

## ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI  
C.P.No.D-3710 of 2018

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Date Order with signature of Judge

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**Present**

**Mr. Justice Muhammad Ali Mazhar**

**Mr. Justice Agha Faisal**

M/s. Crescent Star Insurance Ltd.  
& another .....Petitioners

V E R S U S

The Securities & Exchange  
Commission of Pakistan & others.....Respondents

**25.10.2018**

Mr. Zeeshan Abdullah, Advocate for Petitioners  
a/w Mr. Samar Abbas, Advocate.  
Syed Hafiz Ibad, Law Officer SECP.  
Mr. M. Zahid Khan, Assistant Attorney General.

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**Muhammad Ali Mazhar, J:** The petitioners have challenged the letter dated 10.04.2018, issued by the Additional Joint Director (Insurance), Securities & Exchange Commission of Pakistan (SECP) to the Company Secretary of the petitioner No.1, denying approval for the petitioner No. 2's appointment as a director of the petitioner No. 1.

2. Basically an application was submitted by the petitioner No.1 seeking approval for appointment of the petitioner No.2 as director of petitioner No.1 in terms of the provisions of Insurance Companies (Sound and Prudent Management), Regulations, 2012, however, the petitioner No.1 was communicated that upon scrutiny of the application, certain amounts appeared as overdue to banks/financial institutions by M/s. Best Products (Pvt.) Limited (BPL) and M/s. Dost Steels Limited (DSL) that were

reported against CNIC of the petitioner No.2 as proposed director by State Bank of Pakistan. The letter further reflects that some opportunities were provided to the petitioners but some relevant documents have not been produced; whereas the counsel for the petitioners argued that all relevant documents were produced before the Additional Joint Director (Insurance), SECP for his consideration. On this ground, the appointment of petitioner No.2 was rejected while relying on the Regulation 3(ii)(a) r/w Regulation 3(v) of the Insurance Companies (Sound and Prudent Management), Regulations, 2012.

3. The Law Officer SECP submitted that the issue only pertains to M/s. Best Products (Pvt.) Limited and SECP has no objection with regard to the other company i.e. M/s. Dost Steels Limited. So far as the Best Products (Pvt.) Limited is concerned, the learned counsel for the petitioners pointed out page 511 which is an order passed by this court in J.M. No.25/2002 whereby the winding up petition moved under Sections 305 and 309 of the Companies Ordinance, 1984 was allowed with regard to Best Products (Pvt.) Limited. In the order dated 06.12.2013 the learned Judge of this court observed that none is in attendance on behalf of the shareholders of the company nor any creditors have come forward. The company was ordered to be dissolved pursuant to Section 350 of the Companies Ordinance 1984 and the learned Official Assignee was directed to send intimation to SECP for appropriate action. Basically through the aforesaid order, the Official Assignee's Reference No.01/2010 was disposed of.

4. In the comments filed by SECP it has been stated that petitioner No.2 was not a nominee director in Best Products

(Pvt.) Limited as was the case in the matter of M/s. Dost Steels Limited. It is further stated that Regulation 3(ii)(a1) of the Regulations does not exempt any dissolved entity having overdue/past due balances payable to banks/financial institutions, therefore, petitioner No.2 being a last director as per the record was liable for the overdue/past due balance.

5. The learned counsel for the petitioners pointed out Section 387 of the Companies Act, 2017 which is the corresponding provision of Section 402 of Companies Ordinance, 1984. The crux of this section is that a company being wound up shall continue to be company for all purposes till its final dissolution and its proviso postulates that from the date of commencement of the winding up of a company, the official liquidator or the liquidator shall be deemed to have taken the place of the board and chief executive of the company, as the case may be. It was thus contended that post dissolution the directors of a company also ceased to exist. The Law Officer SECP also submitted that after winding up, the name of M/s. Best Products (Pvt.) Limited has been struck off from the roll of SECP and that M/s. Best Products (Pvt.) Limited does not exist in the record of SECP, hence it is an admitted fact that M/s. Best Products (Pvt.) Limited has already been dissolved.

6. Learned counsel for the petitioners also argued that Regulation 3(ii)(a1) of the Regulations envisages the nexus of a proposed candidate with a subsisting company and not with a company that no longer exists. The learned counsel for the petitioners also referred to the case of **Saadat Hayat Khan vs. Muslim Commercial Bank Limited reported in 2005 CLD 187** and argued that liability of the company

does not *ipso facto* fall upon its directors, unless they stood guarantor or executed other documents/undertakings.

7. Whereas the Law Officer SECP in response pointed out Section 342 of the Companies Act, 2017 which is the corresponding provision of Section 350 of Companies Ordinance, 1984 in which he particularly quoted the proviso which envisages that the dissolution of the company shall not extinguish and right of or debt due to the company against or from any person.

8. In the wake of above discussion, this petition is disposed of with the directions to the Additional Joint Director (Insurance), Securities & Exchange Commission of Pakistan, Insurance Division, Islamabad, to decide the application of the petitioners afresh, after providing an opportunity of hearing, within thirty days. The petitioners may produce all relevant documents regarding the winding up of M/s. Best Products (Pvt.) Limited before the Additional Joint Director (Insurance), Securities & Exchange Commission of Pakistan, Insurance Division, Islamabad, however, if any verification is required, the SECP Insurance Division may also issue notice to the official liquidator to produce all relevant documents. The petitioners will be at liberty to produce all relevant documents and the Additional Joint Director shall take into consideration the effect of dissolution of M/s. Best Products (Pvt.) Limited and the effect of Regulation 3(ii)(a) of the Insurance Companies (Sound and Prudent Management), Regulations, 2012. Pending application is also disposed of.

Judge

Judge