



BEFORE APPELLATE BENCH NO.II

In the matter of

Appeal No. 29 of 2004

1. Muhammad Younus
Chief Executive

4. Wasia Hussain
Director

2. Haji Abdul Ghani
Director

5. Osama Bin Shoaib
Director

3. Mehmood Javed Parwaz
Director

6. Syed Hammad Raza Zaidi
Director

of Prudential Stock Fund Limited
ONB-B9/G, Block-B,
2nd Floor, Mehersons Estate
Talpur Road, Karachi

Appellants

Versus

Commissioner (Specialized Companies Division) SEC.....Respondent

Date of Hearing

October 05, 2004

Present:

Mr. M Farooq Akhtar, Advocate for the Appellants

Mr. Umar Hayat Khan, Director
& Ms. Farah Qamar, Joint Director for the Respondent



ORDER

1. This appeal No. 29 of 2004 has been filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by the directors and chief executive of Prudential Stock Fund Limited ('Company') against an order dated 23-08-2004 passed by Commissioner (Specialized Companies Division).

2. Brief facts of the case are that the term of the appellants as directors of the Company ended on 30-12-2003 and they were required to take immediate steps to hold election for new directors of the Company. The directors failed to hold the election and instead informed the Additional Registrar Company Registration Office, Karachi vide letter dated 15-12-2003 that the election would not be held for a couple of months due to the impediment of non-availability of the appellant directors. The election of director was not held even after lapse of the two month period given by the directors themselves. Vide a letter dated 31-05-2004, the appellant directors again pleaded that there was an impediment in holding election as there were some dispute regarding the ownership of about 24% of issued capital of the Company and that Benami Certificate holders should be allowed to vote in the election. The Commission rejected these alleged impediments vide its letter dated 22-06-2004 and directed the appellant to hold the election within one month. The appellants again failed to hold the election within the time given by the Commission and pleaded yet another impediment by saying that the election would affect the proposed merger proceedings of the Company. Consequently, the Commission issued a direction dated 30-07-2004 under section 472 of the Companies Ordinance, 1984 ('Ordinance') to the Company and the directors to hold the election by 30-08-2004. Meanwhile, the Commissioner issued a notice dated 10-08-2004 to the appellants under section 186 read with sections 177 and 476 of the Ordinance to show cause as to why fine may not be imposed upon them and why they may not be barred from becoming directors. After giving the appellants an opportunity



of being heard, the Commissioner imposed a fine of Rs.5,000/- on each of the appellants vide the impugned order. Not being satisfied with the findings of the Commissioner, the appellants have preferred this appeal before the Appellate Bench.

3. Mr. Farooq Akhtar, Advocate appeared on behalf of all the appellants on the date of hearing on 05-10-2004. He pleaded that the Ordinance merely provides for the term of the directors and does not provide that the election of directors must be held exactly after three years of preceding election. He contended that the elections can be delayed if the circumstances so warrant as sanctioned by the second proviso to section 177 of the Ordinance. He further argued that the Ordinance does not provide for punishment for delay in holding the election of directors and the mere requirement is to report the impediments in holding the election to the Registrar. He pleaded that there were genuine impediments in holding the elections which were duly reported to the Registrar and the Commission within the time prescribed. He argued that in any case there was no malafide intention on part of the appellants in not holding the election. He stated that the shareholders of the Company had passed a unanimous resolution supporting the management's decision of delaying the elections. He stated that the fine had been imposed upon the appellants when they had already complied with the directions of the Commission given under section 472 of the Ordinance. He informed the Bench that the election of the directors had already been held on 01-09-2004. He prayed that fine imposed upon the appellants in the impugned order may be set aside.

4. Mr. Umar Hayat Khan and Ms. Farah Qamar appearing on behalf of the Commissioner stated that the appellants had committed violation of section 177 by not taking immediate steps to hold the election of directors. They stated that the directors had been given enough time for holding the election, and time and again they failed to do so, on basis of untenable reasons. They argued that the reasons given by the directors for not holding the elections did not amount to impediments as provided in the second Proviso to section 177. They informed the Bench that whereas the directors had previously raised the issue of dispute regarding the ownership of some 24% shares



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as an impediment and stated that these shares could not be transferred due to an order of NAB, these very shares were transferred before the election was held on 01-09-2004. This, they claimed proved the fact that the impediment raised by the directors in order to postpone the election was not genuine.

5. We have heard both the parties and examined the documents. In our opinion, the directors of the company have been rightfully penalized for delaying the election for nine months. Section 180 clearly lays down the term of office of the directors, which had expired on 30-12-2003. According to section 177 read with section 180, the appellant directors should have retired on that date and taken immediate steps to hold the election for new directors, which they failed to do. It is our opinion that willful absence of the directors from the country at the time of election of new directors does not constitute a valid impediment under section 177. It is the duty of the incumbent directors to make themselves available so that the election for new directors may be held without delay. Additionally, the appellant directors failed to hold the election even in the extended time of two months claimed by them in their letter to the Registrar. The impediments raised by the directors one after the other were clearly excuses for holding on to the office of directorship. In our opinion, the Commissioner has already taken a lenient view by imposing a penalty of Rs.5,000/- on the directors. We therefore find no reason to interfere in the order passed by the Commissioner. The appeal is consequently dismissed.

(ABDUL REHMAN QUERSHI)
Commissioner

(SHAHID GHAFAR)
Commissioner

Announced in Islamabad on October ____, 2004