



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

BEFORE

RE-CONSTITUTED APPELLATE BENCH NO. III

In the matter of

Revision No. 18 of 2005

1. Hala Enterprises Ltd
120 E/1, Gulberg-III
Lahore

2. Tahir Jahangir
Chief Executive Officer
Hala Enterprises Ltd
120 E/1, Gulberg-III
LahorePetitioners

Versus

Director (Enforcement), SECP.....Respondent

Date of Impugned Order

3 May 2005

Date of hearing of appeal

27 September 2005

Present:

Mr. Mushtaq Ahmad, Advocate for the Petitioners

Mubasher Saeed, Joint Director & Abdul Ghafoor Khan, Deputy Director for the Respondent



ORDER

This order will dispose off revision petition No.18 of 2005 filed under section 477 of the Companies Ordinance, 1984 by Hala Enterprises Ltd. and its chief executive officer, Mr. Tahir Jahangir.

2 Brief facts leading to this petition are that Hala Enterprises Ltd. ("Company") failed to hold its Annual General Meeting (AGM) for the year ended 30-06-2004 on or before 31-10-2004 as required under sub-section (1) of section 158 of the Companies Ordinance, 1984 ("Ordinance"). Section 158 of the Ordinance provides as follows.

" 158. Annual general meeting. -(1) Every company shall hold, in addition to any other meeting, a general meeting, as its annual general meeting, within eighteen months from the date of its incorporation and thereafter once at least in every calendar year within a period of four months following the close of its financial year and not more than fifteen months after the holding of its last preceding annual general meeting:

Provided that, in the case of a listed company, the Commission, and, in any other case, the registrar, may for any special reason extend the time within which any annual general meeting, not being the first such meeting, shall be held by a period not exceeding sixty days.

(2) ...

(3) ...

(4) If default is made in complying with any provision of this section, the company and every officer of the company who is knowingly and willfully a party to the default shall be liable--

(a) if the default relates to a listed company, to a fine not less than twenty thousand rupees and not exceeding fifty thousand rupees and to a further fine not exceeding two thousand rupees for every day after the first during which the default continues; and



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(b) if the default relates to any other company, to a fine not exceeding ten thousand rupees and to a further fine not exceeding five hundred rupees for every day after the first during which the default continues. ”

3. A notice dated 31-01-2005 was served by the Commission upon the Company, its chief executive officer and all directors, calling upon them to show cause why action may not be taken against them under sub-section (4) of section 158 of the Ordinance. An opportunity of personal hearing was provided by Director (Enforcement), who not being satisfied with the assertions of the Company Secretary, imposed a fine of Rs.20,000/- on the Company and Rs.30,000/- on the chief executive officer under section 158 read with section 476 of the Ordinance vide his order dated 03-05-2005 (“Impugned Order”). The Company and its chief executive officer have filed this revision petition before the Appellate Bench against the findings in the Impugned Order. Hearing in the instant matter was held on 27-09-2005 when Mr. Mushtaq Ahmad, Advocate appeared for the Petitioners and Mr. Mubasher Saeed, Joint Director SEC and Mr. Abdul Ghafoor Khan, Deputy Director SEC appeared on behalf of Director (Enforcement).

4. As a preliminary objection, Mr. Mushtaq Ahmad Advocate contended that Director (Enforcement) was not competent under section 476 to impose the fine on the petitioners. He argued that pursuant to S.R.O 975(I)/2003 dated 09-10-2003 the power of the Registrar to impose fine under section 476(1)(b) had been delegated to Additional Registrar (Company Registration Office) Lahore. The Impugned Order was passed without authority by Director (Enforcement) and was therefore void. In addition to the above, the counsel presented detailed arguments on the merits of the case.

5. In reply to the preliminary objection, Mr. Mubasher Saeed, Joint Director stated that the Director (Enforcement) was competent to pass the Impugned Order and had rightly taken cognizance of the contravention. He contended that Mr. Mushtaq Ahmed had referred to the wrong notification while presenting his argument. According to the latest S.R.O 161(I)/2004 dated 17-03-2004, the power to take cognizance of default under section 158 of the Ordinance, and impose penalty thereof, has been duly delegated to Director (Enforcement).



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6. Mr. Saeed also raised a preliminary objection to the revision petition. He contended that the petitioners could not challenge the Impugned Order on facts or law in the instant proceedings. He stated that the petitioners had filed a revision petition which had a limited scope, and therefore the Impugned Order could be challenged only on jurisdictional issues. He referred to provisions of the Code of Civil Procedure, 1908 (CPC) in this regard. He argued that if the petitioners were allowed to argue on the merits, there would be no difference between an appeal and a revision. He contended that the petition deserves to be dismissed on this ground alone. He also gave detailed response to the arguments presented on the merits by the counsel for petitioners. However, since we have decided to dispose of the petition on the preliminary objection raised by the Department, there is no need to produce the arguments presented by both parties on the merits.

7. Mr. Mubasher Saeed had argued that the petitioners could only challenge the Impugned Order on jurisdictional issues, since they had filed a revision petition and not an appeal. He relied on section 115 of CPC. Although CPC does not apply to the proceedings before the Commission, in our opinion the broad principles of law specified therein may be referred to for guidance, especially where identical terms have been used by the legislature. Revision generally has a limited scope compared to appeal and it only applies in cases involving illegal assumption of jurisdiction or non-exercise or irregular exercise of jurisdiction by the authority passing the order. The High Court in the case cited at PLD 2000 Quetta 66, held that erroneous conclusions of law or fact cannot be corrected in revision if there is no jurisdictional error, and the revisional court is therefore not bound to interfere with the merits of the case. Otherwise, as Mr. Mubasher Saeed has argued, there would be no difference between an appeal and a revision.

8. Additionally, we have noted that in this particular case the petitioners had a right of appeal against the Impugned Order under section 33 of the Securities & Exchange Commission of Pakistan Act, 1997 ("Act"). The appeal would have also lain before this Appellate Bench. However, they have chosen to file a revision under section 477 of the Ordinance. To us, the only logical reason for this choice seems to be the difference in limitation period. Whereas the appeal is required to be filed within 30 days of the impugned order, the revision can be filed within 60 days. When confronted with the argument that the



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Impugned Order could not be challenged on merits, neither did Mr. Ahmed present any arguments against it, nor did he request for converting the revision into an appeal. We would have converted the revision into an appeal ourselves, however, the official record shows that the petition was not filed within the limitation period of 30 days specified for appeal in section 33 of the Act. The superior courts have held that a revision can be converted into an appeal and vice versa, provided the same is within the period of limitation. 1995 CLC 1578. We are therefore constrained to dispose of the revision petition after considering the issue of jurisdiction only.

9. Mr. Mushtaq Ahmad has challenged the authority of Director (Enforcement) for passing the Impugned Order on the basis of S.R.O 975(I)/2003 dated 09-10-2003. However, as pointed out by the Department, he has relied on the wrong notification. The jurisdiction to take cognizance of the contravention under section 158 and impose penalty thereof has been duly delegated to Director (Enforcement) under S.R.O 161(I)/2004 dated 17-03-2004. Director (Enforcement) was competent to pass the Impugned Order under section 158 of the Ordinance. We therefore uphold the Impugned Order.

(Dr. Tariq Hassan)
Chairman/Commissioner

(Shahid Ghaffar)
Commissioner

Announced in Islamabad on October 17, 2005