



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

Bawany Air Products Limited

Number and date of notice: No. CSD/ARN/152/2015 -821-27 dated November 21, 2017

Date of hearing: February 28, 2018

Present: Mr. M. Hanif Y. Bawany, Chief Executive
Bawany Air Products Limited

ORDER

Under Section 193 read with Section 476 of the Companies Ordinance, 1984

This order shall dispose of the proceedings initiated against the following directors including chief executive (*the "Respondents"*) of Bawany Air Products Limited of (*the "Company"*) through show cause notice dated November 21, 2017 (*the "SCN"*) issued under the provisions of section 193 read with section 476 of the Companies Ordinance, 1984 (*the "Ordinance"*).

- 1 Mr. Muhammad Ashraf
- 2 Mr. M. Hanif Y. Bawany
- 3 Ms. Mominza Hanif Bawany
- 4 Mr. Vali Muhammad M. Yahya
- 5 Mr. Wazir Ahmed Jogezi
- 6 Mr. Zakaria A. Ghaffar
- 7 Mr. Siraj A. Kadir

2. Brief facts of the case are that the Company did not hold its directors meeting for the quarter ended December 31, 2016 and March 31, 2017. When a query was raised by the Commission in this regard the Company submitted that directors meeting was not held due to pending half yearly review of the financial statements for the period ended December 31, 2016 and



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due to some unavoidable circumstances, lack of manpower and financial difficulties. The company was found to be in apparent non-compliance of the provisions of section 193 of the Ordinance.

3. Subsequently, the SCN was issued to the respondents wherein they were called upon to show cause in writing as to why penal action may not be taken against them in light of the referred provisions of law. In response, Mr. M. Hanif Y. Bawany, Chief Executive (*the "Authorized Representative"*) submitted reply vide letter dated December 27, 2017 on behalf of the respondents. The relevant portion of the aforesaid reply is reproduced hereunder:

"With regards to the difficulties that caused the delay, we would like to submit that our operations came to a halt when an abrupt fire broke at Gaddani Ship breaking at one of the yards and the Government ordered shut down of ship breaking industry for over 45 days from October to November 2016 and January to February 2017. The shutdown was a serious blow to the Company since it was primarily dependent on ship breaking industry. As a result of shut down to overcome the crisis, it could not secure the completion of audit for the half year followed by quarterly accounts and annual accounts on time. The main reason for delay in holding of quarterly BOD meetings of the Company was owing to delay in audit of accounts of the company as in normal practice for years the BOD is held once every quarter with the presentation of accounts for that quarter falling under the same line as such with the delay in accounts the BOD unintentionally had been delayed till the completion of the accounts for that quarter....."

That we have taken due cognizance of the gravity of the delay in compliance with the statutory requirement and would like to undertake that we shall be careful in future and we undertake that we will make all efforts to abide by the above laws as provided in the companies ordinance."

4. In order to provide a hearing opportunity, hearing in the matter was fixed on February 28, 2018. Mr. M. Hanif Y. Bawany, Chief Executive attended the hearing and reiterated the stance taken in the written submissions already provided. He further submitted that the BOD meetings in question have later been held by the Company. The authorized representative was asked to submit the evidence of the meetings held for the relevant quarters. The Company submitted a written reply dated February 28, 2018, wherein the notice and minutes provided related to meeting held on July 7, 2017 for the quarter ended September 30, 2017. The Company



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therefore failed to provide any evidence of holding of the BOD meetings as informed in the hearing by the authorized representative.

5. Before proceeding further, it is necessary to advert to the following relevant provisions of Ordinance:

Sub-section (2) of section 193 of the Ordinance requires that the directors of a public company shall meet at least once in each quarter of a year.

Sub-section (3) of section 193 of the Ordinance, inter alia, provides that if a meeting of directors is not held as required by subsection (2), the chairman of the directors and the directors of a company shall be liable:

- (a) to a fine not exceeding ten thousand rupees and in the case of a continuing default to a further fine not exceeding one hundred rupees for every day after the first during which the default continues, if the contravention relates to a listed company;

6. In terms of the Commission's notification SRO 751 (I)/2017 dated August 2, 2017, the powers to adjudicate cases under section 193 of the Ordinance have been delegated to the Executive Director (Corporate Supervision Department).

7. As regards the matter at hand, I have analyzed the facts of the case, relevant provisions of the Ordinance, representations made by the authorized representative in the written response to the contents of the SCN and during the hearing held. There is no evidence on record to establish that any meeting of the board of directors was held in the two consecutive quarters ended December 31, 2016 & March 31, 2017 and the same has been admitted by the authorized representative. In the instant matter, the BOD of the company were required to meet once in every quarter which is envisaged in the law for the reason that an active oversight of the affairs of the Company is required by the BOD thus their meetings should be held frequently. If the accounts of the Company had been delayed due to any reason, it does not become a justification for the Company for not holding a BOD meeting. Moreover, the financial crisis of a company cannot be accepted as an excuse for non-compliance of the law. It may be mentioned that the BOD meetings perhaps are even more necessary in times of financial troubles in order to formulate strategies and



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review the situation in a timely manner to address the issues being faced by the Company. Thus in my view, the law must be abided by and full compliance shall be made in all circumstances. Such compliance is always in the interest of the company as holding regular meetings of the board of directors ensures prudent decisions and managing the affairs of the Company in a smooth manner. I have therefore reached to the conclusion that reasons put forth by the authorized representative are not cogent and there is no evidence to satisfy the default alleged in the SCN. In my opinion, the respondents have contravened the provisions of Sections 193 of the Ordinance and have admitted this default as well. In view of the foregoing, I hereby impose a penalty of Rs.10,000 (Rupees ten thousand only) on Mr. M. Hanif Y. Bawany, Chief Executive of the Company for violating the provisions of Section 193 of the Ordinance, and issue a stern warning to all the respondents to ensure meticulous compliance with the applicable provisions of law in future.

8. The aforesaid fines must be deposited in the designated bank account maintained with MCB Bank Limited in the name of the "Securities and Exchange Commission of Pakistan" within thirty days from the receipt of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the penalties, proceedings for recovery of the fines as arrears of land revenue will be initiated. It may also be noted that the said fines are imposed on respondents in their personal capacity; therefore, they are required to pay the said amount from personal resources.

Abid Hussain
Executive Director
Corporate Supervision Department

Announced:
November 19, 2018
Islamabad