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**SECURITIES & EXCHANGE COMMISSION OF PAKISTAN  
APPELLATE BENCH REGISTRY**

**BEFORE APPELLATE BENCH NO. II**

In the matter of

**Appeal No. 57 of 2006**

1. Mr. Khalid Suraj Bajwa, Chief Executive
2. Mr. Hassan Kildi Bajwa, Director
3. Mr. Zahid Majmood Bajwa, Director
4. Mr. Hameed Ali Qureshi, Director
5. Mr. Naeem Ahmed Bajwa, Director
6. Mr. Tahir Mahmood Bajwa, Director
7. Mr. Waseem Anwar Khan, Director

.....

Appellants

Versus

Executive Director (CLD)

.....

Respondent

Date of Hearing

11-02-10

**ORDER**

**Present:**

For the Appellant

Nemo

Departmental representative

Sumera Siddiqui  
Joint Director

Muhammad Akram  
Deputy Director



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1. This order will dispose of appeal No. 57 of 2006 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against order dated 30-05-06 (the "Impugned Order") passed by the Respondent.
2. In terms of the provisions of section 245 of the Companies Ordinance, 1984 (the "Ordinance"), Mubarik Dairies Limited (the "Company") was required to prepare and transmit its quarterly accounts for the third quarter ended 31-03-05 by 30-04-05 and first quarter ended 30-09-05 by 31-10-05 respectively to the members of the Company and the Commission. The Company failed to submit the aforesaid accounts with the Commission within prescribed time.
3. Show cause notice dated 02-06-05 ("SCN") was issued to the Appellants for failure to submit quarterly accounts within the stipulated time. Sarwar Awan & Co. Chartered Accountants replied on behalf of the Appellants that the Company had stopped its business in 1994 due to heavy financial losses. The Appellants were provided opportunity to be heard on 15-06-05. Sarwar Awan & Co. Chartered Accountants appeared on behalf of the Appellants and reiterated the same argument taken in the reply to the SCN. The Appellants were served another SCN dated 30-11-05 for their failure to file quarterly accounts for the first quarter ended 30-09-05 by 31-10-05. The hearing in the matter was held on 26-01-06. Appellant 1 of appeared on behalf of the Appellants and reiterated the arguments advanced earlier i.e. of the Company business having stopped. The Respondent not satisfied with the response of the Appellants passed the Impugned Order and imposed a penalty of Rs. 10,000 on each Appellant for each default under section 245(3) of the Ordinance read with section 476 of the Ordinance.
4. The Appellants have preferred appeal against the Impugned Order. The Appellants have stated in the appeal that the Company stopped business in 1994



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due to heavy financial losses. The Appellants had put in huge amounts of money from their personal resources to revive the project but all efforts were in vain and there were no funds available with the Company to prepare and submit its quarterly accounts. It was further contended that the audit of the financial statements of the Company for the year ended 30-06-05 could not be finalized resultantly the quarterly accounts could not be prepared and circulated as the corresponding balances and comparative figures were not available.

5. The appeal was fixed for hearing on 4-2-10, however, no one appeared on behalf of the Appellants and the hearing was adjourned. The hearing was re-fixed on 11-2-10 in order to provide another opportunity to the Appellants. No one appeared on behalf of the Appellants and the Appellate Bench (the "Bench") has decided to proceed ex-parte. The departmental representative contended that poor financial health of the Company does not justify non-compliance with the legal requirements. The directors are responsible for ensuring compliance with the mandatory provisions of law and for default regarding non-filing of quarterly accounts. Past records of the Company show that the Appellants have also failed to hold Annual General Meetings ("AGMs") within prescribed time and AGMs for the years 1998 till 2003 were held on 09-01-05 whereas no half yearly or quarterly accounts have been filed since 2001 till date. It was further contended that the argument of the Appellants regarding delay in finalization of annual audited accounts is not a justifiable excuse for non circulation of quarterly accounts as it is a separate mandatory requirement under section 245 of the Ordinance.
6. The contention of the Appellants that they failed to comply with section 245 of the Ordinance due to poor financial health of the Company is not tenable. Compliance with section 245 of the Ordinance is responsibility of the directors and continuous default of the aforesaid section shows that the default is willful



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and deliberate. Further, section 245(1) of the Ordinance requires the Company and its directors to submit its quarterly accounts to the Commission, which could have been submitted even if the annual accounts were delayed. Section 245(1) (a) of the Ordinance is reproduced for ease of reference:

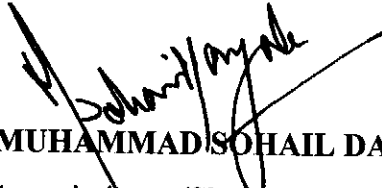
**245. [Quarterly] accounts of listed companies.-** (1) Every listed company shall—

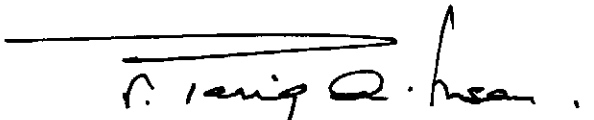
(a) within [one month] of the close of [first, second and third quarter] of its year of account, prepare and transmit to the members and the stock exchange in which the shares of the company are listed a profit and loss account for, and balance-sheet as at the end of that [quarter], whether audited or otherwise; and

Emphasis added

The above cited section clearly states that every listed company shall transmit its quarterly accounts, whether the same are audited or not. We are also not willing to accept that the delay should be condoned due to the delay in finalization of annual accounts. The Appellants shall pay the penalties from their own resources and not from the coffers of the Company.

In view of the above, we do not find any grounds to interfere with the Impugned Order. The appeal is dismissed with no order as to cost.

  
(MUHAMMAD SOHAIL DAYALA)  
Commissioner (SMD)

  
(S. TARIQ ASAF HUSAIN)  
Commissioner (LD)

Announced on: 15-3-10