



**BEFORE APPELLATE BENCH**

In the matter of

**Appeal No. 20 of 2003**

1. Mr. Tahir Hassan, Chief Executive Officer
2. Mr. Naseem-ud-Din Mirza, Director  
of Prudential Investment Bank Limited ..... APPELLANTS

Versus

Executive Director (E & M)  
Securities and Exchange Commission of Pakistan ..... RESPONDENT

Date of hearing 19-05-11

**ORDER**

**Present:**

**For the Appellants:**

Mr. Tariq Khokhar, Advocate

Mr. Aslam Arain, Advocate

**Department representatives:**

Mr. Nasir Askar, Director

Ms. Saima Ahrar, Deputy Director



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1. This order will dispose of appeal No. 20 of 2003 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 ("SECP Act") against the order dated 31-07-01 (the "Impugned Order") passed by the Respondent.
2. The facts leading to the case are that Prudential Investment Bank Limited (the "Company") was required to prepare and transmit to its members, within two months of the close of the first half of its year of accounts, the profit and loss account and balance sheet (the "half yearly accounts") as at the end of 31-12-00 under section 245(1)(b) of the Companies Ordinance, 1984 (the "Ordinance"). The Company was also required to file with the Registrar and the Commission, three copies of half yearly accounts simultaneously with the transmission to the members, which it failed to do within the prescribed time.
3. Show cause notice dated 30-05-01 ("SCN") was issued to the directors and the Company calling upon them to show cause as to why penalty provided under section 245(3) of the Ordinance may not be imposed upon them for the aforesaid contravention. In response to the SCN, the Company vide its letter dated 18-06-01, filed the half yearly accounts with the Commission i.e. with a delay of 111 days, without stating any reason for the delay. Hearing in the matter was fixed, however, no one appeared on behalf of the Appellants. The Respondent, vide the Impugned Order, imposed a fine of Rs. 50,000 each on the Chief Executive Officer ("CEO") and directors of the Company.
4. The Appellants preferred appeal No. 20 of 2003 against the Impugned Order. The appeal was dismissed vide order dated 31-07-03 by Appellate Bench No III on the ground that the appeal is time barred without going into the merits of appeal. The Appellants filed revision No. 1 of 2003 before the Lahore High Court, Rawalpindi Bench, Rawalpindi (the "Court") against the aforementioned order. The Court, vide



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order dated 22-02-06, set aside the order of Appellate Bench No. III and remanded the case to be decided afresh on merits in accordance with law. The Commission preferred an appeal before the Supreme Court of Pakistan against the order of the Court dated 22-02-06. The Supreme Court of Pakistan in CPLA No 238/06 granted Leave to Appeal vide order dated 20-04-06. The Supreme Court of Pakistan, vide order dated 14-04-11, allowed the appeal and the order of Court dated 22-02-06 was set aside. The order of Appellate Bench No III dated 31-07-03 was set aside to the extent of Appellate No. 1 and 2. It was further directed that the appeal to the extent of Appellant No 1 and 2 be deemed pending and should be decided by the Appellate Bench within a period of 60 days of receipt of the order of Supreme Court of Pakistan.

5. The appeal No 20 of 2003 has been fixed before us for hearing. The counsel representing Appellant No.1 and 2 (the "counsel") argued that:
  - a) The SCN was issued to the directors and the Company and not to Appellant No.1, who was the CEO of the Company; nevertheless penalty was imposed on Appellant No.1. It was argued that penalty be set aside on this ground alone. It was further contended that Appellant No.1 resigned from service on 03-03-00 and his resignation was accepted on 11-09-01 w.e.f. the date of his resignation, as such, he was not the CEO at the time of default which related to the period of July 2000 to December 2000 which was after the resignation of the Appellant No 1.
  - b) Appellant No. 2 was a non-executive director of the Company and has been a permanent resident of United States of America. Appellant No 2 did not attend the Board of Directors ("BoD") meetings on regular basis, therefore, no role can be attributed to him for the default.



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6. The department representatives responded that:

- a) the Appellant No.1 was CEO of the Company at the time of issuance of SCN. The financial statements for the year 31-12-00 and 31-12-01 submitted to the Commission substantiate the stance taken by the department.
- b) reliance was placed on section 196(2) (h) of the Ordinance and it was argued that the directors of the company are required to approve annual or half yearly or other periodical accounts as are required to be circulated to the members. The Ordinance does not differentiate between executive and non-executive directors, therefore, the contention of the counsel that Appellant No. 2, being a non-executive director cannot be held responsible for violation of section 245 of the Ordinance is not a valid ground for setting aside the penalty.

7. We have heard the parties. The Supreme Court of Pakistan disposed off the appeal after the counsel agreed to argue the case before the Appellate Bench on both limitation and merit. The issue raised before the Court and Supreme Court of Pakistan with respect to application of section 29 of Limitation Act, 1908 (the "Limitation Act") and its implication on the working of the Appellate Bench, requires determination and our findings on the issue are as under:

- a) in terms of section 29 of the Limitation Act, the general provisions of Limitation Act will not apply as section 33 of SECP Act is a special provision, which provides limitation of 30 days for filing of appeal before the Appellate Bench. We place our reliance on *PLD 1969 SC 167* and *1990 SCMR 164*, where implication of section 29 of Limitation Act has been discussed at length.



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- b) reliance is placed on *1983 SCMR 1239*, where it was held that section 5 of Limitation Act stands excluded by virtue of section 29(2) of Limitation Act, which permits application of only sections 4, 9 to 18 and 22 of Limitation Act. Moreover, in light of para 7 (a) above, section 5 of the Limitation Act is also not applicable as the application for condonation had to be decided in terms of special provision i.e. rule 3 of the Securities and Exchange Commission of Pakistan (Appellate Bench Procedure) Rules, 2003 (the "Appellate Bench Rules").
- c) the Appellants in the application for condonation of delay have stated that the SCN and Impugned Order were sent on the old address of the Company, therefore, they came to know about the Impugned Order on 23-10-02 as a result the appeal could not be filed within time. No ground was stated for the delay in filing of appeal, which was filed on 26-05-03 with delay of 7 months after the date of knowledge and after more than 21 months from the date the order was presumed to have been received by the Appellants in terms of rule 3(2) of the Appellate Bench Rules. In absence of any ground for condonation of delay and having considered the law on the subject, the appeal is blatantly time barred.
8. Having said that, in light of the orders of the Supreme Court of Pakistan, the case has been decided on merits in order to meet the ends of justice:
- a) Perusal of the SCN shows that the SCN was issued to the Company and its directors excluding the CEO i.e. Appellant No. 1; therefore, Appellant No 1 could not have been proceeded against. The question of whether or not Appellant No. 1 was the CEO of the Company at the time of default has thus become inconsequential.
- b) 196(2) (h) of the Ordinance is reproduced for ease of reference:



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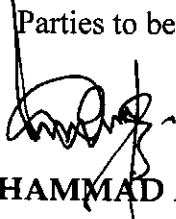
(h) "to approve annual or half-yearly or other periodical accounts as are required to be circulated to the members;"

Further, the then section 245(3) of the Ordinance referred to 'half-yearly accounts' prior to amendment made by Companies (Amendment) Ordinance, 2002 and is reproduced for ease of reference:

*"(3) If a company fails to comply with any of the requirements of this section, every director, including chief executive and chief accountant of the company who has knowingly by his act or omission been the cause of such default shall be liable to a fine of not exceeding one hundred thousand rupees and to a further fine of one thousand rupees for every day during which the default continues."*

Section 245 and section 196 of the Ordinance do not differentiate between executive directors and non-executive directors and hold all directors responsible for violation of section 245 of the Ordinance. We find no weight in the counsel's argument that, since Appellant No. 2 had not attended BoD meetings, he shall not be held responsible for violation of section 245 of the Ordinance.

In view of the above, the Impugned Order is set aside to the extent of Appellant No 1. Parties to bear their own cost.

  
(MUHAMMAD ALI)  
Chairman

  
(MR.TAHIR MEHMOOD)  
Commissioner (CLD)

Announced on: 17<sup>th</sup> June 2011