

In the Supreme Court of Bangladesh

High Court Division
(Special Original Jurisdiction)

Writ Petition No. 5796 of 2008,

In the matter of

An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

And

In the matter of

Ibrahim Akand and Others

..... the petitioners

Versus

Securities and Exchange Commission and Others.

..... the respondents

Dr. M. Zahir for the petitioners

Mr. Mahmudul Islam

..... for respondent Nos.1 and 2

Present:

Mr. Justice Syed Mahmud Hossain

And

Mr. Justice Quamrul Islam Siddiqui

Heard on 5.8.2009, 10.8.2009, 19.8.2009,

15.10.2009, 21.10.2009 and 22.10.2009.

Judgment on 8.11.2009.

Syed Mahmud Hossain J.

In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondent Nos. 1 and 2 to show cause as to why the amendment of Rule 66 of the Securities and Exchange Commission (Mutual Fund) Rules, 2001 (Annexure-K) restricting respondent Nos. 3-6 from declaring stock dividend or rights issue should not be declared to have been taken without lawful authority and to be of no legal effect.

The facts leading to the issuance of the Rule, in brief, are:

The petitioners are holders of securities of different Mutual Funds as under:

1. ICB AMCL 1st NRB MF: 50 shares
- ICB AMCL Islamic MF: 300 shares
2. ICB AMCL 1st NRB MF: 100 shares
3. AIMS 1st Mutual Fund: 5,000 shares

The Writ Petition is directed against the decision of respondent No. 1, Securities and Exchange Commission (in short, SEC) amending Rule 66 of the Securities and Exchange Commission (Mutual Fund) Rules, 2001 (in short, the Rules) prohibiting Mutual Funds to issue bonus or rights shares. On 20.6.2008, after a meeting of respondent No. 1 its spokesman informed the reporters that there would be some alterations in the SEC (Mutual Fund) Rules, 2001. One of the changes was to prohibit the Mutual Funds to issue stock dividend. On 1.7.2008, through an advertisement in the newspapers respondent No. 1 invited opinions, advice or objections from among all concerned regarding the proposed amendments. On 22.7.2008, respondent No. 1 finally approved the proposed amendment. In Bangladesh, currently there are 15 listed Mutual Funds. The last one, ICB AMCL 2nd NRB Mutual Fund, commenced trading in Dhaka and Chittagong Stock Exchanges on 27.7.2008. The size of the Funds will greatly increase with the trading of ICB NRB 2nd M.F. (worth Tk.1.25 billion) and Graneen One: Scheme Two (worth Tk.1 billion). On 31.7.2007, respondent No. 3 (ICB) declared cash dividend @ 190% and stock dividend @ 50% for 1st ICB M.F. for the year 2006-2007. On 27.9.2007, AIMS (respondent No. 4) on its part declared cash dividend @ 10% and stock dividend @ 20% for the year 2006-2007. This encouraged the petitioners along with thousands of other small investors to invest heavily in Mutual Funds.

Before declaring stock dividend AIMS wrote to SEC asking whether stock dividend could be given and SEC gave its consent to take appropriate decision in accordance with the dividend policy stated in the approved prospectus of AIMS. Since AIMS prospectus does not mention the mode of payment of dividend, AIMS went on to declare stock dividend and SEC did not object. This led all Mutual Funds as well as the investors to believe that bonus shares may be issued against all Mutual Funds and hence heavy investment in Mutual Funds followed.

On 26.6.2008, when respondent No. 1, at a meeting decided in principle to amend its existing mutual fund rules to allow Mutual Funds from increasing their size by issuing bonus or rights shares. Share price of ICB AMCL 1st NRB MF fell and their trading came to a virtual halt. As a result, chaos created in the stock market was reflected in the media reports. The adoption by respondent No. 1 of the proposed amendment on 22.7.2008 practically wrecked the market of Dhaka and Chittagong. Share prices of all mutual funds dropped devastatingly and the small investors lost a total of

Signature
25 JAN 2010
SL No. 1105
Securities & Exchange Commission

