

Securities and Exchange Commission of Pakistan
Enforcement and Monitoring Division
7th Floor, NIC Building, 63-Jinnah Avenue, Blue Area, Islamabad

Before Rashid Sadiq, Executive Director

In the matter of
M/S KAUSAR PAINTS LIMITED

Number and date of notice	19(487)CF/ISS/2001 dated March 12, 2002
Date of hearing	June 26, 2002
Present	Mian S. Mohammad Yahya Baghpattee, Chief Executive

Order

The relevant facts for the disposal of this case, briefly stated, are that M/S Kausar Paints Limited (the “Company”) was required to hold its AGM for the calendar year 2001 and to lay therein its balance sheet and profit and loss account for the year ended June 30, 2001 on or before December 31, 2001 as required under Sub-section (1) of Section 158 and Sub-section (1) of Section 233 of the Companies Ordinance, 1984 (the “Ordinance”). The failure of the Company to comply with the aforesaid mandatory requirements necessitated action against the Company, its directors and Chief Executive.

02. Consequently, a notice dated March 12, 2002 was issued to the Company, its Chief Executive and directors calling upon them to show cause as to why penalties as provided under Clause (a) of Sub-section (4) of Section 158 read with Section 476 of the Ordinance may not be imposed and prosecution

proceedings may not be initiated under Sub-section (6) of Section 233 read with Sub-section (7) of Section 230 of the Ordinance.

03. The response to the aforesaid show cause notice was received through the Company's letter dated March 30, 2002. In order to provide an opportunity of personal hearing, the case was fixed on June 21, 2002, which was adjourned to June 26, 2002. Mian S. Mohammad Yahya Baghpatee, Chief Executive of the Company appeared on the date of hearing and argued the case. He averred that the Company had closed its operations two years ago. All activities such as purchase, production, or sale stand suspended for want of capital and due to extreme financial constraint, all the staff had been laid off. It was also stated that necessary funds could not be generated due to unfavourable market conditions. He further stated that PICIC had filed a recovery suit against the Company, which was decreed in its favour and PICIC took possession of factory premises on February 24, 2001 under court order. It was, therefore, contended that the Company has no control over books of account and therefore, accounts for the year ended June 30, 2001 could not be prepared and resultantly Annual General Meeting could not be held.

04. I have given careful consideration to the arguments advanced by the Company for not being able to hold AGM within stipulated time; however, none of them justify the non-holding of AGM. The contentions that Annual General Meeting could not be held as the Company had no control over books of account is not based on facts. I have perused the copy of warrant of attachments of the immovable properties issued by the Court in execution of decree favouring PICIC, which clearly states the following schedule of mortgage of property:

QUOTE

“By attachment and sale of the mortgage property bearing Plot No.F-279, and measuring 1 acre situated at Survey Sheet No. 35P/1-35L/13,

Trans Lyari Quarters Industrial Trading Estate Area, Karachi together with Plant machinery fitting, fixture and construction thereon”.

UNQUOTE

Obviously, the attached property does not include the books of account and other movable property. The contention of the Company that the books of account were in the control of PICIC, therefore, could not be established. Moreover, holding of AGM is one of the statutory obligations of the directors irrespective of whether the accounts, the consideration of which is only one of the matters to be discussed in the AGM, were ready or not. I, therefore, find no merit in the reasons advanced by the Company for non-holding of Annual General Meeting for the year 2001. As the directors were supposed to be aware of the legal requirements and the consequences of their violations and further they were unable to give any justifiable excuse for the contraventions, therefore, it could be legitimately inferred that the default was committed willfully and deliberately for which the Company, its directors and Chief Executive have made themselves liable under the provisions of Sub-section (1) of Section 158 of the Ordinance.

05. For the foregoing, I impose a fine of Rs. 20,000 (Rupees twenty thousand) on the Company and on each director including its Chief Executive for default in complying with the provisions of Sub-section (1) of Section 158 of the Ordinance and for the continuous default, taking a lenient view, no further fine is imposed on the Company, its Chief Executive and directors, which is prescribed @ Rs. 2,000/- per day. I give an opportunity to the Company, its Chief Executive and directors to rectify the irregularity by holding overdue Annual General Meeting immediately. As regard to the non-presentation of accounts, I hereby direct the office to consider initiation of proceedings against the directors and Chief Executive of the Company under

Sub-section (1) of Section 233 of the Ordinance after taking into the requirements of the law.

06. The Company, its Chief Executive namely, Mian S. Mohammad Yahya Baghpatee and directors namely, Mr. Mukhtaruddin Qureshi, Mian S. Zafar Shakil Baghpatee, Begum Saheba Ateeq Mian Yousuf, Mian Saheb S. M. Yousaf Baghpatee, Mian S. Javed Yousaf Baghpatee and Begum Nargis Shahid are hereby directed to deposit the fine amounting to Rs. 20,000 each (aggregating Rs. 160,000) 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 date of this Order and furnish receipted challan to the Securities and Exchange Commission of Pakistan.

RASHID SADIQ

Executive Director (Enforcement and Monitoring)

Announced
August 13, 2002
ISLAMABAD