



Before Abid Hussain, Director (Enforcement)

ORDER

In the matter of

BAWANYAIR PRODUCTS LIMITED

UNDER SECTION 246 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

Number and date of notice No.EMD/233/480/2002 dated January 08, 2010

Date of final hearing: The hearing was fixed on February 23, 2010, but the Company Secretary on behalf of the Company vide letter No.BAP/SECP/0055/10 dated February 16, 2010 requested to decide the case on the basis of the explanation already provided to the Commission.

This order shall dispose of the proceedings initiated through Show Cause Notice No.EMD/233/480/2002 dated January 08, 2009 against Bawanyair Products Limited (the "Company") its Chief Executive, Directors and Company Secretary/Financial Controller under the provisions of Section 246 of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts of the case are that upon examination of record and the accounts for the year ended June 30, 2009 (the "Accounts") it was observed that the Company has failed to comply with the requirements of Circular No. 2 dated January 13, 1999 which required that the listed companies shall transmit to the Commission five copies of their published annual reports and accounts of which one copy should be duly signed by the auditors as well as by the Chief Executive and a director of the company. It was also observed that the Company being a listed company had failed to comply with the legal requirement of submission of copies each of English and Urdu newspapers in which the notice of an AGM was published within the stipulated time before the date of the holding of its annual general meeting for the year ended June 30, 2009 as required under the aforesaid circular.

3. Moreover, the Company as a listed entity failed to comply with the requirements of Circular No.5 of the Commission dated March 14, 2002 in continuation to the Circular No.2 of 2001, dated February 22,2001 requiring listed companies to transmit copy of notice of AGM to the Commission through fax on the same date on which the notice is issued to the shareholders and to provide copies of the newspaper in which notices of AGM is published within 07-days of their publication.



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4. The Company vide letter dated November 02, 2009 was asked to explain and clarify its position in above reference. The Company vide letter dated January 02, 2010 explained and accepted the default submitting that:

“It is true we accept and apologize for the same. It has been brought to notice of the Board of Directors also that our present Auditors M/s. M.Yousuf Afil Saleem & Co. did not provide us the final Auditors Report in the required time frame rather they kept on changing their statement frequently and because of this we were unable to provide the required Annual Audited Accounts on time and this delay occurred (of sixteen days). The Board of Directors of the Company are thinking to change of Auditors.”

5. Consequently, a show cause notice was served upon the Company its Chief Executive, directors and the Company Secretary/Financial Controller of the Company to explain their position in writing as to why penalty as provided under Section 246 read with Section 476 of the Companies Ordinance 1984 (the “Ordinance”) may not be imposed on them. A period of 14 days was given to respond to the aforesaid notice. It was further stated in the notice that in case the directors intend to appear in person or through counsel to clarify the queries raised therein the same may be communicated to the Commission.

6. The show cause notice was responded by Mr. M. Sohail Razzak Company Secretary through letter dated January 12, 2010. It was submitted by the Company Secretary that the relevant documents including fax copy of notice of AGM, paper clippings and copy of the annual accounts duly signed by the auditors, chief executive officer & director of the Company have already been provided to the Commission vide our letter Nos. BAP/SECP/381/09 dated October 16 and BAP/SECP/0348/09 dated October 28, 2009 under Section 242 of the Ordinance. Moreover, the Company expressed its inability to attend hearing at Islamabad and it was stated that as the company is in heavy loss since past few years and currently not in a position to bear traveling expenses to and from Islamabad. A hearing at Karachi was requested.

7. Hearing in the matter was again fixed for February 11 2010 at Islamabad, which was adjourned at the request of the Company, received vide letter dated February 01, 2010, submitting once again the above stated grounds to have the hearing at Karachi. The hearing was re-fix on February 23, 2010 at Islamabad. The Company Secretary responded vide letter No.BAP/SECP/0055/10 dated February 16, 2010 submitting the financial constraint to attend any hearing outside Karachi and made the request to decide the case on the basis of the explanation



already submitted by the Company to the Commission through its letter dated January 02, 2010, January 12, 2010 and February 01, 2010. However he assured that due care will be exercised in future. It is pertinent to mention that as stated above the Company vide its earlier letter dated January 02, 2010 has already accepted the default of Circular 2 Of 2001 dated February 22, 2001 and Circular No.5 of 2002 dated March 14, 2002 by not providing a fax copy of the notice of AGM and the newspaper clippings /cuttings of the notice of AGM to the Commission within prescribed time and submission of unsigned annual audited accounts for the year ended June 30, 2009 on October 16, 2009.

8. Before going ahead, I feel it necessary to advert the relevant provisions of law:

The requirements of Circular No. 2 of 1999 dated January 13, 1999 of the Commission, issued under Section 246 of the Ordinance are as follows:

In exercise of powers under Section 246 of the Companies Ordinance, 1984 henceforth all listed companies shall transmit to the Commission five copies of their published annual reports and accounts of which one copy should be duly signed by the auditors as well as by the Chief Executive and a director of the company. The listed companies are further directed to send copies each of English and Urdu newspapers in which the notice of an AGM/EOGM has been published and statement containing material facts under section 160 of the Companies Ordinance, 1984, at least twenty one days before the date of the holdings of their meetings.

The requirements of Circular No.5, Reference No. EMD/233/473/2002 dated March 14, 2002 are;

Pursuant to this Commission's Circular No.2 of 1999, dated January 13,1999 the listed companies were directed to send copies each of English and Urdu Newspapers in which the notice of an AGM/EOGM has been published and statement containing material facts under Section 160 of the Companies Ordinance, 1984, to this Commission, at least 21-days before the date of the holding of their AGM/EOGM.

- i) Notice of AGM or EOGM must be faxed to the Commission along with statement under Section 160 of the Companies Ordinance, 1984, in case of a special resolution, as usual on the same date on which it is sent to the shareholders.
- ii) Copies of the newspaper in which the notices of AGM or EOGM are published may be sent to the Commission within 07-days of their publication.

The requirements of Circular 2 Of 2001 dated February 22, 2001 are;

To keep a watch on the timely issuance and publication of notices of the meetings, all listed companies are once again directed to transmit the copies of notices of AGM/EOGM to the Commission at fax No. 051-9204915 (attention Commissioner Enforcement) on the same date on which the notices are issued to the shareholders.

It requires a listed company, in addition to despatch of its notice of a meeting in the normal course, is required to publish the notice at least in one issue each of a daily newspaper in



English language and a daily newspaper in Urdu language having circulation in the province in which the stock exchange on which the company is listed is situated.

Sub-Section (2) of Section 246 of the Ordinance provides that:

In the event of a default in complying with the order of the Commission issued under sub-section (1), the company, and every officer of the company who knowingly and wilfully authorises or permits the default, shall be liable to a fine not exceeding one million rupees and to a further fine which may extend to ten thousand rupees for every day during which the default continues.

9. The receipt of the notice of the AGM on fax, the day it is issued to the shareholders, the circulation of the accounts before 21-days of the date of AGM and submission of the respective newspaper clippings within seven days of the publication of the notice in the newspaper, have been made mandatory for the listed Companies as it enables the Commission to analyse the business to be considered in the forth coming AGM/EOGM for its consideration / approval in the meeting and also gives the information of the necessary publication in the newspapers in compliance of the relevant provisions of the Ordinance. This phenomenon also provides the simultaneous financial information to the stakeholders and the Commission at the time of analyzing the business to be transacted in the forth coming AGM/EOGM therefore has a considerable importance and weight in monitoring and the decision making.

10. The objective of signed accounts is also an effort to enhance the transparency into the affairs of the entity and provision of authenticated information to the Commission and stakeholders.

11. In order to conclude the matter, I have duly considered the submissions of the Company Secretary made by him in the correspondence resting on the examination of accounts for the year ended June 30, 2009 and the Show Cause Notice dated January 08, 2010 and appreciate his regret for the default and assurance to exercise exclusive care in future. As the default is established from the record and the same has also been admitted however keeping in view the assurance to observe the compliance of law in future, I hereby impose token penalty of Rs. 5,000 each on the Chief Executive and the Company Secretary / Financial Controller of the Company.

12. The Chief Executive and Company Secretary/ Financial Controller of the Company are directed to deposit the aforementioned total penalty of Rs.10,000/- within thirty days from the receipt of this Order in the Commission's designated bank account with Muslim Commercial Limited and send a copy of the receipt vouchers to the Commission for information and record, failing which



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proceedings under the Land Revenue Act, 1967 will be initiated resulting attachment and sale of their movable and immovable property. It should also be noted that the said penalty is imposed on the Chief Executive and the Company Secretary /Financial Controller in their personal capacity therefore they are required to pay the same from their personal resources.

Abid Hussain

Director (Enforcement)

Announced

February 22, 2010,
Islamabad