



Corporate Supervision Department
Company Law Division

Before Ms. Amina Aziz – Director (CSD)

In the matter of

Fatima Enterprises Limited

Number and date of SCN: No. CSD/ARN/139/2015-2652-58, dated February 07, 2017
Date of hearing February 22, 2017, March 21, 2017, March 30, 2017 and April 18, 2107
Authorized Respondents Mr. Faisal Latif----Chartered Accountants
Mr. M. Shahbaz

ORDER

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

This order shall dispose of the proceedings initiated against the following directors including the chief executive officer (together referred to as "respondents") of **Fatima Enterprises Limited** (the "Company"):

- | | | | |
|---|----------------------------|---|---------------------------|
| 1 | Sh. Nishat Ahmed | 5 | Mr. Kashif Tafazzul Warsi |
| 2 | Sh. Zafar Iqbal | 6 | Mr. Muhammad Asif Balouch |
| 3 | Mr. Muhammad Islam | 7 | Mr. Sarfraz Hasan |
| 4 | Mr. Mubashir Hasan Hamdani | | |

The proceedings against the respondents were initiated through show cause notice (the "SCN") dated February 07, 2017 under the provisions of section 158 read with section 476 of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts of the case are that the Company was required to hold its annual general meeting ("AGM") for the year ended June 30, 2016 on or before October 31, 2016, in terms of sub-section (1) of section 158 of the Ordinance. However, review of record revealed that the Company failed to convene the AGM as per requirement of the law. Consequently, the SCN was issued to the respondents whereof they were called upon to show cause in writing within fourteen days as to why penal action may not be taken against them under section 158 of the Ordinance for not holding the AGM.



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3. In reply to the SCN the Company vide letter dated February 18, 2017 informed that its AGM for the year ended June 30, 2016 could not be held on time because of which the filing of subsequent accounts was delayed. The Company had been engaged in litigation with the banks due to which Balance Confirmation Certificates were not issued (which was required by the auditors for audit) hence, the audit was not completed. This delay in completion of accounts delayed the due AGM. The Chief Executive in the written response also stated that the Company did not seek extension for holding the AGM because they were not sure how prolonged the litigation will be.

The hearings were repeatedly fixed and subsequently adjourned on the Company's requests. Final hearing opportunity was given on April 18, 2017 wherein Mr. Faisal Latif and Mr. M. Shahbaz, the authorized representatives of the respondents appeared before the undersigned. They stated that the AGM was held on March 06, 2017 and accordingly the approved accounts were filed on March 11, 2017. They admitted default and reiterated the submissions made in the written reply but requested to condone the delay and ensured compliance in future. An undertaking from the C.E.O has also been submitted in this regard.

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

Sub-section (1) of section 158 of the Ordinance, inter alia, provides as under:

Every company shall hold, in addition to any other meeting, a general meeting, as its annual general meeting, within eighteen months from the date of its incorporation and thereafter once at least in every calendar year within a period of four months following the close of its financial year and not more than fifteen months after the holding of its last preceding annual general meeting:

Sub-section (4) of section 158, inter alia, provides as under:

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,--



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(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;

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

5. I have analyzed the facts of the case, relevant provisions of the Ordinance, and facts available on record. The aforesaid provisions of the law are clear and explicit. A company is required to hold its AGM within four month from the close of its financial year provided that the Commission may extend the time for thirty days based on application by the company. Holding of 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. This includes consideration and approval of a company's financial statements, which not only show the financial position and performance of the company but also show the results of management's stewardship of resources entrusted to it. The timeline of the provision of financial statements to the shareholders is of utmost importance. The investment decisions of the shareholders are based on the information presented to them in financial statements. Delay in presentation of the said information could lead to either uninformed decision or have an adverse effect with respect to its timing. In order to ensure transparency, the company must meticulously follow the procedure prescribed by the Ordinance for holding the AGMs. 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, to keep it appropriately staffed and organized to ensure due compliance of law. In this context the respondents cannot absolve themselves of their statutory duties regarding holding of AGMs and preparing and filing of annual and quarterly accounts in a timely manner as required by the law.

6. In view of the above stated facts, I have concluded that the provisions of the law have been violated and the respondents are able to fine in terms of section 158 of the Ordinance, as the respondent failed to hold AGM within stipulated time. Furthermore, it is also noted with concern that this the third consecutive time that the Company's AGM has been held with the delay beyond



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even the extended time prescribed in the Ordinance since the year 2014. The aforesaid indicates serious governance issues on the part of the management. However, in view of the pledge by the respondent to ensure timely compliance of the statutory filing provisions I am, taking a lenient view and in exercise of powers conferred by sub-section (4) of section 158 of the Ordinance, I hereby impose a fine of Rs.50,000/- (Rupees fifty thousand only) on the C.E.O of the Company Sh. Nishat Ahmed.

The aforesaid fine 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 receipted bank vouchers must be furnished to the Commission. In case of non-deposit of the fine, proceedings for recovery of the fines as arrears of land revenue will be initiated. It may also be noted that the aforesaid fine are imposed on the respondents in their personal capacity; therefore, they are required to pay the said amount from personal resources.

Amina Aziz
Director (CSD)

Announced:
May 09, 2017
Islamabad