

IN THE HIGH COURT OF SINDH AT KARACHI

SUIT No. 497 / 2018

Plaintiff: Haji Muhammad Ismail Mills Ltd.
Through Mr. Abdullah Azzam Naqvi Advocate.

Defendants: Federation of Pakistan through Mr. Umar
No. 1. Zad Gul Kakar Deputy Attorney General.

Defendants: Pakistan Stock Exchange Limited
No. 2. through Mr. Tariq Qureshi Advocate.

Defendants: Securities & Exchange Commission of
No. 3. Pakistan through Mr. Saad Abbas along with Mr.
Syed Ebad Advocates.

For hearing of CMA No. 3717/2018

Date of hearing: 10.05.2018.
Date of order: 10.05.2018.

ORDER

Muhammad Junaid Ghaffar, J. This is a Suit for Declaration, Mandatory and Permanent Injunction and the Plaintiff has impugned the placement of the Plaintiff's name on Defaulters Segment of Pakistan Stock Exchange and suspension of trading with effect from 11.12.2017 through Notices dated 08.12.2017 and 08.02.2018. Through listed application the Plaintiff seeks suspension of these two impugned Notices.

2. Learned Counsel for the Plaintiff submits that the two notices were issued without any cause or justification, and so also without any lawful authority. He submits that merely a winding-up petition is pending in this Court against the Plaintiff Company and this is no cause to suspend trading or even put the Plaintiff's share in defaulters segment. He further submits that the Notice dated 08.12.2017 has been issued in terms of Regulations of Pakistan Stock Exchange which at the

relevant time were not gazetted and in view of the provision of Section 34(3) proceedings cannot take place until such regulations are properly gazetted. He further submits that no prior notice was issued whereas; it is settled law that before taking any such adverse action a proper opportunity should have been provided. According to the learned Counsel, under the old regulations there was a provision that appropriate remedial measures could be adopted by the Plaintiff before any such adverse action is taken, therefore, both these impugned Notices are void, ab-initio. In support he has relied upon ***Sohail Ahmed and 7 others V. province of Sindh and 2 others (2017 PLC (CS) 1510).***

3. On the other hand, learned Counsel for Defendant No. 2 submits that the Plaintiff Company is non-functional and out of production since 2007, whereas, assets have been disposed of and the financial position of the Plaintiff Company is fragile and weak and a winding up Petition under Section 301 of the Companies Ordinance, 1984 is pending. He further submits that the Regulations itself provide that they would take effect from the date when they are notified and it is not relevant that they are gazetted subsequently. He further submits that notwithstanding this objection, after issuance of these two Notices which were valid for 60 days a subsequent Notice has already been issued on 06.04.2018 for another 60 days therefore, at least the application in question has become infructuous and the objection regarding the regulations being not gazetted also fails. Per learned Counsel the promoters of the Plaintiff Company hold a large number of shares and they intend to sell them in the market if the trading is permitted which would seriously affect the prospective investors, and

the regulator, has therefore, acted accordingly. He therefore, prays for dismissal of this application.

4. I have heard both the learned Counsel and perused the record. At the very outset, learned Counsel for the Plaintiff was confronted as to why at the first instance the Notice dated 08.12.2017 was not impugned as it provided sufficient time before putting their name in Defaulter's Segment and suspension of trading to which no satisfactory reply was offered. Apparently the second Notice impugned of 08.02.2018 was in fact continuation of the suspension of trading for another 60 days with effect from 09.02.2018. The Plaintiff failed to impugned the first Notice and has only come to the Court after second notice was issued for continuation of the suspension for another 60 days, whereas, as of today the period given in the second Notice also stands expired and a fresh Notice dated 06.04.2018 has been issued for a further period of 60 days. In fact listed application to the effect, (perhaps the Suit as well), that the two impugned notices dated 8.12.2017 and 8.2.2018 were issued, when regulation in question were not published in gazette, has become infructuous. Therefore, in all fairness, the objection to the effect that the amended regulations under which the impugned action was taken were not gazetted until 07.03.2018 is no more available at least for the present purpose.

5. Notwithstanding the above observations, the Securities Act, 2015 under Section 8(5) provides that subject to the approval of the Commission all regulations or amendments to the regulations made by the Securities Exchange shall be notified in the final gazette and *shall take effect from such date as may be specified in the notification*. It is a matter on record that though the amending notification was gazetted in the Gazette of Pakistan on 07.03.2018 but such Notification itself

provides that it is effective and issued on 12.12.2017. In this view of the matter, the objection regarding impugned Notice dated 08.02.2018 to that effect is misconceived and not sustainable. As to the first notice of 08.12.2017, it may be observed that it was effective from 11.12.2017 and never impugned till such time the period provided thereunder had already expired; hence, the objection raised as to the validity of it being not gazetted properly, does not appear to be alive, reasonable and justified.

6. Even otherwise, the provisions of a statute for the publication or a notification in official Gazette are generally regarded by the Courts as directory and where their strict non-compliance does not provide any consequences. The legal certainty also requires that ordinarily a statutory instrument should not be treated as invalid because of a failure on the part of public functionaries to publish it in the official Gazette. There may be many things done on the basis of such an instrument. It would seem unfortunate were these things held to be invalid if it were at some stage discovered that there had been a failure by a public authority to go meticulously by the manner and mode of publication of an instrument or notification in the Official Gazette. In the case of *Multiline Associates v. Ardeshir Cowasjee and 2 others* (PLD 1995 SC 423) this Court took the view that even if Karachi Building and Town Planning Regulations, 1979 were not published in the official Gazette under section 21-A(3) of the Sindh Buildings Control Ordinance, 1979, they could be construed and acted upon as regulations for the purpose of the said Ordinance¹.

7. In view of hereinabove facts and circumstances of this case, I am of the view that no prima facie case is made out whereas, neither the

¹ *Saghir Ahmed v Province of Punjab* (PLD 2004 SC 261)

balance of convenience lies in favour of the Plaintiff nor any irreparable loss would be caused as apparently a winding up Petition is pending against the Plaintiff and no aggrieved person has come before the Court which could otherwise be effected by the two impugned Notices. Accordingly, by means of a short order dated 10.05.2018 listed application was dismissed. These are the reasons thereof.

J U D G E

ARSHAD/