



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

*Company Law Division
(Enforcement Department)*

[Islamabad]

Before Rashid Sadiq, Executive Director

IN THE MATTER OF
M/S Pakland Cement Limited

Number and date of notice

No.U-1381/E&M/94/2001
dated April 08, 2003

Present

Barrister Ahmed Saeed
Mr. Farooq Akhtar

Order

Under Section 472 of the Companies Ordinance, 1984

The facts leading to this case, briefly stated, are that a reference was received from the Karachi Stock Exchange (Guarantee) Limited (hereinafter referred to as the “KSE”) vide letter dated January 04, 2003 regarding non-compliance of the mandatory provisions of the Companies Ordinance, 1984 (the “Ordinance”) pertaining to transfer of its shares by M/s Pakland Cement Limited (the “Company”). It was stated in the said reference that the management of the Company had clearly disregarded the directions of the Honorable Sindh High Court and was intentionally and deliberately avoiding the transfer of shares lodged with it by the members of the KSE on behalf of their clients and on their own behalf.



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2. In order to fully appreciate the issue in hand, it is necessary to glance the relevant background facts of this case. The shares of the Company are listed on the KSE. Several investors had acquired large number of shares of the Company through the Clearing House of the KSE. It was the contention of the Company that these shares were placed by Mr. Jarrar Hussain, a registered shareholder of the Company with a member of the KSE namely Mr. Muhammad Rashid Jamal as collateral in trust to extend credit to the said shareholder. The said member was subsequently declared to be defaulter by the KSE and his membership was suspended in accordance with the regulations of the KSE. The said shareholder lodged a complaint with the Company and in consequence the company requested the KSE to advise its members not to deal with the said shares in question as being stolen/lost. When the shares were lodged with the Company for transfer, the Company advised the investors that the title to the said shares were disputed and hence the same could not be transferred in their names pending determination of the title by a court of law. KSE, while not accepting this action issued a show cause notice to the Company as to why the trading of its shares on the KSE floor may not be suspended. As the Company had refused to transfer the shares, therefore, the KSE had subsequently suspended the trading in its shares. Aggrieved by this action of the KSE, the Company approached the Honorable Sindh High Court for guidance of the Court in determining the rightful ownership of shares disposed of by KSE on suspension of its member namely, Mr. Muhammad Rashid Jamal. In the Suit, it was prayed by the Company that it had no interest in the shares in question and that it was only by way of abundant precaution that they were resisting the transfer of shares to the buyers. The Company contended that the suit was filed purely to seek indemnity against any possible claims that may be filed against it subsequently. The Company also prayed to restrain the KSE from taking coercive steps against it. The Honorable



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Sindh High Court decided this case on March 06, 1999. The operative paragraph of the judgment is reproduced here under for ease of reference:

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.

(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 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 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. 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 saddled 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



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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

3. Mr. Jarrar Hussain 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. The operative paragraph of the said judgment is reproduced hereunder:-

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

4. It was the contention of the KSE that the Company was not complying with the aforesaid decisions of the Honorable Sindh High Court. The Commission also received a large number of representations from the investors complaining non-transfer of shares lodged by them with the Company. In fact, most of the shares in question were in physical form and were being lodged with the Company for transfer in the name of Central Depository Company of Pakistan Limited (CDC) in order to convert the same into book entry form. The shares of the company were declared as eligible security by the CDC for its Central Depository System (the “CDS”) and as per regulations of the KSE, the



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shares of the Company could not be traded unless the same are converted into book entry form.

5. The Company informed the KSE vide its letter dated July 26, 1999 that it had appointed Sardar Muhammad Ajaz Khan as an enquiry officer purportedly to determine the *bona fide* purchasers of its shares. It was observed that the judgment of the Honorable Sindh High Court did not require the Company to constitute any such Commission of Enquiry. The Commission had on several occasions enquired from the Company about the report of the Commission of Enquiry. However, in spite of reminders and commitments made by the representatives of the Company on several occasions, the report could not be finalized and submitted to the Commission and the Company was unable to give any justifiable reason for the delay in transfer of shares to a large number of investors. The Company even failed to respond to the Commission's letters on this issue, which indicated that the management of the Company had no respect for the legal requirements and the advise given by the Commission from time to time was completely disregarded.

6. In view of the above circumstances and facts, it appeared to the Commission that the Company was intentionally and deliberately delaying the transfer of shares in spite of clear direction of the Honorable Sindh High Court and in violation of the relevant provisions of law. As it was apprehended that a large number of investors could suffer losses due to the non-transfer of shares, it was decided to initiate proceedings against the company. Consequently, a notice under Section 472 of the Ordinance was issued to the Company on April 08, 2003 to make good the default by transfer and delivery of the shares within 30 days of the date of the said notice.



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7. As the Company has failed to make good the default within 30 days after the service of the aforesaid notice. Therefore, before making an Order under Sub-section (1) of Section 472 of the Ordinance an opportunity of personal hearing was also provided to the Company, its Chief Executive, directors and the company secretary on May 14, 2003. In response to the aforesaid notice, Mr. Shamim Mushtaq Siddiqui, Director vide its letter dated May 13, 2003 informed that the Company was working with the KSE to resolve this long outstanding issue and it was prayed that the notice issued to the Company may be withdrawn. On the date fixed for hearing, Mr. M. Farooq Akhtar, advocate along with Mr. Muhammad Ahmed Saeed, advocate appeared on behalf of the Company and its directors including Chief Executive (hereinafter referred to as the “legal counsels”) and requested for an adjournment, which was allowed and the case was fixed on May 29, 2003 in order to provide sufficient time to the legal counsels for preparation of the case. On the date fixed for hearing, the legal counsels appeared before me and stated that they intend to file a revision under Section 484 of the Ordinance against the notice issued to them for transfer of shares as in their opinion, notice under Section 472 of the Ordinance was not sustainable in the eyes of law. With regard to the report of Commission of enquiry constituted by the Company to determine bona fide purchasers, it was stated that the same was still not finalized. No reason was provided for delay in finalization of the said report. In the meantime, KSE has informed the Commission that the management of the Company had adopted a dilatory tactics to avoid the transfer of shares in fulfillment of their legal obligations, which was indicated from the very fact that despite the constitution of the Commission of Enquiry a year ago, the Company had failed to transfer the shares in question. In this regard, the KSE had provided all possible assistance to the management of



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the Company for collection of shares within the KSE premises, however, the management was bent upon not to transfer shares in violation of the direction of the Court and the mandatory provisions of the Ordinance. KSE had prayed that appropriate action may be initiated for disregarding the mandatory provisions of law, which had caused considerable damage to the confidence of the investors.

8. Before proceeding to decide this case, I consider it necessary to advert to the provisions of Sub-section (1) of Section 74 of the Ordinance which require 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 of the Ordinance 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 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.

9. I have heard the legal counsels who represented the Company and its directors in these proceedings and have also perused the documents placed



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before me by the company and the KSE. As the Honorable Sindh High Court has already decided the issue of disputed shares, therefore, I do not consider it appropriate 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 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, was bound to transfer the Shares in favour of the purchasers who have lodged shares with the Company for transfer in their names / in the name of CDC.

10. What emerged from the above discussion is that the Company has not complied with the Court Order and instead adopted dilatory tactics by constituting a Commission of Enquiry for determining *bona fide* purchasers and even after lapse of a considerable period of time, the said Commission of



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Enquiry has not been able to make out any report. This clearly indicates 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 purchasers. Furthermore, I have noted that the company has not pointed out any defect or invalidity in the instruments of transfer lodged by various purchasers of shares and instead has asked them to lodge the documents with the Commission of Enquiry. As the Company has not been able to justify the delay in transfer of shares, therefore, the Company has committed default under Sub-section (1) of Section of Section 74 of the Ordinance.

11. For the reasons stated above, I hereby direct the Company, its directors namely, Mr. Tariq Mbsin Siddiqui, Chief Executive, Mr. Shamim Mushtaq Siddiqui, Mr. Muhammad Saleem Arif, Mr. Jamil Ahmed Siddiqui, Mr. Muhammad Aqueel Abbasi, Miss Sadaf Khan, Mr. Hasan Ali Bilgrami, all Directors and company secretary namely Mr. Muhammad Adil in terms of Sub-section (1) of Section 472 of the Ordinance, to make good the default by transferring the shares lodged with it within fifteen (15) days of the date of this Order and report compliance to this Commission. The non-compliance with the above directive within the period specified shall render the directors and the company secretary punishable under Section under Section 495 of the Ordinance.

12. This Order is being issued without prejudice to any other provisions under which action may be taken in respect of default as aforesaid.

RASHID SADIQ
Executive Director (Enforcement)

Announced
January 08, 2004
ISLAMABAD