



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 31 of 2016

1. Sh. Nishat Ahmad, Chief Executive
 2. Sh. Zafar Iqbal
 3. Mr. Sarfraz Hasan
 4. Mr. Kashif Tafazzul Warsi
 5. M. Asif Balouch
 6. Mr. Mubassar Hasan Hamadani
 7. M. Islam
- (All Directors of Fatima Enterprises Limited)

Appellants

Versus

Amina Aziz, Director (CSD, SECP)

Respondent

Date of hearing:

21/09/16

Present:

For Appellants:

1. Mr. Faisal Latif, FCA
2. Mr. M. Shabazz Khan

For Respondent:

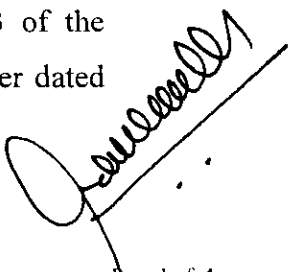
1. Ms. Amina Aziz, Director (CSD)
2. Mr. Aqeel Ahmad Zeeshan, Joint Director (CSD)

ORDER

1. This order shall dispose of appeal No.31 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated


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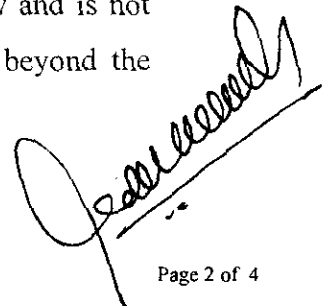
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07/04/16 (the Impugned Order) passed by the Respondent under section 158 read with section 476 of Companies Ordinance 1984 (the Ordinance).

2. Brief facts of the case are that Fatima Enterprises Limited (the Company) failed to hold its Annual General Meeting (the AGM) for the year ended 30/06/15 on or before 31/10/15 as required under subsection (1) of section 158 of the Ordinance. Therefore, a Show Cause Notice (the SCN) dated 15/01/16 was issued to the Appellants. In response to the SCN, the Appellants vide letter dated 26/01/16 submitted that the delay in holding AGM was caused due to delay in finalization of audited annual accounts for the year ended 30/06/15. Hearing of the case was held on 16/03/16 and Appellants were represented by Mr. Faisal Latif (the Representative) who stated that the Company will hold its AGM within a months and notice of the AGM will be submitted. Thereafter, the AGM for the year ended 30/06/15 was held on 18/04/16 with the inordinate delay of more than five months. Therefore, the Respondent, in exercise of power conferred under section 158(4) imposed as aggregate penalty of Rs.350,000 on the Appellants in the following manner:

S. No.	Name of Appellants	Amount Rupees
1.	Sh. Nishat Ahmad	50,000
2.	Sh. Zafar Iqbal	50,000
3.	Mr. Kashif Tafazzul Warsi	50,000
4.	Mr. Muhammad Asif Balouch	50,000
5.	Mr. Mubasshar Hasan Hamadani	50,000
6.	Mr. Muhammad Islam	50,000
7.	Mr. Sarfraz Hasan	50,000
Total		350,000

3. The Appellants preferred this appeal against the Impugned Order before the Appellate Bench (the Bench) on the ground that the Impugned Order is bad in law and is not maintainable. It was further contended that the factors for delay were beyond the control of Appellants and the delay in holding the AGM was not willful.





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4. The Respondent rebutted the grounds of appeal through written comments and stated that the Impugned Order has been passed in accordance with law, therefore, it is valid. It was further stated that the SCN was issued for the failure of the Appellants to hold AGM within stipulated time. The Respondent also stated that the directors of the Company were required to have proper knowledge of legal provisions of the Ordinance because their consent to act as director of a listed company demonstrates that they are aware of their legal obligations under the Ordinance. The requirements of holding the AGMs are clear and explicit and if the directors of a company fail to comply with such requirements, it means that they have defaulted knowingly and willfully.
5. We have heard the parties i.e. Appellants and Respondent and perused the record of appeal.
6. The Appellants have filed this appeal on 18/05/16, after the lapse of thirty days limitation period provided in section 33 of the Act, however in the interest of justice, application for the condonation of delay has been accepted by the Bench so that the Appellants may be given an opportunity to present their case on merits.
7. During the hearing, the Representative has not pressed the grounds of appeal (summarized in para 3 above) and admitted the default in holding the AGM of the Company, however he requested to take lenient view due to subsequent compliance by the Company. The Bench asked the Representative to argue the appeal on merits because any subsequent compliance cannot be termed as a ground to exonerate the Company or the Appellants from the consequences of default. The Representative provided the unattested copies of ledger form dated 01/07/2015 to 30/06/2016 of the Company plant and machinery account and ledger form dated 01/07/2016 to 22/09/2016 of the Company looms account to show the improvement in working of the Company. He also provided a copy of application dated 26/08/16 for induction of the Company into CDC.

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8. The Bench has applied its judicial mind to analyze the facts of the case. The default under section 158 of the Ordinance has been admitted in the memorandum of appeal as well as during the hearing before the Bench. Further, there is nothing on record to rebut that the default was not willful. The documents provided by the Representative during the course of hearing are of no use and the Appellants have failed to make out any defense. It was the responsibility of the directors to ensure compliance of mandatory provisions with respect to holding of AGMs, however they have failed to discharge their duties in accordance with law. The Respondent has already taken a lenient view and imposed the minimum penalty provided under section 158 of the Ordinance, whereas Respondent was empowered to impose the maximum penalty of five hundred thousand rupees.
9. In view of above, the circumstances of the case do not warrant us to interfere with the well-reasoned order dated 07/04/16 passed by the Respondent under section 158 of the Ordinance, therefore appeal is dismissed with no order to cost.

(**Fida Hussain Samoo**)
Commissioner (Insurance)

(**Zafar Abdullah**)
Commissioner (SCD)

Announced on: 28 SEP 2016