



Securities & Exchange Commission of Pakistan
Enforcement and Monitoring Division
NIC Building, Jinnah Avenue, Blue Area, Islamabad

Before M. Zafar-ul-Haq Hijazi, Commissioner (E &M)

In the matter of
M/S SOUVENIR TOBACCO COMPANY LIMITED

No. and date of show cause notice under Section 158 (for non-holding of AGM for the year ended 30.06.2002)	EMD/233/389/2002/5768-75 April 7, 2003
No. and date of show cause notice under Section 245 (for non-filing of accounts for the quarter ended 31.12.2002)	EMD/233/389/2002/5754-60 April 7, 2003
No. and date of show cause notice under Section 246 (for non-filing of accounts for the quarters ended 30.06.2002 & 30.09.2002)	EMD/233/389/2002/5776-83 April 7, 2003
Date of hearing	July 30, 2003
Present	No one appeared

Order

This Order shall dispose of the proceedings initiated against M/S Souvenir Tobacco Company Limited (hereinafter referred to as the “Company”) and its directors for defaults made in complying with the provisions of Sub-section (1) of Section 158, Sub-section (1) of Section 245 and Sub-section (1) of Section 246 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The underlying facts of this case briefly stated are that the Company was required to prepare and transmit to the members and simultaneously file with the Commission quarterly accounts for the quarters ended June 30, 2002, September 30, 2002 and December 31, 2002 in which the company failed. The company was also required to hold annual general meeting (AGM) for the Calendar year 2002 on or before December 31, 2002. The company applied for extension in holding of AGM, which the Commission rejected due to lack of reasonable grounds. The company failed to hold AGM as required under the law. Therefore three show cause notices

of even number dated April 7, 2003 were issued to the company, chief executive and its directors calling upon them to show cause in writing as to why penalty as provided under Sub-section (4) of Section 158, Sub-section (3) of Section 245 and Sub-section (2) of Section 246 of the Ordinance may not be imposed upon them for the aforesaid contraventions.

3. In reply to the said show cause notices all the respondents in their individual replies contended that the request of the company for extension in holding of annual general meeting was rejected by the Commission though the Company had deposited a heavy amount of Rs. 16,000/- as extension fee and whereas the extension in the last year was granted on the same grounds. Besides of the same stringent and expensive law the company decided in Board of directors meeting on May 14, 2002 for de-listing and in this regard application has already been moved to Karachi Stock Exchange on September 05, 2002. An extra ordinary general meeting was held on February 22, 2003 for buy back of shares at Rs. 20/-, price as approved by the Karachi Stock Exchange. Moreover, the company applied for directions u/s 170 to hold AGM, which the Commission has not issued as yet. Had this extension been granted a lot of cost would have been saved by putting agenda for buy back of shares in the annual general meetings on the same day. It was also submitted that almost majority of shares are with the sponsors and there was no trading in the shares of the Company. The replies of the directors were not found to be satisfactory, therefore, in order to give an opportunity of personal hearing the case was fixed for July 30, 2003. On the date of hearing no one appeared, however a letter from Mr. Mahmood Shaikh, Director Finance/Company Secretary was received in which he stated that Commission has rejected the request of extensions/directions etc as the Commission has already made its mind to impose penalty. He also stated that the Company has paid 100% premium to the face value to the minority share holders at the de-listing stage and the Commission or the Stock Exchange did not make any objection regarding non filing of accounts at that stage. He requested for change of venue of hearing from Islamabad to Karachi due to financial constraints.

4. The submissions of the respondents have been given due consideration and it has been observed that none of the reasons submitted by them are tenable. The company was de-listed from Karachi Stock Exchange on June 17, 2003 as per quotation sheet of KSE whereas the respondents failed to comply with the requirements of law since the decision of de-listing in the Board of directors meeting. As far as extension in holding annual general meeting is concerned, I have noted the same was rejected as the Company has been found to be habitual in seeking extensions for holding of the AGMs in the past two years instead of making serious attempts to

ensure compliance with the requirements of law. Regarding the direction under Section 170 to hold overdue annual general meeting, it would be sufficient to say that the management did not file copy of audited accounts in response to the Commission's letter, which was called to ensure that the management was ready to hold annual general meeting. The said accounts have still not been received till the writing of this order. I have noted that the management has never been regular in holding annual general meeting and filing of half yearly as well as quarterly accounts in the past and penalties have been imposed upon them since 1990. Besides, the management failed to deposit the penalties imposed upon them and the cases were referred to the Deputy Commissioner in the past who arranged the deposit of penalties in instalments. The management of the Company instead of becoming compliant to the provisions of law, appears to have taken present proceedings more lightly and have even preferred to stay away from the proceedings demanding that hearing should be fixed in Karachi.

6. In the above circumstances, I feel that the defaults under Section 158, Section 245 and Section 246 were intentional and wilful and due to negligence of the chief executive and other directors. The management of the company is not serious in complying with the requirements of law. The management of the company has not responded positively to the lenient view taken in the past while imposing penalty instead the directors have started taking the requirements of law very lightly. In the circumstances, it is necessary to take strict view of the default but in view of that the majority shareholders have purchased shares from minority holders at Rs. 20/- per share and the company has been de-listed from the KSE, I am again inclined to take a lenient view and instead of imposing maximum fine of Rs. 20,000/- and further fine for continuous default @ Rs. 2,000/- per day under Section 158, impose Rs. 10,000 only, a fine of Rs. 5,000/- under Section 245 instead of imposing maximum fine of Rs. 100,000/- and further fine for continuous default @ Rs. 1,000/- per day and a fine of Rs. 5,725/- for the default for the quarter ended September 30, 2002 @ Rs. 25/- per day for a period of 229 days; up to June 17, 2003, on the following directors and the chief executive:-

<i>Name</i>	<i>Section 246</i>	<i>Section 245</i>	<i>Section 158</i>	Total
	<i>30.09.02</i>	<i>31.12.02</i>	<i>30.06.02</i>	
Mr. Shad Ali Khan, Chief Executive	5,725	5,000	10,000	20,725
Mr. Dilawar Khan, Director	5,725	5,000	10,000	20,725
Mr. Mehmood Shaikh, Director	5,725	5,000	10,000	20,725
Mr. Muhammad Raza Shah, Director	5,725	5,000	10,000	20,725
Mr. Azam Khan, Director	5,725	5,000	10,000	20,725

Mr. Ameer Muhammad Khan, Director	5,725	5,000	10,000	20,725
Mr. Sadruddin Lakhani, Director	5,725	5,000	10,000	20,725
Total	40,075	35,000	70,000	145,075

However, taking a lenient view, the default for the fourth quarter ended June 30, 2002 has been condoned since the requirement of fourth quarterly accounts was done away through the Companies (Amendment) Ordinance, 2002.

7. The Chief Executive and directors of the company are directed to deposit the fine imposed upon them in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with Habib Bank Limited within thirty days from the receipt of this order and furnish the receipted challan to the Commission.

M. Zafar-ul-Haq Hijazi
Commissioner (Enf)

August 06, 2003
ISLAMABAD