



BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 50 of 2003

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|---------------------------------------|-----------------------------------|
| 1. Mr. Abdul Majeed, Chief Executive, | 2. Kashif -ur- Rehman, Director, |
| 3. Mr. Abdul Sattar, Director, | 4. Haji Abdul Ghani, Director, |
| 5. Mr. Zia -ur -Rehman, Director, | 6. Mr. Sabur-ur-Rehman, Director, |
| 7. Mr. Abdul Waheed, Director, | 8. Miss Tasneem Habib, Director |

of Progressive Insurance Company Ltd.
Suit No. 2, 2nd Floor, SASI Arcade,
Block -7, Clifton, Main Road, Karachi.....Appellants

Versus

Commissioner (EMD) SEC.....Respondent

Date of Impugned Order

August 06, 2003

Date of Hearing

December 23, 2003

Present:

For the Appellants

Abdul Majeed, Chief Executive/
Authorized Representative

For the Respondent

1. Mr. Mubasher Saeed Saddozai, Joint Director (EMD)
2. Miss Khalida Parveen, Junior Executive (EMD)



ORDER

This order shall dispose off the appeal No. 50 of 2003 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by the Appellants against the order dated August 06, 2003 passed by Commissioner (Enforcement & Monitoring) under Sections 158 & 246 of the Companies Ordinance, 1984(the “Ordinance”).

2. Brief facts leading to this appeal are that Progressive Insurance Company Ltd. was required to hold its Annual General Meeting (the “AGM”) for the year ended December 31, 2000 on or before June 30, 2001. An extension up to July 31, 2001 was sought for holding of the aforesaid AGM, which was allowed by the Commission. Subsequently, the Company applied for further extension of two months, which was rejected. The company failed to hold the AGM even within extended period of time and held the said AGM with a delay of five months and twenty-one days on January 21, 2002. Besides, the Company also failed to prepare and transmit its quarterly accounts for the period ended March 31, 2002. After providing opportunity of hearing to the Company and its directors, the Commissioner (EMD) vide his order dated August 06, 2003 (the ‘Impugned Order’) imposed the following penalties for the aforesaid defaults on the Chief Executive and directors of the company:-

Name	SECTION 246	SECTION 158	TOTAL
	For quarter ended 31.03.02	For Year ended 31.12.00	
Mr. Abdul Majeed, Chief Executive	21,000	12,000	33,000
Mr. Kashif-ur-Rehman, Director	21,000	12,000	33,000
Mr. Abdul Sattar, Director	21,000	12,000	33,000
Haji Abdul Ghani, Director	21,000	12,000	33,000
Mr. Zia-ur-Rehman, Director	21,000	12,000	33,000
Mr. Saboor-ur-Rehman, Director	21,000	12,000	33,000
Mr. Abdul Waheed, Director	21,000	12,000	33,000
Ms. Tasneem Habib, Director	21,000	12,000	33,000



3. Not being satisfied with the Impugned Order, the above named appellants filed an appeal under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 before the Appellate Bench. The case was fixed for hearing on December 23, 2003 before the Bench.

4. Mr. Abdul Majeed, Chief Executive of the Company appeared on behalf of all the appellants and pleaded the case. He took the plea that they took over the management of the Company from Prudential group in June 2001 i.e. almost six months after close of accounting year and a technical default had already occurred on the part of the previous management. He further said that soon after the take over, the National Accountability Bureau (NAB) initiated an inquiry into the affairs of the Prudential group and this Company being previously part of the Prudential group was also included by the NAB for the aforesaid inquiry. Therefore, the new management of the Company remained busy for quite sometime in attending the NAB queries. Further, the new management could not obtain the relevant record of the Company from Ex-management, as the NAB Authorities seized all the record. He further argued that the record of Share & Corporate Services (Pvt.) Limited, which were providing services as Share Registrar to the Company was also sealed by the NAB and resultantly shareholders list was not available at that time. In these circumstances it became almost impossible for the new management to hold AGM and publish quarterly accounts. He further informed that still there is restriction on the transfer of shares of the company by the NAB authorities. He prayed that considering the peculiar circumstances faced by the company the fine imposed by the Commissioner may be condoned.

5. Mr. Mubashir Saeed, Joint Director (Law) appeared on behalf of the Respondent and argued that there was nothing on the record of the Commission that NAB authorities seized the record of Progressive Insurance Company Ltd. Further, occasional call from the NAB could not be construed to prevent the management from performing the usual affairs of the Company. He urged that the Appellants were supposed to make serious efforts to ensure the compliance of the relevant provisions of



law however, they could not submit any documents/arguments, which evidenced that they had made earnest efforts to avoid this default. He further contended that as per record of the Commission the new management took over the company on the June 02, 2001. The Company was also allowed an extension of one (1) month therefore, the management had enough time for holding of AGM. He further contended that the extension applied for holding of AGM for the year ended December 31, 2000 was only for two months whereas the AGM was held with a delay of five months and twenty-one days. He also contended that the management of the Company had shown its complete disregard to the mandatory provisions of law in the subsequent periods therefore, default on their part cannot be viewed as unintentional.

6. We have taken into consideration the facts of the case and the arguments advanced by both parties. We have also perused the documents including Form 29 filed by the new management of the Company before the CRO Karachi. The plea of the Appellants that they had taken over the management of the Company in June 2001 when the technical default under section 158 for not holding the AGM for the year ended December 31, 2000 had already occurred, carries weight. The default had occurred on part of the old management of the Company and not the new one. In light of these circumstances, it may be unfair to penalize the new management. The penalty imposed by Commissioner (EMD) under section 158 of the Companies Ordinance, 1984 is therefore set aside. However, as far as the default under section 246 for not transmitting quarterly accounts for the period ended March 31, 2002 is concerned, the new management cannot take the similar plea as they had ample time to prepare and submit the accounts. The Appellants' contention that default was not committed willfully or intentionally does not appear to be cogent. Also the post default record of the Company is not convincing. However, keeping in view the Appellants' assurance to be compliant in future, we take a lenient view and reduce the penalties. The fine imposed by the Commissioner (EMD) under section 246 calculated @ of Rs.100/- per day for a period of 210 days is hereby reduced to Rs.50/- per day for the said period of



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NIC Building, Jinnah Avenue, Blue Area, Islamabad

210 days. The Appellants are required to deposit the following fine in the designated bank accounts of the Commission within 30 days from the date of receipt of the Order.

Name	Section 246
	For quarter ended 31.03.02
Mr. Abdul Majeed, Chief Executive	10,500
Mr. Kashif-ur-Rehman, Director	10,500
Mr. Abdul Sattar, Director	10,500
Haji Abdul Ghani, Director	10,500
Mr. Zia-ur-Rehman, Director	10,500
Mr. Saboor-ur-Rehman, Director	10,500
Mr. Abdul Waheed, Director	10,500
Ms. Tasneem Habib, Director	10,500

Appeal disposed off accordingly.

(SHAHID GHAFAR)
Commissioner
(Securities Market)

(ETRAT H. RIZVI)
Commissioner
(Specialized Companies)

Announced in Islamabad on March 22, 2004