

**IN THE HIGH COURT OF SINDH AT KARACHI**

**J.C.M. No. 23 of 2016**

Petitioner: Fakheem Butt  
Through Mr. Syed Abdullah Advocate.

Respondents  
No. 1 to 4: M/s Industrial Waste Reformers (Private)  
Limited & Others Through Ms. Nasima  
Mangrio Advocate.

Respondent  
No. 5: The Securities & Exchange Commission of  
Pakistan Through Mr. Saad Abbasi  
Advocate.

- 1) *For hearing of CMA No. 260/2016.*
- 2) *For hearing of main case.*

**Date of hearing: 10.02.2020**

**Date of Order: 20.02.2020**

**ORDER**

**Muhammad Junaid Ghaffar, J.** This Petition has been filed under Section 152 of the then Companies Ordinance, 1984 seeking correction / rectification in the register of Company / Respondent No. 1 by restoring Petitioner's 325 shares as per Form-A for the year 2013.

2. Learned Counsel for the Petitioner has contended that admittedly till 30.10.2013, pursuant to Form-A filed with Respondent No.5 / SECP, the Petitioner held 325 shares in the Company / Respondent No.1, and thereafter, it came to his knowledge that such shares have been transferred fraudulently in favour of Respondent No.4 and approached SECP through Letters dated 25.11.2014 and 26.11.2014, whereas, SECP vide its Letter dated 15.04.2016 informed that subsequently, another Form-A has been filed and the shares of the Petitioner stands transferred in favour of Respondent No.4, whereas, the remedy available to the Petitioner is by way of a Petition under Section 152 of the Ordinance, 1984. According to him, the transfer of shares is fraudulent inasmuch as the Petitioner has never signed any transfer instrument, whereas, Section 76 ibid and Clause 26 of the

Articles of Association have been violated; hence, the transfer is of no legal effect. He has further contended that Respondents have failed to bring on record any such transfer instrument and instead have set up a claim that Petitioner was holding such shares as Benami which according to him is an afterthought and not sustainable in law. In support of his contention he has relied upon ***Akbar Ali Sharif & 2 others V. Syed Jmaluddin and 2 others (1991 M L D 203)***, ***Central Cotton Mills Ltd. V. Naveed Textile Mills Ltd. And others (1993 M L D 42)***, ***Central Cotton Mills Limited V. Naved Textile Mills Limited and 6 others (1997 C L C 514)***, ***Nisar Ahmad Chaudhry V. Suleman Spinning Mills Ltd. & 2 Others (P L J 1998 Lahore 1017)*** and ***Shahana Parvez & 2 others V. M/s Goodluck Trade Impex (Pvt.) Ltd. And others (P L D 1998 Lahore 1048)***.

3. Learned Counsel for Respondents No.1 to 4 has opposed the Petition and has contended that the Company in question was established by the father of the Petitioner as well as Respondents No.2 to 4 and the shares in the name of the Petitioner were never issued upon any consideration; nor the Petitioner had subscribed to any such shares; hence, was never an owner of these shares. Per learned Counsel, in fact, he was never issued any share(s) or certificates, and since the father is still alive, these shares were held as Benami and were in fact transferred in his name from another sibling when he was a student and therefore, no case is made out. She has further argued that the Petition is time barred, whereas, Petitioner's title is disputed and appropriate remedy lies by way of a Civil Suit. In support she has relied upon ***Zakir Latif Ansari and another V. Pakistan Industrial Promoters Ltd. And 2 others (1998 M L D 395)***, ***Inayatullah Khan Niazi V. Additional Registrar of Companies and 2 others (2007 C L D 334)***, ***Rohail Hashmi and others V. Nabeel Hashmi and others (2003 C L D 201)*** and ***Khurshid Ahmad Khan and another V. Pak Cycle Manufacturing Company Ltd. Shahdara and 4 others (P L D 1987 Lahore 1)***.

4. Learned Counsel for SECP has contended that as per Form-A for the year 2013 the Petitioner was a shareholder, whereas, subsequently, after 09.01.2014 such shares stand transferred in favour of Respondent No.4, whereas, there is no mandatory requirement for filing of transfer

deeds or any other transfer instrument before SECP at the time of filing of Form-A and therefore, as per current record the Petitioner is not a shareholder.

5. While exercising his right of rebuttal, learned Counsel for Petitioner has argued that the title or ownership of Petitioner's shareholding has not been disputed; whereas, the shares have been transferred in a fraudulent manner without consent and approval; hence, the case falls under s.152 ibid and this Court can take notice of such fraud. According to him SECP has not said that these shares were Benami. He has further argued that there is no question or reasonable cause for the Petitioner to transfer his shares in favour of Respondent No.4 / (his sibling), whereas, this Company is a family company and there was no question or need for any payment or subscription for issuance of shares. As to the objection that this matter can only be decided in a Civil Suit, he has relied upon ***Mian Javed Amir and others V. United Foam Industries (Pvt.) Ltd., Lahore and others (2016 S C M R 213)***, and has argued that, evidence if required, can also be recorded by this Company Bench; however, according to him there are no disputed facts involved.

6. I have heard all the learned Counsel and perused the record. This is a petition in terms of s.152 of the erstwhile Companies Ordinance, 1984, which reads as under;

**152. Power of Court to rectify register.** - (1) If-- (a) the name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members or register of debenture-holders of a company;

or (b) default is made or unnecessary delay takes place in entering on the register of members or register of debenture-holders the fact of the person having become or ceased to be a member or debentureholder; the person aggrieved, or any member or debenture-holder of the company, or the company, may apply to the Court for rectification of the register.

(2) The Court may either refuse the application or may order rectification of the register on payment by the company of any damages sustained by any party aggrieved, and may make such order as to costs as it in its discretion thinks fit.

(3) On an application under sub-section (1) the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or debenture-holders or alleged members or debenture-holders, or between members or alleged members, or debenture-holders or alleged debenture-holders, on the one hand and the company on the other hand; and generally may decide any question which it is necessary or expedient to decide for rectification of the register. Companies Ordinance, 1984.

(4) An appeal from a decision on an application under sub-section (1), or on an issue raised in any such application and tried separately, shall lie on the grounds mentioned in section 100 of the Code of Civil Procedure, 1908 (Act V of 1908),--

(a) if the decision is that of a civil court subordinate to a High Court, to the High Court;

and (b) if the decision is that of a Company Bench consisting of a single Judge, to a Bench consisting of two or more Judges of the High Court.

7. Perusal of the above provision reflects that as and when the name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members or register of debenture-holders of a Company; the person aggrieved may apply to the Court for rectification of the register. As to the facts of this Petition it may be noted that it is not in dispute that pursuant to Form-A i.e. the Annual Return of the Company filed with SECP in terms of Section 156 ibid on 30.10.2013, the Petitioner had 325 shares in his name, whereas, his shareholding till that date was not in dispute, and therefore, the arguments of the Respondent's Counsel that the Petitioner never subscribed to such shares has no basis and is meaningless. By the conduct as well as record placed before the Court it cannot be said that the petitioner was never a shareholder. When the Petitioner got knowledge about some transfer, he approached SECP, and was informed vide letter dated 15.4.2016 that as per record and latest Form-A filed by the Company in the year 2014 his 325 shares have been transferred by the him to Respondent No.4 with effect from 09.01.2014 and the said Form-A stands duly accepted for registration on 05.11.2014. At the same time, the complaint of the Petitioner was forwarded to Company in question for its response and record reflects that the Company / Respondent No.1 through its letter dated 06.02.2016 responded to the Deputy Registrar of SECP wherein, the following response of the Company is of relevance for the purposes of deciding this Petition and it reads as under: -

**"Fakheem [petitioner] transferred the shares in his sister's name by his own free will and consent in the same mode and manner he took them from his other sister and elder brother, the CEO, of the Company. As his father I am witness to that effect and I am prepared to consider provided he produces any evidence of how and from whom he took the shares with proof of consideration paid to the transferors of shares to him."**

8. Perusal of the aforesaid response reflects that it is the stance of the Company / Respondents that the Petitioner transferred the shares

in his sister's name by his own free will and consent in the same mode and manner he took them from his other sister and elder brother. On this response, the Counsel for Respondents was confronted as to where are the transfer instruments pursuant to which the Petitioner, according to the Company, had transferred his shares in the name of Respondent No.4 and to this, the Counsel had no answer; nor she could refer to any such document. Her only argument was that the shares were held by the petitioner as benami of his father; hence, there is no element of fraud involved in such transfer of shares. It appears to be a matter of record that no transfer instrument has been placed on record and it leads to an inference that there is no such transfer deed pursuant to which the shares have been transferred. The law as well as the Articles of Memorandum and Association of the Company requires that transfer of any shares from one party to another could only be done by way of a transfer deed duly stamped and presented before the Company and after accepting and executing such transfer, the share holding pattern of the members is then recorded before the regulator i.e. SECP through Annual Returns by way of Form-A. In this matter the Company has accepted that Petitioner was a shareholder in 2013 and he is not a shareholder anymore in 2014 as he has transferred the shares to Respondent No. 4; however, at the same time the Company or for that matter, the other Respondents have failed to bring on record any transfer deed duly signed by the Petitioner. This leads to only one inference and that is, the transfer has been executed and made without consent of the Petitioner and for such purpose no evidence is required any further. This case appears to be simplicitor a rectification of the Register of the Company, as admittedly the Company which claims that the Petitioner had transferred his shares, is not in possession of any such transfer instrument, and therefore, the contention of the Company being devoid of any supporting material cannot be accepted. It is settled law that the Court while exercising jurisdiction under Section 152 of the Companies Ordinance 1984, if satisfied can pass appropriate orders for rectification of the Register of the Company.

9. Section 76 *ibid* provides that an application for registration of the transfer of shares in a Company may be made either by the transferor or the transferee and subject to the provisions of this section, the Company shall enter in its register of members the name of the transferee in the same manner and subject to same conditions as if the

application was made by the transferee, whereas, the proviso thereof, states that the Company *shall not register a transfer of shares unless proper instrument of transfer duly stamped and executed by the transferor and the transferee has been delivered to the company along with the scrip*. A learned Judge of this Court in the case relied upon by the Petitioner's Counsel<sup>1</sup> while discussing this provision has been pleased to hold that:-

In the instant case the respondents have not produced transfer deeds duly stamped and executed by the petitioners Nos.1 and 2 and Mrs. Zulekha Feroze Dossani. The provisions of section 76 of the Ordinance have not at all been complied with.

10. Similarly in another case cited by the Petitioner's Counsel<sup>2</sup> another learned Judge of this Court has been pleased to observe as under:-

16.....However, I asked Mr. Khalid Anwar to produce the deed of transfer and was prepared to allow its production notwithstanding the objections raised by Mr. Muhammad Ali Sayeed. Mr. Khalid Anwar, however, did not produce any deed of transfer. I would, therefore, hold that, prima facie, the transfer of the shares is in violation of the provisions of section 76 of the Companies Ordinance, 1984, and Article 26 of the Articles of Association of the defendant No.1 and, therefore, not valid.

11. The petitioner, in my humble view, has prima facie brought before this Court that he was a shareholder in the Company, which fact is also supported by SECP; hence, he has discharge the initial burden which is upon him in such case, and has in fact shifted the same upon the Respondents, who were required to bring on record through some material that the Petitioner had himself transferred the disputed shares. But unfortunately they have miserably failed to do so, whereas, the Company was required to act diligently, and in accordance with law, while entertaining a transfer request, which it has failed to do so. The transfer appears to be without the Petitioners consent, and even without any transfer deeds signed by him; or for that matter, by anyone else, including the benami claimant of such shares. It appears that being a family concern, the Company is being run on whims and desire of its sponsor or owner; however, once a Company has been

---

<sup>1</sup> Akbar Ali Sharif v Jamaluddin [1991 MLD 203]

<sup>2</sup> Central Cotton Mills Ltd v Naveed Textile Mills Ltd [1993 MLD 42]

incorporated under law, it has to follow the regulations and the law, come what may.

12. As to the claim of the Respondents that these shares were held as Benami in the name of Petitioner, being property of the father, I may observe that such a declaration cannot be granted by this Court under the Company jurisdiction, nor are the Respondents before this Bench for such purposes. It is merely an assertion of the father who is not even a party to these proceedings, and if that is the case, which in fact is their case; then instead, it is the father who is required to seek a declaration of a Benami transaction against the Petitioner by approaching the Court having jurisdiction in the matter. However, in no manner, he or any other person could transfer the shares of the Petitioner on its own, without obtaining consent of the Petitioner.

13. In view of hereinabove facts and circumstances of this case, the Petition is hereby allowed. The Register of the Company / Respondent No.1 stands rectified by cancellation of Form-A for the year of 2014 accepted by SECP on 5.11.2014 to the extent of showing transfer of Petitioner shares in the name of Respondent No.4. SECP to act accordingly and correct its record by restoring the shareholding of the Petitioner in the above terms.

Dated: 20.02.2020

**J U D G E**

ARSHAD/