



BEFORE
RECONSTITUTED APPELLATE BENCH NO. III

In the matter of

Appeals No. 30, 54 & 55 of 2003

Brig (Retd.) N. Humayune
Chief Executive,
MacDonald Layton & Company Ltd,
Office 34 -C, West Wharf Road,
Karachi..... Appellant

Versus

Executive Director (EMD) SEC.....Respondent

Date of Impugned Orders June 27, 2003

Date of Hearing April 09, 2004

Present:

For the Appellant

1. Brig. (Retd) N. Humayune
2. Ali Raza Rizvi



ORDER

Brig. (Retd) N. Humayune ("Appellant") has filed 3 appeals No. 30, 54 & 55 of 2003 under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against three (3) orders, all dated June 27, 2003 passed by Executive Director (Enforcement & Monitoring). As the cases are interlinked, we intend to dispose them off through this single order.

1. The Appellant had initially filed an appeal in August 2003 before the Appellate Bench Registry. However, as the Appellant failed to remove the deficiencies identified to them despite repeated reminders, the said appeal was not registered under Rule 8 (4) of the Securities & Exchange Commission of Pakistan (Appellate Bench Procedure) Rules 2003 ("Rules") by the Registry and returned in October 13, 2003. The Appellant thereafter removed the said deficiencies and filed an appeal under Rules 8(5) of the Rules for registration of the appeal, which was accepted by the Appellate Bench and the appeal was fixed for hearing on December 22, 2003. However no one appeared before the Bench on the fixed date of hearing. The Bench therefore, dismissed the appeals for non-prosecution. The Appellant thereafter approached the Appellate Bench with a request for restoration of the appeals, which was accepted by the Bench. The Appellant further requested that the hearing be held in Karachi as he could not travel to Islamabad due to financial constraints. This request was also accepted by the Bench and the Appeals were finally heard on 09-04-2004 at Karachi, when the Appellant appeared before the Bench.

Appeal No.30 of 2003

2. Appeal No.30 of 2003 has been filed by the Appellant against an order of the Executive Director (EMD) dated 27-06-2004. MacDonald Layton & Company Ltd. ("Company") of which the Appellant is the chief executive, failed to hold its



Annual General Meeting for the calendar year ended June 2002 by 31-12-2002. The Executive Director (EMD) after giving the management of the Company an opportunity of hearing, imposed a penalty of Rs.20,000/- on the Appellant under section 158 of the Companies Ordinance, 1984 ("Ordinance"). Not being satisfied with this order, the Appellant has filed appeal No.30 of 2003 before the Appellate Bench.

Appeal No.54 of 2003

3. Appeal No.54 of 2003 has been filed by the Appellant against an order of the Executive Director (EMD) dated 27-06-2004. The Company was required under section 246 of the Ordinance read with SRO No.764(I)/2001 dated 05-11-2001 to prepare and transmit its quarterly accounts for the period ended 30-06-2002 & 30-09-2002 by 31-07-2002 & 31-10-2002 respectively, to its shareholders, stock exchanges, registrar and the Commission. However, the Company failed to do the same. After giving an opportunity of hearing to the management of the Company, the Executive Director (EMD) imposed a penalty of Rs.20,000/- on the Appellant. Not being satisfied with this order, the Appellant has filed appeal No.54 of 2003 before the Appellate Bench.

Appeal No. 55 of 2003

4. Appeal No.55 of 2003 has been filed by the Appellant against an order of the Executive Director (EMD) dated 27-06-2004. The Company was required under sub-section (1) of section 245 of the Ordinance to prepare and transmit its second quarter accounts for the period ended 31-12-2002 by 28-02-2003 to its shareholders, stock exchanges, registrar and the Commission. However, the Company failed to do the same. After giving an opportunity of hearing to the management of the Company, the Executive Director (EMD) imposed a penalty



of Rs.25,000/- under section 245 on the Appellant. Not being satisfied with this order, the Appellant has filed appeal No.55 of 2003 before the Appellate Bench.

5. On the date of hearing held on 09-04-2004, the Appellant dilated upon the financial problems faced by the Company. He stated that the Company assets representing its credit line were being illegally held by Muslim Commercial Bank Ltd. and Habib Bank Ltd against false claims for the last 17 years. He informed the Bench that the banks had filed numerous cases against the Company in different courts of the country. In addition, the Company had initiated cases in the Hon'ble Sindh High Court against the Government of Iraq for contractual defaults and cancellation of some contracts. He argued that due these reasons, the Company has been out of business. He stated that the Company has been without any staff for the last 6 years and the present management has not been paid any salaries during this time. He stated that the Company was waiting for the outcome of the court cases, which if decided in the Company's favor would revive its fortunes.
6. He argued that the financial constraints were the real reason behind the defaults and there was no willful intention on part of the management to commit the statutory defaults. He stressed that unless it could be proven that the Appellant had willfully and deliberately failed to comply with the provisions of the Ordinance, he could not be penalized. In all his appeals, the Appellant has made numerous prayers, most of which are irrelevant and extraneous to the issue at hand and also outside the jurisdiction of the Bench. During the hearing, the Appellant also pleaded that a general dispensation should be granted to the Company from the performance of its legal and corporate functions under law as the Company's future would be decided one or the other within this year. In addition, the Appellant has prayed for the cancellation/revocation of the orders of the Executive Director (EMD).



7. We have heard the Appellant and also perused the documents submitted by him. In his pleadings before us, the Appellant has not denied that mandatory provisions of law have been violated by the management of the Company. Instead he has based his entire argument on the fact that the violations were committed due to financial problems of the Company and consequently, these violations cannot be termed as willful and deliberate. As much as one may sympathize with the Appellant, it is a hard fact that mandatory statutory provisions have been violated by the Company and the management. And in our view, financial constraints cannot be allowed to become an excuse for violating the law. The Appellant's contention that his default is not willful cannot be accepted. The Company and its management including the Appellant are very much aware of their responsibility under the law. Being a listed company, these responsibilities take an added meaning and consequence. In any case, the Executive Director (EMD) has already taken a lenient view because of the financial position of the Company, and not penalized all the directors. In addition he has only imposed a token penalty on the Appellant. The Appellants contention before us that this penalty cannot be paid due financial problems of the Company is misconceived. The penalties imposed by the Executive Director are not on the Company, but on the Appellant in his individual capacity as the chief executive, and therefore have to be borne by the Appellant and not the shareholders of the Company. We therefore find no reason to interfere with the orders of the Executive Director (EMD). As for the other reliefs sought by the Appellant, they are not within the jurisdictional ambit of the Appellate Bench.

Appeals No. 30, 54 and 55 are disposed off accordingly.

(SHAHID GHAFFAR)
Commissioner

(ETRAT H. RIZVI)
Commissioner

Announced in Islamabad on April ____, 2004