



Corporate Supervision Department
Company Law Division

Before Ali Azeem Ikram – Executive Director (CSD)

In the matter of

Byco Petroleum Pakistan Limited

Number and date of SCN: EMD/233/638/2002-1111 dated January 14, 2015

ORDER

UNDER SECTION 158 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of the proceedings initiated against the following directors including chief executive (together referred to as “respondents”) of **Byco Petroleum Pakistan Limited** (the “Company”).

1	Mr. Mujtaba Jafarey, Chief Executive	5	Mr. Adnan Siddiqui
2	Mr. Hamid Imtiaz Hanfi	6	Mr. Phillip Harris
3	Mr. Muhammad Raza Hasani	7	Ms Diana Brush
4	Mr. Ovais Mansoor Naqvi	8	Mr. Richard Legrand

These proceedings against the respondents were initiated through show cause notice (the “SCN”) dated January 14, 2015 under the provisions of section 158 read with section 476 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The brief facts of the case are that the Company was required to hold its annual general meeting (“AGM”) for the year ended June 30, 2014 on or before October 31, 2014, in terms of sub-section (1) of section 158 of the Ordinance. However, review of record revealed that the Company failed to convene its AGM within the prescribed time. The AGM was held on January 19, 2015 i.e. with a delay of 80 days after direction of the Commission given in terms of section 170 of the Ordinance upon Company’s request. Consequently, the SCN was issued to the respondents whereof they were called upon to show cause in writing as to why penal action may not be taken against them under section 158 of the Ordinance for not holding the AGM within the prescribed time. In response to the SCN, the Company replied vide letter dated January 27, 2015. A brief of submissions in respect of contents of the SCN is given below:

- The AGM of the Company could not be held within the prescribed time and this fact was duly communicated to the Commission while seeking directions under section 170 of the



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Ordinance. The Commission through letter dated December 22, 2014 directed the Company to hold its overdue AGM on or before January 31, 2015.

- It is understood that the aforesaid direction was without prejudice to the penal provisions of section 158 of the Ordinance.
- The reason for delay in holding the AGM was delay in finalization of annual accounts of the Company. Consequently, the audit could not be completed within prescribed time, for which the auditor's certificate has already been submitted to the honorable Commission while seeking direction under section 170 of the Ordinance.

Based on their submissions, the respondents requested for a lenient view.

3. The case was fixed for hearing on April 28, 2015 through hearing notice dated April 22, 2015. In response to the hearing notice, the Company vide letter dated April 27, 2015 submitted that the case may be decided based on the written response already submitted to the Commission on January 27, 2015. The respondents were advised to provide a statement signed by all the respondents to the effect that they want the proceedings to be concluded based on written submission made through letters dated January 27, 2015, without availing the opportunity of hearing. Subsequently, the Company through letter dated September 30, 2015 submitted the requisite written statement of the respondents on affidavit whereof they requested to conclude the proceedings based on written submissions.

4. 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:

"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:



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"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;"

5. I have analyzed the facts of the case, relevant provisions of the Ordinance, and submissions made by the respondents. 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, including those in minority, to participate in discussion and voting on agenda items of the AGM. This includes consideration and approval of a company's financial statements, which not only show the financial position and performance of the company but also show the results of management's stewardship of resources entrusted to it. The timeline of the provision of financial statements to the shareholders is of utmost importance. The investment decisions of the shareholders are based on the information presented to them in financial statements. Delay in presentation of the said information could lead to either uninformed decision or have an adverse effect with respect to its timing. In order to ensure transparency, the company must meticulously follow the procedure prescribed by the Ordinance for holding the AGMs. In addition to their responsibilities of overseeing and managing affairs of the Company, directors also have fiduciary duties towards the Company and its shareholders. They are, therefore, liable to a higher level of accountability which requires them to be vigilant and perform their duties with care and prudence. It is directors' responsibility to oversee the functioning of the company, to keep it appropriately staffed and organized to ensure due compliance of law. In this context the respondents cannot absolve themselves of their statutory duties regarding holding of AGMs and preparing and filing of annual and quarterly accounts. The respondents have cited delay in finalization of annual accounts and its audit as the reason for delay in holding the AGM. It is reiterated that preparation and approval of accounts within the prescribed time is also the responsibility of the directors and delay in preparation and approval of accounts cannot be a



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justification for late holding of the AGM. It is a matter of grave concern that since 2009, except for one instance, all AGMs of the Company have been held with delay.

6. In view of the foregoing, I have concluded that the provisions of the law have been violated and the respondents are liable to fine in terms of section 158 of the Ordinance. However, taking cognizance of the fact that though with a delay, the AGM has been finally held by the Company, instead of imposing maximum fine on all the respondents, in exercise of powers under sub-section (4) of section 158 of the Ordinance, I hereby impose a fine of Rs100,000/- (Rupees one hundred thousand) on the 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 failure to 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 fine is imposed on the respondent in his personal capacity; therefore, he is required to pay the said amount from personal resources.

Ali Azeem Ikram
Executive Director (CSD)

Announced:
October 14, 2015
Islamabad