



BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 58 of 2006

Noor A Qadir and Others APPELLANTS
Versus
Executive Director (CLD) RESPONDENT

ORDER

Date of Hearing

13 November 2008

Present:

For the Appellant:

Shafiq Ahmed
Advocate

For the Respondent:

Haris Bin Tipu (Departmental Representative)
Deputy Director



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

1. This order shall dispose of appeal No.58 of 2006 filed under section 33 of the Securities and Exchange Commission of Pakistan ("SECP") Act, 1997 by Noor A Qadir and Others (the "Appellants") against the order dated 18-05-2006 (the "Impugned Order") of the Executive Director, Company law Division ("Respondent").
2. The Appellants are Chief Executive and Directors of M/s Usman Textile Mills Limited (the "Company"). The facts leading to the case are that the Company was required to prepare and transmit to its members and simultaneously file with SECP, its quarterly accounts for the 2nd quarter ended March 31, 2005 and 1st quarter of 2005. The Company failed to prepare and furnish the aforesaid accounts with SECP, consequently a show cause notice dated 25-7-05 was issued to the Appellants for their failure to file the quarterly accounts for the 2nd quarter ended 31-3-05. The Appellants were also given an opportunity of hearing, however, the counsel for the Appellants requested for an adjournment. Later another notice dated 27-1-06 was served on the Appellants to show cause as to why penalties under section 245 read with section 476 of the Companies Ordinance (the " Ordinance") may not be imposed on them for failure to file quarterly accounts for the 2nd quarter ended 31-3-05 and 1st quarter of 2005. The counsel for the Appellants in the show cause proceedings appeared before the Respondent and contended that the management of the Company was involved in litigation with banks for settlement of loans and the business of the Company remained suspended as a result there was no staff to prepare and submit the quarterly accounts. The Respondent passed the Impugned Order and held that the Appellants track record is not satisfactory as the penalties were imposed on the directors in past, further they have failed to submit the quarterly account till the passing of the Impugned Order therefore the act of the Appellants was willful. The Respondent imposed a penalty of Rs. 30,000/- on each Appellant for

[Handwritten signatures]



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

failing to submit the quarterly accounts for the first and second quarter of 2005.


3. The Appellants have preferred the instant appeal against the Impugned Order. The counsel for the Appellants argued that the failure to submit the quarterly accounts was not willful. The Chief Executive of the Company Mr. Noor Qadir was arrested by National Accountability Bureau (NAB) and he was behind the bar. In his absence the business was suspended therefore no staff was available for the preparation and submission of quarterly accounts. The counsel for the Appellant stated that any director of company who was not knowingly and willfully a party to the default cannot be penalized. In support of the contention, the Appellant counsel relied on case cited at AIR 1938 Mad 640.
4. The Departmental Representative argued that the default of the Appellants was willful as only the Chief Executive was behind bars and all other Appellants being the directors of the Company were under a statutory obligation to get the quarterly accounts prepared and transmitted to its members and simultaneously filed with SECP. He however, observed that the Company since the last default in 2nd quarter of 2005 has substantially complied with section 245 of the Ordinance by filing the quarterly accounts within the stipulated time.
5. We find no force in the argument presented by the counsel for the Appellants that the default was not willful. The overall management of the Company and responsibility for its affairs rests with the Board of Directors. The fact that Chief Executive was behind the bars does not absolve other directors from performing their fiduciary duties. The absence of resources or necessary staff for preparation of accounts cannot be made a ground for non compliance and also shows that the Appellants were fully aware of the requirement of law.




SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

6. It has been brought to our attention that the Appellants have filed the quarterly accounts within the stipulated time since the last default in the 2nd quarter of 2005.

7. The Respondent has already taken an extremely lenient view by imposing a penalty of merely Rupees thirty thousand (Rs. 30,000) on each Appellant, presumably in light of the past record of the Company, as the penalty amount could have been up to Rupees hundred thousand (Rs. 100,000) on each Appellant for default of each quarter i.e. Rupees two hundred thousand (Rs. 200,000) on each Appellant. We therefore, do not see any reason to interfere with the Impugned Order. The Appeal is disposed off with no order as to costs.


(MR. RAZI- UR-REHMAN KHAN)
Chairman


(S. TARIQ. A HUSAIN)
Commissioner (LD)

Announced on: 31st December 2008.