

[Islamabad]

Before Dr. Sajid Quershi, Executive Director (CL)

Order in the matter of

M/s Macdonald Layton Company Limited

Number and date of notice:	No. EMD/233/571/2002 - 5457-5464 Dated December 12, 2005
Date of Hearing:	February 13, 2006
Present:	No one appeared on behalf of the Company and directors

### Order

This Order shall dispose of the proceedings initiated against M/s Macdonald Layton Company Limited (hereinafter referred to as “the Company”) and its directors under the provisions of Section 472 of the Companies Ordinance, 1984 (hereinafter referred to as “the Ordinance”).

2. The facts leading to this case, briefly stated, are that in terms of the provisions of Section 233 of the Ordinance, the Directors of the Company were required to lay before the shareholders in the annual general meeting audited balance sheet and profit and loss account for the years ended June 30, 2004 and 2005. Further in terms of Section 237 of the Ordinance the directors were required to attach to the aforesaid audited accounts consolidated financial statements of the group presented as those of a single enterprise and such consolidated financial statements should be reviewed by the auditors. The company was also required to send the said audited accounts alongwith the auditors and directors reports and consolidated financial statements to the shareholders, the Commission, the Stock Exchange(s) and the Registrar at least 21 days before the date of annual general meeting. The examination of



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Company's record in the Commission revealed that its business operations have been suspended since the year 1998 and that for the years ending June 30, 2004 and 2005 it has been submitting un-audited annual accounts to the Commission in violation of Sub-section (3) of Section 233 of the Ordinance. Furthermore, the company has also not submitted consolidated financial statements for the aforesaid years as required by Section 237 of the Ordinance. The Company also not held its annual general meeting for the aforesaid years.

3. In view of the above Notice under Section 472 of the Ordinance dated December 12, 2005 was issued requiring the directors to arrange for audit of the books of accounts of the company and submit audited / consolidated accounts for the years ended June 30, 2004 & 2005 within 30 days of the date of the notice.

4. The reply to the aforesaid direction was received vide letter dated January 16, 2006 signed by Brig.(R) N. Humayune one of the directors of the company on behalf of the rest of the directors. The following contentions with regards to preparation and presentation of audited consolidated financial statements were made:

- In indigent circumstances the company has done its best to comply with requirements of its corporate function through a skeleton staff.
- The company does not have any money to pay to the auditors, thus the second best option was to submit un-audited accounts.
- There was no business activity during the period. Furthermore the un-audited accounts will at least keep everyone informed about the financial position of the company.
- The chief executive and the director have been serving the interest of the shareholders since the last seven year without any remuneration for which they deserve to be commended not condemned.
- Consolidation of accounts could be carried out since the financial position of the subsidiaries cannot be ascertained due to dispute, however, subsidiaries accounts based on expectations are duly appended with the financial statements of the company.



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- The present state of affairs of the company is attributable to wrongful withholding of its funds, assets, deposits and securities by Nationalized Commercial Banks. However, as per recent development SBP has ruled in favour of the company and has issued a binding order to HBL & MCB. The company now awaits implementation of the said order.

In the end it has been prayed that moratorium given to the company on the request of the SBP vide its letter dated March 26, 2005 with reference to winding proceedings may be extended till the implementation of the binding order of SBP by the respective Banks. It has been assured that thereafter the company will comply with all its statutory functions.

5. The aforesaid explanation did not justify contravention of the mandatory statutory provisions of the Ordinance and therefore, hearing of the case was fixed on February 13, 2006. No one appeared in the hearing, however, a letter dated February 02, 2006 was received wherein the contentions raised in the earlier reply were repeated. Besides it was further stated that the company has elected a new set of directors on December 28, 2005 who are not yet familiar with the past affairs of the company, whereas, the chief executive/director, Brig(R) N. Humyune, who handles these issues is ailing and cannot travel to Islamabad. In the end it has been stated that if it is still considered necessary the next hearing may be held at Karachi as convenient. It is apparent from the reply in writing to the hearing notice that the respondents do not wish to put forth any further arguments by appearing before the undersigned in person.

6. Before proceeding further, it is necessary to understand the significance of the mandatory provisions of law, which have been violated. The capital required for the business of a company is contributed by its shareholders who may not necessarily be the persons managing the company. In the case of a listed company, the general public also contributes towards the equity of the company. Such persons do not have any direct control over the company except that they elect directors for a period of three years and entrust the affairs of the company to them in the hope that they will manage the company to their benefits. The



shareholders are, therefore, the stakeholders and the ultimate beneficiaries. Practically, however, the shareholders have no control over the way their company is managed by the directors appointed by them. It was, therefore, necessary that there must be some arrangement in place whereby the shareholders who are the real beneficiaries must get some independent view as to how the directors have managed the affairs of the company. The law, therefore, recognizing this situation, has provided that the shareholders should appoint an *auditor* who shall be responsible to audit the accounts and books of account and make out a report to them at the end of each year. This is the only safeguard provided by law to the shareholders to ensure that the business is carried on by the directors in accordance with sound business principles and prudent commercial practices and no money of the company is wasted or misappropriated. The emphasis on abiding by these provisions of the statute can be assessed by the fact that its violation entails penalty by way of imprisonment of directors of the Company.

7. As regards preparation and presentation of consolidated financial statements this requirement has been laid down in the statute to ensure that proper disclosure is made before the shareholders of the effect of the results of operations of a subsidiary on that of the holding company. Since the subsidiaries utilize resources of the holding company which belong to its shareholders it is pertinent that financial statements of the group as a whole are presented before them so that they are informed about the profitability of the group as a whole.

8. It is also deemed necessary to advert to the provision of law, under which the notice to undo the irregularity was given. Section 472 of the Ordinance, to the extent relevant, is reproduced as follows:

***472. Enforcing compliance with provisions of Ordinance***

- (1) If a company, having made default in complying with any provision of this Ordinance or committed any other irregularity fails to make good the default or undo the irregularity, as the case may be, within thirty days after the service of a notice on the company requiring it to do so, the Authority may, of its own



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motion or on an application made to it by any member or creditor of the company or a reference by the registrar and, in the case of a listed company, besides other persons as aforesaid, on a reference by the stock exchange, make an order directing the company and any officer thereof, as the case may be, to make good the default or undo the irregularity or otherwise make amends, as the circumstances may require, within such time as may be specified in the order.

- (2) Any such order may provide that all costs of and incidental to the application or reference shall be borne by the company or by any officer of the company responsible for the default.

9. Considering that the business of the Company has been suspended since 1998 and it is in dire straits as regards its financial I am of the view that it is even more important that the shareholders are provided authentic information regarding the state of affairs of the company. Audited annual financial statements are one such source of verified information prescribed by law. The auditors among other would certify that the business was carried on by the directors in accordance with sound business principles and prudent commercial practices and no money of the company is wasted or misappropriated and whether or not the company is a going concern. The audit would also verify the existence of assets, bank settlements, revival plans of the company and vindicate the stance of the directors that they have been making all out efforts to revive the company. The directors of a public listed company should be aware of their fiduciary duties and importance of abiding by the mandatory provisions of the statute. Such vital mandatory provision cannot in any case be ignored on the pretext of scarcity of funds or shortages of staff. Therefore, in the circumstances of the case, I proceed to order the directors of the company as follows:

- (i) Prepare consolidated financial statements of the company in accordance with the provisions of Section 237 of the Ordinance for the years ended June 30, 2004 and 2005.



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- (ii) Arrange for the audit of the financial statements of the company for the years ended June 30, 2004 and 2005 along with the consolidated financial statements for the aforesaid years.
- (iii) Submit to the Commission audited financial statements of the company for the years ended June 30, 2004 and June 2005 along with the auditors' report thereon and appended by the consolidated financial statements for the aforesaid years and their respective audit reports within 60 days of the date of this order.

10. During the course of these proceedings it has also been noticed that the company failed to submit accounts for the year ended June 30, 2003. Furthermore the company has also not held Annual General Meetings for the calendar years 2003, 2004, 2005. Therefore, in addition to above I direct the Directors of the Company in terms of Section 473 of the Ordinance:

- (i) Prepare consolidated financial statements of the company in accordance with the provisions of Section 237 of the Ordinance for the year ended June 30, 2003.
- (ii) Arrange for the audit of the financial statements of the company for the year ended June 30, 2003 along with the consolidated financial statements for the aforesaid year.
- (iii) Submit to the Commission audited financial statements of the company for the year ended June 30, 2003 along with the auditors' report thereon and appended by the consolidated financial statements for the aforesaid years and their respective audit report within 60 days of the date of this order.
- (iv) Make an application to the Commission under Section 170 of the Ordinance seeking direction from the Commission for holding of the overdue Annual General Meeting for the calendar years 2003, 2004 and 2005 within 7 days of submission of aforesaid



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audited annual accounts wherein these financial statements would be approved by the shareholders.

11. In the end it may be emphasized that non-compliance of the above directive, the Company and its directors shall be liable to action under Section 495 of the Ordinance, which provides that where any directive is given or order is issued by the Court, the officer, the Commission, the registrar or the Federal Government under any provision of this Ordinance, non-compliance thereof within the period specified in such direction or order shall render every officer of the company or other person responsible for non-compliance thereof punishable, in addition to any other liability, with fine not exceeding fifty thousand rupees and, in the case of a continuing non-compliance, to a further fine not exceeding two thousand rupees for every day after the first during which such non-compliance continues. If non-compliance or failure continues after conviction under sub-section (1), the officer or other person who is a party to such non-compliance or failure shall be liable to punishment with imprisonment which may extend to six months and fine not exceeding two thousand rupees for every day after the first during which such non-compliance continues, and shall further cease to hold office in the company and be disqualified from holding any office in any company for a period of five years.

12. It may also be noted that this order is issued without prejudice to any penal action, which may be taken in respect of the default under Section 158, 233, 237 and 309 of the Companies Ordinance, 1984.

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**Dr. Sajid Quershi**  
Executive Director (CL)

**Announced:**  
February 17, 2006  
ISLAMABAD