



BEFORE
RE-CONSTITUTED APPELLATE BENCH NO. II

In the matter of

Appeals No. 29, 30, 31, 32, 33, 34 of 2005 and
48, 49, 68, 72, 79 and 80 of 2006

1. Arshad Wadud Khan
2. Khalid Wadud Khan
3. Zamir-ud-din Sabri
4. Dr. Safdar Ali Butt
5. Sajid Mumtaz Khan
6. Bashir Ahmed

All Directors of Islamic Investment Bank Ltd

.....Appellants

Versus

1. Executive Director (NBFC Department) SEC
2. Director (NBFC)

.....Respondents

Present:

1. Appellants for themselves
2. Shoaib A. Qureshi, Director NBFC, and Imran Hussein Minhas for the Respondents



ORDER

1. This order will collectively dispose off appeals No. 29, 30, 31, 32, 33, 34 of 2005, and appeals No. 48, 49, 68, 72, 79 and 80 of 2006 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by the following directors of Islamic Investment Bank Limited (the “Company”).

- (i) Arshad Wadud Khan
- (ii) Khalid Wadud Khan
- (iii) Zamir-ud-din Sabri
- (iv) Dr. Safdar Ali Butt
- (v) Sajid Mumtaz Khan
- (vi) Bashir Ahmed

2. The appeals were filed against two orders passed by the NBFC Department. The first order dated 03-07-2005 was passed by Executive Director (NBFC) under Section 245(3) read with Section 476 of the Companies Ordinance 1984 (the “Ordinance”) for failure to prepare and furnish the quarterly accounts for the first, second and third quarters ended 31-03-2004, 30-06-2004 and 30-09-2004 respectively. After providing an opportunity of hearing and not being satisfied by the contentions raised before him, the Executive Director (NBFC) imposed a penalty of Rs.100,000/- on each of the above 6 directors and the chief executive officer for every instance of violation. A penalty of Rs.300,000/- was thus imposed on each of the appellants.

3. The second order dated 03-06-2005 was passed by Director (NBFC) under section 158(1) of the Ordinance for not holding the Company’s Annual General Meeting (AGM) for the year ended 31-12-2003. The Director (NBFC) imposed a penalty of Rs.20,000/- on each of the above 6 directors (appellants) and the chief executive officer.

4. None of these appeals were filed within the limitation period prescribed under section 33 of the SECP Act, 1997 and the appellants have therefore filed applications for condonation of delay in filing the appeals. All the appellants have taken the identical



argument that the show cause notices were issued by the Commission at the official address of the Company and these were never communicated to them by the management of the Company. They stated that they only found out about the impugned orders passed by the Commission after the limitation period to file the appeals had elapsed.

5. Although, the service of the show cause notices and the impugned orders on the Company address constitutes valid service under the law, we are inclined to condone the delay so that the matter may be heard and disposed of on merits rather than on technical grounds. The delay is therefore condoned.

6. The main argument taken by all the board members is that they were not part of the management and therefore not responsible for the default committed by the Company. Dr. Safdar Butt in particular pleaded that he was a nominee director and was asked to sit on the board by the chief executive of the Company to benefit from his experience. Mr. Arshad Wadud Khan and Khalid Wadud Khan insisted that they raised the issue of non-compliance of the requirements of law with the management in the Board meetings. However, they could not produce any evidence to that effect as they insisted that these objections were not recorded in the final minutes of the Board meetings.

7. The appellants contended that AGM was scheduled to be held on time and the Board had given its approval. However, few days before the AGM, the management on its own and without consulting the Board, decided to postpone it. They did enquire from the management about not holding the AGM and filing the quarterly accounts, however they were told that it was due to non-finalization of the accounts and differences with the auditors on that issue. The appellants further argued that in 2004 the Commission had started a spate of actions against the management as well as the Company, including show causes under sections 282D and 282F for removal of the



Board of Directors. The management and Board were therefore too occupied with these issues and could not prepare the accounts and hold the AGM. They also contended that in 2005 the entire board was taken into custody by the National Accountability Bureau (NAB), however after investigation the appellants were set free and only the management including Nadeem Anwar, CEO and Javaid I. Qureshi have been kept in custody. They argued that this meant that they were not responsible for the mismanagement of the Company.

8. The appellants also argued that since the show cause notices on these issues were not served upon them, the orders were passed ex-parte and without affording them an opportunity of hearing. They stated that the management kept them in the dark about a lot of issues including these show cause notices. They further contended that maximum penalty has been imposed by the Executive Director under section 245 for not filing the quarterly accounts which was too harsh. They pleaded that the both penalties imposed under section 245 and section 158 may be set aside.

9. Mr. Shoaib Adnan Quershi, Director NBFC who appeared on behalf of the Department contended that the show cause notices were validly served upon the entire board of directors including the chief executive officer. He stated that Mr. Javaid I. Qureshi appeared in both the show cause notices on behalf of the entire Board and was duly authorized by the Board. He produced before us the Board resolution signed by 4 directors including Mr. Bashir Ahmed Chairman of the Board, Mr. Arshad Wadud Khan and Mr. Sajid Mumtaz Khan authorizing Mr. Javaid I. Qureshi in this regard. He argued that in view of this Board resolution, it was not proper for the appellants to argue that the show cause notices were not validly served or that the impugned orders were passed ex-parte and without providing them an opportunity of hearing.

10. The Director (NBFC) further contended that it was the overall responsibility of the Board to see that the accounts were prepared and the AGM held on time. They



should not be allowed to argue that they are not responsible for the contraventions committed and the entire responsibility lies with the management. He argued that the board members have not produced any evidence to the effect that they ever raised their concern with the management over the contraventions committed by the Company. He prayed that the impugned orders may be upheld and the appeals be dismissed.

11. We have heard the arguments presented by the appellants and the NBFC Department. The Department is correct to argue that the show cause notices were validly served on the appellants on the Company address. Mr. Javaid I. Qureshi was authorized by the Board to represent them before the Commission, which he did. The impugned orders were also sent by the Commission to the Company's address. In any case, the delay in filing the appeal has been condoned by us and they have been provided an opportunity of hearing before this forum.

12. As for the appellant's contention that the Board members are not responsible and only the management should be penalized for the contraventions committed by the Company, we find this argument untenable and self-serving. There were 7 directors on the Board of the Company including the CEO, and out of these 7 directors, 6 are pleading that they are not responsible for what was going on in the Company. This is totally unacceptable. The Directors have the overall responsibility of managing the company. And where the company is a listed entity and that too an NBFC, the fiduciary responsibility of the directors, be it the non-executive directors, nominee directors or minority directors, increases many fold. We accept that the extent of their responsibility may vary according to their position, however, the members of the board are overall responsible for the affairs of company and for the violations if any, which occur during their tenure. It is also quite odd in our opinion, for all the directors to argue that their concerns expressed in the board meetings were not being recorded in the minutes. If the Company was being run in such a manner, then it was incumbent upon the directors to either resign their posts or at least raise their concern with the regulatory authority.



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13. We also find no merit in the argument that since NAB has not charged them or set them free, they should be pardoned of all the contraventions committed during their tenure. The requirements of law under the Companies Ordinance, 1984 are separate and distinct from any other contravention they may, or, may not have committed. We also find the argument untenable that since the Commission had initiated numerous actions against the Company and its Board, they were therefore pre-occupied with these issues. Holding the AGM and finalizing the accounts of the Company are among the primary responsibilities of the Board.

14 For reasons stated above, we find no merit in the appeals. The impugned orders are upheld and the appeals are hereby dismissed.

(Razi-ur-Rahman Khan)
Chairman/Commissioner

(Rashid I. Malik)
Commissioner

Announced in Islamabad on 2nd February 2007