



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

BEFORE APPELLATE BENCH NO. II

In the matter of
Appeal No. 65 and 66 of 2006

Haroon Shiekh
Muhammad Zaheeruddin
M. Sualeh Farooqi
All Directors of Dominion Stock Funds Limited

406, 4th Floor, Trade Centre
I.I Chundrigar Road
Karachi.....

Appellant

Versus

Director (NBFC Department)
Securities and Exchange Commission of Pakistan
NIC Building Jinnah Avenue, Islamabad.....

Respondent 1

Executive Director (NBFC Department)
Securities and Exchange Commission of Pakistan
NIC Building Jinnah Avenue, Islamabad.....

Respondent 2

Date of Hearing

June 9, 2009

ORDER

Present:

For the Appellant:

Shafiq Ahmed
Advocate

For the Respondents:

Rashid Paracha
Director (NBFC)

Syed Asad Haider
Joint Director (NBFC)

Vinod Sitani
Joint Director (NBFC)



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1. This order will dispose of the appeals No. 65 and 66 of 2006 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by the Appellants against the order dated 29-8-2005 in appeal 65 of 2006 (the "First Impugned Order") passed by Mr. Umar Hayat Khan, Director NBFC (the "Respondent 1") and order dated 15-6-2005 in appeal 66 of 2006 (the "Second Impugned Order") passed by Mr. Rashid Sadiq, Executive Director NBFC (the "Respondent 2"); collectively referred to as (the "Impugned Orders").
2. Dominion Stock Funds limited, (the "Company") was required under section 158 (1) of the Companies Ordinance 1984 (the "Ordinance") to hold its Annual General Meetings (the "AGMs") for the years ending 30-6-2003 and 30-6-2004, within the stipulated periods ending 31-10-2003 and 31-10-2004 respectively. The Company failed to hold the AGMs within the stipulated time, which necessitated action against the directors in terms of section 158 (4) of the Ordinance. The Appellants were given an opportunity of hearing to explain why the AGMs were not held within the stipulated time, however, the Appellants failed to appear or provide any explanation for its failure to hold the AGMs. The Respondent 1 therefore passed the First Impugned Order ex-parte against the Appellants and imposed a fine of Rs.50,000/ on each director for not holding AGMs within time.
3. The Company was also required under clause (a) of section 245 (1) of the Ordinance to prepare and transmit to its members and the relevant Stock Exchanges, Registrar and the Commission its quarterly profit and loss accounts and balance sheet for the quarters ending 30-9-2003, 31-12-2003, 31-3-2004 and 30-9-2004, respectively. The Company failed to comply with aforesaid mandatory provision of the Ordinance. It necessitated action against the directors under section 245 (3) of the Ordinance. The Appellants were given an opportunity of hearing to explain why the quarterly accounts were not prepared



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and transmitted within the stipulated time. Respondent 2 not satisfied with the explanation passed the Second Impugned Order against the Appellants and imposed a fine of Rs.100,000/- on each director for each quarter in which the quarterly accounts were not submitted.

4. The Appellants have preferred to file the instant appeals against the Impugned Orders of Respondent 1 and Respondent 2 respectively on 27-7-2006, after a lapse of one year. The Appellant's counsel on the point of limitation argued that appeals could not be filed within the stipulated time as the majority shareholder and sponsoring director of Investec Securities (Pvt.) Ltd, ("ITSL") namely Mr. Noor A Qadir was arrested by National Accountability Bureau ("NAB") in December 2003 and was released in April 2006. It was contended that ITSL was the majority share holder and provided necessary funds for day to day functioning of the Company. The counsel contended that in absence of Mr. Noor A Qadir, the Company lacked the necessary finances to engage counsel and file the appeals and it was only after his release that funds became available for filing the appeals.
5. In response to the arguments of the Appellants counsel, the department representative Mr. Asad Haider stated that both the appeals are time barred. Appeal 65 of 2006 by over a year and appeal 66 of 2006 by 11 months and are liable to be dismissed. The departmental representative relied on 1999 SCMR 1326, 2008 SCMR 54 and 2009 YLR 580 in support of his contention. The arrest of Noor A Qadir cannot be made ground for non-filing of the appeals with in 30 days as prescribed in section 33 (1) of the SECP Act 1997. Noor A Qadir was neither the chief executive nor the director of the Company. The Company is an independent entity and is required to act through its board of directors, and not on the advice of any person claiming to be the majority shareholder and sponsoring director.
6. We have heard the parties. The judgments cited by the departmental representative at 1999 SCMR 1326, relies on the maxim; Law would help vigilant



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and not the indolent, whereas the case law cited at 2008 SCMR 54 has held that where there are no cogent reasons, the application for condonation should not be acceded to. The contention of the Appellants that since Noor A Qadir was arrested therefore the appeal could not be filed is not tenable. Noor A Qadir was not aggrieved from the Impugned Order as penalty was not imposed on him. We are also not willing to accept that the delay should be condoned due to the non availability of funds with the company for filing the appeal. The penalties were imposed on the directors in their personal capacity as such they were required to pay the penalties from their own resources and not from the coffers of the Company. The plea that company bank account was frozen and therefore the finances were not available to file the appeal is without merit as the Appellants were required to bear the expenses of filing the appeal from their own resources. No grounds for condonation have been made out and as such the appeal is liable to be dismissed on the point of limitation without going into the merits of the case.

7. We have been persuaded in the interest of justice to look into the penalties imposed on some of the directors, who we are informed had resigned in the year 2004 before the end of the financial year. On perusal of the resignations attached with both the appeals and one provided by the Appellant's counsel during the hearing and find that Mr. Muhammad Sualeh Farooqi resigned in May 2004 before the close of financial year and therefore fine for not holding the AGM for the year 2004 should not have been imposed on him. Mr. Masoud A Naqvi resigned in April 2004 before the close of financial year and therefore fine for not holding the AGM for the year 2004 should not have been imposed on him. The resignation letter of Muhammad Zaheeruddin dated 01-06-09 was provided to the Bench during the hearing, keeping in view the date of resignation, it will have no bearing on the fines imposed on him in the year 2003 and 2004.

In view of the above, the First Impugned Order is modified to the extent that directors, namely Mr. Saleh Farooqi and Mr. Masoud A Naqvi are not required to



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pay the fine for failure to hold AGM in the year 2004. The Second Impugned Order is upheld. Appellants and other Directors are hereby directed to pay the fine accordingly within 15 days, failing which appropriate proceedings may be initiated by the department for recovery of the fine.

(MUHAMMAD SOHAIL DAYALA)

Commissioner (SMD)

(S. TARIQ. A HUSAIN)

Commissioner (LD)

Announced on: 20-7-09