



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

BEFORE APPELLATE BENCH NO. II

In the matter of

Appeal No. 15 of 2005

Tri Star Power Limited

F/498, S.I.T.E,

Karachi.....Appellant

Versus

1. Executive Director (C.L)

Securities and Exchange Commission of Pakistan

NIC Building Jinnah Avenue, Islamabad.

..... Respondent No 1

2. Registrar

Company Registration Office

4th Floor State Life Building No 2,

Wallace Road,

Karachi.

..... Respondent No 2

Date of Hearing

12-8-09

ORDER

Present:

For the Appellant:

Umer Lakhani

Advocate

For the Respondent:

Ali Azeem Ikram

Director

Haris bin Tipoo

Deputy Director



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

1. This order in appeal No. 15 of 2005 filed by Tri Star Power Ltd (the "Appellant") is against the order dated May 2, 2005, ("Impugned Order") passed by Executive Director, Company Law (the "Respondent No 1").
2. The facts leading to the case are that the Additional Registrar of Companies, Company Registration Office ("CRO") Karachi vide his letter dated 11-8-03, sought sanction of the Securities Exchange Commission of Pakistan (the "Commission") under clause (b) of section 309 of the Companies Ordinance 1984 (the "Ordinance") to present a petition for winding up of the Appellant. The sanction was sought on the basis that the Appellant had suspended its business since 2001, which was violation of clause (c) of section 305 of the Ordinance.
3. The Commissioner, Enforcement & Monitoring ("E &M") exercising powers of the Commission issued a show cause notice ("SCN") dated 15-8-2003, pursuant to the provisions of section 309 (b) of the Ordinance, calling upon the Appellant to show cause as to why the Additional Registrar, CRO may not be given sanction to file a petition for winding up of the Appellant. The case was fixed for hearing on 3-9-03 but was adjourned due to pre-occupation of the then Commissioner, E &M to 7-10-03. On 7-10-03, an application for adjournment was sent to the Commissioner, E &M stating that the Chief Executive was ill and therefore the case be adjourned. The case was thereafter re-fixed on 28-10-03, 10-11-03, 15-12-03 and 7-1-04, but was adjourned on each date on the request of the Appellant on the same ground i.e. illness of Chief Executive. The case was fixed before the Respondent No 1 on 23-8-04, however, the same was adjourned due to pre-occupation of the Respondent No 1. The case was finally fixed for hearing on 31-3-05 with notice that in case the hearing is not attended by the authorized representative of the Appellant, the case shall be decided ex-parte. Another adjournment was however, sought on the ground of illness of the Chief Executive of the Appellant.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

4. The Respondent No 1 decided to proceed against the Appellant ex-parte on the ground that the Appellant did not reply to the show cause notice; failed to appear for the hearing despite seeking a number of adjournments; cited vague reasons for adjournment. In the Impugned Order it was held that Appellant had suspended business for five consecutive years, as a result of which it ought to be wound up under clause (c) of section 305 of the Ordinance. Respondent No 1 in exercise of his powers conferred under clause (b) of section 309 of the Ordinance authorized Respondent No 2 to file winding up petition in the High Court.
5. The Appellant preferred the instant appeal against the Impugned Order. The appeal was fixed on 15-2-07 before the Appellate Bench (the "Bench") but was later adjourned on the request of the Appellant's counsel. The case was again fixed on 11-8-08 for hearing at Karachi for the convenience of the parties, however, the Appellant's counsel sought an adjournment which was granted. The appeal was re-fixed on 13-11-08 and was also heard partially on 14-11-08. In order to ascertain whether or not the Appellant had suspended the business, the Appellant's counsel was directed by the Bench to furnish the audited accounts of the Appellant for the period 2002 to 2007. The Appellant's counsel undertook to provide audited accounts within sixty (60) days and followed it by an undertaking dated 19-11-08 to this effect. The Appellant provided the audited accounts for the period 2002 to 2007 to the Commission's Enforcement department on 20-4-09. The case was thereafter fixed on 30-7-09 at 4 pm but was adjourned to 31-7-09 to be heard at 3 pm due to adjournment sought by the Appellant's counsel on the ground that his firm was on general adjournment until 30-7-09. The Appellant's counsel again on 31-7-09 sent an adjournment application on the ground of general adjournment having been granted by the Sind High Court, Karachi until 31-7-09. Although not a justifiable ground the Appellant's counsel was granted yet another opportunity to appear and plead his case on 12-8-09.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

6. On the date of hearing the Appellant's counsel, Mr. Umer Lakhani appeared before us and argued :

- a) That the Impugned Order was not a speaking order as no reasons were made out for the decision and was passed ex-parte without providing an opportunity of hearing to the Appellant.
- b) The Appellant is operational and the business of Appellant had never been suspended.
- c) The Appellant complied with the direction of the Bench and provided the audited accounts for the year 2002 to 2007 and therefore no further proceedings need be held.
- d) On being asked by us, as to why the accounts for the year 2008 have not been filed as yet; the Appellant's counsel stated that he shall restrict himself to the Show Cause Notice (the "SCN") as proceedings subsequent to the SCN are in consequential for the present purposes.

7. The departmental representative in response stated that:

- a) The Impugned Order was passed after taking into account the Appellant's financial condition; suspension of business since the year 2000 and failure to hold Annual General Meetings ("AGMs") since the year 2003. Sufficient reasons were cited by Respondent No 1 in the Impugned Order to justify initiation of winding up proceedings under clause (b) of section 309 of the Ordinance. The Appellant was given several opportunities to appear and defend the case, however, the Appellant failed to appear before the Respondent No 1 and therefore an ex-parte order was passed.
- b) The Bench in its order dated 31-12-08 desired that the Appellant should furnish accounts for the year 2002 to 2007 in order to ascertain whether or



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

not the Appellant had suspended its business. The accounts for the year 2002 to 2007 show that the Appellant had suspended its business since the year 2000. Para 1.1 of the Notes to the Accounts for the year ended 30-6-07 states that the Appellant has closed down its operational and commercial activities since the year 2000 and that no employee has been working with the Appellant since the year 2000. Reference was also made to para 21 of the Notes to the accounts for the year ended 30-6-07 where the actual production of the Appellant has been shown as Nil.

- c) The Bench directed the Appellant to file the accounts for the year 2002 to 2007 in order to ascertain whether or not the Appellant had suspended its business. The Appellant was required to file the annual accounts with the Commission annually in terms of section 233 of Ordinance and has failed to provide the accounts. The compliance was made on instruction of the Bench, however, it does not mean that no further proceedings be held in the instant appeal.
- d) The Appellant has failed to submit the annual accounts for the year 2008, which were due to be filed latest by September 2008. Separate show cause proceedings shall be initiated against the Appellant for the said violation.

8. Our para wise finding on the issue are as follows:

- a) On the issue, whether the order was speaking order or not, the Impugned Order has been perused. In para 5 of the Impugned Order, the financial condition of the Appellant has been stated, which has been reproduced for ease of reference:

"..... The latest available audited Balance Sheet of the Company as at June 30, 2002 indicates that the Company has accumulated losses of Rs 32.296 million as on that date. The fixed assets of the Company stood at



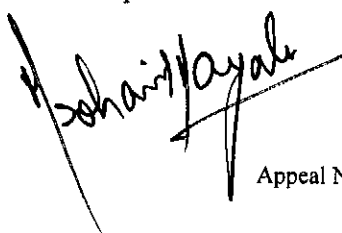
SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

Rs 71.75 million, current assets Rs 51.119 million while current liabilities were Rs. 0.82 million as on June 30, 2002. The Company has sustained losses of Rs 21.02 million during the year 2004..." (We believe the year has apparently been inadvertently mentioned as 2004, whereas it ought to be read as 2002).

In reaching the conclusion, the Respondent No 1 in addition to the financial condition of the Appellant also kept in view that the business of the Appellant had remained suspended since the year 2000 and the Appellant failed to hold the AGM since year 2003. In our view these were sufficient reasons spelled out in the Impugned Order.

The Impugned Order was passed ex-parte as the Appellant showed complete disregard to the proceedings before Respondent No 1. The Appellant sought adjournment at least on five occasions on the ground that the then Chief Executive of the Appellant was ill. The Appellant could have appeared through a counsel or an authorized representative; however, it appears that the Appellant was trying to evade the proceedings. We therefore do not find merit in the argument of the Appellant's counsel that opportunity of hearing was not provided. In any case the Bench made it clear to the Appellant's counsel during the hearing that we are providing him the right to agitate whatever he desires.

- b) The Bench had instructed the Appellant's counsel on 31-12-08 to provide the annual audited accounts for year 2002-2007 in order to ascertain, whether or not the business of Appellant had remained suspended since year 2000. It is clearly established from the annual accounts filed by the Appellant that the business of the company has remained suspended since the year 2000. Para 1.1 of the Notes to the Accounts for the year ended 30-6-07 is reproduced for ease of reference:





SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

"The Company has incurred a net loss, after tax, of Rs.5,094,939/- during the year ended June 30, 2007, and as of that date its accumulated losses of Rs.52,542,508/-. The company has been closed down its operation and commercial activities since 2000. No production activity has been done in the company during the year, the management feels the stoppage of operational activity is temporary and not permanent and when the conditions of the business and markets will be favorable the company will start its operation in near future. Furthermore, no employee is working in the company since the year 2000."

The argument of counsel for the Appellant that the company is operational and it has never suspended the business is against the stated position in the audited accounts of the Appellant for the year ending 30-6-2007. We have already provided Appellant sufficient opportunity to show that it was operational, however, the annual audited accounts for the year 2002 to 2007 provided by the Appellant in April 2009 and the audited accounts for the year 2001 already available with the department clearly shows that business has remained suspended since the year 2000.

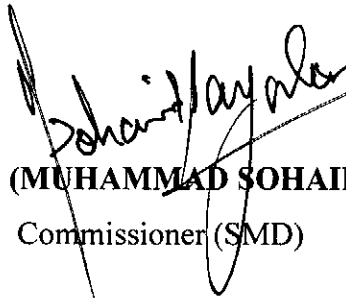
- c) We do not see any merit in the argument that after filing of accounts no further proceeding need to held as the audited accounts upto the year 2007 have been filed as desired by the Bench. The Bench directed the Appellant to file its audited accounts in order to confirm, whether or not the Appellant had suspended its business. The filing of accounts has made it clear that the Appellant has not been functioning and has suspended its business as stated in the Impugned Order.
- d) The Appellant counsel failed to respond to the query of the Bench regarding non-filing of the annual accounts of 2008 within the stipulated time. The Appellant is a listed company and it is incumbent on the management to comply with the statutory requirements laid down in the Ordinance. The




SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

Appellant in complete disregard of the requirements has consistently failed to file the requisite accounts and have failed to hold AGM's. This kind of conduct cannot be tolerated from a listed company, whose shares continue to be traded on the stock exchange, resulting in fraud being perpetuated on the public at large who have been led by the Appellant into believing that it is operational.

9. In view of the foregoing, no ground is made out to interfere with the Impugned Order. The Impugned Order is upheld. No order as to cost.


(MUHAMMAD SOHAIL DAYALA)
Commissioner (SMD)


(S. TARIQ ASAF HUSAIN)
Commissioner (LD)

Announced on: 8-9-09