



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Revision No. 43 of 2011

Shabbir Ghani, Chief Executive Officer,
(M/s Indus Fruit Products)

.....Applicant

Versus

Commissioner (CLD), SECP, Islamabad

.....Respondent

Date of hearing

09/04/13

ORDER

Present:

For the Appellant:

Mr. Maqsood Ahmad

Department representative:

Mr. Mubasher Saddozai, Director (CCD)

Mr. Anwar Ahmed, Assistant Registrar (CCD)



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1. This order shall dispose of revision No. 43 of 2011 filed under section 477 (1)(b) of the Companies Ordinance, 1984 (“the Ordinance”) against the order dated 30/12/10 (the “Impugned Order”) passed by the Respondent.
2. The facts leading to the case are that in terms of the provisions of section 158 (1) of the Ordinance, Indus Fruit Products Limited (“the Company”) was required to hold its Annual General Meeting (the “AGM”) for the year ended 30/06/09 on or before 31/10/09. The Company failed to hold the aforesaid AGM within the prescribed time period. The Securities and Exchange Commission of Pakistan (“the Commission”) vide its letter dated 28/05/10 directed the Company in terms of section 170 of the Ordinance to convene the overdue AGM on or before 21/06/10 so as to lay therein the audited accounts for the aforesaid period and to transact any other business as required under the law. The Company was also advised to submit within a week of the date of AGM, a compliance report along with certified true copies of the minutes of the said AGM and the audited accounts approved by the shareholders therein. The Company failed to comply with the aforesaid direction.
3. Show Cause Notice dated 11/08/10 (“SCN”) was served on the Chief Executive Officer of the Company (the “Applicant”) calling upon him to show cause as to why penalties under section 171 read with section 476 of the Ordinance may not be imposed on him. The Applicant, however, did not respond to the SCN. In order to provide an opportunity of personal hearing, the matter was fixed for hearing several times. The case was fixed for hearing on 26/08/10 and 29/11/10 but no one appeared on behalf of the Company. On 15/12/10 a request for adjournment was sent by the Applicant and the case was re-fixed for hearing on 28/12/10, however, no one appeared on behalf of

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the Company on the said date. The Respondent passed the Impugned Order and held that the Company was required to hold its overdue AGM for the year ended 30/06/09 on or before 21/06/10 in terms of Commission's direction under section 170 of the Ordinance and imposed penalty of Rs.10,000/ on the Applicant.

4. The Applicant has preferred to file the instant revision petition against the Impugned Order. The Applicant's representative argued that the Company suffered losses and as a result it became commercially unviable to operate the unit. The main office of the Company was closed and due to non-availability of staff, the Applicant could neither respond to the notices issued by the Commission nor hold the AGM.
5. The department representative argued that the Applicant did not hold the AGM for the year 30/06/09 and 30/06/10 for which penalties of Rs 400,000 and Rs 350,000 were imposed under section 158 of the Ordinance through orders dated 12/03/10 and 30/12/10 respectively. The Applicant was issued a direction under section 170 of the Ordinance to hold the outstanding AGM for the year ended 30/06/09; however, the Company failed to hold the aforesaid AGM. The Respondent proceeded against the Applicant under section 171 of the Ordinance and imposed a penalty of Rs 10,000 through the Impugned Order. It was also brought to the attention of the Bench that the process of winding up has been initiated against the Company by the Commission on failure of the Company to hold two consecutive AGM's and the Company has been delisted from the Karachi Stock Exchange.
6. We have heard the parties and have gone through the record. Section 158(1), section 170 (1) and section 171 of the Ordinance are reproduced for ease of reference:

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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 [three] 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 [thirty] days.

170. Power of [Commission] to call meetings. - (1) If default is made in holding the statutory meeting, annual general meeting or any extraordinary general meeting on the requisition of members in accordance with section 157, section 158 or section 159, as the case may be, the [Commission] may, notwithstanding anything contained in this Ordinance or in the article of the company, either of [its] own motion or on the application of any director or member of the company, call, or direct the calling of, the said meeting of the company in such manner as the [Commission] may think fit, and give such ancillary or consequential directions as the [Commission] thinks expedient in relation to the calling, holding and conducting of the meeting and preparation of any document required with respect to the meeting.

171. Penalty for default in complying with the directions of the [Commission] for holding the meeting. - If default is made in complying with any directions of the [Commission] under section 170, the company and every officer of the company who is in default shall be liable to a fine which may extend to ten thousand rupees and in the case of a continuing default to a further fine which may extend to two hundred rupees for every day after the first during which the default continues.

The law on the non-holding of AGM is explicit and sets out definite time lines to be followed. The holding of AGM is one of the fundamental requirements of the Ordinance as non-holding of AGM has serious consequences for the investors.

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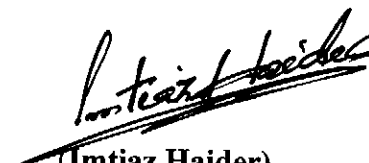
SECP Reliance is placed on *Mian MUHAMMAD ILYAS MEHRAJ and 17 others Versus APPELLATE BENCH No. III*, cited at 2009 C L D 883, wherein, it was held by the honorable judge of the Lahore High Court, Lahore:

“.....No departure is permissible from the compliance of the mandatory provisions of section 158. The company is artificial person and those who manage it's affairs are under legal as well as fiduciary obligation, to run the affairs of the company as the law Companies Ordinance, 1984 requires Corporate democracy is the essence of the corporate personality of a juristic person. The legislature in it's wisdom was conscious of the importance of holding of Annual General Meeting and that is why a company is made liable to be wound up, if fails to hold two consecutive Annual General Meetings.”

The Applicant's argument is not tenable as closure of office and non-availability of staff is not a valid justification under the law for non-holding of AGM. The Company failed to hold the AGM by 31/10/09 in terms of the requirements of section 158(1) of the Ordinance. The failure to hold AGM in the prescribed time led to the issuance of direction under section 170 of the Ordinance. The Applicant failed to conduct the AGM in terms of the above direction by 21/06/10 and as per the record of the concerned department, the Applicant has failed to hold the AGM till date. The act of the Applicant was willful, as such; the penalty was rightly imposed in the instant case.

In view of the above, we see no reason to interfere with the Impugned Order. The revision is dismissed with no order as to cost.


(Zafar Abdullah)
Commissioner (OED and TMF & CD)
Announced on: 22/05/13


(Imtiaz Haider)
Commissioner (SMD)