



Corporate Supervision Department  
Company Law Division

Before Ms. Amina Aziz – Director (CSD)

*In the matter of*

**Johnsons and Philips Pakistan Limited**

Number and date of SCN: No. CSD/ARN/33/2015-2122-28 dated January 05, 2017

Date of hearing: January 25, 2017

Ch. Muhammad Usman, Legal counsel.

Present:

**ORDER**

**UNDER SECTION 245 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 **Johnsons and Philips Pakistan Limited** (the “Company”):

- |   |                          |   |                    |
|---|--------------------------|---|--------------------|
| 1 | Mr. Bilal Ahmed Qureshi  | 5 | Mr. Farooq A. Khan |
| 2 | Mr. Shehryar Saeed       | 6 | Mr. Nabeel Sadiq   |
| 3 | Mr. Marium Shafi         | 7 | Mr. Imran Rafiq    |
| 4 | Mr. Muhammad Tariq Anjum |   |                    |



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The proceedings against the respondents were initiated through show cause notice (the "SCN-I")

dated January 05, 2017 under the provisions of section 245 read with section 476 of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts of the case are that the Company did not file the interim financial statements ("Quarterly Accounts"/Half yearly) for the following periods with the Commission, in a timely manner as per requirements of section 245 of the Ordinance:

Quarter Ended	Due on
30-Sep-15	31-Oct-15
31-Dec-15	29-Feb-16
31-Mar-16	30-Apr-16

Consequently, the SCNs 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 sub-section (3) of section 245 of the Ordinance for not filing the aforesaid Quarterly Accounts with the Commission in a timely manner, as per requirements of the law.

3. The Company vide its letter dated January 23, 2017 replied to the SCN stating that the quarterly accounts for the quarter 31-Mar-16 had been provided on time before April 30, 2016.

The filing of accounts for the quarter ending Dec-2015 were delayed due to some technical issue related to the digital signatures of one of the directors when contended that digital signatures are not required for sending of physical copies. The counsel mentioned that the



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directors were under the belief that first, the accounts have to be e-filed then physical copies are to be sent.

The accounts for the quarter 30-Sep-15 were delayed due to some coordinating issues with the auditors which made them miss the deadline.

In addition, the courier receipts for the quarterly accounts sent 31-Dec-15 and 31-Mar-16 were also attached with the reply.

4. It is necessary to mention here that though as stated in the reply the quarterly accounts were sent however, the department did not receive them. On enquiring, it was found that they were addressed to the Registrar whereas, physical copies are sent to the Corporate Supervision Department.

Referring to given to para 5.4 which states;

*"The point made that when such a term (willful and knowingly) is being used it is making a reference to a willful and deliberate attempt to subvert the law. This provision is penal in nature and is not meant to punish acts of negligence or carelessness."*

Submission of accounts is the duty of the directors of a listed company and if anyone fails to perform his duty, he becomes liable for punishment. Now whether the act was willful, deliberate, negligent or careless is a question of fact and onus falls on the party contending it. It is not just assumed.

The definition need not be stated here as the reply incorporates them well willful act is greatly differs from a negligent act but only when proved.

5. It is necessary here to quote the following case laws for reference;

In 2013 CLD 82,

**AZMAT ALI SHEIKH, DIRECTOR/CHIEF EXECUTIVE OFFICER Vs EXECUTIVE DIRECTOR (ENFORCEMENT) SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN:**

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN, 63-Jinnah Avenue

COMMISSION OF PAKISTAN

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The director of the Company took the plea that the act (non-filing of accounts and filing with delay) was not willful or done unknowingly; it was rebutted with the fact that not once but the Company has defaulted in submission of accounts thrice (filed their quarterly accounts with delay of more than 265 days in first quarter, filed with a delay of 172 days for the second quarter and

not at all filed for the third quarter) such a continuing default cannot be assumed as negligent or not in the knowledge of the Executive Director of the Company. Hence, the decision of the Executive Director (CSD) was upheld.

Then again, in **2014 CLD 791** in the case of *Asian Mutual Insurance (Guarantee) Company* it was stressed that directors of a Company in addition to day to day running of the Company and management of its business also have fiduciary duties i.e. duties held in trust; and some wider duties imposed by statute; and breach of the said statutory duties would usually be a criminal offence punishable with fine or imprisonment. Directors were gauged against a higher standard of accountability which requires them to be vigilant and perform their duties with due care.

The directors of a company need to be vigilant enough and are supposed to be well aware of their legal obligations.

6. It is also necessary to bring your attention to the compliance history of your Company. The quarterly accounts for 31-Dec-14 due on 28-Feb-15 were filed with a delay of 180 days (filed on 27-08-15) for which a *warning order* was issued. Then for the accounts of 31-Mar-15 due on 30-Apr-15 were filed with a delay of 11 days for which a *warning* was issued. In the SCN issued the accounts for three quarters are



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under consideration. However, reiterating the fact that the relevant department never received the accounts since they were sent to the Registrar but again taking a kind stance the delay is thus condoned.

7. Before proceeding further, it is necessary to advert to the following relevant provisions of the Ordinance. In terms of sub-section (1) of section 245 of the Ordinance read with Commission's circular no. 9 dated March 19, 2003, all listed companies are, inter alia, required to file their quarterly accounts with the Commission within stipulated time i.e. one month from the close of first and third quarters and two months from the close of second quarter.

Sub-section (3) of section 245, inter alia, provides as under:

*(3) If a company fails to comply with any of the requirements of this section, every director, including chief executive and chief accountant of the company who has knowingly by his act or omission been the cause of such default shall be liable to a fine of not exceeding one hundred thousand rupees and to a further fine of one thousand rupees for every day 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 245 have been delegated to the Director (Corporate Supervision Department).

8. I have analyzed the facts of the case, relevant provisions of the Ordinance, and submissions made by the respondents. Before deciding upon on matter, manner not only provide to its users a reliable source of information regarding a company's financial position and performance but these also show the results of management's stewardship of resources entrusted to it. In order to ensure transparency, all the companies must meticulously follow the legal requirement for preparing and circulation of interim accounts. In addition to their responsibility of overseeing and managing affairs of the Company, directors also have fiduciary duties towards the I would like to highlight that the requirement to circulate interim accounts was introduced so that the shareholders




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could have timely access to information about the affairs of companies. Keeping in view the fact that timing of interim financial statements is of essence the disclosure and audit requirements of these accounts have been kept to a bare minimum. Interim financial statements prepared properly and in a timely 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.

9. It is clear that the Company did not file the relevant Quarterly Accounts in physical form to the Commission; however, those were e-filed with the Registrar with some delay. Nevertheless, in view of the extraordinary circumstances I take a lenient view of the case and instead of imposing fine, I hereby conclude the proceedings with a stern warning to the respondents to be careful in future and ensure meticulous compliance with provisions of Section 245 of the Ordinance.

  
Amina Aziz  
Director (CSD)

**Announced:**  
January 26, 2017  
Islamabad