



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

BEFORE APPELLATE BENCH NO. II

In the matter of
Appeal No. 76 and 77 of 2006

Muhammad Zaheeruddin Appellant No. 1
Muhammad Sualeh Farooqi Appellant No. 2
Mr. Haroon Shiekh Appellant No. 3
Directors of Investec Mutual Funds Limited
406, 4th Floor, Trade Centre
I.I Chundrigar Road
Karachi Appellants

Versus

Director (NBFC Department)
Securities and Exchange Commission of Pakistan
NIC Building Jinnah Avenue, Islamabad. Respondent No. 1
Commissioner (NBFC Department)
Securities and Exchange Commission of Pakistan
NIC Building Jinnah Avenue, Islamabad. Respondent No. 2

Date of Hearing 23-11-09

ORDER

Present:

For the Appellants:

Mr. Shafiq Ahmed
Advocate

For the Respondent department:

Mr. Asad Haider
Joint Director



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1. This order will dispose of appeals No. 76 and 77 of 2006 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 (the "SECP Act") by the Appellants against the order dated 09-03-05 (the "First Impugned Order") passed by Respondent No. 1, in appeal No. 76 of 2006, and order dated 02-08-04 (the "Second Impugned Order") passed by Respondent No. 2, in appeal No. 77 of 2006; collectively referred to as (the "Impugned Orders").
2. M/s Investec Mutual Fund Limited (the "Company") was required under section 158 (1) of the Companies Ordinance, 1984 (the "Ordinance") to hold its Annual General Meeting ("AGM") for the year ended 30-06-04 by the period ending 31-10-04. The Company failed to hold the AGM within the stipulated time, which necessitated action against the directors in terms of section 158 (4) of the Ordinance. Appellant No. 1 and 3 were given an opportunity of hearing to explain as to why the AGM was not held within time. The counsel for Appellant No. 1 and 3 stated that the office of the Company remained closed for some time on account of resignation of secretarial staff, therefore, accounts could not be prepared in time causing delay in holding of AGM. Respondent No. 1 dissatisfied with the response of the Company passed the First Impugned Order against Appellant No. 1 and 3 and imposed a fine of Rs.20,000/ each for not holding AGM within stipulated 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 second quarter ending 31-12-03 within the period of two (2) months of the close of quarter i.e. latest by 29-02-04. The Company failed to comply with aforesaid mandatory provision of the Ordinance necessitating action against the directors under section 245 (3) of the Ordinance. The Appellants were given an opportunity of hearing to explain as to why the



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quarterly accounts were not prepared and transmitted within time. The directors of the Company appeared in person and stated that the quarterly accounts could not be filed as the auditors of the Company resigned and appointment of new auditor could not be made. Respondent No.2 dissatisfied with the explanation passed the Second Impugned Order imposing a fine of Rs.10,000/- each on Syed Maoud A Naqvi, Mr. Mubarak Lakhani and on the Appellants.

4. The Appellants have preferred to file the instant appeals on 25-09-06 against the Impugned Orders. Before proceeding on the merits of the case, the Appellant's counsel was asked by the Appellate Bench (the "Bench") to explain the reasons for filing the appeals beyond the limitation period. 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") Mr. Noor A Qadir, was arrested by National Accountability Bureau ("NAB") on December 2003 and was released on April 2006. ITSL was the majority shareholder and provided necessary funds for day to day functioning of the Company. In absence of Mr. Noor A Qadir, the Company lacked the necessary finances to engage a counsel and file the appeals.
5. In response to the arguments of the Appellant's counsel, the department representative stated that both the appeals are time barred. Appeal No.76 of 2006 by more than one and half (1-1/2) year and appeal No. 77 of 2006 by more than two (2) years 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 Mr. Noor A Qadir cannot be made ground for non-filing of the appeals within thirty days as prescribed in section 33 (1) of the SECP Act. Mr. 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.




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6. We have heard the parties at length. The judgments cited by the departmental representative, cited at 1999 SCMR 1326, relies on the maxim; law would help vigilant 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 the appeal could not be filed as Mr. Noor A. Qadir was arrested is not tenable. Mr. Noor A Qadir was not aggrieved from the Impugned Order as penalty was not imposed on him. We are 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 plea that Company bank account was frozen and therefore the finances were not available to file the appeal is without merit. 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. 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.

In view of the above, we do not find any grounds to interfere with the Impugned Orders. The appeals are dismissed with no order as to cost. Appellants and other Directors are hereby directed to pay the fine within fifteen (15) days, failing which appropriate proceedings may be initiated by the department for recovery of the fine.


(MUHAMMAD SOHAIL DAYALA)
Commissioner (SMD)


(S. TARIQ. ASAF HUSAIN)
Commissioner (LD)

Announced on 23-12-09