



Corporate Supervision Department
Company Law Division

Before Amina Aziz –Director

In the matter of

Berger Paints Pakistan Limited

Number and date of notice: CSD/ARN/89/2015-2725-31 dated February 09, 2017

Date of Hearing March 06, 2017

Present for Respondents Written reply dated March 02, 2017 received.

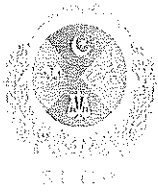
ORDER

UNDER SECTION 158 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of the proceedings initiated against following directors including chief executive (together referred to as "respondents") of Berger Paints Pakistan Limited (the "Company") through show cause notice (the "SCN") dated February 09, 2017, issued under section 158 read with section 476 of the Companies Ordinance, 1984 (the "Ordinance").

S.#	Names of Directors
1	Mr. Maqbool H. H. Rahimtoola
2	Mr. Dr. Mehmood Ahmed
3	Mr. Hamid Masood Sohail
4	Mr. Muhammad Nasim
5	Mr. Ilyas Sharif
6	Mr. Shahzad M. Hussain
7	Mr. Zafar A. Osmani

2. The brief facts of the case are that the Company was required to publish the notice of its annual general meeting ("AGM") for the year ended June 30, 2016 in Urdu language along with English language. The Company, however, published on October 04, 2016 notice of AGM in daily Urdu newspaper, but in English language instead of Urdu Language, as required per subsection 3 of section 158 of the Companies Ordinance 1984.



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3. Consequently, the SCN was issued to the respondents whereof they were called upon to show cause in writing as to why penal action may not be taken against them under section 158 of the Ordinance for not publishing notice of AGM in Urdu language in Urdu newspaper.

4. The respondents, through letter dated March 02, 2017 replied to the Show cause notice, stating that that the act was neither intentional nor willful. The notice of AGM was published in English language in Urdu newspaper due to the vendor's inadvertent mistake. The notice was given to the vendor and they published it without translation. They assured that they would comply with the rules and regulations in future.

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

sub-section (3) of section 158 of the Companies Ordinance, 1984 ("Ordinance") provides that *the notice of an annual general meeting shall be sent to the shareholders at least twenty-one days before the date fixed for the meeting and, in the case of a listed company, such notice, in addition to its being dispatched in the normal course, shall also be published at least in one issue each of a daily newspaper in English language and a daily newspaper in Urdu language having circulation in the Province in which the stock exchange on which the company is listed is situate.*

sub-section 4 of section 158 of the Ordinance provides that *(4) If default is made in complying with any provision of this section, the company and every officer of the company who is knowingly and willfully a party to the default shall be liable,--*

(a) if the default relates to a listed company, to a fine not less than [fifty] thousand rupees and not exceeding [five hundred] thousand rupees and to a further fine not exceeding two thousand rupees for every day after the first during which the default continues; and

(b) if the default relates to any other company, to a fine not exceeding [one hundred] thousand rupees and to a further fine not exceeding [five] hundred rupees for every day after the first during which the default continues.

6. In terms of the Commission's notification SRO 1003(I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 158 of the Ordinance have been delegated to Director (Corporate Supervision Department).



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7. I have analyzed the facts of the case, relevant provisions of the Ordinance, and submissions made by the respondents. The aforesaid provisions of the law are clear and explicit. A company is required to publish notice of AGM in both English language and Urdu language separately ensuring a wider dissemination for the notice. It is for ease of understanding and enhancement thereof for such shareholder in particular and other stakeholders in general who are unfamiliar or less proficient in the English language. It is imperative that notice is communicated to every concerned individual since holding of the AGM is a very important statutory event and provides an opportunity to the shareholders, including those in minority, to participate in discussion and voting on agenda items of the AGM that include consideration and approval of companies' financial statements, which not only show the financial position and performance of a company but also show the results of management's stewardship of resources entrusted to it. A notice which is understandable to the average man can ensure the presence of all shareholders. In addition to their responsibilities of overseeing and managing affairs of the Company, directors also have fiduciary duties towards the Company and its shareholders. They are, therefore, liable to a higher level of accountability which requires them to be vigilant and perform their duties with care and prudence. It is directors' responsibility to oversee the functioning of the company and to ensure due compliance of law.

8. Publishing of AGM notice in Urdu and English is a requirement of law but unfortunately, it has been noted that the directors of the Company have not observed the compulsory requirements of law. However, keeping in view of the submissions of the respondents and good past track record of company of complying with the laws; instead of imposing fine, I hereby, conclude the proceedings with a warning to the respondents to be careful and ensure compliance with mandatory provisions of the Ordinance, in true letter and spirit; in future.

Amina Aziz
Director

Announced:
March 10, 2017
Islamabad

