regard to the transfer of shares in the name of Mrs. Qudsia Mohammed Hussain Dossa without sufficient cause, the complainant may approach the court in terms of Section 152 of the Ordinance for rectification of the register of members and for punishment of the responsible persons as provided under Section 153 of the Ordinance.

RASHID SADIQ
Executive Director (Enforcement & Monitoring)

Announced
June 19, 2002
ISLAMABAD