



BEFORE
RE-CONSTITUTED APPELLATE BENCH NO. III

In the matter of

Appeals No. 40 and 43 to 47 of 2005

1. Mr. Mohammad Arif,
2. Mr. Syed Haider Abbas,
3. Mr. Ashfaq Ahmed,
4. Mr. Ismail Mukkadam,
5. Mr. Mushtaq Ahmed and
6. Mr. Salman Ali

All Directors of Quality Steel Works Ltd

D-22, S.I.T.E. Mangopir Road,

Karachi.....Appellants

Versus

Executive Director (Company Law Division) SEC.....Respondent

Date of Impugned Order

August 17, 2005

Date of hearing of Appeal

February 7, 2006

Present:

Mansoor A. Sheikh, Advocate for the Appellants

Mr. Tariq Bakhtawar, Mr. Mubashir Saeed, Mr. Abdul Ghafoor Khan, and Mr. Shahzad Afzal Khan for the Respondent



ORDER

1. This order will collectively dispose off appeals No. 40 and 43 to 47 of 2005 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by the directors of Quality Steel Works Limited (the "Company"), namely, Mr. Mohammad Arif, Mr. Syed Haider Abbas, Mr. Ashfaq Ahmed, Mr. Ismail Mukkadam, Mr. Mushtaq Ahmed and Mr. Salman Ali. The appeal has been filed against the order dated 17-08-2005 ('Impugned Order') passed by Executive Director (Company Law Division).

2. Brief facts of the case are that the Executive Director (CLD) (the "Respondent") issued show cause notices dated 01-04-2005 and 02-06-2005, under Section 245(3) read with Section 476 of the Companies Ordinance 1984 (the "Ordinance") to the directors and chief executive officer of the Company, for failure to prepare and furnish the quarterly accounts for the second quarter ended 31-12-2004 and third quarter ended 31-03-2005. After providing an opportunity of hearing and not being satisfied by their contentions, the Executive Director (CLD) imposed a penalty of Rs.100,000/- on each of the 6 directors as well as the chief executive officer of the Company vide the Impugned Order.

3. The directors of the Company (the "Appellants") have filed this appeal before us against the Impugned Order. The appeal was heard on 07-02-2006 when Mr. Mansur A. Shiekh appeared before us on behalf of all the Appellants. Mr. Shiekh stated that the allegations leveled against the Appellants vide the show cause notices are denied on the following grounds.

- (i) That the Company is not operational and is closed. The officers of the Company including the General Manager (Accounts) left the services of the Company. The Chief Executive being ill is out of the country for more than a year and is therefore not managing the affairs of the Company.



- (ii) That under section 245(1)(a) of the Ordinance, the requirement to prepare and submit the quarterly accounts is on the Company and not the directors.
- (iii) That under section 245(3) of the Ordinance, only those directors who have knowingly by their acts or omissions caused the default can be penalized.
- (iv) That the Appellants being directors are not responsible for looking after the financial matters of the Company and therefore not responsible for filing the accounts.
- (v) That the circumstances surrounding the default were beyond the control of the directors.
- (vi) That the Company cannot be regarded as a listed Company as it is non-operational and non-functional and therefore not on the board of the Karachi Stock Exchange.

4. In addition to above, Mr. Mansur A. Shiekh contended that the Company should be given time to comply with the statutory requirements. In this regard, the names of the directors should be removed from the ECL so that the chief executive officer can come back from aboard and supervise the preparation of accounts of the company among other matters. He further stated that the Company has appointed the present auditors as its accountants so that the accounts can be prepared, and will be appointing new auditors in the meanwhile. He prayed that the Impugned Order passed by the Executive Director (CLD) may be set aside.

5. In their response to the contentions raised on behalf of the Appellants, Mr. Mubasher Saeed, Joint Director (CLD) appearing on behalf of Executive Director (CLD) stated that the Company and its management has committed a number of statutory violations in the past and have been penalized for these offences. These included, among others:



- (a) failure to prepare and file half yearly accounts for the years 2000, 2001 and 2002;
- (b) failure to prepare and file accounts for quarters ended on 31-12-2003, 31-03-2004 and 30-09-2004;
- (c) failure to hold AGM for the years 1999, 2000, 2001 and 2004; and
- (d) failure to hold the elections of directors due in August 1999;

6. Mr. Mubasher Saeed informed the Bench that a cumulative fine of Rs.3,102,500/- imposed by the Commission for various statutory defaults remains unpaid. He argued that the repeated violations by the Appellants and their failure to pay the fine imposed by the Commission prove that they have no respect for law and their actions are willful. He argued that the directors were responsible for the overall performance of the Company and it is against the established principles of law to argue that the directors are not responsible for looking after the financial matters of the Company and therefore not responsible for filing the accounts. He refuted the stand of the Appellants that the Company was not listed on the Karachi Stock Exchange anymore. He further informed the Bench that the Commission had appointed an inspector to investigate the affairs of the Company however due to lack of co-operation by the directors the report of the inspector could not be completed. He prayed that the appeal may be dismissed and the Impugned Order should be upheld.

7. We have heard the parties in detail. In our view the past record of the Company shows that its management is not in the habit of complying with statutory requirements. Such behavior is unacceptable from the management of a listed Company.

8. We find no force in any of the legal arguments presented by the counsel for the Appellants. It is an established principle of law that the overall management of the Company and responsibility for its affairs rests with the Board of Directors. The Executive Director (CLD) has therefore rightly penalized the chief executive and the



directors of the Company. In light of the repeated violations of law, it also cannot be argued that the directors are not knowingly responsible for the defaults. They are fully aware of the facts and the obligations placed on them by the law.

9. In light of the past record, the counsel's plea that the Company should be given more time to comply with the requirements also carries no force. There is no bar on the chief executive officer to come back from aboard and fulfill the requirements. Similarly, the absence of necessary staff for preparing the accounts cannot be made a ground for not complying with requirements of law. During the hearing we inquired from the counsel as to why the Company has not considered voluntary winding up keeping in view the circumstances surrounding it. We were told that a winding up petition filed by one of the shareholders of the Company is pending with the court. We further inquired about the shareholding of the Company. We were told that 51% of the shares are held by a private company namely Marketing Enterprises (Pvt) Ltd. However, the counsel had no information about who owned the above private company. The Department was also unable to provide the latest details as the Company had not prepared and filed its accounts since 2001. However, the accounts for 2001 show that a considerable number of shares of the Company are held by individuals, who may be private investors. It is obvious from the above facts that the affairs of the Company are in dire straits. In these circumstances, we find no reason to interfere with the findings of the Executive Director (CLD) in the Impugned Order. This appeal is therefore dismissed.

(Razi-ur-Rahman Khan)
Chairman/Commissioner

(Salman A. Shaikh)
Commissioner

Announced in Islamabad on April 4, 2006