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

**BEFORE APPELLATE BENCH NO. II**

In the matter of

**Appeal No. 19 of 2005**

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



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

1. This order will dispose of appeal No. 19 of 2005 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against order dated 12-05-05 (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 first quarter ended 30-09-04 by 31-10-04 and second quarter ended 31-12-04 by 28-02-05 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 notices dated 07-02-05 and 01-04-05 ("SCNs") were issued to the Appellants for failure to submit quarterly accounts within the stipulated time. No response was received from the Appellants to the SCNs. The Appellants were provided opportunity to be heard on 24-03-05 and 09-05-05 but they failed to appear for the aforesaid hearing. The Respondent proceeded to decide the case on its merits and 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 Impugned Order was passed without hearing the Appellants. It was further stated that the Company stopped business in 1994 due to heavy financial losses. The Appellants put huge amounts of money from their personal resources to revive the project, however, all efforts went in vain. The Company had to shut down operations and there were no funds available with the Company to prepare and submit its quarterly accounts.




SECURITIES & EXCHANGE COMMISSION OF PAKISTAN  
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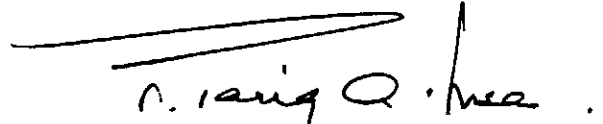
5. The appeal was fixed for hearing on 4-2-10, however, no one appeared on behalf of the Appellants and the hearing was adjourned. The hearing was re-fixed on 11-2-10 in order to give final opportunity to the Appellants. No one appeared on behalf of the Appellants and the Appellate Bench (the "Bench") decided to proceed ex-parte. The departmental representative contended that the Appellants were twice given opportunity of hearing by the Respondent, however, they failed to appear. It was further argued 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 are liable for default in case of non-filing of quarterly accounts. Past records of the Company shows 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, which shows that the default is willful
6. The Appellants failed to appear for the hearing before the Bench. The Appellants conduct is habitual as they also failed to appear for hearings before the Respondent. 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 an obligation of the directors and continuous default of the aforesaid section shows that the default is willful and deliberate. The Respondent rightly penalized the directors who shall pay the penalties from their own resources and not from the coffers of the Company.



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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