



Securities & Exchange Commission of Pakistan
Company Law Division
(Enforcement Department)

[Islamabad]

Before Rashid Sadiq, Executive Director

ORDER

In the matter of

M/S Khyber Tobacco Company Limited

(Under Sub-section (3) of Section 245 Of the Companies Ordinance, 1984.)

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|---------------------------|---|
| Number and date of notice | EMD/Enf -II/389/2003 dated February 23, 2004 |
| Date of hearing | March 30, 2004 |
| Present | Mr. Khalid Khan Accountant |
| Date of Order | April 01, 2004 |

This is a case of violation of the provisions of Section 245 of the Companies Ordinance, 1984 (the “Ordinance”) by M/S Khyber Tobacco Company Limited (the “Company”).

2. The facts leading to this case, briefly stated, are that in terms of the provisions of Section 245 of the Ordinance, the Company was required to prepare and transmit to its members and simultaneously file with the Registrar and the Commission, its quarterly accounts for the period ended on September 30, 2003 by October 31, 2003, whereas the said accounts were filed with the Commission and the Registrar on January 13, 2004 i.e. with a delay of 73 days. The failure of the directors to comply with the aforesaid requirement necessitated action against them as provided under the law.

3. Consequently, a notice dated February 23, 2004 was issued to all the directors of the Company including its Chief Executive calling upon them to show



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cause as to why fine as provided under Sub-section (3) of Section 245 may not be imposed on them. The Chief Executive of the Company responded to the aforesaid show cause notice vide his letter dated February 27, 2004. In order to provide an opportunity of hearing, the case was fixed on March 30, 2004. Mr. Khalid Khan, Accountant, appeared on behalf of all the directors and also submitted a written reply.

4. In the written submissions, the Chief Executive of the Company on behalf of all the respondents stated that the Company was allowed an extension of two months for holding of its Annual General Meeting (AGM) and filing of annual accounts therein for the year ended June 30, 2003, up to December 30, 2003. Consequently, the non-availability of opening balances from the annual accounts resulted in delay in preparation of accounts for the quarter ended September 30, 2003. He requested for condonation of delay in submission of quarterly accounts. During the course of hearing, Mr. Khalid Khan, reiterated the same arguments as were given in the written explanation by the Chief Executive of the Company. He also assured that no such delay would occur in future.

5. I have given due consideration to the submissions of the respondents and found that the arguments advanced by them do not justify late submission of quarterly accounts because late finalization of the annual accounts is not a justifiable excuse for delaying the circulation and filing of quarterly accounts which is a separate mandatory requirement under Section 245 of the Ordinance. Moreover, the AGM of the Company was held on December 29, 2003 for which the accounts were required to be circulated to the shareholders on December 08, 2003 after approval of the Board of Directors. It means that the said annual



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accounts were ready with the Company by November 30, 2003 and the Company could have transmitted the said accounts in the second week of December 2003. The Company, however, transmitted these accounts on January 13, 2004. This delay has not been explained satisfactory. I have also noted that the Company has also defaulted in compliance of this statutory requirement in the past. After careful consideration of the circumstances of this case, I am of the view that the delay in submission of quarterly accounts is deliberate and intentional which attracts the provisions of Sub-section (3) of Section 245 of the Ordinance. However, since the authorized representative of the respondents has assured to comply with the provisions of the law in future, I am, therefore, inclined to take a lenient view in the matter and impose a token penalty of Rs. 15,000/- (Rupees fifteen thousands only) on the Chief Executive of the Company. The other directors are reprimanded to be careful in future.

6. The Chief Executive of the Company is hereby directed to deposit the fine amounting to Rs. 15,000/- 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 receipt of this order and to furnish receipted challan to the Commission.

Rashid Sadiq
Executive Director (Enforcement)

Announced:
April 01, 2004
ISLAMABAD