



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director (CSD)

In the matter of

CNFA Pakistan Center for Enterprise and Development

Number and date of notice: CSD/ARN/169/2015-1930, dated June 19, 2015
Dates of hearings: April 27, 2016
Present: M. Faheem Akhter, CFO and Syed Murtaza Ali Pirzada

ORDER

**UNDER SECTIONS 173 AND 193 READ WITH SECTION 476 OF THE COMPANIES
ORDINANCE, 1984**

This order shall dispose of the proceedings initiated against all the directors including the chief executive (the "respondents") of CNFA Pakistan Center for Enterprise and Development (the "Company").

1. Syed Abid Ali Bukhari
2. Alan Wilbert Pieper
3. Paul Joseph Sippola
4. Mary Jeanette Beatrice Bright
5. Shamsher Haider Khan

The proceedings against the respondents were initiated through show cause notice (the "SCN") dated June 19, 2015 under sections 173 and 193 read with section 476 of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts of the case are that while carrying out examination of annual audited financial statements ("Accounts") for the year ended June 30, 2014 of the Company filed under section 242 of the Ordinance, the Commission, inter alia, required the Company to provide minutes of meetings of directors of the Company held during the year. The Company through letter dated February 23, 2015, inter alia, stated as under:

"The meetings were conducted through skype or phone calls from time to time, considering the fact that the Company is at initial stages of its operations and is in the process of proposing projects"

The Commission vide letter dated April 23, 2015 further required the Company to provide information confirming compliance with provisions of section 193 of the Ordinance, in response to which the Company vide letter dated April 28, 2015 submitted that there was no violation on the



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part of the Company. Despite requisition by the Commission, the Company failed to furnish the minutes of the meetings of directors and also failed to substantiate that at least one meeting of directors was held during each quarter of the year. The Company, prima facie, contravened the provisions of sections 173 and 193 of the Ordinance, as it has failed to provide evidence of maintenance of the minutes of the meetings of directors and holding at least one meeting of directors during each quarter of the year. Consequently, the SCN was issued to the respondents who were required to submit a written reply within fourteen days.

3. In response to the SCN, Syed Murtaza Ali Pirzada, through letter dated July 3, 2015 requested for further time for submission of reply on behalf of the respondents and also requested to provide an opportunity of hearing to explain the case in person. Subsequently, Murtaza Law Associates through letter dated September 4, 2015 submitted written reply on behalf of the respondents. They stated that meetings of the board of directors ("BOD") were conducted during the year as per the law and also provided copies of minutes of the following BOD's meetings held during the year ended June 30, 2014:

- i. BOD meeting held on November 18, 2013 for the quarter September to December, 2013;
- ii. BOD meeting held on February 20, 2014 for the quarter January to March 2014; and
- iii. BOD meeting held on June 16, 2014 for the quarter April to June 2014.

The case was fixed for hearing on April 27, 2016. On due date, M. Faheem Akhter, CFO and Syed Murtaza Ali Pirzada, appeared before the undersigned and mainly reiterated their earlier written submissions. They also provided certified copies of the minutes of the aforesaid BOD's meetings. However, they did not provided any evidence of holding of the meeting of directors during the first quarter of July to September, 2013.

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

Sub-section (1) of section 173 of the Ordinance provides as under:

"Every company shall cause a fair and accurate summary of the minutes of all proceedings of general meetings and meetings of its directors and committee of directors, along with the names of those participating in such meetings, to be entered in properly maintained books. A copy of the minutes of meeting of the board of directors shall be furnished to every director within fourteen days of the date of meeting."



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Sub-section (2) of section 193 of the Ordinance provides as under:

"The directors of a public company shall meet at least once in each quarter of a year."

Sub-section (5) of section 173 of the Ordinance provides as under:

"In the event of failure to comply with the provisions of sub-section (1) or sub-section (4), the company and every officer of the company who is knowingly in default shall be liable to a fine which may extend to five thousand rupees and to a further fine which may extend to one hundred rupees for every day after the first day during which the failure continues."

Sub-section (3) of section 193 of the Ordinance provides as under:

"If a meeting of directors is conducted in the absence of a quorum specified in sub-section (1), or a meeting of directors is not held as required by sub section (2), the chairman of the directors and the directors 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; or

(b) to a fine not exceeding two thousand rupees and in the case of a continuing default to a further fine not exceeding fifty rupees for every day after the first during which the default continues, if the contravention relates to a non-listed company."

5. I have reviewed the facts of the case, relevant provisions of the Ordinance, and submissions made by the respondents. Perusal of record provided by the respondents reveals that meetings of the Company's BOD were held in second, third and fourth quarter of the Company's financial year ended June 30, 2014. However, no evidence regarding holding of the BOD meeting during the first quarter i.e. July to September, 2013 has been provided. It means that the Company did not hold the BOD's meeting in the first quarter, as minutes of the same are not available. Therefore, requirements of section 193 have not been complied with, as far as the quarter from July to September, 2013 is concerned. In respect of alleged violation of section 173 of the Ordinance, it is evident that the Company has maintained the record of the minutes of meetings of directors held during the second, third and fourth quarter of the year ended June 30, 2014. It is pertinent to mention here that the proceedings against the respondents were initiated under sections 173 and 193 of the Ordinance, as the requisite information and record was not provided by the Company, despite specific requisition. The record has been provided only after initiation of the subject proceedings.



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6. For the foregoing reasons, I am of the view that the provisions of sections 193 of the Ordinance have been contravened, as the Company has not held the meeting of the BOD during the quarter ended September 30, 2013. However, I take cognizance of the facts that the Company is a not for profit organization registered under section 42 of the Ordinance and the meetings of the directors have been held in three out of four quarters and the minutes of those BOD's have also been provided. Moreover, the respondents have shown their willingness and have given assurance to ensure compliance with all the applicable legal provisions in future. Therefore, in exercise of the powers conferred by the Ordinance, instead of imposing fines, I hereby conclude the proceedings with a stern warning to the respondents to be careful in future and ensure meticulous compliance with applicable provisions of the Ordinance.

Amina Aziz
Director (CSD)

Announced:
June 13, 2016
Islamabad