



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

NIC Building Jinnah Avenue, Blue Area, Islamabad

Before

Commissioner (Securities Market Division)

In the matter of

Revision Application filed under Section 484 of the Companies Ordinance, 1984

- | | |
|---|---------------|
| 1. Mr. Najeeb Ullah Ghauri,
Director NetSol Technologies Limited | Petitioner -I |
| 2. NetSol Technologies Limited | Petitioner-II |

Versus

Executive Director (SMD)	Respondent
--------------------------	------------

Date of impugned Order	July 08, 2009
------------------------	---------------

Date of hearing	November 17, 2009
-----------------	-------------------

Present at hearing:

(i) Representing the Petitioner-I:

Mr. M. Javed Panni	Chief Executive, MJ Panni and Associates
--------------------	---

(ii) Representing the Petitioner-II:

Mr. Boo-Ali Siddiqui	Company Secretary, NetSol Technologies Limited
----------------------	---

(iii) Representing the Respondent:

- | | |
|--------------------------|----------------------|
| 1. Mr. Imran Inayat Butt | Director (SMD) |
| 2. Mr. Muhammad Farooq | Joint Director (SMD) |



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

NIC Building Jinnah Avenue, Blue Area, Islamabad

Order

This order will dispose of Revision Application filed under Section 484 of the Companies Ordinance, 1984 (the “**Ordinance**”) by Mr. Najeeb Ullah Ghauri, Director NetSol Technologies Limited (the “**Petitioner-I**”) against the Order dated 08/07/2009 (the “**impugned Order**”) passed by Executive Director, Securities Market Division (the “**Respondent**”) under Section 224(2) of the Ordinance as well as the application filed by NetSol Technologies Limited (the “**Petitioner-II**”) to become party of the Revision Application.

2 Brief facts leading to this Revision Application are that the Petitioner-I made certain purchase and sale transactions in the shares of the Petitioner-II as its Director. The said transactions were resulted in a gain of Rs. 15,584,690/- (Rupees Fifteen million five hundred eighty-four thousand six hundred and ninety only) computed in the manner prescribed in Rule 16 of the Companies (General Provisions and Forms) Rules, 1985 (the “**Rules**”). A Notice dated 25/05/2009 was issued by the Respondent to the Petitioner-I to show cause as to why the aforesaid amount of gain should not be tendered by him in favor of the Commission, as provided in subsection (2) of Ordinance. An opportunity of personal hearing was granted to the Petitioner-I on 18/06/2009. However not being satisfied with the arguments advanced by counsel of the Petitioner-I, the Respondent passed the Impugned Order on 08/07/2009, wherein, the Petitioner-I was directed to tender the aforesaid amount of gain in favour of the Commission. The perusal of the impugned Order reveals that during the above mentioned proceedings following two assertions were presented by the counsel of the Petitioner-I, which were found untenable by the Respondent:-

- 1) *The Petitioner-I is entitled to retain the sale proceeds of bonus shares and the same should be excluded from his other purchase and sale or sale and purchase transactions which purportedly come within the ambit of Section 224. The impact of exclusion comes to Rs. 3,046,968/-.*
- 2) *The Petitioner-I be allowed to tender the tenderable gain of Rs. 12,537,730/- to the Petitioner-II.*

3. The Petitioner-I has preferred this Revision Application under Section 484 of the Ordinance against the impugned Order, whilst, the Petitioner-II, which was not party of the earlier proceedings carried out by the Respondent, made an application to become party of the Revision Application. The



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

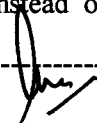
NIC Building Jinnah Avenue, Blue Area, Islamabad

Application of the Petitioner-II was considered and found it similar to the Application of Petitioner-I. Both the Petitioners prayed to allow the Petitioner-I to tender the amount of gain to the Petitioner-II instead of the Commission. Even, the grounds of the Revision Application given by both the Petitioners were found similar. I, therefore, decided to hear them jointly.

4. The hearing in the matter was fixed for October 21, 2009, which on the request of Counsel of the Petitioner-I namely Mr. M. Javed Panni, Chief Executive, MJ Panni and Associates (the "**Representative of the Petitioner-I**") was adjourned and re-fixed for November 03, 2009. The said Representative of the Petitioner-I again expressed his inability to attend the hearing and requested for its deferment. The request was accepted and the matter was fixed for November 17, 2009. On the given date the Representative of the Respondent-I, Mr. Boo-Ali Siddiqui, Company Secretary of Petitioner-II (the "**Representative of the Petitioner-II**"), Mr. Imran Inayat Butt, Director Securities Market Division and Mr. Muhammad Farooq, Joint Director Securities Market Division (the "**Representatives of the Respondent**") appeared before me.

5. At the outset, the Representative of the Petitioner-II stated that demand for recovery of the tenderable gain was raised on November 20, 2007 within the stipulated period after coming to know from the information received from Central Depository Company of Pakistan Limited (the "**CDC**") that the Petitioner-I has made certain purchase and sale transactions. He added that since the Petitioner-II was not aware of the actual details of the transactions, therefore, the Petitioner-I was asked to furnish the details of the transactions including the dates and rates. He further stated that the matter was under correspondence between the Petitioner-I and Petitioner-II, when the Commission also took up the same matter with the Petitioner-I on November 20, 2008. He requested that the Petitioner-I be allowed to tender the amount of gain in favour of the Petitioner-II instead of the Commission.

6. In reply, The Representatives of the Respondent stated that *inter alia* each director of a listed company in terms of Section 221 of the Ordinance is required to report each and every change in his/her shareholding alongwith its date and rate to the issuer company, within 15 days of the change. And in compliance of the provisions of Section 220 of the Ordinance, each listed company is required to maintain a Register of Directors' shareholdings. Thus, the Petitioner-II was supposed to raise demand for tendering of the gain on the basis of the said Register of Directors' shareholdings instead of the





SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

NIC Building Jinnah Avenue, Blue Area, Islamabad

information received from CDC. It was also pointed out that each listed company receives information from CDC with time-lag of one month. In the instant case the Petitioner-I made three purchase transactions from 26/02/2007 to 07/03/2007 and five sale transactions from 24/05/2007 to 07/06/2007. Thereafter, he made further nine purchase transactions from 01/10/2007 to 29/10/2007 followed by four sale transactions from 01/11/2007 to 14/11/2007 and one purchase on 05/02/2008. Thus, the Petitioner-II was supposed to receive information from CDC for first phase of purchase and transactions till July 2007, while demand for recovery of the gain was raised on 20/11/2007. In this regard, the Representative of the Petitioner-II accepted that there was negligence on the part of Petitioner-I and Petitioner-II. In response to my query, the Representative of the Petitioner-II stated that the Petitioner-I holds about two to three percent shareholding in Petitioner-II, however, Petitioner-I also has interest in NetSol Technologies Inc. a USA based entity, which holds 58% shares of the Petitioner-II.

7. The Representative of the Petitioner-I stated that his client has accepted the findings given by the Respondent on the issue of bonus shares and requested that the Petitioner-I be allowed to tender the amount of the gain in favour of the Petitioner-II. He further stated that although the Petitioner-II has failed to recover the amount of the gain within the time limit stipulated in Section 224 of the Ordinance, but, amount of the gain belongs to shareholders of the issuer company, therefore, the Petitioner-I be allowed to tender the same to the Petitioner-II instead of the Commission.

8. In reply, the Representatives of the Respondent raised a preliminary objection to the revision petition. It was contended that the Petitioners could not challenge the Impugned Order on facts or law in the instant proceedings. Since the Petitioners had filed a revision application which had a limited scope, and therefore, the Impugned Order could be challenged only on jurisdictional issues. In this regard, Order passed by the Appellate Bench of the Commission in the matter of Revision No. 18 of 2005 was also referred to. It was pleaded that if the petitioners are allowed to argue on the merits, then there would be no difference between an appeal and a revision. The Representatives of the Respondent contended that the petition deserves to be dismissed on this ground alone, as the Petitioners have not raised any jurisdictional issue in it. The Representative of the Petitioner-I responded that an appeal is required to be filed under Securities and Exchange Act, 1997 (the "SECP Act"), while the instant Revision Application has been filed under the Companies Ordinance, 1984. He contended that "the assertion that in Revision Application only jurisdictional issues can be challenged" is not in line with the spirit of Section 484 of the Ordinance,



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

NIC Building Jinnah Avenue, Blue Area, Islamabad

as the said Section of the Ordinance does not make such distinction. The Representative of the Petitioner-I further stated that this technical difference between appeal and revision generally used by Supreme Court can not be applied in the instant case. The Representatives of the Respondent responded that subsequent to the promulgation of SECP Act, the aggrieved party has two forums for challenging the impugned order. The aggrieved party may file revision or appeal depending upon the circumstances of the case. Thus, this technical/legal difference between the appeal and revision must be applied, as in case of non-application of this aspect there would be no difference between an appeal and a revision.

9. I have heard the Representatives of the Petitioners and Respondent and have gone through the contents of the Revision Application specifically Grounds of the Revision given by Petitioner-I and II. I have observed that grounds agitated in the Revision Application are the same which were argued before the Respondent. No legal flaw has been pointed out by the Representatives for the Petitioners. It has also been observed that both the Petitioners have accepted the findings of the Respondent on the issue of bonus shares. However, both the Petitioners have requested to allow the Petitioner-I to tender the amount of gain in favour of the Petitioner-II instead of the Commission. It is pointed out that the same plea with same grounds was also put forwarded before the Respondent, who has addressed this issue in detail in the Impugned Order. I am of the view that the Respondent has rightly inferred in the Impugned Order, that after the lapse of time limit stipulated in Section 224 of the Ordinance, the beneficial owner may not be allowed to tender the amount of gain to the issuer instead of the Commission and even the Commission does not have any power under the Ordinance to waive off this legal restriction and requirement.

10. In order to gauge the validity of the preliminary objection raised by Representatives of the Respondent, I have consulted the Appellant Bench's Order passed in the matter of Revision No 18 of the 2005, Section 115 of CPC and PLD 2000 Quetta 66 (cited by the Appellate Bench in the aforesaid Order). Section 115 of CPC inter alia provides that:-

"The High Court may call for the record of any case which has been decided by any Court subordinate to such High court and in which no appeal lies thereto, and if such subordinate Court appears—

- (a) to have exercised a jurisdiction not vested in it by law, or*
- (b) to have failed to exercise a jurisdiction so vested, or*
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,"*

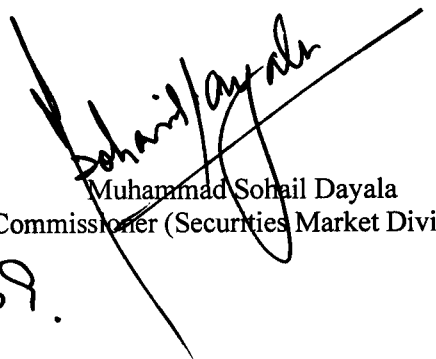


SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

NIC Building Jinnah Avenue, Blue Area, Islamabad

In this regard, the Appellate Bench held that *"although CPC does not apply to the proceedings before the Commission, in our opinion the broad principles of law specified therein may be referred to for guidance, especially where identical terms have been used by the legislature. Revision generally has a limited scope compared to appeal and it only applies in cases involving illegal assumption of jurisdiction or non-exercise or irregular exercise of jurisdiction by the authority passing the order"*. The Appellate Bench has also referred to PLD 2000 Quetta 66, wherein, the High Court held that *"erroneous conclusions of law or fact cannot be corrected in revision if there is no jurisdictional error, and the revisional court is therefore not bound to interfere with the merits of the case"*.

11. In view of the foregoing discussion, I intend to agree with the contention of the Representatives of the Respondent, that subsequent to promulgation of SECP Act, 1997, the aggrieved party has two options depending upon the circumstances of the case, as it may opt to file revision application under the Companies Ordinance, 1984 or go for appeal under SECP Act, 1997, therefore, technical difference between an appeal and revision application must be applied for. If this difference is disregarded then in my opinion there would be no difference between an appeal and revision except the time limitation. I am, therefore, constrained to dispose of the Revisions Application after considering the issue of jurisdiction only. In the instant Revision Application, neither the Petitioners have raised any jurisdictional issue nor their Representatives have requested for its conversion into appeal. Moreover, the Petitioner-I has accepted that he has made tenderable gain, which has not been tendered to the Petitioner-II within the stipulated time period. Similarly, the Petitioner-II has accepted that it has failed to recover the amount of the gain, within the period as stipulated in Section 224(2) of the Ordinance. Furthermore, I have noticed that the jurisdiction to take cognizance for recovery of tenderable gain has been duly delegated to the Respondent under S.R.O. 1061(I)2005 dated October 18, 2005. Thus, in view of the reasons recorded above, I uphold the Impugned Order and the Revision Application is hereby dismissed.


Muhammad Sohail Dayala
Commissioner (Securities Market Division)

Announced On: 25th NOVEMBER 2009.