



BEFORE APPELLATE BENCH NO. II

In the matter of

Appeal No. 30 of 2008

1. Mr. Altaf Hussain
2. Mr. Asif A Mufti
3. Mr. Adnan-ul-Karim
4. Mr. Nasarullah Korai
5. Mrs. Saeeda Hassan Ali Effendi
6. Mr. Neivell Mehta
7. Mr. Nisar Ahmed

Southern Networks Limited

5-Y, Block 6

PECHS, Karachi

..... APPELLANT

Versus

Executive Director (Enforcement)

Securities and Exchange Commission of Pakistan

NIC Building, Jinnah Avenue, Blue Area, Islamabad

..... RESPONDENT

ORDER

Date of Hearing

24-11-09

Present:

For the Appellants:

Mr. Nisar Ahmed

Mr. Abdul Hamad

Departmental representative:

Mr. Ali Azeem Ikram

Director (Enforcement)

Mr. Haris bin Tipu

Deputy Director (Enforcement)



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1. This order shall dispose of appeal No. 30 of 2008 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the order dated 19-12-2007 (the "Impugned Order") passed by the Respondent.
2. In terms of the provisions of section 245(1) of the Companies Ordinance, 1984, (the "Ordinance"), Southern Networks Limited (the "Company") was required to prepare and transmit its quarterly accounts for 2nd quarter ended 31-12-06 by 28-02-07 and 3rd quarter ended 31-03-07 by 30-04-07 respectively, to the shareholders, stock exchanges, Registrar and the Commission. The Company failed to submit the aforesaid accounts with the Commission within prescribed time and the quarterly accounts for the 2nd quarter were received on 31-07-07 i.e. with a delay of five (5) months and quarterly accounts for the 3rd quarter were received on 01-08-07 i.e. with a delay of three (3) months.
3. Show cause notice dated 18-07-07 ("SCN") was issued to the Appellants for failure to submit quarterly accounts with in the stipulated time. In response to the SCN, the Company Secretary on behalf of Appellants contended that the delay in finalization of quarterly accounts for the 2nd quarter ended 31-12-06 and 3rd quarter ended 31-03-07 was due to delay in finalization of annual accounts for the year ended 30-06-06 which were approved and adopted in the Annual General Meeting held on 25-05-07. It was further submitted that the annual accounts were delayed due to non availability of opening balances as on 01-07-06. The Chief Financial Officer & Company Secretary attended the hearing on behalf of the Appellants and repeated the arguments as furnished in the written reply to the SCN. The Respondent dissatisfied with the response to the SCN, issued the Impugned Order and imposed a penalty of Rs 5,000/-



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on each Appellant under section 245(3) of the Ordinance read with section 476 of the Ordinance, for each quarter default.

4. The Appellants have preferred the instant appeal against the Impugned Order. The Appellants' representatives admitted the default and contended that the default was consequence of delay in the finalization of annual accounts of the Company. It was further pointed out that the Sindh High Court, Karachi has issued a liquidation order against the Company in another legal matter; therefore, the instant appeal cannot proceed.
5. The departmental representatives argued that section 245(1) of the Ordinance requires the Company and its directors to transmit its quarterly accounts, which could have been submitted even if the annual accounts were delayed. It was further argued that mere appointment of a liquidator does not affect the immediate proceedings before the Commission unless the Appellant could show a restraining order of the Sindh High Court, Karachi in this matter.
6. We have heard the parties. Section 245(1)(a) of the Ordinance is reproduced for ease of reference:

245. Half-yearly accounts of listed companies:- (1) Every listed company shall:- (a) within two months of the close of the first half of its year of account, prepare and transmit to the members and the stock exchange in which the shares of the company are listed a profit and loss account for, and balance-sheet as at the end of half year, whether audited or otherwise;

Emphasis added

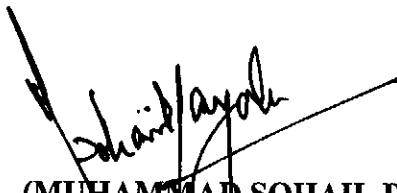
The above cited section clearly states that every listed company shall transmit its quarterly accounts, whether the same are audited or not. We are not




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willing to accept that the delay should be condoned due to the delay in finalization of annual accounts. The plea that the matter may not be heard and decided by the Appellate Bench as liquidator has been appointed by the Sindh High Court, Karachi is not tenable as the penalties were imposed on the Appellants and not on the Company and section 316 of the Ordinance does not bar proceedings against the Appellants who were acting as Chief Executive / director of the Company. The Appellants shall pay the penalties from their own resources and not from the coffers of the Company.

In view of the above, we do not find any grounds to interfere with the Impugned Order. The appeal is dismissed with no order as to cost.


(MUHAMMAD SOHAIL DAYALA)
Commissioner (SMD)


(S.TARIQ ASAF HUSAIN)
Commissioner (LD)

Announced on: 14-1-10