



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director (CSD)

In the matter of

Fatima Enterprises Limited

Number and date of SCN: EMD/233/117/02-1197 dated January 21, 2015
Date of Hearing: November 4, 2015
Present: Mr. Faisal Latif, Authorized Representative

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 the chief executive officer (together referred to as “respondents”) of **Fatima Enterprises Limited** (the “Company”):

1	Mr. Sh. Nishat Ahmad, CEO	5	Mr. Mubashar Hassan Hamadani
2	Mr. Sh. Zafar Iqbal	6	Mr. Muhammad Islam
3	Mr. Kashif Tafazzul Warsi	7	Mr. Sarfraz Khan
4	Mr. Muhammad Asif Balouch		

These proceedings against the respondents were initiated through show cause notice (the “SCN”) dated January 21, 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. Based on a request of the Company, the Commission in terms of proviso to sub-section (1) of section 158 of the Ordinance, allowed the Company an extension in time till November 29, 2014 to hold its AGM. However, review of record revealed that the Company failed to convene its AGM within the extended time, as per requirements of the law. The AGM was held on December 23, 2014, with a delay of 24 days after the extended dated. 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 holding the AGM with a delay of 24 days.

3. In response to the SCN, the respondents submitted reply through letter dated January 29, 2015 and stated that the delay in holding the AGM was caused due to late finalization of audit of



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 1 -

Accounts for the year ended June 30, 2014. The delay in finalization of audit of Accounts was caused due to disputes of the Company with financial institutions, in respect of which the auditor has qualified his report. The Company received the auditors' report on November 27, 2014 and immediately issued 21 days' notice of the AGM to shareholders as required under the law. Based on the aforementioned statement, the respondent stated that the circumstances were beyond the control of the management, therefore, the proceedings may be dropped. The case was fixed for hearings on April 29, 2015, September 29, 2015 and October 19, 2015, however, every time the respondents requested for adjournment. Finally, the hearing was held on November 4, 2015 before the undersigned and the respondents were represented by Mr. Faisal Latif as their authorized representative. During the hearing the respondents mainly reiterated their earlier stance as per written submissions and also stated that the Company has been in financial problems with its financier banks. It was further informed that the Company Secretary has been changed and the Company is inducting Pakistan Unified Corporate Action Reporting System ("PUCARS") for better compliance in future. They also stated that the Company has been facing problems in finalization of Accounts for the year ended June 30, 2015 due to issues with the auditors and the Company plans to change the auditors for next year. The authorized representative was advised to provide timeline for finalization and submission of Accounts for the year 2015 and submit letter from the auditors giving reasons for delay in finalization of Accounts for the year ended June 30, 2014.

4. Subsequently, the respondents through letter dated November 10, 2015 submitted various communications from the Company to the auditor whereof the auditors was requested to expedite the audit of Accounts for the year ended June 30, 2014. However, no communication from the auditor regarding reasons for delay in finalization of audit of Accounts 2014 along with timeline for finalization of annual Accounts and holding of AGM for the year 2015 was provided. As advised by the competent authority during the hearing, the respondents were again required to submit the following information in connection with the proceedings:

- (i) Specific timeline for holding of the overdue AGM and filing of annual and interim accounts; and
- (ii) Communication from the auditor regarding delay in audit / finalization of accounts for the year 2014 and 2015.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 2 -

In response, the respondents through letter dated November 14, 2015 the respondents submitted the unaudited half yearly accounts for the period ended December 31, 2014 and quarterly accounts for the period ended March 31, 2015. It was further stated that audit of annual Accounts for the year ended June 30, 2015 was pending with the auditors and it is hoped that it will be completed by the end of December 2015 and the AGM will be convened on or before January 20, 2016. The respondents also enclosed a letter dated November 12, 2015 from the auditor wherein it was stated that audit of Accounts 2014 was delayed due to scope limitation i.e. information from banks was not provided in time. In respect of delay in audit of Accounts 2015, it was stated by the auditor that they were trying their level best to complete the work at earlier possible time but information from the banks was still pending.

5. 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:

Provided that, in the case of a listed company, the Commission, and, in any other case, the registrar, may for any special reason extend the time within which any annual general meeting, not being the first such meeting, shall be held by a period not exceeding thirty days.”

Sub-section (4) of section 158, inter alia, provides as under:

“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;”



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 3 -

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 158 of the Ordinance have been delegated to the Director (Corporate Supervision Department).

6. I have analyzed the facts of the case, relevant provisions of the Ordinance, and submission of 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 in a timely manner as required by the law. The Company held its AGM for the year ended June 30, 2014 with a delay of 24 days after the extended time of November 29, 2014. I have noted that despite being given an extension of one month in time for holding the AGM, the respondents failed to convene the AGM in time. It is also pertinent to mention that the Company has also not held its AGM for the year ended June 30, 2015 till date and as submitted is not in a position to hold it before the month of January 2015 in any case.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Corporate Supervision Department
Company Law Division

Continuation Sheet - 4 -

7. 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, I take cognizance of the facts that in the past, the Company has been holding its AGMs within the prescribed time of four months or extended time of five month and though with a delay the AGM for the year 2014 has also been held. Therefore, in exercise of the powers conferred by sub-section (4) of section 158 of the Ordinance, instead of imposing maximum fines on all the respondents, I hereby impose a fine of Rs50,000/- (Rupees fifty thousand only) 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.

Before parting with the order, I hereby invoke the provisions of section 473 of the Ordinance and direct the respondents and the Company to hold its overdue AGM for the year ended June 30, 2015 latest by January 20, 2016. This direction is being issued without prejudice to the penal consequences of default in complying with the legal provisions.

Amina Aziz
Director (CSD)

Announced:
December 1, 2015
Islamabad