



Corporate Supervision Department
Company Law Division

Before Mr. Abid Hussain – Executive Director

In the matter of

Moonlite (Pak) Limited

Number and date of SCN: No. CSD/ARN/211/2015-2945-51 dated February 24, 2017
Date of hearing April 25, 2017 & February 1, 2018
Present: Mr. Muhammad Sohail Umar
Chief Executive Officer
Moonlite (Pak) Limited

ORDER

UNDER SECTIONS 158 and 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 (*the "Respondents"*) of Moonlite (Pak) Limited (*the "Company"*):

- | | | | |
|---|---------------------|---|-------------------------|
| 1 | Mr. Muhammad Ashraf | 6 | Mrs. Nasreen Ashraf |
| 2 | Mr. Muhammad Sohail | 7 | Mr. Abdullah Ghulam Ali |
| 3 | Mr. Shahid Umer | | |
| 4 | Mr. Faraz Ashraf | | |
| 5 | Ms. Parsa Sohail | | |

The proceedings against the respondents were initiated through show cause notice dated February 24, 2017 (*the "SCN"*) under the provisions of sections 158 and 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 hold its annual general meeting (*the "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. Further, the Company also did not file the quarterly accounts for the quarter ended on September 30, 2016 in physical form with the Commission as against the requirements of section 245 of the Ordinance. Consequently, the SCN was issued to the Company for non-holding of AGM for the year 2016 and non-filing of quarterly



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accounts. The SCN was issued to the respondents wherein they were called upon to show cause in writing within fourteen days as to why penal action may not be taken against them under sections 158 and 245 of the Ordinance.

3. Hearing in the matter was held on April 25, 2017 in which Mr. Muhammad Sohail, the Chief Executive Officer of the Company appeared as authorized representative. He submitted a written response and reiterated facts stated therein. The authorized representative stated that the Company had been in liquidation for quite some time however, it has now proceeded with a merger scheme with Bunny's Limited. The authorized representative informed that the merger petition was pending in the Lahore High Court.

4. He further stated that the Company is under staffed and he is singlehandedly running the affairs of the Company. The audit was delayed because of the authorized representative was busy with completion of an investigation authorized by the Commission against the Company. He submitted that the Company would be holding the overdue AGM as soon as the audit was completed.

5. The matter was re-fixed for hearing on February 1, 2018 wherein the authorized representative again appeared on behalf of the Company. He stated that the merger of the Company with Bunny's Limited has been sanctioned. The authorized representative further submitted that due to lack of resources the Company could not hold the AGM on time nor timely submit the due quarterly accounts. However, the Company has planned to hold the AGM for the year 2016 & 2017 together in March 2018. The authorized representative requested some time to regularize things.

6. The Company vide letter dated January 31, 2018 sought directions for holding of the overdue AGMs for the year 2016 & 2017 under section 147 of the Companies Act, 2017 (section 170 of the Ordinance) on March 15, 2018. The notices of the AGM were also sent vide letter dated February 21, 2018.

7. 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:



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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,-

(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;

8. 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 751 (I)/2017 dated August 2, 2017, the powers to adjudicate cases under sections 158 and 245 of the Ordinance have been delegated to the Executive Director.

9. 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,



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including those in minority, to participate in discussion and voting on agenda items of the AGM. Quarterly accounts prepared properly and in a timely 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 quarterly accounts.

10. In view of the above stated facts, submissions of the respondents and circumstances of the Company, I have observed that the Company has held the AGMs for the years 2016 and 2017 on March 15, 2018 as per commitment made by the authorized representative during the hearing. The corrective measures have been taken as regards the non-holding of AGM. I hereby conclude the proceedings under Section 158 of the Ordinance with a warning to the respondent to ensure meticulous compliance with the provisions of law in future.

11. As regards the proceedings in relation to section 245 of the Ordinance for non-filing of quarterly accounts by the Company, I have observed that the Company has failed to file the quarterly accounts for the quarter ended September 30, 2016 despite lapse of considerable time. The Company has also failed to give a valid justification in this regard. I therefore impose a penalty of Rs.10,000 on Mr. Muhammad Sohail Umer, Chief Executive of the Company.

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 fines are imposed on the Chief Executive in his personal capacity; therefore, he is required to pay the said amount from personal resources.

ABID HUSSAIN
Executive Director
Corporate Supervision Department

Announced:
April 12, 2018
Islamabad