

Appellate Bench Orders

Before Appellate Bench No.3

October 23, 2002

Before Appellate Bench No. 3

In the Matter of

Revision No. 57 of 2002

1. Islamic Investment Bank Limited
21 College Road, Markaz
Shalimar – 7
Islamabad
2. M. Nadeem Anwar
President & CEO
Islamic Investment Bank Limited
21 College Road, Markaz
Shalimar – 7
Islamabad
3. Mr. Bashir Ahmed
Director
Islamic Investment Bank Limited
21 College Road, Markaz
Shalimar – 7
Islamabad
4. Mr. Arshad Wadud Khan
Director
Islamic Investment Bank Limited
21 College Road, Markaz
Shalimar – 7
Islamabad
5. Mr. Zameer-ud-din Sabiri
Director
Islamic Investment Bank Limited
21 College Road, Markaz
Shalimar – 7
Islamabad
6. Mr. Khalid Wadud Khan
Director
Islamic Investment Bank Limited
21 College Road, Markaz
Shalimar – 7
Islamabad

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Appellant

7. Mr. Mirza Khurshid Baig
Director
Islamic Investment Bank Limited
21 College Road, Markaz
Shalimar – 7
Islamabad
8. Mr. Abdul Wadud Khan
Director
Islamic Investment Bank Limited
21 College Road, Markaz
Shalimar – 7
Islamabad
9. Dr. Safdar Ali Butt
Director
Islamic Investment Bank Limited
21 College Road, Markaz
Shalimar – 7
Islamabad
10. Mr. Sajid Mumtaz Khan
Director
Islamic Investment Bank Limited
21 College Road, Markaz
Shalimar – 7
Islamabad

Executive Director (E & M) SEC	Versus	Respondent
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Date of Impugned Order

August 06,
2002

Date of Hearing of appeal

October 18,
2002

Present:

For the Appellant:

1. Mr. Javaid Qureshi
2. Mr. Tariq Khokhar, Advocate Supreme Court
3. Mr. Muhammad Aslam Arian, Advocate High Court

For the Respondent

1. Mr. Atta Muhammad Khan, Director SEC
2. Mr. Mubasher Saeed, Joint Director SEC

Order

This matter arises before us from a revision filed under section 484 of the Companies Ordinance, 1984 (the "Ordinance") by the Appellants against the order dated August 06, 2002 (the "Impugned Order") made by the Executive Director (Enforcement & Monitoring). Brief facts leading to this appeal are as follows:

(1) A show cause notice dated March 07, 2002 was issued to Appellant No.1 (the "Company"), its directors and chief executive calling upon them to show cause as to why penalties under Clause (a) of Sub-section (4) of Section 158 and Sub-section (3) of Section 245 read with Section 476 of the Ordinance may not be imposed and prosecution proceedings may not be initiated under Sub-section (6) of Section 233 read with Sub-section (7) of Section 230 of the Ordinance for,

(a) not holding the Annual General Meeting for the calendar year 2000

(b) not filling the annual accounts for the year ended December 31, 2000 before June 30, 2001 and

(c) not preparing and submitting the half-yearly accounts for the period ended June 30, 2001 within the time prescribed by law.

(2) The aforesaid Show Cause Notice was responded through letter dated March 11, 2002 on which a hearing was fixed by Respondent to give an opportunity of personal hearing to the Appellants. The Chief Executive of the Company Mr. Nadeem Anwar appeared on behalf of the Appellants and contended that the delay in approving the annual accounts was due to pending approval of Ministry for financial restructuring of the Company. It was also stated that half yearly accounts for the period ended June 30, 2001 could not be submitted due to late holding of AGM on February 28, 2002 in which accounts for the year ended December 31, 2000 were approved.

(3) The Respondent not being convinced by the explanations afford to him held that the Chief Executive and directors of the Company committed the defaults knowingly and willfully and imposed a fine of Rs.20,000/- on the Company and its Chief Executive for default in complying with the provisions of Sub-section (1) of Section 158 of the Ordinance. However, no penalty was imposed by the Respondent on the other directors of the Company for the above default. For the default under Sub-section (1) of Section 245 of the Ordinance the Respondent imposed a fine of Rs.10,000/- on each of the directors including Chief Executive of the Company.

(4) Aggrieved by the Impugned Order, the Appellants have preferred this revision before this Bench. The case was fixed for hearing on October 17, 2002 and the parties appeared and argued the case.

(5) Mr. Tariq Khokhar appearing on behalf of the Appellants has taken the plea at the outset that a revision application filed under section 484 of the Ordinance cannot be heard by two Commissioners of the Bench. His contention was that the revision application ought to be heard by one Commissioner. Further that Appellants application for grant of extension in time for holding the AGM had been decided and turned down by the Respondent. The Respondent then could not have acted impartially while hearing the case against the Appellants for not holding the AGM in time. He insisted that the Respondent while passing the Impugned Order had pre-judged his case.

(6) Mr. Khokhar further argued that as the Respondent has in the Impugned Order found the Company and the Chief Executive of the Company to be "mainly responsible" for the default, therefore all other directors should stand absolved and that although the Respondent in the Impugned Order has held that the default by the Appellants was committed "willfully and deliberately", no finding has been given by the Respondent on Appellant's willfulness in the Impugned Order. He stated that the Respondent never held an inquiry regarding the willfulness of default of the Appellants therefore he could not legally have given a ruling on the willfulness of the Appellants.

(7) Mr. Khokhar further submitted that the Appellants had applied to the Commission for a grant of 90 days extension in June 2001 for holding the AGM. However, after waiting for a period of approximately 2 months, the Appellant's request was turned down by the Respondent. He submitted that the Appellants were even penalized for the delay of 2 months on part of the Respondent in deciding the matter. Explaining the reasons for not holding the AGM in time, Mr. Khokhar further submitted that the Company had applied to the Hon'ble High Court of Peshawar for a merger with Islamic Modarba. He stated that due to the merger proceedings, the Company could not prepare the annual accounts. His contention was that during the pendency of the merger proceedings before the High Court "everything freezes" and the Company was accordingly not able to function normally. He further asserted that the AGM had been held by the Company and the issue has now become only academic.

(8) Mr. Atta Muhammad Khan, appearing on behalf of Enforcement & Monitoring Division of the Commission at the outset challenged the maintainability of the revision application filed by the Appellants. His contention was that the Impugned Order has been passed by the Respondent under section 476 of the Ordinance and an appeal or revision against such an order lies under section 477 and not section 484 of the Ordinance as has been filed by the Appellants. He asserted that the revision application filed by the Appellants was therefore not maintainable. He further submitted that under section 115 of CPC, the scope of a revision application is limited to illegalities and irregularities concerning jurisdiction of the lower court /tribunal. He asserted that the Respondent had the jurisdiction to decide the matter and it was decided without committing any illegality or irregularity. He further asserted that the contention of the Appellants that the AGM could not be held because of the merger proceedings is not valid as it is incorrect to state that High Court had custody of all books and documents belonging to the Company

(9) We have heard both the parties at length and also examined the relevant provisions of the Ordinance and the material placed before us. It is noted at the outset that the revision application has been filed by the Appellants under sub-section (2) of section 484 of the Ordinance. Sub-section (2) of section 484 stipulates;

(2) "The Authority may on an application being made to it within sixty days from the date of any order passed by it otherwise than in revision under sub-section (1), or if its own motion, review such order; and the Authority's order in review shall be final."

It is clear from the plain reading of the above sub-section that sub-section (2) of section 484 deals with review of the order passed by the Commission and not revision as has been filed by the Appellants. Revision of an order is dealt with by

sub-section (1) of section 484. However, as the Appellants insisted during the hearing that they intended to file a revision application against the Impugned Order and not a review application, this can be considered as a typo mistake and the Appellants can be excused for referring to a wrong sub- section.

(10) Provisions relating to revision of an order are contained in sub-section (1) of section 484 and provide as under: -

“(1) Any order, other than an order under section 476, passed or made under this Ordinance by the registrar or officer or by an officer subordinate to the Authority or exercising powers of the Authority, not being an order of the Court, shall be subject to revision by the Authority upon application being made by any aggrieved person or the registrar within sixty days from the date of such order; and the Authority’s order in revision shall be final.”
(Emphasis added)

It is obvious from sub-section (1) of section 484 reproduced above that revision provisions contained therein cannot be invoked in case of an order under section 476. Therefore, we agree with the Respondent that the Appellants should have moved a revision application under section 477 and their application under section 484 is misplaced and should normally be dismissed.

(11) Notwithstanding the position stated in paragraph 10 above, we have gone into the merits of the matter and observed an inconsistency in the two orders of the Respondent i.e. one passed under section 158 (4) and the other passed under section 245 (3). In the order under section 158 (4), the directors (other than Chief Executive) have been absolved of the consequences of the default while in the order under section 245 (3) penalty has been imposed on these directors. There is no doubt that the responsibility for ensuring timely preparation and circulation of both annual and half yearly accounts rests on the directors under different provisions of the Ordinance. It is also acceptable that the Chief Executive who manages the matters on behalf of and under authorization of the Board of Directors is the prime person responsible for not observing a particular requirement and cannot plead unwilling and unknowing disregards. This being so it is difficult to understand as to why in case of default under Section 158 (4) other directors should be absolved and in another case i.e. section 245 (3) they should be held responsible, particularly in the absence of an order which speaks on this point.

(12) Considering the merits of the case as discussed in paragraph 11 above, we decide the case as under: -

- a) the revision application filed before us under section 484 of the Ordinance is converted to revision application under section 477;
- b) the argument of the Appellant with regard to prejudged mind of the Respondent could not be substantiated before us and is hereby rejected.
- c) The reasons like pending restructuring proposal with Ministry of Finance and the merger proceedings before the court do not constitute factors disabling the Company and his Chief Executive in complying with the provisions of section 158 (4) and accordingly the penalty imposed upon the Company and its Chief Executive for default under section 158 is maintained,

d) the penalty against the directors other than Chief Executive of the Company for default under section 245 (3) is remitted.

(13) In the end we take up the issue raised by the Appellants that a revision application filed under section 484 of the Ordinance cannot be heard by two Commissioners of the Bench and ought to be heard by a single Commissioner. As we have already held that the revision application was incorrectly filed by the Appellants under section 484 of the Ordinance and should have been filed under section 477, this objection no longer remains valid. However, we may for information sake refer to SRO-72 (I)/2001 whereby the Commission has delegated its power of revision under section 484 of the Ordinance and all other laws being administered by the Commission, to the Commissioners comprising the Appellate Benches.

The case is disposed of in the terms mentioned above.

(M. ZAFAR-UL-HAQ HIJAZI)

Commissioner
(Company Law)

(Etrat H. Rizvi)

Commissioner
(Insurance)

Islamabad

Announced : October 23, 2002