



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

BEFORE APPELLATE BENCH NO. II

In the matter of

Appeal No. 37 of 2005

1. Mr. Haroon Akhtar Khan, Chief Executive
2. Mr. Akbar Akhtar Khan, Chairman, Director
3. Mr. Ghazi Akhtar Khan, Director
4. Mrs. Rasheeda Begum, Director
5. Mrs. Mobina Akhtar Khan, Director
6. Mrs. Nazli Rafat Jam al, Director
7. Mr. Hameed Ullah Khan Paracha, Director
8. Mr. Saeed Ullah Khan Paracha, Director

.....

Appellants

Versus

Executive Director (CLD)

.....

Respondent

Date of Hearing

11-02-10

ORDER

Present:

For the Appellant:

Mr. Mehdi Raza Khan
(General Manager, Finance)

For the Respondent department:

Mr. Abid Hussain
Director

Mr. Aqeel A. Zeeshan
Deputy Director

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1. This order will dispose of appeal No. 37 of 2005 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 04-08-05 (the "Impugned Order") passed by the Respondent.
2. In terms of the provisions of section 245 of the Companies Ordinance, 1984 (the "Ordinance"), Tandlianwala Sugar Mills Limited (the "Company") was required to prepare and transmit its quarterly accounts for the first quarter ending 31-12-04 by 31-01-05 to the members of the Company and the Commission. The Company filed the accounts with the Commission on 12-03-05 i.e after a delay of one month and twelve days.
3. Show cause notice dated 06-04-05 ("SCN") was issued to the Appellants for failure to submit quarterly accounts within the stipulated time. The Appellants were provided opportunity of hearing on 14-07-05, wherein, it was contended by the Appellants' representative that the quarterly accounts for the first quarter ending 31-12-04 could not be prepared and filed with the Commission within the prescribed time as the Company was not in a position to hold its Annual General Meeting ("AGM") for the year ended 30-9-04 for which it was also granted an extension of thirty (30) days by the Commission. The Respondent not satisfied with the response of the Appellants passed the Impugned Order and imposed a penalty of Rs. 20,000 on each Appellant under section 245(3) of the Ordinance read with section 476 of the Ordinance.
4. The Appellants have preferred appeal against the Impugned Order. It was argued by the Appellants' representative that the quarterly accounts could not be prepared within prescribed time as the Company was not in the position to hold its



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AGM for the year ended 30-09-04 for which it was also granted extension of thirty (30) days by the Commission. Delay in finalization of annual accounts for the aforesaid period resulted in delay in preparation and circulation of the quarterly accounts as the corresponding figures to be incorporated in the quarterly accounts were required to be taken from the aforesaid annual accounts. The Appellants requested that the penalty be reduced. Reference in this matter was made to order dated 08-08-05 in the matter of Redco Textile Mills Limited wherein a fine of Rs 10,000 only was imposed on the Chief Executive despite continuous defaults in filing of quarterly accounts.

5. The Respondent department 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 which is a separate mandatory requirement under section 245 of the Ordinance. It was further stated that the AGM of the Company was held on 28-02-05, for which the annual accounts were required to be circulated to the shareholders twenty one (21) days before the AGM, i.e. latest by 07-02-05. The Appellants submitted the quarterly accounts on 12-3-05 despite the fact that the annual accounts were available since first week of February 2005. As regards the penalty imposed in the matter of Redco Textile Mills Limited, it was argued that directors of Redco Textile Mills Limited were penalized a sum of Rs. 850,000 for all defaults. It was further argued that the Company had delayed submission of annual, half yearly and quarterly accounts previously on numerous occasions; however, the Commission condoned the delay and finally took the action of imposing penalties on the directors in order to ensure timely compliance in future.
6. We have heard the parties. Section 245(1) (a) of the Ordinance is reproduced for ease of reference:



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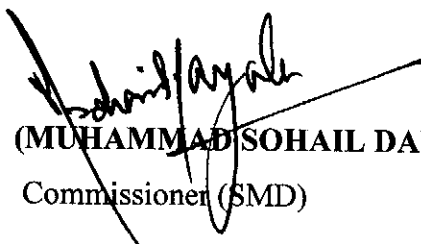
245. *[Quarterly] accounts of listed companies.- (1) Every listed company shall—*


- (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 not willing to accept that the delay should be condoned due to the delay in finalization of annual accounts. We have gone through the past history of delays in submission of annual, half yearly and quarterly accounts of the Company and it has transpired that the delay in filing the accounts was condoned on thirteen (13) separate instances. The Company habitually delayed submission of accounts and failure to improve the compliance resulted in imposition of penalty.

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