

THE HIGH COURT OF SINDH, KARACHI
[COMPANY BENCH]

J.C. Misc. No. 36 of 2022
In the matter of the Companies Act, 2017
And
Marion Laboratories (Pvt) Limited

Petitioner : Imran Saboor through M/s. Ali Nawaz Kharal and Asadullah Jan, Advocates.

Respondent 1 : Securities and Exchange Commission of Pakistan through Syed Ebad-ur-Rehman, Advocate.

Respondent 2-4 : Marion Laboratories (Pvt) Limited and 2 others through Mr. Zaheer Minhas, Advocate.

Respondent 5 : Nemo.

Date of hearing : 06-03-2025

Date of order : 25-03-2025

ORDER

Adnan Iqbal Chaudhry J. - This is an application under section 126 of the Companies Act, 2017 for rectification of the members' register maintained by the company, *Marion Laboratories (Pvt.) Ltd.* (Respondent No.2) under section 119 of the Companies Act, 2017.

2. The Applicant and Respondents 3 and 4 are sons of S.M. Saboor who was majority shareholder and Director of the company and who passed away on 29-12-2015. Prior to his death, the Respondents 3 and 4 were already shareholders in the company and the Respondent No.3 was the other Director. Though the Applicant was appointed Chief Executive of the company, he was not a shareholder.

3. In July 2019, the Applicant learnt that he had been removed as Chief Executive of the company. He complained to the SECP that his removal was unlawful. By letter dated 22-08-2019, he also complained that Respondents 3 and 4 were not transmitting the shares of late S.M.

Saboor **[Deceased]** to his legal heirs. Responding to the SECP by letters dated 31-07-2019 and 10-12-2019, the Respondents 2 to 4 contended that the Applicant had been lawfully removed as Chief Executive pursuant to a resolution of the Board of Directors passed on 28-10-2018; and the matter of succession to the shares of the Deceased was between his legal heirs and had nothing to do with the SECP. However, since the thrust of the Applicant's complaint was his removal as Chief Executive, by letter dated 27-02-2020 the SECP asked him to approach the Court for redress.

4. In filing this application under section 126 of the Companies Act, 2017 **[the Act]**, two distinct prayers were made by the Applicant. The first, for rectification of the members' register to reflect shares inherited by him from the Deceased; and second, for restoring him as Chief Executive of the company. However, at the hearing, learned counsel for the Applicant conceded that the latter prayer was beyond the scope of section 126 of the Act and confined his submissions to rectification of the members' register.

5. Learned counsel for the Respondents 2 to 4 submitted that the application was time-barred. He relied on the case of *Bentonite Pakistan Ltd. v. Bankers Equity Ltd.* (2023 SCMR 1353) where a three-member Bench of the Supreme Court while dealing with an application under section 316 of the Companies Ordinance, 1984, held that limitation for 'all applications' under the Companies Act, 2017 would be governed by Article 181 of the Limitation Act, 1908. On the other hand, learned counsel for the Applicant cited *Naila Naeem Younus v. Indus Services Ltd.* (2022 SCMR 1171) where a two-member Bench of the Supreme Court held categorically for an application under section 126 of the Companies Act, 2017 that the Limitation Act was not applicable. Though *Bentonite* is by a larger Bench, it is a leave-refusing order, and therefore it needs to be considered whether it is binding precedent in terms of Article 189 of the Constitution of Pakistan, and if so, whether it also applies to an application seeking

transmission of shares inherited from a deceased Muslim. However, for the present, I need not examine that aspect.

6. Even if Article 181 of the Limitation Act applies to an application under section 126 of the Companies Act, the period of three years therein begins from the date “when the right to apply accrues”. For rectification of the members’ register the right to apply accrues on events set-out in section 126 of the Act itself *viz*:

“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 debenture-holder;”

7. In the facts of the present case, the shares of the Deceased still stand in his name in the members’ register. Those shares have not been transmitted to any legal heir. The Respondents 2 to 4 do not deny that the Applicant inherits certain shares as a son of the Deceased. Rather, their case seems to be that the Applicant never formally applied to the company under section 78 of the Act for transmission of those shares. Therefore, the right to apply for transmission of those shares still subsists with the Applicant. Learned counsel for the Respondents 2 to 4 was asked whether they have any objection to the transmission of shares of the Deceased to all his legal heirs including the Applicant. He has filed a statement that they do not object.

8. In the aforesaid circumstances, this application is disposed of by directing the Respondents 2 to 4 to transmit shares of late S.M. Saboor to all his legal heirs as per Sharia within 15 days and file notice/return of such transmission with the Registrar of Companies along with a certified copy of this order.

JUDGE

Karachi:

Dated: 25-03-2025