



**BEFORE**  
**RECONSTITUTED APPELLATE BENCH NO. III**

In the matter of

**Appeal No. 45 of 2003**

1. Syed Naveed Hassan Zaidi  
Chief Executive  
Asset Investment Bank Ltd.

4. Dr. Khalid Iqbal  
Director  
Asset Investment Bank Ltd.

2. Mr. M. A Rahmani  
Director  
Asset Investment Bank Ltd.

5. Mr. Azhar Tariq Khan  
Director  
Asset Investment Bank Ltd.

3. Mr. Rana M. Abu Obaida  
Director  
Asset Investment Bank Ltd.

6. Mr. Shamim I. Junejo  
Director  
Asset Investment Bank Ltd.

.....Appellants

Versus

Commissioner (Enforcement & Monitoring) SEC.....Respondent

Date of Impugned Order

August 06, 2003

Date of Hearing

October 28, 2003

**Present:**

**For the Appellant**

Syed Naveed Hassan Zaidi

**For the Respondent**

1. Mr. Atta Muhammad Khan, Director (EMD) SEC
2. Mr. Mubasher Saeed, Joint Director (EMD) SEC



## **ORDER**

This order will dispose off the present appeal No. 45 of 2003 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by the above mentioned chief executive and directors of Asset Investment Bank Limited (the “Appellants”) against the order dated August 06, 2003 (‘Impugned Order’) passed by Commissioner (Enforcement & Monitoring).

1. The facts leading to this appeal are that Asset Investment Bank Limited (the “Bank”) was required to hold its annual general meeting (AGM) for the calendar year 2001 on or before December 31, 2001. It failed to hold the said meeting and consequently a notice was issued to the Bank and its directors to show cause why penalties as provided under sub-section (4) of section 158 of the Companies Ordinance, 1984 (the “Ordinance”) may not be imposed on them. An opportunity of hearing was provided to them by Commissioner (Enforcement & Monitoring). However, he rejected their assertions and imposed a fine of Rs.10,000/- each on the 6 Appellants. Not being satisfied by this order of the Commissioner (Enforcement & Monitoring), the Appellants have filed this appeal before us.

2. The appeal was fixed for hearing on October 28, 2003 when Appellant No.1, Syed Naveed Hassan Zaidi, the chief executive of the Bank appeared on behalf of all the Appellants. In support of the appeal, he contended that the Impugned Order was contrary to facts and therefore unjustified. He asserted that the Bank had applied to the Commission for grant of extension of 90 days for holding the AGM, however the same was refused on the ground that a winding up petition against the Bank was pending in the Hon’ble High Court. He asserted that the Bank’s request should not have been



turned down on this ground as it was contrary to section 402 of the Ordinance. He stated that the Bank thereafter filed an application before the High Court for grant of extension. However, the winding up petition filed by the Commission before the High Court was withdrawn. Thereafter, the Bank made an application under section 170 of the Ordinance to the Registrar Companies for allowing it to hold the AGM, which was granted. The AGM was consequently held on August 17, 2003. He argued that the Appellants were not at fault for the delay caused in holding the AGM as the time had been spend in efforts to obtain the extension and the permission under section 170 to hold the AGM from the Registrar. He argued that the default was neither willful nor deliberate and therefore no penalty can be imposed on the Appellants. He further contended that the Bank had a good past record in holding the AGMs and therefore deserved a lenient view. He prayed that the Impugned Order may be set aside in light of these facts.

3. Mr. Mubasher Saeed, Joint Director appearing on behalf of Commissioner (Enforcement & Monitoring) contended that the Bank's application for grant of extension in time in holding the AGM was rejected as the reasons given in the application were not considered to be valid. He argued that the power to grant the extension was discretionary and the Commission was not bound to do so if the reasons were not potent. He stated that it was in light of this fact and also that a winding up petition was pending before the High Court that the Bank was not granted an extension. He further argued that once the request for extension was refused by the Commission, the Bank should have held the AGM as soon as possible.

4. We have heard both the parties and considered their arguments. As far as the grant of extension is concerned, we are of the view that the reason stated in the Bank's application, namely that the management was negotiating with potential investors for injection of fresh equity and that they wanted to reflect this development in the



published accounts, is unconvincing. It becomes more unconvincing in light of the fact that the said fresh equity has still not been injected after a lapse of nearly two years. In any case, this information could have been conveyed to the shareholders through other means whenever it would have materialized. However, it is undesirable that instead of stating this reason for denying the request for extension, the application was turned down on the ground that a winding up petition was pending against the Bank before the High Court. As stated by the Appellants, Section 402 of the Ordinance clearly states that,

402. “A company being wound up shall continue to be a company for all purposes till its final dissolution in accordance with the provisions of this Ordinance and, unless otherwise specified, all provisions and requirements of this Ordinance relating to companies shall continue to apply mutatis mutandis in the case of companies being wound up : ...”

5. Conversely, this section also places a requirement on the Bank and its management to hold the AGM as required under section 158 within the time specified. In case if the extension in time was not granted to the Bank, its management should have made its best efforts to hold the AGM as soon as possible. This Bench would have been inclined to take a lenient view towards the Appellants had the AGM been held within the 90 day period after the request of the Bank for extension was declined. The 90 day extension if granted would have ended on March 30, 2002. However, the AGM was held on August 17, 2002, which means that there was a further delay of approximately 4 ½ months. The Appellant’s argument that this time was consumed in efforts to get an extension from the High Court and obtaining permission from the Registrar to hold the AGM under section 170 are not acceptable. Section 158 places a requirement upon the Bank to hold the AGM within a specified time, however if the AGM is not held within the time specified it does not mean that the AGM can then only be held with the prior permission of the Registrar. This, in our view is a



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misinterpretation of section 170. There was no restriction on the Bank to hold its AGM and it should have been held as soon as possible.

6. We also cannot agree with the Appellant's assertion that the default was not committed knowingly or willfully. It is clear that the Appellants were aware of the requirement upon them to hold the AGM within time. Their efforts to obtain extension points towards their knowledge. They were also aware that the extension, had it been granted, would have been for 90 days only. Their failure to hold the AGM even within this extended period for the simple reason that they wanted to show certain prospective developments in the accounts, leads to the conclusion that this default was willful.

In light of the reasons stated above, we are unable to agree with the arguments given by the Appellants. The appeal is accordingly dismissed.

**(ETRAT H. RIZVI)**

Commissioner (Specialized Companies)

**(SHAHID GHAFAR)**

Commissioner (Securities Market)

Islamabad

Announced: October 30, 2003