

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.1042 of 2017

[Khalid Mehmood & others v. M/s. Multi Plus Corporation Private Limited & others]

Dates of hearing : 23.05.2017 and 25.05.2017

Date of Decision : 21.07.2017

Plaintiffs : **Khalid Mehmood and others through M/s. Murtaza Wahab Siddiqui, M. Asad Iftikhar and M. Yahya Iqbal, Advocates.**

Defendants 1 & 2 : **M/s. Multi Plus Corporation Private Limited & another through M/s. M. Zeeshan Abdullah, Saalim Salam Ansari and M. Adnan Abdullah, Advocates.**

Case law cited by the Plaintiffs' counsel.

1. P L D 2008 Supreme Court page-707
[*Lahore Race Club and others v. Raja Khushbakht-ur-Rehman*]
2. 2016 S C M R 213
[*Mian Javed Amir and others v. United Foam Industries (Pvt.) Ltd., Lahore and others*]

Case law relied upon by Defendants' counsel.

1. 2005 S C M R page-318
[*Adamjee Insurance Company Limited and others v. Muslim Commercial Bank Limited*]
2. 1968 S C M R page-1043
[*Asian Mutual Insurance Company Limited, Lahore v. Rana Zafarullah Khan and others*]
3. 2014 C L D page-52
[*Suleman Lalani v. Al-Abbass Sugar Mills Ltd. and others*]
4. 1990 C L C page-1756
[*Maqbool Ahmad and others v. Syed Farzand Ali Shah and others*]
5. 1999 C L C page-1795
[*Atta Muhammad Khan and another v. Lasbella Cement Ltd.*]

Law under discussion:

- (1) Civil Procedure Code, 1908.
- (2) Companies Ordinance, 1984.
- (3) Pakistan Electronic Media Regulatory Authority Rules, 2009.
- (4) The Companies (General Provisions and Forms) Rules, 1985.

ORDER

Muhammad Faisal Kamal Alam, J: This order will dispose of the following Civil Miscellaneous Applications including the Review Application_

- (i) C.M.A.No.5607 of 2017 (under Order XXXIX, Rules 1 and 2 Read with Order 40, Rule 1 of C.P.C.)
- (ii). C.M.A.No.7897 of 2017 (under Order XXXIX, Rules 1 and 2 Read with Section 151 of C.P.C)
- (iii) C.M.A.No.7898 of 2017 (under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973, and
- (iv) C.M.A.No.8114 of 2017 (under Section 114 Read with Order 47, Rules 1 and 2 and Section 151 of C.P.C.).

2. The Plaintiffs have filed the present suit against the Defendants, *inter alia*, calling in question the Extra Ordinary General Meeting (“**EOGM**”) held on 07.04.2017. The Plaint contains following prayer clauses_

“It is respectfully prayed that this Hon’ble Court be pleased to:

- i. Declare that the Plaintiffs and Defendant No.2 are bounds by the terms of the Agreement & Halafnama (Annexures C and C/1);***
- ii. Declare that the Plaintiffs are the lawful and legitimate owenrs of additional 30% shares of Defendant which were only given on trust to the Defendant No.2;***
- iii. Permanently restrain the Defendant No.2 from creating any third party interest in the 30% shares given to him on trust;***
- iv. Appoint a Receiver to manage the Company (Defendant No.1) and run its day to day affairs;***
- v. Remove the name of the Defendant No.2 from all the bank accounts held by the Defendant Company and restrain the***

Defendant from embezzling any amount from the same or in any other manner;

- vi. Cancel the EOGM dated 07.04.2017 as the shareholding of the directors/shareholders is disputed and is pending adjudication before this Hon'ble Court;*
- vii. Costs of the proceedings; and*
- viii. Any other relief deemed appropriate by this Hon'ble Court in the circumstances of the case.”*

3. It is not a disputed position that between the parties hereto other cases are also pending in the nature of Judicial Companies Miscellaneous No.22 of 2016 and 04 of 2017, wherein, the issue with regard to purported transfer of shareholding to other persons by the members of defendant No.1 has been challenged and *sub judice*, as the stance of Plaintiffs is that Defendant No.1 (Multi Plus Corporation Private Limited), being a private limited company, its shares cannot be transferred to outsiders considering the 'restrictive covenant' contained in the Articles of Association as well as recently inserted Rule 12-A of the Companies (General Provisions and Forms) Rules, 1985 (*ibid*).

4. The EOGM in dispute admittedly was held with the permission of this Court mentioned in its order of 06.04.2017, whereafter on 14.04.2017, this Court while overruling the objections with regard to instant proceeding, directed defendant No.2 to file relevant documents relating to the impugned EOGM of 07.04.2017. On 11.05.2017, it was ordered that defendant No.2 being a Chief Executive Officer (“CEO”) of defendant No.1 will run it in cooperation with its Board of Directors, but for the time being Buland Iqbal, who is one of the purported newly elected directors in the impugned EOGM, was restrained from acting as Head of Productions and Operations. Against this order C.M.A.No.8114 of 2017 is preferred under Section 114

read with Order 47, Rules 1 and 2 and Section 151 of C.P.C. (Review Application), by defendants No.1 and 2.

5. Learned counsel representing plaintiffs and defendants No.1 and 2 have argued in detail on the overall state of affairs of defendant No.1 (Company), and significance of their investments made therein over a period of time.

6. On behalf of plaintiffs, it has been argued that the election of three directors including Buland Iqbal, is a nullity in the eyes of law as two of them were not the original shareholders / members of defendant No.1 and they were made members by defendant No.2 by transferring of shares, which were given to the said defendant No.2 as a trust. The gist of the arguments of plaintiffs' counsel is that the shareholding as reflected in Form-A of 31.10.2016, available at page-325, is due to the fact that defendant No.2 was given 30% additional shares in defendant No.1 as a trust with the object to manage the affairs of defendant No.1 in a viable manner, but the said defendant No.2 has committed a breach of trust, by partly transferring these shares to M/s Imran Haider and Buland Iqbal, who subsequently got elected in the said EOGM in dispute. The present Form-29 (at page 443 of Court file) dated 07.04.2017, wherein, names of above persons have been mentioned as newly elected Directors, has been disputed by plaintiffs. It is further contended that shares were illegally transferred in contravention of Articles of Association, Rule 12(A) as well as Agreement of 09.01.2007 and 'Halafnama' (Affidavit) between the plaintiffs and defendant No.2, which are available at page-59 and 61 of the Court file. In this regard, plaintiffs have also sought a declaratory relief, *inter alia*, to the extent that the 30% share earlier reflected as shareholding of defendant No.2, is in fact owned by plaintiffs, as no amount was paid by

said defendant No.2 (Aamir Masood Shiekh) in respect thereof, as required by the provisions of the Company Law.

7. While controverting the arguments of learned counsel for the plaintiffs, the crux of the stance of the defendants is that the EOGM in which the present Board of Directors got elected was duly held under the provisions of the Company Law, which has been further acted upon as the requisite documents, *inter alia*, Form-29 (dated 07.04.2017) have been submitted to and accepted by defendant No.3-SECP. To the contention of plaintiffs' side about the restraint put by Order of 06.04.2017 against non-implementation of decision taken in the impugned EOGM, the defendants' counsel replied by referring to the record of present case that notice of the said order was issued on 11.05.2017, that is, four days after EOGM was held and businesses transacted thereat have been acted upon; consequently, defendant No.2 and Rana Iqbal Afzal Khan have been re-elected as CEO and Director respectively, whereas, Buland Iqbal Siddiqui and Syed Imran Haider Abidi have been elected as Directors. It was further contended that the plaintiffs too participated in the said EOGM, though under protest, as clearly mentioned in the record and proceedings of the said meeting, available at page-419, Annexure "D/29" (second part of the Court file), appended with counter affidavit of defendant 2, which is a reply to the interlocutory applications of the plaintiffs. Per counsel of defendants No.1 and 2, the plaintiffs were given a fair opportunity at the said EOGM to exercise their right to note. Learned counsel representing the private defendants has seriously questioned the authenticity of the aforereferred documents; the said Agreement of 09.01.2007 and the 'Halafnama' [Affidavit]. Learned counsel for private defendants has also referred to the last Audit Report dated 30.06.2016 (available at page-359)

to show that defendant No.1-Company is indebted to defendant No.2 (Aamir Masood Sheikh) for an amount of Rs.43 Million (approximately).

8. I have thoughtfully considered the arguments of learned counsel representing the plaintiffs and defendants No.1 and 2. At this stage, two issues have been agitated by plaintiffs with vehemence; *i*) the alleged transfer of shares by defendant No.2 (Aamir Masood Sheikh) in favour of aforementioned persons, and *ii*) legality of impugned EOGM of 07.04.2017 and decisions taken thereat. As mentioned in the preceding paragraphs, that shareholding dispute is also a subject matter of other *sub judice* cases, besides the fact that genuineness of the aforereferred documents can be proved by leading evidence. Notwithstanding this aspect, at this interlocutory stage, the undisputed questions can be considered in the light of the Company Law to address the second issue about the legality of EOGM.

9. I have examined the relevant provisions of the Company Law with regard to holding of EOGM and election of the Directors. In my considered view, this is a fundamental question. It would be advantageous to reproduce Sections 159 and 178 of the Company Law_

159. Calling of extraordinary general meeting. - (1) All general meetings of a company, other than the annual general meeting referred to in section 158 and the statutory meeting mentioned in section 157, shall be called extraordinary general meetings.

(2) The directors may at any time call an extraordinary general meeting of the company to consider any matter which requires the approval of the company in a general meeting, and shall, on the requisition of members representing not less than one-tenth of the voting power on the date of the deposit of the requisition, forthwith proceed to call an extraordinary general meeting.

(3) *The requisition shall state the objects of the meeting, be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.*

(4) *If the directors do not proceed within twenty-one days from the date of the requisition being so deposited to cause a meeting to be called, the requisitionists, or a majority of them in value, may themselves call the meeting, but in either case any meeting so called shall be held within three months from the date of the deposit of the requisition.*

(5) *Any meeting called under sub-section (4) by the requisitionists shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by directors.*

(6) *Any reasonable expense incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sum due or to become due from the company by way of fees or other remuneration for their services to such of the directors as were in default.*

(7) *Notice of an extraordinary general meeting shall be sent to the members at least twenty-one days before the date of the meeting, and in the case of a listed company shall also be published in the manner provided for in sub-section (3) of section 158:*

Provided that, in the case of an emergency affecting the business of the company, the registrar may, on the application of the directors, authorise such meeting to be held at such shorter notice as he may specify.

(8) *Every officer of the company who knowingly or willfully fails to comply with any of the provisions of this section shall be liable,-*

(a) if the default relates to a listed company, to a fine not less than ten thousand rupees and not exceeding twenty thousand rupees and in the case of a continuing default to a further fine which may extend to two thousand

rupees for every day after the first during which the default continues; and

(b) if the default relates to any other company, to a fine which may extend to two thousand rupees and in the case of a continuing default to a further fine which may extend to two hundred rupees for every day after the first during which the default continues.

[Underlined to add emphasis]

178. Procedure for election of directors. - *(1) The directors of a company shall, subject to section 174, fix the number of elected directors of the company not later than thirty-five days before the convening of the general meeting at which directors are to be elected, and the number so fixed shall not be changed except with the prior approval of a general meeting of the company.*

(2) The notice of the meeting at which directors are proposed to be elected shall among other matters, expressly state-

(a) the number of elected directors fixed under subsection (1); and

(c) the names of the retiring directors.

(3) Any person who seeks to contest an election to the office of director shall, whether he is a retiring director or otherwise, file with the company, not later than fourteen days before the date of the meeting at which elections are to be held, a notice of his intention to offer himself for election as a director:

Provided that any such person may, at any time before the holding of election, withdraw such notice.

(4) All notices received by the company in pursuance of subsection (3) shall be transmitted to the members not later than seven days before the date of the meeting, in the manner provided for sending of a notice of general meeting in the normal manner or in the case of a listed company by publication at least in one issue each of a daily newspaper in English language and a daily newspaper in Urdu language having circulation in the Province in which the stock exchange on which its securities are listed is situate.

(5) *The directors of a company having a share capital shall, unless the number of persons who offer themselves to be elected is not more than the number of directors fixed under sub-section (1), be elected by the members of the company in general meeting in the following manner, namely:-*

- (a) *a member shall have such number of votes as is equal to the product of the number of voting shares or securities held by him and the number of directors to be elected;*
- (b) *a member may give all his votes to a single candidate or divide them between more than one of the candidates in such manner as he may choose; and*
- (c) *the candidate who gets the highest number of votes shall be declared elected as director and then the candidate who gets the next highest number of votes shall be so declared and so on until the total number of directors to be elected has been so elected.*

[(6) The directors of a company not having share capital shall be elected by members of the company in general meeting in the manner as provided in articles of association of the company.]

10. Provision of penalty or a consequence in the above sections makes them mandatory in nature, as subsection (7) of Section 159 of the Company Law in clear terms has mandated that twenty one (21) days clear notice should be given to the members before the date of meeting, as far as non-listed corporate entity is concerned, which is the present case. Undisputedly, the impugned notice of EOGM is of 18.03.2017, appended as Annexure-F, (page-79) of the plaint, wherein the members were informed about the holding of elections for Directors. Admittedly, the said EOGM has been held on 07.04.2017, that is, on the 21st day, even if the date of notice (18.03.2017) is also included, whereas the said meeting should have been held on 08.04.2017, in order to comply with the

mandatory statutory provision of Section 159. Participation though under protest of the plaintiffs in the EOGM in question will not lend any validity to the said EOGM, nor the order of 06.04.2017, *inter alia*, as it was in the nature of an ad-interim order with an implied effect, that the meeting to be held on 07.04.2017, would be in accordance with provisions of the Company Law and not otherwise.

11. In view of the above discussion, since the EOGM in dispute was not convened in accordance with the mandatory provisions of the Company Law, therefore, the same is a nullity in the eyes of law and any business transacted thereat is also illegal. Conscious of the fact that defendant No.1 being a corporate entity cannot be run without a Board of Directors, thus, the concept of transition contained in section 176 of the Company Law is invoked, but merely as an interim arrangement and solely for the transitory period. Consequently, the Board of Directors existing immediately before the above EOGM is restored, with the sole object to hold fresh elections of the Board of Directors, but strictly in accordance with law, *inter alia*, by giving twenty one (21) days clear notice before the date of EOGM on which election is to be held, as mandated in Section 159 of the Company Law, besides complying with other relevant provisions.

It is also necessary to clarify that issue of transfer of shares by defendant No.2 as agitated by the plaintiffs and other pending disputes since require a proper trial, as discussed in the foregoing paragraphs, *inter alia*, as the defendants' side has seriously questioned the authenticity of the documents (Annexure-C & C/1) of the plaint, on the basis of which the issue of shareholding has been raised by the plaintiffs, hence it cannot be decided at this interlocutory stage. This order has only restored the earlier Board of Directors for holding fresh election of the Directors without disturbing the present shareholding, powers and authority of present CEO-defendant No.2.

The appointment of Buland Iqbal as the Head of Productions and Operations is also set-aside, as he was appointed in the aforementioned impugned EOGM.

In this view of the matter, decisions cited by both learned counsel for the parties at present do not require any discussion.

12. Accordingly, C.M.A.No.5607 of 2017 seeking injunctive relief for holding EOGM on 07.04.2017, C.M.A.No.7897 of 2017, seeking suspension of the Notification dated 28.04.2017, whereunder Buland Iqbal was appointed at Head of Productions and Operations, C.M.A.No.7898 of 2017 for initiating contempt proceedings against defendant No.2 as well as C.M.A.No.8114 of 2017 filed by defendants No. 1 and 2 seeking review of the order dated 11.05.2017, stand disposed of. Office is directed to fix present cause with the aforementioned Judicial Companies Miscellaneous No.22 of 2016 and 04 of 2017, in order avoid conflicting decisions.

JUDGE

Dated: 21.07.2017.

*Riaz Ahmed / P. S.**