

Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 93 of 2016

1. Mr. Aziz L. Jamal- CEO
 2. Mr. Rashid L. Jamal
 3. Mr. Husein Jamal
 4. Mr. Ahsan Jamal
 5. Mr. Akhtar Wasim Dar
 6. Mrs. Aisha Bai Suleman
 7. Miss Hina Abdul Rashid
- (All directors of Husein Industries Limited)

Appellants

Versus

The Director, Corporate Supervision Department, SECP

Respondent

Date of hearing:

09/02/17

Present:

For Appellants:

1. Mr. Aziz Jamal.
2. Mr. Khurram Jah

For Respondent:

Ms. Amina Aziz, Director (CSD)

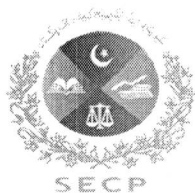
ORDER

1. This order shall dispose of Appeal No.93 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the Act) against the Order dated

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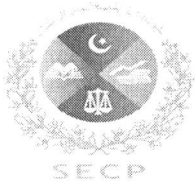
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05/05/16 (the Impugned Order) passed by the Respondent under Section 245(3) read with Section 476 of the Companies Ordinance 1984 (the Ordinance).

2. Brief facts of the case are that Husein Industries Limited (the Company) failed to prepare and transmit three quarterly/ half yearly accounts for the period ended 31/12/14, 31/03/15 and 30/09/15 to its members and also failed to file said accounts with the Registrar and Securities & Exchange Commission of Pakistan on or before 28/02/15, 30/04/15 and 31/10/15, respectively, as required under Section 245 of the Ordinance. Therefore, a Show Cause Notice (the SCN) dated 01/02/16 was issued to the Chief Executive Officer (the CEO) and other directors of the Company. The Appellants replied to the SCN vide letter dated 11/02/16, that the Company is facing a financial crunch and has inadequate staff to finalize its quarterly accounts. Thereafter, in a hearing held on 04/04/16, the Appellant's representative reiterated the submissions already made through the written reply. However, the Respondent being dissatisfied with the response, imposed an aggregate fine of Rs 210,000/- on the CEO and directors of the Company in the following manner;

| S.No. | Name of Respondents | Amount |
|--------------|------------------------|------------------|
| 1. | Mr. Aziz L. Jamal | 30,000/- |
| 2. | Mr. Rashid L. Jamal | 30,000/- |
| 3. | Mr. Husein Jamal | 30,000/- |
| 4. | Mrs. Aisha Bai Suleman | 30,000/- |
| 5. | Mr. Akhtar Wasim Dar | 30,000/- |
| 6. | Mr. Ahsan Jamal | 30,000/- |
| 7. | Miss Hina Abdul Rashid | 30,000/- |
| Total | | 210,000/- |

3. The Appellants preferred this Appeal against the Impugned Order before the Appellate Bench (the Bench) on the ground that the non-compliance of Section 245(3) was caused inadvertently as the Company was under the financial constraints, therefore, it failed to



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meet the requirements of Section 245(3) of the Ordinance. During the hearing, the Appellant's representatives apprised the Bench that the adjudged non-compliance of Section 245(3) has now been rectified. They further stated that since incorporation of the Company six decades ago, it has fair compliance history of relevant laws and procedure. They further contended that that accounts for the year 2016 shall be filed in due course. Lastly, they requested the Bench to consider the subsequent compliance of Section 245(3) and prayed for a lenient view.

4. The Respondent has stated that the Appellants have complied with the requirements of Section 245(3) subsequent to the Impugned Order. The Respondent further stated that the Appellants have also not filed the accounts for the year 2016.
5. We have heard the parties (Appellants and Respondent) and perused the record of Appeal. The Appellants have filed this Appeal on 09/11/16 against the Impugned Order dated 05/05/16, therefore, it is time barred in view of limitation period of thirty days, provided under Section 33 of the Act. However, in the interest of justice, the Bench has accepted the application for the condonation of delay so that the Appellants may be given an opportunity to present their case on merits.
6. It is admitted fact that the Appellants have failed to comply with the requirements of Section 245(3) of the Ordinance within stipulated time, however, after pronouncement of the Impugned Order they have filed the required accounts with the Respondent. The non-compliance of the Appellants is admitted therefore, the Bench finds no reason to exonerate the Appellants from the charge of established violations, however, subsequent compliance by the Appellants can be considered as a ground for a lenient view. Furthermore, other than the present violations, the Company has a fair compliance history.
7. The efforts of the Appellants to revive the operations of the Company are on record, as they have already rectified violations and previously they have not committed non-



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compliance of relevant laws. The conduct of the Appellants depicts that they are aware of their obligations towards the affairs of the Company and non-compliance of Section 245(3) was not willful. The Appellants plea that non-compliance of Section 245(3) of the Ordinance was caused due to financial and human resource constraints faced by the Company, cannot be ignored while adjudicating the instant Appeal.

8. The Appellants have committed before the Bench that compliance of relevant legal framework shall be ensured in future. The Company was incorporated about six decades ago and since then it remained compliant except the issue in hand. The Company is in the process to re-align its operations and business activities and in this regard, Company's top management efforts are on record. Therefore, in view of the aforesaid, we hereby convert the penalty imposed through the Impugned Order into warning and direct the Appellants to ensure compliance of the relevant provisions of law in future and restoration in trading of its shares at PSX by removal from Defaulters' Counter. The Appeal is disposed of accordingly.

9. Parties to bear their own cost.

(Fida Hussain Samoo)

Commissioner (Insurance)

(Zafar Abdullah)

Commissioner (SCD)

Announced on:

20 MAR 2017