



BEFORE RECONSTITUTED APPELLATE BENCH

In the matter of

Appeal No. 41 of 2003

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| 1. Mansur Khalid Baghpatee
Director
Delta Insurance Co. Ltd
D-2, ST/8-B, KDA Scheme No.1
Karachi | 4. SM Mohsin Baghpatee
Director
Delta Insurance Co. Ltd |
| 2. Masood Tariq Baghpatee
Chairman/CEO
Delta Insurance Co. Ltd | 5. SM Shafi Baghpatee
Director
Delta Insurance Co. Ltd |
| 3. SM Nadeem Baghpatee
Director
Delta Insurance Co. Ltd | 6. Syed Nasir Iqbal
Director
Delta Insurance Co. Ltd |
| | 7. Muhammad Shahid
Director
Delta Insurance Co. Ltd |

.....Appellants

Versus

Commissioner (EMD) SEC.....Respondent

Date of Impugned Order June 25, 2003

Date of Hearing April 14, 2004

Present:

Asad Iqbal Siddiqui, Advocate for the Appellants



ORDER

Through this order we intend to dispose off appeal No. 41 of 2003 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by the management of Delta Insurance Co. Ltd (the “Company”) against the order dated June 25, 2003 (“Impugned Order”) passed by Commissioner (Enforcement & Monitoring).

1. The facts leading to this appeal are that the Company had purportedly failed to publish proper notice for the AGM for the year ended 31-12-2000 and prepare and transmit annual accounts for the same year. The Company also failed to prepare and submit half yearly accounts for the period ended 30-06-2001 and June 30, 2002 and quarterly accounts for the periods ended 31-12-2001, 31-03-2002 and 30-09-2002. Three notices dated 13-09-2001 and two notices dated 07-01-2003 were issued to the Company, chief executive and the directors calling upon them to show cause in writing as to why penalty under Section (4) of Section 158 read with Sub-section (2) of Section 246, Sub-section (7) of Section 233 read with Sub-section (2) of Section 246 and Sub-section (3) of Section 245 may not be imposed upon them. An opportunity of hearing was provided by the Commissioner to the Company and its directors including chief executive, however no one appeared on the fixed date of hearing. The Commissioner vide his order dated 25-06-2003 imposed the following penalties:

Name	Section 158 read with Section 246	Section 233 read with Section 246	Section 245		Section 246		Total
	31.12.00	31.12.00	30.06.01	30.06.02	31.03.02	30.09.02	
	Rupees						
Mr. Masood Tariq Baghpati, Chief Executive	5,000	5,000	20,000	20,000	5,000	5,000	60,000
Mr. S. M. Nadeem, Director	5,000	5,000	20,000	20,000	5,000	5,000	60,000



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Mr. S. M. Mohsin, Director	5,000	5,000	20,000	20,000	5,000	5,000	60,000
Mr. Muhammad Shahid, Director	5,000	5,000	20,000	20,000	5,000	5,000	60,000
Mr. Mansoor Khalid Baghpati, Director	5,000	5,000	20,000	20,000	5,000	5,000	60,000
Mr. S. M. Shafi Baghpati, Director	5,000	5,000	20,000	20,000	5,000	5,000	60,000
Syed Nasir Iqbal, Director	5,000	5,000	20,000	20,000	5,000	5,000	60,000
Mr. Abdul Majeed, Director				20,000	5,000	5,000	30,000
Total	35,000	35,000	140,000	160,000	40,000	40,000	450,000

2. Not being satisfied with the Impugned Order, the Appellants have filed this appeal No.41 of 2003 before the Appellate Bench. The appeal was fixed for 14-04-2004 when Mr. Asad Iqbal Siddiqui, Advocate appeared before the Bench on behalf of the Appellants.
3. Mr. Siddiqui contended that the Impugned Order was an ex-parte order and had been passed without giving the Appellants an opportunity to plead their case. He stated that the Appellants had requested the Commissioner that the hearing be conducted at Karachi as the Company and the Appellants could not afford to travel to Islamabad. He argued that the right place for the hearing to be held was Karachi as the cause of action had arisen in Karachi. In addition, the main office of the Company was in Karachi and the Appellants were also the residents of Karachi. He referred to S.20 of the Code of Civil Procedure, 1908. In support of his contention he referred to a number of judgments of the superior courts.
4. He further contended that the Appellant's inability to travel to Islamabad was taken as their unwillingness by the Commissioner and a harsh order was passed by him. He stated that the request by the Appellants for a hearing at Karachi was due to genuine reasons as the Company was facing a financial crunch. He stated



that ever since then the Company had been wound up by the Hon'ble High Court. He argued that the Impugned Order reflected a bias view of the Commissioner. He referred to Para 4 of the Impugned Order where the Commissioner had held that, *'It appears that the directors of the Company have no respect to relevant provisions of the Ordinance and a lenient view taken in past while adjudicating similar default for the half year 1999 has not given good results. The directors of the Company instead of becoming compliant to the provisions of law, appears to have taken present proceedings more lightly and have even preferred to stay away from the proceedings demanding that hearing should be fixed in Karachi.'*

5. Mr. Siddiqui further argued that in absence of the Appellants, the Impugned Order was passed by the Commissioner on the basis of assumptions and presumptions and without making proper effort to verify the pleas raised by the Appellants in their replies to the show cause notices. He contended that no default has ever been committed in preparation of the accounts for the year ended 31-12-2000. He submitted that these were prepared and transmitted within the extended period. He further contended that the Appellants had properly complied with the requirement of sub-section 3 of section 158 and notice for the AGM for year ended 31-12-2000 was published in newspapers in compliance with Circular (2) of 2001. He produced before us copies of the notice published in two different newspapers.
6. He stated that the half yearly accounts for the years ended 30-06-2001 and 30-06-2002 were prepared and submitted by the Company with a delay of only few days, which was not intentional nor based on malafide intention. He contended that this delay was due to circumstances which were beyond the control of the management. With regard to the accounts for quarters ended 31-12-2001, 31-03-2002 and 30-09-2002, Mr. Siddiqui contended that these were prepared and transmitted within the extended period and therefore there was no violation of the provisions of the Companies Ordinance, 1984. He prayed that in light of all



these facts, the penalties imposed by Commissioner on the Appellants be set aside.

7. We have heard the counsel for the Appellants and also perused the documents on record. The counsel's argument with regard to the place of cause of action and his reliance on Code of Civil Procedure is misconceived for the simple reason that CPC does not apply to the proceedings before the Appellate Bench. In any case, the proceedings before the Commission or any of its officers are quite dissimilar to the ones before the courts of the country. The Commission has not established any permanent tribunals or courts which are situated in Karachi or any other city for that matter. It is the discretion of the Commission or the adjudicating officer to decide whether to hear the parties at the Commission's headquarter or any other regional office. The parties therefore cannot demand a hearing at a particular place as a matter of right. Consequently, the counsel's argument that the Appellants were not provided with an opportunity of hearing is untenable. They were given an opportunity of hearing on which they failed to appear and therefore an ex-parte order was passed against them. The Appellant's argument that the Impugned Order was biased as the Commissioner took a strict view is also not supported by any evidence and is therefore invalid.

8. With regard to the penalty imposed for violation of section 158 read with Circular No. 2 of 1999, Circular No. 4 of 1999 and Circular No. 2 of 2001, Para 2 of the Impugned Order makes a reference to the requirements laid down in section 158 read with the above Circulars and states that the Company failed to comply with these requirements. These requirement which have been referred include:
 - (a) publication of notice of AGM in the newspapers;
 - (b) publication in the newspapers having circulation in the province, in which the stock exchange on which shares of the company are listed;



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- (c) copies of the newspapers are required to be transmitted to the Commission at least twenty one days before the date of AGM;
- (d) the notice of AGM is required to be published in the morning newspapers; and
- (e) the notice of AGM is required to be faxed to the Commission on the same date on which it is sent to the members.

However, it is not clear from the Impugned Order as to which of these legal requirements provided in the above Circulars has been violated by the Company and the Appellants. This issue could not be clarified as no one appeared on behalf of the Respondent. The notice for the AGM for year ended 31-12-2000 was indeed published in two newspapers. The counsel for the Appellant produced before us copies of the published notice. Considering the fact that the Impugned Order entails penal provisions of the Ordinance and imposes a fine on the Appellants, it was necessary in our opinion to specify the exact violation committed by the Appellants and then impose a penalty after considering the merits. In light of these facts, we set aside the penalty imposed in the Impugned Order on the Appellants for violation section 158 read with Circular No. 2 of 1999, Circular No. 4 of 1999 and Circular No. 2 of 2001.

9. With regard to the Company's failure to prepare and transmit annual accounts for the year ended 31-12-2000, the counsel produced before us the covering letter dated 24-05-2001 addressed to the Executive Director submitted along with 5 annual reports for year ended 31-12-2000. In light of any evidence to the contrary, we accept the Appellant's plea and set aside the penalty imposed by the Commissioner under section 233 of the Ordinance on all the Appellants.
10. With regards to default under section 246 of the Ordinance read with SRO No.764 (1)/2001 dated 05-11-2001 for not preparing and transmitting the accounts for quarters ended 31-03-2002 and 30-09-2002, the counsel' contention



that the said accounts were prepared and submitted within the extended period is not correct. He has not produced any evidence to that effect. Besides the record shows that although, the Company had applied to the Commission for an extension of one month, however no extension was granted to the Company. In addition, as recorded in the Impugned Order, the Company failed to prepare and submit the accounts even till the date of passing of the Impugned Order. The counsel failed to repel this finding before us. In light of these circumstances and the past record, we believe that the counsel's contention that the default was not willful is without merits. The penalty imposed by the Commissioner under section 246 is therefore upheld.

11. With regards to default under section 245 of the Ordinance for not preparing and transmitting the half yearly accounts for period ended 30-06-2001 and 30-06-2002, the Appellants have taken a contradictory position. On one hand they have contended that the said accounts were prepared and submitted as per the requirements of law, while on the other hand they admit there was a delay in preparing and filing the accounts. It is clear from the record that there was a violation of law and the accounts were not submitted within the time prescribed. The Appellant's contention that this delay was beyond their control is not acceptable as they have not provided any evidence to this effect. Besides, the record shows that the management has been in violation of the provisions of the Ordinance in the past. However having said that, considering the fact that the delay in preparing and submitting the half yearly accounts was not significant and that the Company has been wound up ever since, we reduce the penalty imposed by the Commissioner for the said default for the period ended 30-06-2001 and 30-06-2002 from Rs.20,000/- to Rs.5,000/- on each of the Appellants.
12. The Appellants are directed to deposit the following fines in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan within fifteen days from the receipt of this order.



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Name	Section 245		Section 246		Total
	30.06.01	30.06.02	31.03.02	30.09.02	
Mr. Masood Tariq Baghpati, Chief Executive	5,000	5,000	5,000	5,000	20,000
Mr. S. M. Nadeem, Director	5,000	5,000	5,000	5,000	20,000
Mr. S. M. Mohsin, Director	5,000	5,000	5,000	5,000	20,000
Mr. Muhammad Shahid, Director	5,000	5,000	5,000	5,000	20,000
Mr. Mansoor Khalid Baghpati, Director	5,000	5,000	5,000	5,000	20,000
Mr. S. M. Shafi Baghpati, Director	5,000	5,000	5,000	5,000	20,000
Syed Nasir Iqbal, Director	5,000	5,000	5,000	5,000	20,000

This appeal is disposed off accordingly.

(SHAHID GHAFFAR)
Commissioner

(ETRAT H. RIZVI)
Commissioner

Announced in Islamabad on May _____, 2004