



BEFORE APPELLATE BENCH

In the matter of

Appeal No. 25 of 2006

1. Muhammad Ashraf Khan (Chief Executive)
2. Mr. Mushtaq Ahmed
3. Mrs. Yasmin Ashraf
4. Muhammad Younas Khan
5. Ms. Harem Ara Hashmi
6. Muhammad Akram
7. Mr. Shahid Mahmood

(Appellants no 2 to 7 are directors of M/s Kashmir Polytex Limited)

..... APPELLANTS

Versus

Executive Director (CLD)
Securities and Exchange Commission of Pakistan

..... RESPONDENT

Date of hearing

28-04-11

ORDER

Present:

For the Appellant:

Mr. Samay Sham, Jamil & Jamil

Ms. Fozia Omar, Jamil & Jamil

Department Representative:

Mr. Bilal Rasul, Additional Registrar/ Director (Enforcement)



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

1. This order shall dispose of appeal No. 25 of 2006 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 (the "SECP Act") against the order dated 15-12-05 (the "Impugned Order") passed by the Respondent.
2. In terms of the provisions of section 245(1) of the Companies Ordinance 1984, (the "Ordinance"), Kashmir Polytex Limited (the "Company") was required to prepare and transmit its quarterly accounts for 3rd quarter ended 31-03-05 by 30-04-05 to the shareholders, stock exchanges, Registrar and the Commission. The Company submitted its quarterly accounts with the Registrar, Company Registration Office ("CRO") and the stock exchanges, however, it failed to submit the said accounts to the Commission within the stipulated time.
3. Show cause notice dated 02-06-05 ("SCN") was issued to the Appellants. The Appellants filed reply to the SCN and hearing in the matter was held. The Respondent, dissatisfied with the response of the Appellants, passed the Impugned Order and imposed a penalty of Rs. 20,000 on Appellant No. 1 being the Chief Executive Officer of the Company and Rs. 10,000 on the rest of the Appellants, who were directors of the Company.
4. The Appellants' counsel argued that the Respondent failed to consider that the Commission lacks jurisdiction over the Company since the Company is incorporated in Azad Jammu & Kashmir ("AJK"). Section 31(2)(a) of the Azad Jammu and Kashmir Interim Constitution Act, 1974 (the "AJK Constitution") mandates that the AJK Council shall have:



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“exclusive power to make laws with respect to any matter in the Council Legislative list set out in the Third Schedule, hereinafter referred to as the Council Legislative list”

[Emphasis added]

Paragraphs 16, 17, 49 and 52 of the Third Schedule to the AJK Constitution are relevant and are reproduced for ease of reference:

“16. Stock-exchange and future markets with object and business not confined to Azad Jammu and Kashmir.

17. Corporations, that is to say, the incorporation regulation and winding up of trading corporations including banking, insurance and financial corporations, but not including corporations owned or controlled by Azad Jammu and Kashmir and carrying on business only within Azad Jammu and Kashmir or, co-operative societies, and of corporations, whether trading or not, with object not confined to Azad Jammu and Kashmir, but not including universities,

49. Offences against laws with respect to any of the matters enumerated in the list.

52. Matters incidental or ancillary to any of the matters enumerated in this list.”

5. It was argued that the paragraphs of Third Schedule quoted above show that the exclusive power to legislate regulation of companies incorporated within AJK solely lies with the AJK Council. It was submitted that the SECP Act has not been adopted by the AJK Council, therefore, the Commission lacks jurisdiction to impose fines and penalties on the Company or any of the Appellants. It was further argued that the Respondent failed to consider that the obligation on the Company to file quarterly accounts with the stock exchanges only arises under Rule 17 of the Karachi and



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Lahore Stock Exchange Listing Rules which is why the Company filed quarterly accounts with the stock exchanges and not the Commission. Further, section 245 of the Ordinance as amended by the Companies (Amendment) Ordinance 2002, ("Ordinance 2002") would not apply to the Company since the Ordinance 2002 has not been adopted by the AJK council.

6. Before going into the merits of the case we will address the issue of jurisdiction of the Commission over companies incorporated in AJK. We place our reliance on *PLD 1985 SC (AJ&K) 62*, where it has been held that AJK does not constitute a part of the Islamic Republic of Pakistan and is a foreign territory under the Constitution. Part XIV of the Ordinance deals with companies established outside Pakistan and section 453 of the Ordinance deals with the accounts of foreign companies. The foreign companies are required to file the accounts on yearly basis and not on quarterly basis as required under section 245 of the Ordinance. We do not see how the Respondent could have passed an order under section 245 of the Ordinance against a company incorporated in AJK. The companies of AJK are treated as foreign companies for the purposes of application of the Ordinance, as such; Part XIV of the Ordinance is applicable and no case is made out for violation of section 245 of the Ordinance.

In view of the foregoing, we accept the appeal and hereby set aside the Impugned Order with no order as to cost.

(MUHAMMAD ALI)
Chairman

(MR. TAHIR MEHMOOD)
Commissioner (CLD)

Announced on: 17th June 2011