

Before Abdul Rehman Qureshi, Commissioner

In the matter of
M/s. Johnson & Philips (Pakistan) Limited

Date of final hearing	December 18, 2003
Present	Mr. Fayaz A. Longi on behalf of NIT No one appeared on behalf of other directors

ORDER

This Order shall dispose of the proceedings initiated against M/s. Johnson & Philips (Pakistan) Limited (hereinafter referred to as the “Company”) and its directors for defaults made in complying with the provisions of Sub-section (1) of Section 158, Sub-section (1) of Section 245 and Sub-section (1) of Section 246 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The Company was required to hold its Annual General Meeting (the “AGM”) for the year ended on June 30, 2001 and June 30, 2002 on or before December 31, 2001 and December 31, 2002 respectively in accordance with the provisions of Sub-section (1) of Section 158 of the Ordinance. Since the Company failed to hold the said AGMs within the prescribed period, therefore, two show cause notices dated June 27, 2002 and January 06, 2003 were issued to the Company, its Chief Executive and directors calling upon them to show cause as to why penalty as provided under Sub-section (4) of Section 158 read with Section 476 of the Ordinance may not be imposed for the aforesaid contravention.

3. The Company also failed to prepare and transmit to the members and simultaneously file with the Commission its half yearly accounts for the half-year ended on December 31, 2001 by February 28, 2002. Therefore, a show cause notice dated April 05, 2002 was also served upon the Company and its directors, calling upon them to show cause as to why penalty as provided under Sub-section (3) of Section 245 read with Section 476 of the Ordinance may not be imposed for the aforesaid defaults.

4. The Company was also required to prepare and transmit to the members and simultaneously file with the Commission its quarterly accounts for the quarters ended on March 31, 2002, June 30, 2002 and September 30, 2002 by April 30, 2002, July 31, 2002 and October 31, 2002. Since the Company failed to file the aforesaid accounts within the prescribed period, therefore, show cause notices dated August 28, 2002 and January 06, 2003 were issued to the Company, its Chief Executive and directors, calling upon them to show cause as to why penalty as provided under Sub-section (2) of Section 246 read with Section 476 of the Ordinance may not be imposed for the aforesaid defaults.

5. In response to the show cause notice under Sections 245 and 246 for non-submission of quarterly accounts for the quarters ended 31-12-2001 and 31-03-2002, Mr. Riaz Ahmed Chughati, Chief Accountant & Company Secretary submitted that the said accounts could not be filed due to non-finalization of the annual accounts for the year ended June 30, 2001. He submitted that as soon as the annual accounts are finalized the same shall be submitted to the Commission along with the said half yearly and quarterly accounts. Mr. Shehryar Anwer Saeed, the Chief Executive of the Company, in response to the show cause notice under Section 158 submitted that due to pending negotiations with creditors and potential investors, the auditors of the Company could not finalize the accounts for the year ended 30-06-2001, hence the AGM could not be held on due date. He urged that the circumstance, which caused the default, were beyond the control of the management. In response to the show cause notice under Sections 158 and 246 pertaining to the accounts for the year ended 30-06-2002 and for the quarters ended 30-06-2002 and 30-09-2002 the Company requested for a time of fifteen (15) days for submission of reply but no such reply was made. However, Mr. Firasat Ali, Head of Corporate Governance of NIT through his various letters submitted that their

nominee directors have been stressing upon the Company's management to comply with the statutory requirements. He further stated that NIT has withdrawn its representation from the BOD of the Company due to Company's continuous failure to comply with the requirements of Company Law and its inability to continue as a going concern. He requested that the nominee directors of NIT may be absolved from the responsibility of the aforesaid show cause notices. In addition, Mr. Muhammad Abbas Sheikh, Nominee Director of MCB, submitted that he has resigned from the BOD of the Company with effect from May 12, 2003, therefore, his name may be deleted from the list of defaulters.

6. The case was initially fixed for hearing on June 26, 2002. On the said date Mr. Shehyar Anwer Saeed the Chief Executive, Mr. Riaz Ahmed Chughtai, Director and Raja Qasit Nawaz Khan, legal advisor appeared and submitted a written reply on behalf of all the directors and reiterated that there was no intentional default on the part of the management. In the next hearing held on October 08, 2002, Mr. Riaz Ahmed Chughtai, Director and Raja Qasit Nawaz Khan, legal advisor appeared and requested for some time for holding of AGM for the financial year 2001 and for filing of half yearly/ quarterly accounts for the periods ended on December 31, 2001 and March 31, 2002. Mr. Fayaz A. Longi and Ms. Shahnila Parekh also appeared and made submissions on behalf of NIT. The case was finally fixed for hearing on December 18, 2003 at Karachi on Company's request. However, no one appeared on the date of hearing except Mr. Fayaz A. Longi who reiterated the same arguments as were earlier submitted by NIT.

7. Under the situation it is evident that the plea taken by the Company for the delay in holding of AGM for the year ended June 30, 2001 is not based on valid grounds. Furthermore, the non- preparation and circulation of quarterly/ half yearly accounts due to the fact that previous annual accounts have not been prepared is not a tenable reason as there are independent requirements of law for submission of annual and half yearly/quarterly accounts. Moreover, the Company has failed to furnish any justification for defaults under Section 158 for period ended on June 30, 2002 and under Section 246 for the periods ended

on June 30, 2002 and September 30, 2002. In view of the forgoing, the defaults under Section 158, Section 245 and Section 246 are considered intentional.

8. However, taking into consideration that the Company is in financial crises, I taking a lenient view impose the following fines on the Chief Executive of the Company only. The other directors are issued a strict warning to be careful in future:-

Show Cause Notice (Under Section)	Period	Amount Rs.
158	June 30, 2002	10,000
245	December 31, 2001	10,000
246	March 31, 2002	10,000
246	September 30, 2002	10,000
Total		40,000

As the AGM for the year ended June 30, 2001 has already been held on March 21, 2003, the delay involved in holding of said AGM is ignored. The default for the fourth quarter ended June 30, 2002 is also condoned keeping in view the fact that the requirement of preparation of fourth quarterly accounts has been done away after amendments in Section 245 of the Companies Ordinance, 1984 through Companies (Amendments) Ordinance, 2002.

9. Mr. Shehryar Anwer Saeed, the Chief Executive of the Company is hereby directed to deposit the fine imposed upon him amounting to Rs. 40,000/- (Rupees forty thousands 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 receipt of this order and to furnish receipted challan to the Commission.

(Abdul Rehman Qureshi)
Commissioner (C.L.D)

January 07, 2004
ISLAMABAD