



BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 25 of 2003

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| 1. Quice Food Industries Limited
Suit No.B-6, Rahat Jo Dero,
Tariq Road, PECHS, Block-2
Karachi | 5. Mr. Muhammad Fahim
Director
Quice Food Industries Limited |
| 2. Mr. Muhammad Afaq Shamsi
CEO
Quice Food Industries Limited | 6. Mr. Shahid Darvish
Director
Quice Food Industries Limited |
| 3. Mr. Muhammad Ahmed
Director
Quice Food Industries Limited | 7. Mr. Muhammad Farooq
Director
Quice Food Industries Limited |
| 4. Mr. Akhtar Rasheed
Director
Quice Food Industries Limited | 8. Mr. Muhammad Asim
Director
Quice Food Industries Limited |

.....Appellants

Versus

Executive Director (EMD) SEC.....Respondent

Date of Impugned Order

June 28, 2002

Date of Hearing

October 22, 2003

Present:

For the Appellants

1. Mr. Muhammad Afaq Shamsi
2. Muhammad Asim



ORDER

Through this order we intend to dispose off appeal No. 25 of 2003 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by Quice Food Industries Limited (“Company”), its directors, chief executive and company secretary against the orders dated June 28, 2002 (“Impugned Order”) passed by Executive Director (Enforcement & Monitoring).

1. The Appellants had initially filed the appeal in August 2002 before the Appellate Bench Registry. However, as they failed to remove the deficiencies identified to them despite repeated reminders, the said appeal was not registered by the Registry and returned in March 2003. The Appellants then filed the instant appeal after a lapse of 4 months in July 2003, which were fixed for hearing on October 22, 2003 however no one appeared before the Bench on the said date. The appeal was accordingly dismissed for non-prosecution. The Appellants then filed application for restoration of appeal, which were accepted by the Bench. The appeal was consequently fixed for hearing on December 11, 2003 at Company Registration Office, Karachi when Mr. Muhammad Afaq Shamsi, CEO and Mr. Muhammad Asim, director appeared on behalf of all the appellants.

2. The facts of the appeals are that the Company failed to hold its AGM for the calendar year 2001 by 31 December 2001 as required by Section 158 of the Companies Ordinance, 1984 (“Ordinance”). It also failed to lay before its shareholders in AGM its annual accounts for the financial year ended June 30, 2001 as required by Section 233 and to submit half yearly accounts for the period ended December 31, 2000. After providing an opportunity of hearing to the Company and its directors including chief executive, the Executive Director (EMD) imposed the following penalties vide his order dated June 28, 2002.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

NIC Building, Jinnah Avenue, Blue Area, Islamabad

Sr. No.	NAME	AMOUNT OF FINE		
		U/S 158 Rupees	U/S 245 Rupees	TOTAL Rupees
1.	Quice Food Industries Limited	20,000	-	20,000
2.	Mr. Shahid Durvish	20,000	25,000	45,000
3.	Mr. Muhammad Afaq Shamsi	20,000	25,000	45,000
4.	Mr. Muhammad Farooq	20,000	25,000	45,000
5.	Mr. Muhammad Ahmed	20,000	25,000	45,000
6.	Mr. Muhammad Asim	20,000	25,000	45,000
7.	Mr. Akhtar Rasheed	20,000	25,000	45,000
8.	Mr. Muhammad Faheem	20,000	25,000	45,000
	TOTAL	160,000	175,000	335,000

3. Not being satisfied with the Impugned Order, all the above named have filed this appeal No.25 of 2002 before the Appellate Bench.

4. The Appellants have pleaded that the statutory defaults were committed due to numerous reasons, all of which were beyond the control of the Appellants. They blamed recession in the business due to which the unit at Hattar was almost closed down. Mr. Afaq Shamsi stated that one of the creditors of the Company had obtained an order from the Hon'ble Sindh High Court for the attachment of moveable and immoveable assets of the Company due to which the operations of the factory were suspended. Mr. Shamsi also stated that the Commission vide an advertisement which appeared in the daily newspapers on January 03, 2002 had provided all companies an opportunity to regularize their affairs and file any late statutory returns and documents within 90 days of January 01, 2002. He stated that the Company had consequently issued notices to its shareholders for holding its 10th AGM, however despite this relief provided by the Commission itself, the Executive Director (EMD) had imposed penalties upon the Appellants. The Appellants argued that the defaults committed by them were not committed knowingly and willfully and that they had not made any financial gain or caused any loss to the shareholders due to the non-compliance. They further stated that the Executive Director (EMD) had not taken into consideration their submissions made before him while passing the Impugned Order.



5. The Enforcement & Monitoring Department in their reply to the appeal have stated that the previous corporate behavior of the Company is unsatisfactory as it had failed to hold its AGM for the years 1998 and 1999 within the time limit prescribed in Section 158 of the Ordinance and penalties were imposed on the Company/ its Chief Executive for non-holding of AGMs. They argued that the Company has admitted that it failed to hold its AGM by the time provided in the Ordinance and therefore committed a default of sub-section (1) of Section 158.

6. They argued that even if the attachment order of the Hon'ble Sindh High Court caused the Company's financial decline and its operations were suspended, it is incorrect that the Company could not find means to regularize its corporate record during this alleged period of suspension. They referred to the case of K.M. Muneer, Chief Executive, Tobacco International Ltd., Karachi 1987 MLD 3039 where the chief executive's analogous plea that FIA had taken away company's books of accounts and other relevant record and therefore timely preparation of accounts and holding of AGM was impracticable, was dismissed on the grounds that the chief executive in these circumstances could have asked the FIA's permission to have photostat copies of accounts and other relevant record got made by his staff. In the case of the Company too the Chief Executive and Directors of the Company could have obtained the permission of the Sindh High Court to modify its order giving them access to Company's accounts/ records to enable the Company to carry out its statutory duties under the Ordinance during the period of suspension. They contended that there is no legal requirement in Section 158 that the Appellants directly or indirectly gain any financial profit or shareholders of the Company sustain any loss as a result of non-compliance with the mandatory requirement of holding AGM within the stipulated time.

7. We have considered the arguments of both the parties. The fact that the Appellants have committed a statutory default by not holding the AGM within the time prescribed cannot be denied. The Appellants' contention that the Impugned Order was contrary to the relief provided by the Commission through its scheme which appeared in the daily newspapers on January 03, 2002 is misconceived, as this scheme was for non-listed companies only and therefore did not apply to the Company, which is a listed company.



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We agree with the Enforcement & Monitoring Department that had the Appellants been serious in their efforts to fulfill their statutory requirements, they could have obtained permission from the Hon'ble Sindh High Court for allowing them to hold the AGM and prepare the accounts. As far as the contention of the Appellants that the default was not committed knowingly or willfully is concerned, the past record of the Company and the penalties imposed upon it and its management show that the Appellant were very much aware of the legal requirements. It is therefore wrong to argue that the defaults were not committed knowingly or willfully. Having said that however, we are inclined to take a lenient view keeping in view that the Appellants have given an assurance that they would comply with the statutory requirements in the future. Whereas the Commission strives for effective regulation and enforcement of best practices yet its aim is the protection of the investor through beneficial regulation and development of the corporate sector. We therefore reduce the penalties imposed by the Executive Director (EMD) as under.

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8.	Mr. Muhammad Faheem	20,000	5,000	25,000
	TOTAL	160,000	35,000	195,000

This appeal is disposed off accordingly.

(M. ZAFAR UL HAQ HIJAZI)
Commissioner (PSP)

(ETRAT H. RIZVI)
Commissioner (SCD)

Islamabad
Announced: December ____, 2003