



Before Abid Hussain – Executive Director

In the matter of

Bela Automotives Limited

| | |
|--------------------------------------|---|
| Number and date of show cause notice | CSD/ARN/91/2015 dated April 27, 2016 |
| Date of Hearing | May 12, 2016, May 25, 2016, June 06, 2016, January 02, 2017, March 22, 2017, and April 24, 2017 |
| Present | Mr. Abdul Mateen, Chief Executive Officer |

ORDER

Under Section 309 read with Section 305 of the Companies Ordinance, 1984

This order shall dispose of proceedings in the matter of show cause notice dated April 27, 2016 under Section 309 read with Section 305 of the Companies Ordinance, 1984 (“Ordinance”) issued to Bela Automotives Limited (“Company”) and board of directors including the Chief Executive (collectively called “respondents”) of the Company.

2. The facts leading to this case, briefly stated, are that the Company Registration Office Quetta, approached this office for grant of sanction in terms of clause (b) of Section 309 read with clause (b) of Section 305 of the Ordinance to present a petition before the Honorable High Court for winding up of the Company on the ground that the Company has failed to hold its annual general meetings (“AGM”) for the years ended June 30, 2013, June 30, 2014 and June 30, 2015. Further, the Company had not filed its annual accounts for the years 2013 to 2015.
3. Show cause notice dated April 27, 2016 was served on the respondents and the Company, under Section 309 read with Section 305 of the Ordinance, indicating the aforesaid ground to present a petition

SECURITIES AND EXCHANGE
COMMISSION OF PAKISTAN
NIC Building, 63 Jinnah Avenue,
Islamabad, Pakistan



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 1 -

for winding up of the Company. An opportunity of hearing was given on June 06, 2016 to the respondents. The Chief Executive of the Company, Mr. Abdul Mateen, appeared before the undersigned on the aforesaid date of hearing and stated that the Company is operational however, the last AGM was held in 2012. Further, it was stated that the Company is engaged in litigation with Habib Bank Limited (“HBL”) since 1986 owing to undue markup charged by bank, against the rules of State Bank of Pakistan. In view of above, Mr. Abdul Mateen requested for six months’ time to comply with the mandatory requirements of holding of AGM and filing of annual and interim accounts. He also acknowledged that 52% of the shareholding is with him and his family and he is interested in managing the affairs of the Company in the interest of shareholders and complying with relevant legal requirements.

4. Written submissions were also provided subsequent to the hearing i.e. through letter dated May 30, 2016, wherein primarily the details of the case between the Company and HBL were given. The Company reiterated the stance taken in the hearing, stating that owing to the litigation with HBL it was not possible for it to comply with the provisions of law therefore the penalty amount pertaining (to separate proceedings by Commission) for non submission of accounts by waived off. Further, the respondents showed optimism that as the claims of settlement with the Bank were in the final stage, the overall working of the company would also improve. In addition, the Company has started to pay statutory fees to Stock Exchange and that the website of the company had also been developed but not fully functional yet. Lastly, the respondents requested another opportunity of personal hearing. It may be noted that hearing opportunity was already provided earlier i.e. on May 12, 2016, May 25, 2016, June 06, 2016, as well subsequent to the letter of the Company i.e. on January 02, 2017, March 22, 2017, and April 24, 2017 however, no further response was received on behalf of the respondents.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 2 -

5. It is necessary to highlight that importance of holding of AGM and filing of accounts. AGM is an important institution for the protection of the shareholders of a company. Thus, it is envisaged in the Ordinance that directors ensure that shareholders meet together at least once in a year in general meeting to review the working of the company and determine the sufficiency of the decisions taken by directors for the interest of the Company and the shareholders. Further, directors are mandated to present annual accounts for deliberation and consideration of the shareholders in general meeting. Hence, if a Company is not holding its AGM then it can be implied that is acting against the spirit of law. Further, failure to present such accounts by any Company is a punishable offence.

6. In terms of notification S.R.O 1003(I)/2015 dated October 15, 2015 the power to adjudicated cases under Section 309 of the Ordinance has been delegated to Executive Director (Corporate Supervision Department).

7. Before elaborating the facts of the case, it is necessary to advert to the following relevant provisions of the Ordinance:

Clause (b) of section 305 of the Ordinance states that:

a company may be wound up by the Court if default is made in delivering the statutory report to the registrar or in holding the statutory meeting or any two consecutive annual general meetings;

Section 309 of the Ordinance states that:

an application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), or by any contributory or contributories, or by all or any of the aforesaid parties, together or separately, or by the registrar, or by the Commission or by a person authorized by the Commission in that behalf.

8. It is imperative to state certain important facts having significance on to the subject proceedings.

The Company incorporated as a private limited company in 1983 and subsequently converted into a public



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 3 -

limited company in 1985. Its shares were listed on the then Karachi Stock Exchange now Pakistan Stock Exchange in 1994. The principal business of the Company is manufacturing of auto parts. The records of this Company reflect the following:

- The Company failed to hold annual general meetings (AGMs) for three consecutive years i.e. June 30, 2013, June 30, 2014, June 30, 2015 and June 30, 2016.
- The Company failed to publish and circulate its annual and interim accounts for period 2013, 2014, 2015 and 2016.
- The company has an outstanding liability of Rs. 108.995 million registered in favour of Habib Bank Limited.

9. In the subject case, the directors of the Company have deliberately acted negligently which cannot be justified in anyway. The submission of the Chief Executive that the Company is operational yet it failed to hold AGMs and present its operational performance to the shareholders and regulator which reflects the deliberate intent of the respondents to deprive shareholders of their right to attend AGM and assess the working through relevant accounts. The courts have stressed on the importance of holding of AGM, even if the annual accounts are prepared or not which is a mandatory requirement of law itself. *"There is a clear statutory duty on the directors to call the meeting whether or not the accounts are ready or ready"* (AIR 1934 Cal 624). This is in addition to negligence of the directors to perform their fiduciary responsibilities as envisaged in the Ordinance. The Ordinance provides that if a company fails to hold any two consecutive AGMs it is liable to be wound up by Court.

10. From the facts asserted above and after careful consideration of all the facts and circumstances of the case, I am of the view that the Company is liable to be wound up as it has failed to hold annual general meeting since 2013. There are no substantive grounds or underlying records i.e. financial statements/ financial plans/ submissions etc. that could be construed as intention or commitment of the directors for regularizing its conduct.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 4 -

11. For the forgoing, I, in exercise of the powers conferred on me under Section 309 of the Ordinance, hereby authorize the Deputy Registrar, Company Registration Office, Quetta to present a petition for winding up of Bela Automotives Limited.

Abid Hussain
Executive Director

Announced:
May 25, 2017
Islamabad

