



BEFORE

RECONSTITUTED APPELLATE BENCH NO. III

In the matter of

Appeal No. 53 of 2003

1. Mr. Said Karim
Director
Syed Match Company Ltd.

4. Mrs. Shaheen Abid
Director
Syed Match Company Ltd.

2. Mr. Muhammad Rafiq
Director
Syed Match Company Ltd.

5. Mr. Khyber Khan
Director
Syed Match Company Ltd.

3. Mr. Niaz Muhammad
Director
Syed Match Company Ltd.

6. Mr. Muhammad Saleem
Director
Syed Match Company Ltd.

.....Appellants

Versus

Commissioner (Enforcement & Monitoring) SEC.....Respondent

Date of Impugned Order August 07, 2003

Date of Hearing of Appeal October 27, 2003

Present:

For the Appellant

1. Mr. Ijaz Akber, FCA
2. Mr. Saad Mahfooz

For the Respondent

1. Mr. Mubasher Saeed, JD (EMD)
2. Ms. Ayesha Shaikh, DD (EMD)



ORDER

This order will dispose off the present appeal No.53 of 2003 filed under sub-section (1) of section 33 of the Securities & Exchange Commission of Pakistan Act, 1997 ('Act') by the above mentioned directors of Syed Match Company Ltd. (the 'Appellants') against the Order dated August 07, 2003 (the 'Impugned Order') passed by Commissioner (Enforcement & Monitoring).

1. Brief facts leading to this appeal are that Syed Match Company Ltd. (the "Company") was required under section 246 of the Companies Ordinance, 1984 read with SRO 764(I)/2001 dated November 05, 2001 to prepare and transmit to its members and file with the Securities & Exchange Commission of Pakistan (the "Commission") quarterly accounts for the quarter ended June 30, 2002 on or before July 31, 2002 and for quarter ended September 30, 2002 on or before October 31, 2002. However the Company failed to do the same. Consequently, a show cause notice dated December 30, 2002 was issued to the Company, its chief executive and directors. Subsequently, the chief executive and the directors were given several opportunities of hearing however no one appeared on their behalf. Keeping in view the past record of defaults of the Company and the Appellants failure to attend the hearings, Commissioner (Enforcement & Monitoring) imposed a fine of Rs.5,450/- on each of the Appellants. The Appellants have now filed the present appeal against the order of Commissioner (Enforcement & Monitoring).

2. The case was fixed on October 27, 2003 when Mr. Ijaz Akber, FCA appeared on behalf of the Appellants. He contended that the Impugned Order was against the facts and circumstances of the case. He stated that the main reason for the default was that the Company underwent a change of management in May 2002. He claimed that the Company had remained sealed



on the orders of Senior Civil Judge, Haripur from April 2000 to May 2002 because of which the books of accounts could not be prepared. He also claimed that a fire had broken out in the factory due to which it remained closed for approximately 50 days. He asserted that the present management should not be made liable for the past record of the Company. He claimed that the new management was trying their best to revive the project and a lenient view should be taken towards them.

3. He argued that the penalty under sub-section (2) of section 246 of the Ordinance could only be imposed on those officers who were knowingly or willingly in default and that the Appellants had not committed the default knowingly or willfully. He further contended that no provision for adjudication was provided under section 246 of the Ordinance and that the Impugned Order has been passed under section 246 instead of section 476, which was wrong.

4. Mr. Mubasher Saeed and Ms. Ayesha Shaikh appearing on behalf of the Commissioner (Enforcement & Monitoring) stated that the previous record of the Company was unsatisfactory as it had failed to hold its AGM for the year 2000 and 2001 within the prescribed statutory time limit. They contended that the Appellants failed to comply with mandatory requirements of the Ordinance knowing fully well that the Company had been penalized in the past for non-preparation of half yearly accounts. This meant that the Appellants knowingly and willfully authorized or permitted the default.

5. Mr. Mubasher referred to the case of K.M. Muneer, Chief Executive, Tobacco International Ltd., Karachi 1987 MLD 3039 where the court held that the closure of factory did not prevent the management from having access to its books of accounts in order to comply with its statutory obligations to prepare its half yearly accounts. He stated that according to the Appellants own admission, the Company's factory was merely closed and operations suspended. This did



not prevent the management from having access to Company's books of accounts and deputing necessary professional staff for the said purpose. He asserted that section 246 of the Ordinance was to be read with section 476 and this had been mentioned in the show cause notice issued to the Appellants. In any case, he stated that the omission of section 476 from the order does not make the Impugned Order defective.

6. We have heard both the parties and considered their arguments. Although we recognize the facts stated by the representative regarding the closure of the factory and change of management, however we are of the view that none of these are sufficient reasons for not fulfilling statutory requirement. The sealing or closure of the factory does not prevent the Appellants from having access to the Company's books of accounts. In any case, the Appellants have not produced any solid evidence in support of this contention. We have also noted the case law 1987 MLD 3039 cited by Mr. Mubasher, which supports this proposition.

7. We also do not agree with the contention of the Appellants that the default was not committed knowingly or willfully. The argument presented by representatives of Commissioner (Enforcement & Monitoring) is potent that Appellants failed to comply with mandatory requirements of the Ordinance knowing fully well that the Company had been penalized in the past for non-preparation of half yearly accounts.

8. We also have no hesitation in agreeing with the contention that the Commission does have the authority to impose fine under sub-section (2) of section 246 read with section 476 of the Ordinance. There are numerous decisions of the superior courts that omission to quote a particular section or provision of law does not make the order defective as long as the power/authority to pass the order existed.



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In light of the submissions of the parties and the above findings we uphold the order of the Commissioner (Enforcement & Monitoring) dated August 07, 2003 wherein a lenient view has already been taken. This appeal is accordingly dismissed.

(ETRAT H. RIZVI)
Commissioner (Specialized Companies)

(SHAHID GHAFAR)
Commissioner (Securities Market)

Islamabad

Announced: October 31, 2003