



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 28 of 2016

1. Mr. Abdul Mateen, Chief Executive
 2. Ms. Nilofer Mateen
 3. Mr. Anwar Iqbal
 4. Ms. Farnaz Anwar
 5. Mr. Omer Mateen
- (All Directors of Bela Automotives Limited)

Appellants

Versus

The Commissioner (SMD), SECP

Respondent

Date of hearing:

13/07/16

Present:

For Appellants:

Mr. Abdul Mateen, Chief Executive

For Respondent:

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

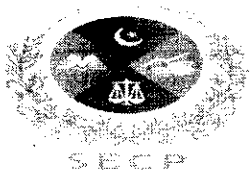
ORDER

1. This order shall dispose of appeal no.28 of 2016 filed on 27/05/16 under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 05/04/2016 (the Impugned Order) passed by the Respondent under section 160 read with section 100 of the Securities Act, 2015 (the Act). After removal of deficiencies appeal was registered on 17/06/16.

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2. Brief facts of the case are that Bela Automotives Limited (the Company) was placed on the defaulter counter of erstwhile Karachi Stock Exchange now Pakistan Stock Exchange (PSX) on 02/09/02 due to its failure to hold two consecutive annual general meetings, failure to pay two years annual listing fee and failure to join Central Depository System (CDS). Thereafter, trading in Company shares was suspended on 01/08/12. The Respondent, with a view to restore the Company on the normal counter of the PSX issued a direction on 01/09/15 to the Appellants under Section 100 of the Act however, it was not complied with. Thereafter, a Show Cause Notice (the SCN) dated 16/10/15 under section 160 read with section 100 of the Act was issued to Appellants, as to why penal action may not be initiated against them, under section 159 of the Act. The Appellant No.1 vide letter dated 14/11/15 replied that notice has not been received and only reminder was received on 13/11/15, therefore the Respondent provided a copy of notice to the Appellants. Thereafter, another letter dated 28/11/15 was received from the Appellants wherein it was requested to allow 4-5 days to file reply of the SCN, which was allowed accordingly by the Respondent. Hearings in the matter of SCN proceedings were fixed for 17/12/15, 20/01/16 and 26/01/16, however, despite ample opportunities no one appeared on behalf of the Company or Appellants. Therefore, the Respondent, imposed a penalty of Rs.500,000 on each the directors for their failure to comply with the direction, in the following manner:

S. No.	Name of Respondents	Amount
1.	Mr. Abdul Mateen	500,000
2.	Mr. Imran Mateen	500,000
3.	Ms. Nilofer Mateen	500,000
4.	Ms. Muniza Erman	500,000
5.	Mr. Anwar Iqbal	500,000
6.	Ms. Famaz Anwar	500,000
7.	Mr. Omer Mateen	500,000
Total		3,500,000

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3. The Appellants preferred an appeal against the Impugned Order before the Appellate Bench. Mr. Abdul Mateen, Appellant No.1 appeared on behalf of rest of the Appellants to argue the appeal. He requested to condone the delay in filing of appeal and prayed to set aside the Impugned Order on ground that the Company account was debited by Rs.154 Million by the Bank unlawfully therefore the Company was not able to pay its obligation due to scarcity of financial resources. Further it was stated that dispute with income tax department damaged the financial health of Company. Lastly it was requested to allow six months to comply with direction and to remove defaults.
4. The Respondent has rebutted the grounds of appeal and stated that the Appellants being directors of a listed company were responsible to run the affairs of Company in accordance with law; however they failed to discharge their fiduciary duties. The Respondent, further prayed to dismiss the appeal as the alleged defaults have been accepted by the Appellants during the course of proceedings.
5. We have heard the parties i.e. Appellants and Respondent and perused the record with the assistance of the parties.
6. As far as delay in filing of appeal is concerned, the Bench in the interest of justice accepts the application for condonation of delay so that matter may be decided on merits. The Appellant No.1 was authorized by the rest of directors to plead the case vide letter of authority annexed with the appeal, however, names of two directors Mr. Imran Mateen and Ms. Muniza Imran were missing and two other names Fazl e Kafeel and Khilat Kafeel were incorporated as directors of Company. The Appellant No.1 was asked to remove this ambiguity and to submit letter of authority on behalf of Mr. Imran Mateen and Ms. Muniza Imran. The Appellant No.1 instead of filing the desired letter of authority, filed resignation of Mr. Imran Mateen and Ms. Muniza Imran. The date mentioned on resignation was 10/11/14. The Appellant No.1 vide letter dated 27/07/16 confirmed that Imran Mateen and Ms. Muniza Imran were replaced by two new directors namely Fazl e Kafeel and Khilat Kafeel.

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7. In view of above, it was necessary to determine the names of directors who were on Board of Directors (the BOD) at the time direction under section 100 of the Act was issued. It is an established fact that the Company has long history of defaults, however, issuance of direction under section 100 provided the Company and directors a fresh opportunity to remove the defaults within 14 days of the date of direction. Therefore, the Bench has to see whether the Impugned Order was passed against the directors who were present on BOD at the time of direction or some retired directors were also penalized.
8. The Respondent was asked to assist the Bench on the facts narrated in para 5 and 6 of this order. The Respondent submitted that names of the directors who were penalized vide the Impugned Order are in consonance with the last Form-A (2012) and the last Annual Accounts (2012) submitted by the Company. Further, the Form-A (2013) attached with the Appeal at page-76 also has the same names of the directors as mentioned in the Form-A (2012) and Annual Accounts (2012). Therefore, at the time of direction under section 100 of the Act, composition of BOD was as per last Form A.
9. The memorandum of appeal contains the names of seven directors who were penalized vide the Impugned Order however; two of them had not given authority to the Appellant No.1 to plead on their behalf. Therefore, the Bench cannot proceed with the appeal to the extent of two directors namely Mr. Imran Mateen and Ms. Muniza Imran. Now, the appeal shall deem to have been filed by five directors namely Mr. Abdul Mateen, Ms. Nilofer Mateen, Mr. Anwar Iqbal, Ms. Farnaz Anwar and Mr. Omer Mateen.
10. As per the contents of appeal and in view of the arguments of Appellant No.1 it is clear that alleged violation of listing regulations of Pakistan Stock Exchange and non-compliance of direction under section 100 of the Act has been admitted. The primary ground taken by the Appellant No.1 to set aside the Impugned Order is inability of the Company to comply with the requisite requirements due to financial constraints. The

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Appellant No.1 during the hearing and thereafter vide a letter dated 13/07/16 requested the Bench to allow six months time to meet all the requirements and to remove the defaults mentioned in Impugned Order. The Appellants have failed to bring on record any irregularity or illegality with respect to the Impugned Order, therefore, request to set aside the Impugned Order has no merits.

11. Appellants admission and willingness to remove defaults mentioned in the Impugned Order is wise decision therefore, we are inclined to partially accept the request of Appellants with respect to time to remove the defaults. As far as merits of the case are concerned, we find no reason to interfere with the Impugned Order; however we hereby grant 90 days' time to the Appellants, reckoned from the date of this order, to remove the defaults mentioned in the Impugned Order. The Respondent is directed not to proceed against the Appellants prior to completion of 90 days or after successful removal of defaults mentioned in the Impugned Order within 90 days. However in case Appellants fails to remove the defaults within stipulated time, the Respondent shall have right to enforce and recover the penalty imposed through the Impugned Order.

12. In view of above, the appeal is disposed of. Parties to bear their own cost.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Zafar Abdullah)
Commissioner (SCD)

Announced on: 01 SEP 2016