



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Enforcement Department

Islamabad

Before Tariq Bakhtawar, Director Enforcement

In the matter of Punjab Oil Mills Limited
for non-compliance with certain provisions of the Companies Ordinance 1984

Number and date of Notice	No. S/U-556/EM/741/2003 dated July 6, 2004
Date of final hearing	November 24, 2004
Present	
Representing the Complainant	Mr. Khurram Raza, Advocate
Representing the Company	Mr. Imran Anjum Alvi, Advocate
Representing NIT Nominee Directors	Mr. Aurangzeb Mirza, Advocate

ORDER

This order shall dispose of the proceedings initiated against M/s. Punjab Oil Mills 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 6, 2004.

2. The Company was incorporated under the Ordinance as a public company limited by shares in the year 1984. The shares of the Company are listed on the Stock Exchanges in Pakistan. The paid up share capital of the Company is Rs. 20,419,130 divided into 2,041,913 ordinary shares of Rs.10 each. The Company is principally engaged in production and sale of vegetable ghee, cooking oil, margarine and laundry soap. The Company has 1,228 shareholders comprising individuals, investment companies, joint stock companies, financial institutions etc. and as per pattern of shareholding annexed to the Directors’ Report on the accounts for the year June 30, 2004, associated companies, chief executive, directors and their spouses hold 30% of the total shareholding which indicates that there is a substantial public interest in the shares of this Company. The object for which the Company was established and its powers are contained in its Memorandum and Articles of Association. The Board of Directors of the Company as per its latest annual report for the year ended June 30, 2004 comprises as follows:



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1. Mr. Mian Fazl-i-Ahmed – Chairman
2. Mr. Anwar A. Batla – Vice Chairman
3. Izaz Ilahi Malik – Managing Director/Chief Executive
4. Mr. Tahir Jahangir – Director
5. Mr. Firasat Ali – Director
6. Mr. Gul Nawaz – Director
7. Mr. Nadeem Ibrahim – Director

3. In order to fully appreciate the issue in hand, it is necessary to have a glance on the relevant background facts of this case. Mr. Imran Bhatti, a shareholder of the company (hereinafter referred to as the “Complainant”) has lodged a complaint to the Commission vide his letter dated June 25, 2003 regarding contravention by the Company of the mandatory provisions of the Ordinance in relation to the shares lodged by him for transfer in his name. According to the Complainant, he had bought 140,000 shares (hereinafter referred to as the “Shares”) of the Company, through the clearing house of the Lahore Stock Exchange (the “LSE”) for lawful consideration. Out of these shares, 5,000 Shares were lodged by the Complainant with the Company along with all requisite documents and duly executed instruments of transfer deeds on May 05, 2003. The Company acknowledged the receipt of these Shares vide its letter dated June 04, 2003 and replied that these shares could not be transferred in his name as the Company has received legal notice from the original owners of these shares through their legal counsel stating that the shares have not been sold by them. According to the Complainant, he re-submitted these shares for transfer vide his letter dated June 10, 2003 however, the Company again refused to transfer the same. His sole grievance that according to law these Shares were required to be transferred in his name within forty-five days. The Complainant has also provided a sale / purchase confirmation receipt from Mian Nusrat-ud-din, Member LSE, confirming the aforesaid purchase transaction in accordance with the rules and regulations of the Stock Exchange.

4. The aforesaid complaint was forwarded to the Company vide this Commission’s letter dated July 1, 2003 with the advice to take appropriate necessary action and to redress the grievances of the Complainant on priority basis under intimation to the Commission. The Company vide its letter dated July 14, 2003 informed that the sponsors shares held by the shareholders of the Company were placed as securities / collaterals with the Trust Modaraba against financial facilities extended to its two associated undertakings viz Teejays Corporation (Pvt) Limited and Hala Enterprises (Pvt) Limited. In consequent of default committed by the said two undertakings, money decrees were obtained by Trust Modaraba against borrowers as well as their guarantors namely the sponsor shareholders and a compromise had been



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effected with Trust Modaraba. The said Modaraba apparently created a further lien on the sponsors' shares in favour of Allied Bank of Pakistan Limited (ABL). This lien was created without requisite authority and in absence of any prior notice to the borrower / guarantors; therefore sale of shares was dubious and unlawful. The Company further informed that fraudulent sale / proposed sale by the ABL has been challenged by the true and actual owners of shares in suit titled Teejays Corporations (Pvt) Limited etc Vs. Allied Bank of Pakistan Limited etc before the Banking Court No. IV, Lahore and the Honourable Banking Court, vide order dated 7-7-2003, has been pleased to pass the restraining orders. In view of these circumstances, the Company has been unable to transfer these disputed shares.

5. Having not satisfied with the aforesaid arguments, a notice dated July 6, 2004 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 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.

6. The Company through its legal counsel M/s. Imtiaz Siddiqui & Associates, Advocates & Solicitors, in its response to the aforesaid Show Cause Notice, repeated its stance mentioned earlier. They have also stated that a cumulative reading of the provisions contained in Sections 76, 77, 78 and 78A of the Ordinance manifests that the fundamental features of these provisions are not applicable in the cited case and the rights claimed by the transferee, under a transaction, are not the one provided under Section 76 of the Ordinance. The purchase of shares and the claim for transfer thereof has not arisen in the context of transaction contemplated under Section 76 of the Ordinance. The Counsel also stated that transaction of sale unto the transferee was defective and invalid; the sale of pledged shares are in violation to the provisions of the Contract Act, 1872 and provisions of the Financial Institutions (Recovery of Finances) Ordinance, 2001. The rights of transferee can not be better than that of the seller. The transferor, in the present case, has not entered into any transaction inasmuch as the same has arisen due to unlawful sale thereof and is subject matter of suit referred above. It was also stated in the response to the Show Cause Notice that the refusal to transfer the shares by the Company/directors is validly based for the reasons explained above. It is, thus that the impression of bona fide purchase by the complainant, is not valid nor the same has any material bearing on the issue under consideration. Therefore, the complainant's remedy does not lie against the Company; rather it should be against the person who has sold him shares suffering from invalid documentation and defective title. The said complainant has chosen not to pursue his remedies against the person defrauded him but has preferred to pursue the Company and its directors.



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7. Based on their arguments, the Company's Legal Counsel requested to withdraw the Show Cause Notice issued against the Company and its directors since according to them neither the Company nor its directors have defaulted in any of their lawful obligation as alleged against them even they have informed the complainant of the fraud and deceit played upon him by the person who sold the shares to him and hence, the said transfer was refused.

8. Having not satisfied with the submissions by the Company's Legal Counsel, the matter was subsequently fixed several times and adjourned on the request of the Company. A final hearing was held on November 24, 2004 on which date, Mr. Imran Anjum Alvi appeared on behalf of the Company and Mr. Aurangzeb Mirza appeared on behalf of NIT Nominee Directors and repeated almost the same arguments as were earlier communicated by the Company in its response to the show cause notice. Mr. Khurram Raza, Advocate appeared on behalf the complainant argued that the shares were purchased for lawful consideration in accordance with the rules/regulations and procedure of the Stock Exchange. As the complainant was unaware of any defects, the shares are required to be transferred in accordance with law.

9. Before proceeding to decide the case, I consider it necessary to refer to the relevant provisions of the Ordinance, which have *prima facie* been violated by the Company and its directors. 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 as prescribed. 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 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 same be entitled to re-lodge the transfer deed with the Company.

10. The provisions of Section 31 of the Securities & Exchange Ordinance, 1969 are very clear and relevant to be reproduced in this case:



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“Quote”

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.*

(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.*

“Unquote”

11. The provisions of Section 31 of the Securities and Exchange Ordinance, 1969 provides that once 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 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 evidence of LSE member that he had purchased these shares through the clearing house of the Exchange for lawful consideration. I therefore, do not agree to the plea of the company.

12. The Counsel for the complainant in the meanwhile before arriving to the conclusion informed from the following order passed by the Banking Court No. IV, Lahore on November 20, 2004:

“In view of the statement of the counsel for the plaintiff and also para No.9 of the plaint, the instant suit is triable by Modaraba Tribunal, Lahore. The learned counsels for the defendants are also of the same view. Therefore, the plaint is returned to the plaintiff, so that it could be presented before the Modaraba Tribunal, Lahore. “



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13. I have heard the arguments of the counsels representing the Complainant and the Company and its directors in these proceedings and have also perused the documents/record placed before me for consideration. It is apparent that the Company and its directors are bound to transfer the shares, valid transfer deeds of which are lodged with them and the fact that they are resisting to do so only goes to show that perhaps they have some interest in not transferring the shares.

14. What emerged from the above discussion is that the Company intends to prolong this issue on one pretext or the other and has neither pointed out any defect or invalidity in the instruments of transfer lodged by the Complainant nor has been able to justify the refusal to transfer of these Shares in the name of the Complainant, therefore, the Company has committed default under Sub-section (1) of Section 74 of the Ordinance. 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 the default continues. As the complainant initially lodged shares for transfer on May 5, 2003 therefore, the default continues for 581 days till the signing of this order. As the directors including the Chief Executives have not been able to justify the default, therefore, they all are under the aforesaid penal provisions. However, three of the directors, two nominated by the National Investment Trust and one by the National Bank of Pakistan respectively have not been considered for the said penal provisions since the role played by nominee directors is of restricted nature. I therefore, impose a fine of Rs.58,100/- (Rupees fifty eight thousand one hundred only) on the Company and its each director excluding the three nominee directors (total amount Rs. 290,500) as follows:

S. #	Names	Designation	Penalty (Rupees)
1.	M/S Punjab Oil Mills Ltd		58,100
2.	Mr. Mian Fazl-i-Ahmed	Chairman	58,100
3.	Mr. Anwar A. Batla	Vice Chairman	58,100
4.	Mr. Izaz Ilahi Malik	Managing Director/Chief Executive	58,100
5.	Mr. Tahir Jehangir	Director	58,100
Total			290,500



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15. The Company, its Chief Executive, and directors (as indicated above) are directed to deposit the fine amounting to Rs. 58,100/- each, aggregating to Rs. 290,500/- (Rupees two hundred ninety thousand and five hundred only) in the designated bank account of the 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 refused to transfer 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 stipulated time in the name 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.

TARIQ BAKHTAWAR
Director Enforcement

Announced
December 07, 2004
Islamabad