

Form No: HCJD/C-121.  
**JUDGEMENT SHEET**  
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.  
JUDICIAL DEPARTMENT.

{SECP. Appeal No.01/2015}

Pakistan Mobile Communication Ltd. etc.

**Vs**

Appellate Bench No.III, Securities & Exchange Commission of  
Pakistan, etc.

Appellant by: Barrister Ehsaan Ali Qazi, Advocate.

Respondents by: Barrister Ammar Hussain Khushnood and  
Shahzad Ali Rana, Advocates.

*Hearing*  
Date of ~~decision~~: 14.09.2015

\*\*\*\*\*

**AAMER FAROOQ, J.** This appeal is directed against  
order dated 01.01.2015 passed by respondent No.1.

2. Respondent No.2 issued Show Cause Notice to the Chief Executive of appellant No.1 under section 496 of the Companies Ordinance, 1984 (***the Ordinance***) with the allegation that appellant No.1 had engaged in business of '*Reward Schemes and Prize Draws*' which was beyond the scope of the objects of the appellant Company. Appellant No.1 replied the Show Cause Notice and it was contended in the same that '*Prize Reward Scheme*' was part of the Company's advertisement/marketing campaign and was duly covered under Clause III (33) of its Memorandum of Association (MOA). Respondent No.2, in pursuance of Show Cause Notice imposed a fine of Rs.3,70,000/- on the appellants as well as respondents No.3 to 7 (the then Directors) under section 476 of the Ordinance. The referred order was challenged in appeal before respondent No.1 which was dismissed vide the above mentioned impugned order.

3. The learned counsel for the appellants *inter alia* submitted that under clause III (33) of the Objects as contained in Memorandum of Association (MOA) of the appellant company,

the Company is empowered to undertake any marketing campaign, therefore, the '*Prize Reward Scheme*' was part of the advertisement campaign and within its Objects. Therefore, sections 476 as well as 496 of the Ordinance are not attracted. It was further contended that respondent No.1 while dismissing appeal of the appellants placed reliance on case titled '*Warid Telecom & others Vs Pakistan Telecommunication Authority, Islamabad*' reported as (2013 CLD 1085) which was not attracted in the facts and circumstances of the case. The learned counsel further submitted that any act which though falls within the objects of the Company, however, is illegal by virtue of some law does not qualify as *ultra vires* the objects of the Company.

4. The learned counsel for respondent No.1 *inter alia* submitted that the '*Prize Reward Scheme*' is prohibited under the law i.e. by virtue of Pakistan Telecommunication Authority (Directions / Rules), therefore, the appellant could not have undertaken the same. In this behalf, it was further submitted that in case titled '*Warid Telecom & others Vs Pakistan Telecommunication Authority, Islamabad*' reported as (2013 CLD 1085), the '*Prize Reward Scheme*' was held to be unlawful and the August Supreme Court of Pakistan upheld the referred verdict. The learned counsel further pointed out that any act which is not permissible under the objects clause in the Memorandum of Association (MOA) of a Company is *ultra vires* its Objects. In support of his contentions, the learned counsel placed reliance on the definition of *ultra vires* as provided in Black's Law Dictionary. Reliance was also placed on cases titled "*The Directors, &c., of the Ashbury Railway Carriage and Iron Company Ltd. Vs Hector Riche*" (1875), "*Re Crown Bank Vs Chancery Division*" (1890) and "*The Attorney General & Ephraim Hutchings (Relator) Vs The Directors, &c., of the Great Eastern Railway Company*" (1880).
5. The appellants and respondents No.2 to 7 have been fined under section 476 of the Ordinance for conducting business / activities which were *ultra vires* the Objects. The main defence

put forward by the referred persons is that "Prize Reward Scheme" was part of marketing campaign which is permissible under its Objects. Appeal filed by appellants was dismissed on the basis of decision of this Court filed by the petitioners titled '*Warid Telecom & others Vs Pakistan Telecommunication Authority, Islamabad*' (2013 CLD 1085), wherein this Court dismissed the petition and upheld the directions of Pakistan Telecommunication Authority (PTA) declaring '*Prize Reward Scheme*' as unlawful. The referred decision of the Court was challenged before the Hon'ble Supreme Court of Pakistan in Constitution Petition No.643/2013 wherein it was observed that the lure of the *prizes* was used to induce customers by sending message(s) and make telephonic calls at considerably higher rates, and the extra revenue after deduction of the additional costs incurred and cost of prizes, add to the profits of the petitioners. It was further observed that whether or not the petitioners made a profit is not the determining factor, but rather if the activity was illegal. The Hon'ble Supreme Court held that since, the said *prize schemes* appeared to be operating as lotteries in contravention of section 294-A PPC and offering prizes in apparent violation of section 294-B PPC, therefore, the PTA would be within its rights to direct the petitioners to stop the said *prize schemes*.

6. The crux of the referred judgement is that '*Prize Reward Schemes*' were held to be in the nature of lottery and rewards, hence not permissible. The appellant under the Objects in the Memorandum of Association (MOA) is entitled to undertake marketing and advertisement campaign. In this behalf, the relevant clause is 33 and is as follows:

*"To adopt such means of making known the business and products of Company as seem expedient and in particular by advertisement in press, by circulars, by purchase and exhibition of works of art or interest by publication of books and by periodicals and by granting prizes, rewards and donations."*

7. There is no cavil to the fact that appellant Company can undertake advertisement or marketing campaign, however, the question that needs elucidation is that where marketing campaign or advertisement is unlawful or is in violation of Rules/Regulations or some law, whether the same would fall within the scope of *ultra vires* doctrine as enshrined in section 496 of the Ordinance interpreted in dictums of the foreign jurisdiction as well as the Hon'ble Supreme Court of Pakistan. In the case titled "*Lucky Cement Ltd. Vs Commissioner Income Tax, Zone Companies, Circle-5, Peshawar*" reported as (2015 SCMR 1494), the August Supreme Court of Pakistan observed as follows:

*"It has been noticed and experienced by us for various MOAs of different companies that in order to avoid any of its venture being declared as ultra vires of the object, besides the main object of the company and its ancillary purposes, the latest trend is that the company shall incorporate in the MOA certain other objects as well which are aloof and independent of its main object/business; this is also so because the company might at some point of time like to undertake some another or more business, but would be precluded from doing so, because of the lack of object and it is difficult to have the MOAs changed and altered frequently.*

*A company thus may have a primary object and purpose, but still there may also be several other objects mentioned in the objects clause, and after proper construction of such objects, by resorting to the relevant rules of interpretation, it should be considered whether those are ancillary to the main object of the company or can be held to be independent of each other. It may be pertinent to mention here that MOA of a company in law should be read and construed liberally and be given a wide meaning through literal interpretation of the clause. Since objects are considered to be the permissive activities which a company can undertake in order to do its business, the same*

*should not be given a restrictive meaning. In any case, rigid construction of the said document, unless and until inevitable and insurmountable, must be avoided."*

8. Similarly in case titled *The Shamnugger Jute Factory Co., V. Ram Narain Chatterjee and Others* (1987 ILR 14) the Calcutta High Court held as follows:

*"The powers of a Company depend upon its Memorandum of Association or other instrument of incorporation and it can do nothing which that document does not warrant expressly or impliedly. A Company, therefore, formed to carry on one trade cannot engage in another. But, on the other hand, this doctrine must be reasonably understood and applied. A Company in carrying on the trade for which it is constituted and in whatever may be fairly regarded as incidental to, or consequential; upon that trade, "is free to enter into any transaction not expressly prohibited."*

In *Framroze Rustomji Paymaster Vs. British Burmah Petroleum Co. Ltd.* (1976 46 CompCas 587) it was held as follows:

*"This is not a final view of the matter which can only be taken either at the final hearing of the winding-up petition or at the final hearing of the suit. In the meanwhile, what remains are the contention of the parties with regard to the nature of this business. Even if the said business the ultra vires the Object Clause in the Memorandum of Association of the Company, it is neither mala in se nor mala quia prohibita. It is neither wrong in itself, i.e. immoral, nor wrong because it is prohibited by the law of the land, i.e. illegal. It is merely business which the company by its Constitution cannot carry on and has none the less been carrying on. In my opinion, carrying on such business will be carrying business within the meaning of Clause XII of the Letters Patent so as to confer jurisdiction in this court.*

9. The principle discussed from the referred judgements shows that the objects in the Memorandum of Association of the Company are not to be interpreted in a rigid manner rather are to be interpreted in a flexible fashion as in the world of today. A

Company might undertake multiple tasks/businesses or while performing a primary function can also have ancillary Objects. Similar view on the question of *ultra vires* doctrine is from English Jurisdiction in the case titled "*The Directors, &c., of the Ashbury Railway Carriage and Iron Company Ltd. Vs Hector Riche*" (1875), wherein it was held that the objects of a Company proposed to be incorporated under the Companies Act cannot be departed from unless a change is made permitted under the law. Similarly, in Black's Law Dictionary, the *ultra vires* has been defined as follows:

*"Unauthorized; beyond the scope of power allowed or granted by a corporate charter or by law the officer was liable for the firm's ultra vires actions."*

10. In the instant case, the '*Prize Reward Scheme*' was undertaken by the appellant Company in pursuance of advertisement or marketing campaign which was permissible under clause 33 of the objects clause. However, the '*Prize Reward Scheme*' was categorically termed as a lottery by this Court as well as the Hon'ble Supreme Court of Pakistan, hence, the act was illegal. The act declared illegal by virtue of some rules or regulations, subsequent to, incorporation of the Company and being part of the objects of the Company though might be illegal / unlawful but cannot be regarded as *ultra vires* the Company. In this behalf, the very concept of the *ultra vires* as is discussed from the judgements above which is something beyond the scope of the Company or is not provided in the Objects of the Company. An act which though is provided in the Objects but otherwise illegal is not *ultra vires* but simply an unlawful act.

11. Under section 496 of the Companies Ordinance, penalty can be imposed on a Company only if any transaction is entered into by a Company, if the same is *ultra vires* of the Company. As

observed above, in the instant case, the act or the transaction of the Company was though unlawful but being part of the ancillary objects i.e. advertisement and marketing for its products cannot be termed as *ultra vires*, hence, section 496 is not attracted in the facts and circumstances of the case.

12. In view of above, the instant appeal is allowed and the impugned order dated 01.01.2015 passed by respondent No.1 is set aside.

**(AAMER FAROOQ)**  
**JUDGE**

Announced in open Court on the 30<sup>th</sup> day of October 2015.

**JUDGE**

\*M.Amir\*

*Approved For Reporting*