

[Islamabad]

Before Dr. Sajid Qureshi, Executive Director (CL)

Order in the matter of

M/s. Quice Food Industries Limited

Number and date of notice:

No. EMD/233/578/2002- 7191-7197
Dated January 03, 2006

Date of Hearing:

February 22, 2006

Present:

Mr. Muhammad Afaq Shamsi
Chief Executive Officer

Order

This order shall dispose of the proceedings initiated against the directors of M/s Quice Food Industries Limited (hereinafter referred to as “the Company”) under the provisions of Section 472 of the Companies Ordinance, 1984 (hereinafter referred to as “the Ordinance”).

2. The facts leading to this case, briefly stated, are that in terms of the provisions of Sub-section (1) of Section 158 of the Ordinance, the Company was required to hold its Annual General Meetings (the “AGMs”) for the year ended June 30, 2004 and June 30, 2005 within four months of the close of the said years. The Company was further required, under the provisions of Section 233 of the Ordinance to lay before the Company in annual general meeting audited annual accounts of the Company for the aforesaid periods. However, the Company failed to hold its annual general meetings for the year ended June 30, 2004 and June 30, 2005 to lay therein the annual audited accounts for the said years. The track record of the Company with regard to filing of accounts and holding of AGMs is also not satisfactory. Before this the Company held its over due annual general meetings (AGMs) for the calendar years 2001, 2002 and 2003 to lay therein the audited annual accounts of the Company for the aforesaid years in compliance with the direction under Section 170 of the Ordinance issued on March 21, 2005. The Company has also failed to file its quarterly accounts since 2003.



3. The Enforcement Department conducted examination of the audited annual accounts of the Company for the year ended June 30, 2001 to June 30, 2003. The Examination of the aforesaid accounts revealed that the auditors M/s. Namdar & Co., Chartered Accountants, have expressed qualified opinion for the said years due to non-reconciliation of bank liabilities, non-verification of existence and valuation of stores, spares and stock in trade, non-provisioning for trade debtors, non-provisioning for staff retirement benefits and non-maintenance of fixed assets register. It was further observed that the audit reports on all the afore referred accounts highlighted the existence of going concern uncertainty regarding which no future plans were disclosed by directors in the respective reports. On the basis of the materiality of the aforesaid matters it was comprehended that the audited annual accounts pertaining to the aforesaid financial years had not been made in conformity with the requirements of Section 234 of the Ordinance and did not present a true and fair view of the state of affairs of the Company as at that dates.

4. In view of the aforesaid, it was considered necessary to direct the Company to undo the aforesaid defaults. Hence, a notice under Section 472 of the Ordinance dated January 03, 2006 was issued requiring the Company to make good the continuing defaults by removing auditors qualifications and submitting audited annual accounts for the period ended June 30, 2004 and June 30, 2005. It was advised that the accounts should be prepared such that they depict the true and fair view of the state of affairs of the Company. In addition, separate proceedings under Section 158, 170 and 245 of the Ordinance were also initiated against the Company.

5. Mr. Iqbal Shahid, the Company Secretary replied the aforesaid notice. He submitted that the Company was in the process of preparing accounts in the light of the Commission's notice. He requested to the Commission to extend the notice period up to 90 days. In order to discuss the issues in detail, the case was fixed for hearing on February 16, 2006. No one appeared on the date of hearing instead a letter was received from the Company Secretary stating that they had almost completed the assignment. He requested for adjournment of hearing. The request was acceded to and the matter was re-fixed on February 22, 2006. On the date of hearing Mr. Muhammad Afaq Shamsi, the Chief Executive Officer of the Company appeared before the undersigned to argue the case. Mr. Shamsi submitted that they had almost finalized the accounts and the same will be submitted to the Commission in few days.



6. Before proceeding to decide this case, I consider it necessary to highlight the importance of the strict observance of the aforesaid mandatory provisions which are meant for timely provision of true and fair information to the investors/shareholders. The protection of the investors/shareholders is one of the key objectives of the Ordinance. It is investors/shareholders who provide seed for capital formation. Such persons do not have any direct control over the company apart from that they elect directors for a period of three years and hand over the affairs of the company to them in the expectation that they will manage the company in a prudent manner. In order to protect their interests Section 233, 234 and 245 of Ordinance requires that timely, adequate, meaningful and *true and fair* information is transmitted to them in the form of annual and interim accounts. They are also provided, under Section 158 of the Ordinance, with an opportunity to discuss, speak and vote on the significant matters, like approval of accounts, appointment of auditors, election of directors and other important issues relating to the performance of the Company, in the annual general meeting. In view of the aforesaid, the violation of the aforesaid mandatory provisions of the Ordinance could not be ignored.

7. It is also deemed necessary to advert to the provisions of law, under which the notice to undo the irregularity was given. Section 472 of the Ordinance, to the extent relevant, is reproduced as follows:

472. Enforcing compliance with provisions of Ordinance

- (1) *If a company, having made default in complying with any provision of this Ordinance or committed any other irregularity fails to make good the default or undo the irregularity, as the case may be, within thirty days after the service of a notice on the company requiring it to do so, the Authority may, of its own motion or on an application made to it by any member or creditor of the company or a reference by the registrar and, in the case of a listed company, besides other persons as aforesaid, on a reference by the stock exchange, make an order directing the company and any officer thereof, as the case may be, to make good the default or undo the irregularity or otherwise make amends, as the circumstances may require, within such time as may be specified in the order.*
- (2) *Any such order may provide that all costs of and incidental to the application or reference shall be borne by the company or by any officer of the company responsible for the default.*

8. I have carefully considered the circumstances of the case and the submissions of the Company. In view of the firm commitment of the Chief Executive of the Company, I consider it appropriate to allow some time for rectifying the said defaults, therefore, I proceed to order the directors of the company to submit to the Commission the audited financial statements of the company for the year ended June 30, 2004 June 30, 2005, prepared in accordance with Section 234 of the



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Ordinance depicting the *true and fair view of the state of its affairs* as on that dates, along with the auditors report thereon, duly approved by the shareholders within 37 days of the date of this order.

9. In the end it may be emphasized that in case of non-compliance of the above directives, the directors of the Company shall be liable to action under Section 495 of the Ordinance, which provides that where any directive is given or order is issued by the Court, the Officer, the Commission, the registrar or the Federal Government under any provision of this Ordinance, non-compliance thereof within the period specified in such direction or order shall render every officer of the company or other person responsible for non-compliance thereof punishable, in addition to any other liability, with fine not exceeding fifty thousand rupees and, in the case of a continuing non-compliance, to a further fine not exceeding two thousand rupees for every day after the first during which such non-compliance continues. If non-compliance or failure continues after conviction under sub-section (1), the officer or other person who is a party to such non-compliance or failure shall be liable to punishment with imprisonment which may extend to six months and fine not exceeding two thousand rupees for every day after the first during which such non-compliance continues, and shall further cease to hold office in the company and be disqualified from holding any office in any company for a period of five years.

Dr. Sajid Qureshi
Executive Director (CL)

Announced:
March 01, 2006
ISLAMABAD