



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 35 of 2008

Ashfaq Ahmed
s/o Alhaaj Ishtiaq Ahmed
C-17 Pak Kausar Town
Karachi

.....

Appellant

Versus

Director (SMD)

.....

Respondent

Date of Hearing

13-11-08

ORDER

Present:

For the Appellant:

Ashfaq Ahmed

For the Respondent:

Tariq Soomro (Departmental Representative)
Joint Director (SMD)

Tariq Soomro
Ashfaq Ahmed



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1. This order will dispose of appeal No. 35 of 2008 filed by Mr. Ashfaq Ahmed (the "Appellant") against the order dated July 10, 2008 ("Impugned Order") passed by Director, Securities Market Division ("Respondent")
2. Ordinary shares of Bank Islami Pakistan Limited ("BIPL") were offered to general public. BIPL vide letter dated April 21, 2006 furnished to the Securities and Exchange Commission of Pakistan ("SECP") list of such applicants who submitted applications for subscription of shares of BIPL in violation of Section 18A of the Securities and Exchange Ordinance, 1969 ("Ordinance"). The Appellant's son name, Ahsan Ashfaq appeared in the aforementioned list. An applications bearing No. 09-048-006 was submitted through account No. 2081-7 maintained with Habib Bank Ltd, PIA Airport Branch, Karachi and another application No.02-272-25 was submitted through account No.01-100-4354-2 maintained with Allied Bank Limited, Indus Mehran, Malir Extention Branch, Karachi. Both the applications were submitted by the Appellant's son namely Ahsan Ashfaq under the same name, NIC number, father's name, address and signature.
3. A show cause notice ("SCN") was therefore issued to the Appellant and his son by the SECP under section 18A of the Ordinance calling upon them to show cause why the application money should not be confiscated for the violation of said section. The Appellant in response to the show cause claimed that he submitted application No 09-048-006 through bank account No 2081-7 maintained at Habib Bank Limited, PIA Airport Branch, in his name. He stated that the application No 09-048-006 was submitted in the name of his son and therefore the two applications were separate and did not contravene section 18A of the Ordinance. On the other hand the Appellant's son namely Ahsan Ashfaq in response to the show cause notice stated that only one application No 02-272-25 through account

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No.01-100-4354-2 maintained at Allied Bank Limited, Indus Mehran, Malir Extension Branch, Karachi was submitted by him and that the same was unsuccessful and therefore his subscription money should be refunded.

4. That the Appellant and his son appeared before the Respondent in the show cause hearing and maintained the stance taken in the reply to the show cause notices. After hearing the Appellant, the Respondent passed the Impugned Order, and held that two applications bearing No 02-272-25 and No 09-048-06 have been submitted by the Appellant's son namely Ahsan Ashfaq using same name, NIC number, father's name, address and signature in violation of section 18A of the Ordinance as such the subscription money of both the applications are liable to be confiscated under subsection (2) of section 18-A of the Ordinance. Respondent however, taking a lenient view returned the subscription money of application No 02-272-25 whereas subscription money of application No 09-048-006 being multiple was confiscated under sub-section (2) of section 18A of the Ordinance
5. The Appellant dissatisfied with the Impugned Order has preferred the instant appeal. The Appellant appeared before the Bench in person and stated that the application bearing No. 09-048-006 was submitted through account No. 2081-7 maintained with Habib Bank Ltd, PIA Airport Branch, Karachi by him and in support of his contention produced the bank receipt of the application bearing No 09-048-006 showing his name; serial of the application and the bank stamp. He denied that the aforementioned application was made by his son Ahsan Ashfaq and stated that his son had only partially filled the application, which was made through his account.
6. The Department Representative on the other hand stated that the application was made by the Appellant's son as it bore his signatures, which could be verified from the ID card as such the applications were multiple and were liable to

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confiscation under section 18-A of the Ordinance. The Respondent has already taken a lenient view by refunding the subscription money of the application No 02-272-25, whereas the subscription money of the application No 09-048-006 being multiple was confiscated.

7. We heard the parties at length and sought clarification from the bank on the status of the application No 09-048-006 before deciding the matter. The Securities Market Division has produced before the Bench letter dated 14-11-08 under the signatures of Mr. Mushtaq Hussain, Manager Operations, HBL, the contents of which are self explanatory and are reproduced below:

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.....

Duplicate Share Application of Bank Islami

Dear Sir,

Reference your letter # SMD-South/(2433)/2008 dated 14/11/08 regarding captioned subject, addressed to Group Executive, Global Operations, HBL.

We confirm that Mr. Ashfaq Ahmed CNIC No 42501-1470811-5 maintains account # 00480002081701 with us. He has applied for 500 shares of Bank Islami Pakistan Limited on March 06, 2006 through his cheque # 07895684 Rs 5000/=, inadvertently application filled in his son's name Mr. Ahsan Asfaq CNIC No 42501-4826349-5 having account with ABL was submitted and due to heavy rush it was also over looked by us. Said application containing his sons particular was forwarded under Bank Code 09 Branch Code 0048 Serial No 06.

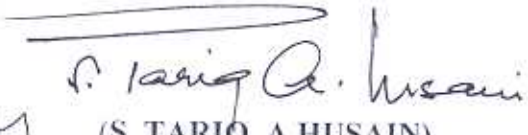


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It was an human error occurred on both parts i.e customer as well as the Bank's officer. Keeping in view of above facts you are requested to please release Rs 5000/= held on duplication."

8. In view of Habib Bank Limited, Manager Operations admission of the error in processing the application without proper verification by its officer, the applications cannot be termed as multiple applications. The application bearing No 09-048-006, submitted through account No. 2081-7 maintained with Habib Bank Ltd, PIA Airport Branch, Karachi shall be deemed to have been made by the Appellant and not by his son namely Ahsan Ashfaq.
9. In view of the foregoing, we hereby modify the Impugned Order and direct that the shares against application bearing No No 09-048-06 be handed over to the Appellant.


(MR. RAZI- UR-REHMAN KHAN)
Chairman


(S. TARIQ. A HUSAIN)
Commissioner (L.D)

Announced on: 31-12-08