

Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 27 of 2016

1. Mr. Munawar Malik
2. Mr. Zaheer Malik
3. Ms. Humera Malik
4. Mr. Naseer A. Malik
5. Mrs. Mussrat Bano Malik
6. Mr. Asif Mufti

(All Directors of Hashmi Can Company Limited)

Appellants

Versus

The Commissioner (SMD), SECP

Respondent

Date of hearing:

13/07/16

Present:

For Appellants:

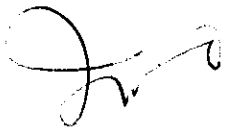
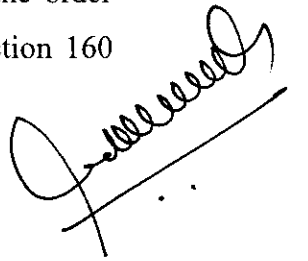
Ms. Naheed A. Shahid (Azizuddin & Shahid Law Associates)

For Respondent:

1. Ms. Ayesha Riaz- Additional Director (SMD)
2. Mr. Haroon Abdullah Abbas- Deputy Director (SMD)

ORDER

1. This order shall dispose of appeal No.27 filed by the Appellants against the order dated 05/04/16 (the Impugned Order) passed by the Respondent under section 160 read with section 100 of the Securities Act, 2015 (the Act).





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2. Brief facts of the case are that Hashmi Can Company Limited (the Company) was put on the defaulter counter of PSX on 03/01/07 due to failure to hold Annual General Meetings (the AGMs), failure to pay two years annual listing fee and failure to join Central Depository System (the CDS). In consequence, trading of Company shares was suspended on 16/02/12. The Respondent issued a direction on 01/09/15 under section 100 of the Act to the directors of Company including Appellants to undo the afforested defaults. However, the Appellants failed to comply with the direction. The CEO of the Company vide letter dated 08/09/15 stated that operations of the Company are closed due to litigation before different courts, therefore Company cannot pay outstanding dues and cannot hold the AGMs. He further stated that after conclusion of litigation, the Company intends to go into voluntary winding up.
3. In view of failure to comply with the direction, a Show Cause Notice (the SCN) dated 16/10/15 under section 160 read with section 100 of the Act was served on Appellants as to why the penal action may not be taken against them under section 159 of the Act. First hearing in the matter was fixed on 17/12/15 however; it was adjourned till end of December 2015 on the request of Appellants representative (Azizuddin & Shahid Law Associates). Thereafter, case was fixed on 20/01/16, 26/01/16, 09/02/16 and 03/03/16 however, despite ample opportunities no one appeared on behalf of Company or the Appellants. In the circumstances, the Respondent imposed a penalty of Rs. 500,000 on the directors including Appellants in the following manner:

S. No.	Name of Respondents	Amount
1.	Mr. Munawar Malik	500,000
2.	Mr. Imran Rafiq (Nominee Director NIT)	500,000
3.	Mr. Zaheer Malik	500,000
4.	Mrs. Mussrat Bano Malik	500,000
5.	Ms. Humera Malik	500,000
6.	Mr. Naseer A. Malik	500,000
7.	Mr. Asif Mufti	500,000

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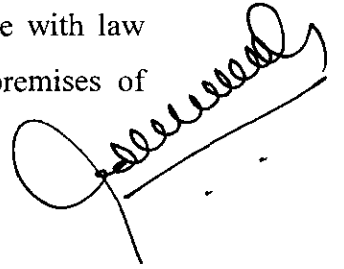
Total	3,500,000
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4. The Appellants preferred a separate appeal against the Impugned Order before the Appellate Bench and they have taken legal as well as factual grounds to set-aside the Impugned Order. The Counsel of the Appellants reiterated grounds of appeal and stated that due to old age and dependency, most of the Appellants are unable to contribute anything for betterment of the Company or to adhere to any direction. The Counsel further stated that assets of the Company are under unlawful control and possession of land grabbers and union leaders who had illegally occupied the premises of Company and looted stores and installation. The Counsel further stated that various litigations are pending in different courts and Company intends to go into voluntary winding up after the conclusion of litigations therefore, Impugned Order may be set-aside.
5. The Respondent has rebutted the submissions and grounds of appeal and stated that Appellants being directors of a listed company were responsible to comply with the legal requirements; however, they have failed to discharge their duties in an appropriate manner. The Respondent, prayed to dismiss the appeal, as the alleged defaults have been accepted by the Appellants.
6. We have heard the parties i.e. Appellants and Respondent and perused the record of appeal.
7. The Appellants have admitted the alleged violation of listing regulations of Pakistan Stock Exchange and non-compliance of direction under section 100 of the Act issued by the Respondent. The Appellants have requested to waive the penalty on the grounds mentioned in para 4 of this order. The argument with respect to capabilities of Appellants cannot be acceded to because being directors they were under the statutory duty to carry out the affairs of Company strictly in accordance with law however, they failed. Further, the plea of Appellants that asset and premises of

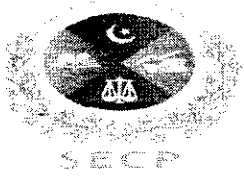


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Company is under illegal occupation of land grabbers and union leaders cannot be termed as a ground of escape.

8. In view of above, there is no reason to interfere with the findings and conclusion of the Respondent therefore, the Impugned Order to the extent of Appellants is upheld and appeal is dismissed.
9. Parties to bear their own cost.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Zafar Abdullah)
Commissioner (SCD)

Announced on: 28 JUL 2016