



BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 59 of 2006

Noor A Qadir and Others APPELLANTS

Versus

Executive Director (CLD) RESPONDENT

ORDER

Date of Hearing

13 November 2008

Present:

For the Appellant:

Shafiq Ahmed
Advocate

For the Respondent:

Haris Bin Tipu (Departmental Representative)
Deputy Director



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

1. This order shall dispose of appeal No.59 of 2006 filed under section 33 of the Securities and Exchange Commission of Pakistan (“SECP”) Act, 1997 by Noor A Qadir and Others (the “Appellants”) against the order dated 26-05-2006 (the “Impugned Order”) of the Executive Director, Company law Division (“Respondent”).
2. The Appellants are Chief Executive and Directors of M/s Usman Textile Mills Limited (the “Company”). The facts leading to the case are that the Company was required to prepare its annual accounts and to hold its Annual General Meeting (“AGM”) for the year ended 30-06-05 on or before 30-10-05. The Company failed to hold the said AGM within the prescribed time period. A show cause notice dated 27-1-06 was served on the Chief Executive and directors of the company to show cause why penalties under section 158(4) read with section 476 of the Companies Ordinance (the “Ordinance”) may not be imposed on them for failure to hold the AGM for the year ended 30-6-05. The counsel for the Appellants in the show cause proceedings appeared before the Respondent and contended that the AGM could not be held due to non-finalization of annual accounts. Moreover, the management of the Company was involved in litigation with banks for settlement of loans and the business of the Company remained suspended as a result AGM could not be held. The Respondent passed the Impugned Order and held that the Appellants arguments are baseless as it was all the more easy for the Appellants to have prepared the annual accounts and hold the AGM within prescribed time when the Company was not functioning. The Respondent imposed a penalty of Rs. 20,000/- on each Appellant for non holding of AGM.
3. The Appellants have preferred the instant appeal against the Impugned Order. The counsel for the Appellants argued that the failure to hold the AGM was not willful. The Chief Executive of the Company Mr. Noor

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Qadir was arrested by National Accountability Bureau (NAB) and he was behind the bar. In his absence the business was suspended therefore AGM could not be held. The counsel for the Appellant stated that any director of company who was not knowingly and willfully a party to the default cannot be penalized. In support of the contention, the Appellant counsel relied on case cited at AIR 1938 Mad 640.

4. The Departmental Representative argued that the default of the Appellants was willful as only the Chief Executive was behind bars and all other Appellants being the directors of the Company were under a statutory obligation to hold the AGM within the prescribed time. He however, observed that the Company since the last default has substantially complied with section 158 of the Ordinance by holding the AGM's within the stipulated time.
5. We find no force in the argument presented by the counsel for the Appellants that the default was not willful. The overall management of the Company and responsibility for its affairs rests with the Board of Directors. The fact that Chief Executive was behind the bars does not absolve other directors from performing their fiduciary duties. The holding of AGM is for the protection of investors/ shareholders. The transmission of timely, adequate and meaningful information is essential and non-holding of AGM deprives the investor/ shareholders from participating in matters such as approval of accounts, appointment of auditors, and election of directors.
6. The Respondent has already taken an extremely lenient view by imposing a penalty of merely Rupees twenty thousand (Rs. 20,000) on each Appellant, as the penalty amount could have been up to Rupees fifty thousand (Rs. 50,000) on each Appellant. We therefore, do not see any





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reason to interfere with the Impugned Order. The Appeal is disposed off with no order as to costs.

Razi ur Rehman Khan

(MR. RAZI-UR-REHMAN KHAN)

Chairman

S. Tariq A. Husain

(S. TARIQ. A HUSAIN)

Commissioner (LD)

Announced on: 31st December 2008.