



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

**BEFORE APPELLATE BENCH NO. III**

In the matter of

**Appeal No. 53 of 2010**

1. Mr. Younus Dawood, Chief Executive
2. Mr. Amanullah Haji Sattar, Director
3. Mr. Abdul Ghaffar Dawood, Director
4. Mr. Muhammad Anwar Fatani, Director
5. Mr. Muhammad Zaheer, Director  
(M/s DYL Motorcycles Limited)

.....

Appellants

Versus

Director (Enforcement) / Additional Registrar of Companies  
Securities and Exchange Commission of Pakistan

.....

Respondent

**ORDER**

Date of hearing

20/04/12

Present:

For the Appellant:

Mr. K.D. Rajani, Advocate

Departmental representatives:

Mr. Shahzad Afzal, Joint Director

Mr. Haris Bin Tipoo, Deputy Director



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1. This order shall dispose of appeal No. 53 of 2010 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 (the "SECP Act") against the order dated 22/10/10 (the "Impugned Order") passed by the Respondent.
2. Examination of the annual audited accounts for year ended 30/06/08 (the "Accounts") of DYL Motorcycles Limited (the "Company") revealed that the Company has made equity investment of Rs. 175.090 million by acquiring 442,148 (2007: nil) ordinary shares at Rs. 396/- each of Baluchistan Engineering Works Limited ("BEWL") (an associated company). During the year under review the Chief Executive / directors of the Company were also the Chief Executive / directors of the associated company. Respondent department vide its letter dated 14/09/09 advised the Company to furnish minutes of the meeting of the Board of Directors ("BoD") held during the year. In response, the Company vide its letter dated 14/10/09 submitted the relevant information which revealed that the Appellants / directors had participated in the meeting and had passed the following resolution dated 03/06/08:

*"Resolved that the Company be authorized to make investment of Rs. 175,090,608/- in Balochistan Engineering Works Limited.*

*To get the approval of share holders, Board of Directors decided to hold Extra Ordinary General Meeting of the Company on June 25, 2008. The Secretary was asked to issue notice of E.O.G.M. to all the members accordingly, with copies of draft resolution."*

3. Analysis of the documents and reply submitted by the Company reflected that the Appellants / directors had not disclosed the nature of their concern and interest in the meeting of the BoD held dated 03/06/08. The Appellants /



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directors participated in the meeting to form quorum at the time of discussion and voted for equity investment in BEWL in contravention of section 214 and section 216 of the Companies Ordinance, 1984 (the "Ordinance")

4. Show Cause Notice dated 10/05/10 ("SCN") was issued to the Chief Executive and directors of the Company under section 214(6) and section 216(3) read with section 476 of the Ordinance. The Appellants submitted written reply and hearing in the matter was held. The Respondent, not satisfied with the response, passed the Impugned Order and imposed penalty of Rs. 2,000 (Rupees Two Thousand Only) each on the Chief Executive and directors of the Company.
5. The Appellants preferred to file the instant appeal against the Impugned Order. The Appellants' counsel argued that:
  - (a) equity investment of Rs. 175.090 million in BEWL was made in accordance with the approval of shareholders in the Extra Ordinary General Meeting ("EOGM") held on 25/06/08. The notice of EOGM to the shareholders is in accordance with section 160 (1) (b) of the Ordinance and is a testimony that the directors had disclosed their concern and interest for the proposed resolution; and
  - (b) investment made in associated company with the approval of shareholders as required under section 208 of the Ordinance cannot be deemed as contravention of section 214 or section 216 of the Ordinance.



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6. The Department representatives argued that:
- (a) the Statement of material facts under section 160(1)(b) of the Ordinance provided by the Company along with the letter dated 14/10/09 has been cross-examined with the copy of Statement provided with the rejoinder to the Notice. The Company has altered the Statement and the para concerning the directors' interest and concern had been added later on; and
  - (b) the Chief Executive / directors have failed to comply with the provisions of section 214 of the Ordinance by not disclosing the nature of their concern and interest in the meeting of the BoD held on 03/06/08. Similarly, the directors including Chief Executive participated in the meeting to form quorum and voted for equity investment in BEWL in contravention section 216 of the Ordinance.
7. We have heard the parties. Sections 214(1)&(6) and 216 (1)&(3) of the Ordinance have been reproduced for ease of reference:-

*214. Disclosure of interest by director.-*

*(1) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in any contract or arrangement entered into, or to be entered into, by or on behalf of the company shall disclose the nature of his concern or interest at a meeting of the directors.*



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*Provided that a director shall be deemed also to be interested or concerned if any of his relatives, as defined in the Explanation to sub-section (1) of section 195, is so interested or concerned.*

*(6) A director who fails to comply with sub-section (1) or sub-section (2) shall be liable to a fine which may extend to five thousand rupees.*

Emphasis added

216. *Interested director not to participate or vote in proceedings of directors.-*

*(1) No director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void.*

*(3) Every director who knowingly contravenes any of the provisions of subsection (1) or sub-section (2) shall be liable to a fine which may extend to five thousand rupees.*

Emphasis added

(a) & (b) By virtue of section 214 of the Ordinance, a director of a company having concern or interest in a contract or arrangement made by the company is required to disclose the direct or indirect interest. Similarly, interested




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director is not allowed to take part in the discussion or vote on the contract or arrangement in which he is interested. The presence of interested director is not counted for the purpose of forming quorum of a BoD meeting at which such contract or arrangement is discussed in terms of section 216 of the Ordinance.

The aforesaid provisions of law are clear and explicit. In the instant case, it is evident that the Appellants / directors of the Company failed to comply with the provisions of section 214 of the Ordinance by not disclosing the nature of their interest in the BoD meeting held on 03/06/08. The Company has altered the Statement of material facts under section 160(1) (b) of the Ordinance by adding para concerning the directors' interest. We take strong exception to the fact that the Appellants / directors have provided fabricated copy of such Statement of material facts and would argue the respective department to take serious notice of such blatant submission of fabricated documents in future. The arguments of the Appellants / directors that equity investment of Rs. 175.090 million in BEWL was made in accordance with the approval of shareholders in the EOGM and the notice of such EOGM to the shareholders was in accordance with section 160 (1) (b) of the Ordinance does not absolve the Appellants from violation of section 214 and section 216 of the Ordinance.

In view of the above, we see no reason to interfere with the Impugned Order. The appeal is dismissed with no order as to cost.

  
(Mohammed Asif Arif)  
Commissioner (Insurance)

  
(Imtiaz Haider)  
Commissioner (SM)

Announced on: 13<sup>th</sup> July 2012