



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

BEFORE APPELLATE BENCH NO. II

In the matter of

Appeal No. 9 of 2006

1. Mr. Shehryar Saeed, Chairman/CEO
2. Mr. Nadeem S. Qureshi, Director
3. Sardar Muhammad Muzafar Sukera, Director
4. Mr. Abdul Rafiq, Director
5. Mr. Rehan Sadiq, Director
6. Mr. U.U. Khawaja, Director
7. Mr. Buriar Haider Naqvi, Director

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Appellants

Versus

Director (Enforcement)

Securities and Exchange Commission of Pakistan

Respondent

ORDER

Date of Hearing

23-11-09

Present:

For the Appellants:

Furkan Ali
Advocate

Respondent:

Tariq Bakhtawar
Director (Enforcement)

Departmental representative:

Shahzad Afzal Khan
Deputy Director (Enforcement)



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1. This order shall dispose of appeal No. 9 of 2006 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 12-12-05 (the "Impugned Order") passed by the Respondent.
2. The facts leading to the case are that in terms of section 158(1) of the Companies Ordinance, 1984 (the "Ordinance"), Johnson & Phillips (Pakistan) Limited (the "Company") and the Appellants were required to hold the Annual General Meeting (the "AGM") for the year ended 30-06-04 on or before 30-10-04. The Company and the Appellants failed to hold the AGM within the stipulated time.
3. Show cause notice dated 02-09-05 (the "SCN") was issued to the Company and the Appellants under section 158(1) of the Ordinance. The Company and the Appellants filed reply to SCN and their counsel appeared before the Respondent. The counsel admitted the default and contended that the AGM was not held as the annual accounts for the years ended 30-06-02 and 30-06-03 could not be finalized due to failure of the auditors to furnish the accounts. It was stated that the Commission was already aware of the delay on the part of auditors and the Company had also replaced its auditors on the Commission's advice. The Respondent not satisfied with the response of the Appellants, passed the Impugned Order and imposed penalty of Rs. 30,000 each on the Company and the Appellants under section 158(4) read with section 476 of the Ordinance.
4. The Appellants preferred appeal against the Impugned Order before the Appellate Bench (the "Bench"). The Appellants' counsel argued that:



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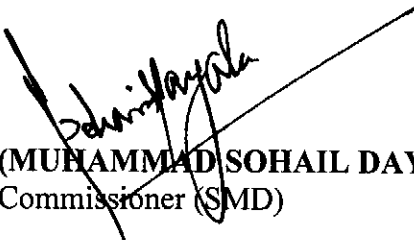
- a) Non-holding of AGM was due to non-finalization of the accounts of financial years ending 30-6-02 and 30-6-03 by the auditors, which act was beyond the control of the Company and the Appellants.
- b) The default if any was not willful and as such the penalty could not have been imposed under section 158 of the Ordinance. The Appellants took all reasonable steps to ensure that the accounts were finalized and presented before the Board of Directors.
5. The Respondent contended that the Appellants failed to hold the AGM within the stipulated time, which attracted penalty under section 158 (4) of the Ordinance. The default was willful as the Appellants were fully cognizant of the consequences of non-holding of AGM and did not make serious efforts to avert the situation. The Appellants had previously violated section 158 of the Ordinance by not holding AGM within the stipulated time for which penalties were imposed on the Chief Executive and directors of the Company.
6. We have heard the parties and have perused the record. The Appellants failed to hold the AGM for the year ending 30-06-04. The law has specified time for holding AGM, which is four (4) months from the close of financial year. There is sufficient time period provided to hold AGM after close of financial year. The Appellants failed to take necessary action against the auditors for failing to conduct audit for the year ended 30-06-02 and 30-06-03. It was only on the direction of the Commission, dated 28-10-04 under section 252(6) of the Ordinance that the auditors were replaced and the outstanding AGM was held on 30-9-05 after delay of one year. The Appellants are responsible for the non-holding of AGM within the stipulated time, therefore, penalty was rightly imposed. The Appellant No 1 had previously failed to hold the AGM for two consecutive years ending 30-6-01 and 30-6-02 respectively for which, penalty

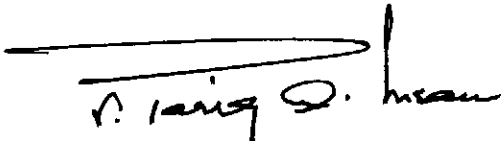


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was imposed on him. The Appellants were fully cognizant that failure to hold AGM may lead to penal consequences under section 158 (4) of the Ordinance. We concur with the view expressed by the Respondent that the default of not holding AGM was willful.

In view of the foregoing, we do not find any ground 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 (L.D)

Announced on: 14-1-10