



Securities & Exchange Commission of Pakistan
Enforcement and Monitoring Division

[Islamabad]

Before Rashid Sadiq, Executive Director

In the matter of
M/S WALI OIL MILLS LIMITED

Number and date of notice	EMD/233/550/2002 August 27, 2002
Date of hearing	September 23, 2002
Present	Mr. Muhammad Amin Hashmi Advocate

Order

This is a case of violation of the provisions of Section 246 of the Companies Ordinance, 1984 (the “Ordinance”), which requires the preparation and transmission of quarterly accounts by listed companies.

2. Through SRO No.764 (I) 2001 dated November 05, 2001, the listed companies were required to prepare and transmit to its members, stock exchanges, Registrar and the Commission their quarterly accounts within one month of the close of relevant quarter of their year of accounts. Accordingly, M/S Wali Oil Mills Limited, a listed company (the “Company”) was required to



Securities & Exchange Commission of Pakistan
Enforcement and Monitoring Division

prepare and transmit its quarterly accounts for the period ended March 31, 2002 by April 30, 2002 to its members, stock exchanges, Registrar and the Commission. The failure of the Company to comply with the aforesaid requirement necessitated action in terms of the aforesaid provisions of law.

3. Consequently, a notice dated August 27, 2002 was issued to the Company, its directors and Chief Executive to show cause in writing as to why fine as provided in Sub-section (2) of Section 246 of the Ordinance may not be imposed. The Company responded the aforesaid show cause notice vide its letter dated September 20, 2002. In order to provide an opportunity of hearing, the case was fixed on September 23, 2002 on which date, Mr. Muhammad Amin Hashmi, advocate appeared on behalf of the Company, its Chief Executive and directors.

4. In the written submissions as well as at the time of hearing, Mr. Hashmi contended that quarterly accounts could not be prepared due to delay in finalization of half-yearly accounts for the period ended December 31, 2001, which was caused due to termination of Chief Accountant and corruption of data lying in his Computer. It was further stated that it was not the responsibility of the Chief Executive or directors to prepare and circulate "Quarterly Accounts" though they have to approve such accounts before their circulation, but it is the job of the "Chief Accountant" under Sub-section (7) of Section 230 of the Ordinance to prepare and circulate these accounts. Thus, the Chief Executive and directors may not be held responsible for any alleged default or omission that can only be attributed to the Chief Accountant. It was further argued that the provisions of Sub-section (2) of Section 246 of the Ordinance provides that the penalty could be imposed only in case the contravention to comply with any provisions of Section 246 of the Ordinance



Securities & Exchange Commission of Pakistan
Enforcement and Monitoring Division

has been done “knowingly and willfully.” As there was no *mala-fide* motive, bad intentions or criminal intentions on the part of the Chief Executive or any Director, the omission was not willful. He requested for a lenient view of the default and assured timely compliance of this requirement in future.

5. After carefully considering the arguments advanced by the Company’s Counsel and examination of the relevant provisions of the Ordinance, I have come to the conclusion that the contentions of the Company do not carry any merit for the following reasons:

- i) The preparation of quarterly accounts and half yearly accounts are two separate requirements of law and, therefore, cannot be intermixed. The quarterly accounts do not require much time as these are un-audited accounts and could be promptly circulated soon after the close of the relevant quarter. It is the duty of directors to timely prepare the half yearly and quarterly accounts well in time to ensure their circulation within prescribed time. The delay in preparation of half yearly accounts, therefore, is not a valid reason for delaying the subsequent quarterly accounts and is not acceptable.
- ii) As regards to the corruption of accounting data, it is the duty of the directors to ensure that proper backup of the data is maintained so that there is no delay in compilation, presentation and transmission of interim accounts in the event of any mishap. The Commission has also advised all the listed companies vide Circular No.4 dated March 24, 2000 that they should keep the back up files of all data so as to ensure that it can be retrieved in



Securities & Exchange Commission of Pakistan
Enforcement and Monitoring Division

case of any break down of computer software. I, therefore, do not find any merit in the argument advanced by the Company.

- iii) The termination of the Chief Accountant is also not a justifiable reason for delaying the quarterly accounts. A listed company is expected to maintain proper books of accounts so that annual and interim accounts are prepared within prescribed time limit. It is the responsibility of the directors to have in place a sound system to ensure compliance of law even in the absence of Chief Accountant.
- iv) About the contention that Chief Accountant is responsible for preparation of quarterly accounts, I am of the view that the provisions of Sub-section (2) of Section 246 of the Ordinance cast a duty on the Company and its every officer for compliance with the Orders / directions of the Commission. The law makes the officers including directors responsible for preparation of accounts. The ultimate responsibility, therefore, lies on the directors who could be held liable to punishment in case of non-compliance. It appears that the directors are trying to shift the burden of default on the Chief Accountant of the Company who is merely an employee and is ordinarily obliged to act upon the instructions of the directors. If the Chief Accountant has also authorized or permitted the default, he could also be held liable for punishment. The directors, however, cannot escape their obligation for delay in preparation and circulation of accounts.
- v) It has been argued that the default was not willful. A default is considered willful when under ordinary circumstances, a person committing the default could have refrained from it and when a



Securities & Exchange Commission of Pakistan
Enforcement and Monitoring Division

person fails to comply with the legal provisions knowingly which he is required to do but follows a different course of action is considered as willful default. The requirement of quarterly accounts was intimated to all the listed companies. Moreover, this requirement was also published through press releases in all major daily newspapers and was also available on the Commission's website. This requirement was also widely discussed in the business and legal circles. The Chief Executive and directors were duty-bound to timely prepare and circulate the quarterly accounts to the shareholders. From the above circumstances, it can legitimately be inferred that the default was committed intentionally and deliberately. Moreover, the directors have not been able to prove that the default was not intentional and deliberate.

6. In view of the above and after careful consideration of the circumstances of this case, I am convinced that the Chief Executive and the directors have avoided complying with the requirements of law intentionally and deliberately. They have, therefore, made themselves liable for fine as provided under Sub-section (2) of Section 246 of the Ordinance. As the Company has now submitted its quarterly accounts for the period ended March 31, 2002 as promised at the time of hearing and have also provided assurance for timely compliance of this requirement in future, therefore, taking a lenient view of the default and instead of imposing maximum fine of Rs.1,000 for each day of default on all the responsible officers, I impose a fine of Rs. 25,000 (Rupees twenty five thousand only) only on Chief Executive of the Company. As this is the first default of the Company in transmitting of the quarterly accounts, the other directors of the Company are only reprimanded to be careful in future.



Securities & Exchange Commission of Pakistan
Enforcement and Monitoring Division

7. The Chief Executive namely Mr. Muhammad Bashir is hereby directed to deposit the fine amounting to Rs.25,000 (Rupees twenty five thousand only) 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 & Monitoring)

Announced
December 26, 2002
ISLAMABAD