

Appellate Bench Orders

Before Appellate Bench No.3

October 24, 2002

Before Appellate Bench No. 3

In the Matter of

Appeal No. 53 of 2002

1. Mr. Mazhar-ul-Haq
Siddiqui
Chief Executive,
M/s Prudential Discount &
Guarantee House Ltd.
2. M/s Prudential Discount &
Guarantee House Ltd
Prudential House, P.O box
643, Hasan Ali Street,
Off, I.I Chundrigar Road,
Karachi.

.....

Appellant

Versus

1. Executive Director (E &M) SEC

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Respondent

Date of Impugned Order

July 10, 2002

Date of Hearing of appeal

October 18, 2002

Present:

For the Appellant

1. Mr. Asad Iqbal Siddiqui, Advocate
2. Mr. Mazhar-ul-Haq Siddiqui

For the Respondent

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

Order

This matter arises before us from two identical appeals filed under Section 33 of the Securities & Exchange Commission of Pakistan, Act 1997 by the Appellants against the orders dated July 10, 2002 (the "Impugned Orders") made by the Executive Director (*Enforcement & Monitoring*). Brief facts leading to the appeals are as follows:

2. Two separate show cause notices dated June 5, 2002 & June 7, 2002 were served on the Appellants who are Chief Executive/Directors of M/s Prudential Discount & Guarantee House Limited ("the Company") by the Respondent calling upon them to show cause as to why penalties under Clause (a) of Sub-section (4) of Section 158 & Clause (b) of Sub-section (1) of Section 245 of the Companies Ordinance, 1984 ("the Ordinance") may not be imposed for non-holding of annual general meeting of the company for the year ended June 30, 2001 latest by December 31, 2001 and transmission of half-yearly accounts for the period ended December 31, 2001 within the prescribed time limit.
3. The said notices were responded by appellants through letter dated June 20, 2002 informing that they have not been able to hold annual general meeting timely and transmit its half-yearly accounts due to non-cooperation of their auditors i.e. M/s Ford Rhodes Robson Morrow, Chartered Accountants (the Auditors). They also referred a letter where the auditors had demanded advance fee for completion of their audit. The Appellants submitted that the Auditors demanded the fee in advance, which was paid in advance by the Appellant No. 2 accordingly. The Appellants further argued that the Auditors despite the payment gave up the audit assignment without giving any cogent reasons on February 27, 2002. He further submits that this was for the first time that they could not hold annual general meeting in time due to their external auditors' attitude. In the reply, he confirmed before the Respondent that the accounts would be finalized soon and the meeting held accordingly.
4. Being not satisfied with the contentions and considering the default as willful and deliberate, the Executive Director imposed a penalty of Rs. 20, 000/ each on the Company & its directors including the Chief Executive for non-holding of annual general meeting & Rs. 25, 000/ on the directors including the Chief Executive for violation of non-transmission of half-yearly accounts.
5. The appellants being aggrieved by the Impugned Orders have preferred the instant appeals before this Appellant Bench.
6. Mr. Asad Iqbal Siddiqui, Advocate appearing on behalf of the Appellants has argued in length the whole issue and submitted almost the same arguments. He was of the view that default of his clients was not willful & deliberate as it was due to the non-cooperative attitude of their auditors which constraint them to hold meeting in time. He further submitted that half-yearly accounts couldn't be prepared before finalization of annual accounts as the two matters related with each other. He submitted that the company in fact applied to the Commission for extension in holding annual general meeting on November 30, 2001 and had also paid the

prescribed fee, but unfortunately the same was not responded by the Commission till date.

7. Mr. Mazhar-ul-Haq Siddiqui produced a copy of order of Accountability Court, Karachi and also submitted that at the relevant time of holding annual general meeting he along with all statutory record of the company remained under the custody of National Accountability Bureau (NAB). He further submitted that most of the directors had resigned and the Chairman of bank had already been declared as absconder. He further submitted that the company had then appointed Rao & Co., Chartered Accountants and has already held its annual general meeting for the year ended June 30, 2001 on August 31, 2002.

8. Mr. Atta Muhammad Khan, Director along with Mr. Mubasher Saeed, Joint Director appearing on behalf of the Respondent contended that the plea of the Appellants that the annual general meeting was not held due to non-cooperation of auditors should not be entertained as the company has been violating mandatory provisions of law in this regard in past also. He pointed out that the company in fact handed over the draft accounts to its auditors on January 25, 2002 whereas its annual general meeting was due on December 31, 2001 by latest. He was also of the view that holding of annual general meeting & submission of annual accounts are two separate requirements of law and cannot be intermixed as it was the duty of directors to hold meeting in time at all costs. On the question of not responding to the company's application for extension, he submitted that the letter of the company was duly replied through Commission letter dated January 7, 2002 wherein, the company was asked to provide a certificate from its auditors, which was not provided by the company.

9. The Appellants have resorted to three arguments to support their inability to hold AGM and to transmit half-yearly accounts. Firstly, the non-cooperative attitude of the Auditors despite advance payment of fee. Secondly, the records of the company and the Chief Executive himself were in the custody of NAB and thirdly, the SECP did not respond to their request for giving extension in holding the Annual General Meeting.

10. We have heard both the parties at length and examined the relevant provisions of the Ordinance and the material placed before us and have arrived at the conclusion that the arguments put forth by the Appellants remained factually deficient in terms of their own correspondence with the Auditors and the SECP. A review of the letters from the company addressed to the Auditors bring the following facts before us: -

i) The draft accounts for the financial year ended 30.6.2001 and the relevant schedules were given to the Auditors under covering letter dated January 25, 2002. To be able to hold the board meeting and subsequently Annual General Meeting within the time prescribed under law, the audit of these account should have been completed latest by the first week of December, 2001.

We are, therefore, of the view that the company failed in preparing its draft accounts and schedules in time.

ii) The payment of advance audit fee as maintained by the Appellant and for which they referred to their letter dated 24.11.2001 addressed to the Auditors.

We have reviewed the letter and find that the said payment related to the outstanding bills of the previous period and not advance payment. The fault, therefore, lies with the company for handing over the draft accounts and the relevant schedules much after the required date of holding the Annual General Meeting.

iii) As to the custody of the records of the company and the Chief Executive, there is a letter dated January 16, 2002 on the record addressed by the company to the Auditors with the following remarks *"as inquired by you, we would like to inform you that there is no formal investigation being carried out by NAB against the company."* The same letter further says that the audit fee will be paid in the first week of the commencement of your audit. We have also reviewed the order of Accountability Court dated January 5, 2002 and found nothing regarding seizure or release of books of accounts of company rather it exhibits that he was personally taken into custody by NAB and then released. The arguments of appellants to this regard are not accepted.

iv) As regards to the failure of SECP to respond to the letter for extension in holding the AGM and the contention of the Appellants that the same remained un-responded till the date of hearing, the Respondent has produced a letter from the Appellants dated May 31, 2002 giving a reference to the Respondents' letter No. SC/MF-JD (MS)/33/2002 dated January 7, 2002. This letter suggests that the Appellants were informed in writing about the deficiency in their request for extension. The Respondent's letter clearly provides that application for extension in time period for holding an AGM could not be considered until the receipt of certificate from their Auditors.

11. In the circumstances, since the Respondent has already taken a lenient view and not imposed penalty for continued default, we do not find any merit to interfere in the impugned order and accordingly uphold order of Respondent (Executive Director) dated July 10, 2002.

(M. ZAFAR-UL-HAQ HIJAZI)
Commissioner (Company Law)

(Etrat H. Rizvi)
Commissioner (Insurance)

Islamabad
Announced : October 24, 2002