



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director (CSD)

In the matter of

Fatima Enterprises Limited

Number and date of SCN: CSD/ARN/139/2015-2555-61, dated January 15, 2016
Date of Hearing: March 16, 2016
Present: Mr. Faisal Latif, Authorized Representative

ORDER

UNDER SECTION 158 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of the proceedings initiated against the following directors including the chief executive officer (together referred to as “respondents”) of **Fatima Enterprises Limited** (the “Company”):

- | | | | |
|---|---------------------------|---|------------------------------|
| 1 | Mr. Sh. Nishat Ahmad, CEO | 5 | Mr. Mubashar Hassan Hamadani |
| 2 | Mr. Sh. Zafar Iqbal | 6 | Mr. Muhammad Islam |
| 3 | Mr. Kashif Tafazzul Warsi | 7 | Mr. Sarfraz Hassan |
| 4 | Mr. Muhammad Asif Balouch | | |

The proceedings against the respondents were initiated through show cause notice (the “SCN”) dated January 15, 2016 under the provisions of section 158 read with section 476 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The brief facts of the case are that the Company was required to hold its annual general meeting (“AGM”) for the year ended June 30, 2015 on or before October 31, 2015, in terms of sub-section (1) of section 158 of the Ordinance. However, review of record revealed that the Company failed to convene its AGM in a timely manner, as per requirements of the law. Consequently, the SCN was issued to the respondents whereof they were called upon to show cause in writing as to why penal action may not be taken against them under section 158 of the Ordinance for not holding the AGM within the prescribed time.

3. In response to the SCN, the respondents submitted reply through letter dated January 26, 2016 and with reference to the contents of the SCN stated that the delay in holding AGM was caused due to delay in finalization of audit of annual accounts for the year ended June 30, 2015 by the auditor M.A. Nazir Chaudhri & Company, Chartered Accountants who were to complete the audit latest by September 22, 2015. It was further stated that the auditors have given assurance to



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complete the audit within two weeks after which directors' meeting will be called for decision to convene the AGM. The respondents further stated that they were trying their best to overcome the delay in holding the AGM to comply with the provisions of the Ordinance. Based on the submissions, they requested for a lenient view. The case was fixed for hearings on February 15, 2016, February 23, 2016 and March 8, 2016, however, the respondents repeatedly requested for adjournment. Finally, the hearing was held on March 16, 2016 before the undersigned and the respondents were represented by Mr. Faisal Latif as their authorized representative. During the hearing the respondents, through their representative, mainly reiterated their earlier stance as per written submissions and also stated that the Company will hold its AGM within a months' time and notice of the AGM will be submitted. The representative further stated that correspondence from the auditor containing reasons for delay will be submitted within a week. Based on his submissions, the representative requested for a lenient view in the matter. Subsequently, notice dated March 24, 2016 of the AGM has been submitted whereof the board of directors of the Company has convened the AGM on April 18, 2016. The Company, through letter dated April 2, 2016 provided copy of annual accounts for the year ended June 30, 2015 along with various emails addressed to the auditor whereof the Company had requested the auditor to complete audit of Accounts. However, no communication from the auditor has been provided to substantiate the reasons for delay in finalization of audit of accounts for the year ended June 30, 2015.

4. Before proceeding further, it is necessary to advert to the following relevant provisions of the Ordinance.

Sub-section (1) of section 158 of the Ordinance, inter alia, provides as under:

"Every company shall hold, in addition to any other meeting, a general meeting, as its annual general meeting, within eighteen months from the date of its incorporation and thereafter once at least in every calendar year within a period of four months following the close of its financial year and not more than fifteen months after the holding of its last preceding annual general meeting:

Provided that, in the case of a listed company, the Commission, and, in any other case, the registrar, may for any special reason extend the time within which any annual general meeting, not being the first such meeting, shall be held by a period not exceeding thirty days."

Sub-section (4) of section 158, inter alia, provides as follows:



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"If default is made in complying with any provision of this section, the company and every officer of the company who is knowingly and willfully a party to the default shall be liable,--

(a) if the default relates to a listed company, to a fine not less than fifty thousand rupees and not exceeding five hundred thousand rupees and to a further fine not exceeding two thousand rupees for every day after the first during which the default continues;"

In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 158 of the Ordinance have been delegated to the Director (Corporate Supervision Department).

5. I have analyzed the facts of the case, relevant provisions of the Ordinance, and submission of the respondents. The aforesaid provisions of the law are clear and explicit. A company is required to hold its AGM within four month from the close of its financial year provided that the Commission may extend the time for thirty days based on application by the company. Holding of AGM is a very important statutory event and provides an opportunity to the shareholders, including those in minority, to participate in discussion and voting on agenda items of the AGM. This includes consideration and approval of a company's financial statements, which not only show the financial position and performance of the company but also show the results of management's stewardship of resources entrusted to it. The timeline of the provision of financial statements to the shareholders is of utmost importance. The investment decisions of the shareholders are based on the information presented to them in financial statements. Delay in presentation of the said information could lead to either uninformed decision or have an adverse effect with respect to its timing. In order to ensure transparency, the company must meticulously follow the procedure prescribed by the Ordinance for holding the AGMs. In addition to their responsibilities of overseeing and managing affairs of the Company, directors also have fiduciary duties towards the Company and its shareholders. They are, therefore, liable to a higher level of accountability which requires them to be vigilant and perform their duties with care and prudence. It is directors' responsibility to oversee the functioning of the company, to keep it appropriately staffed and organized to ensure due compliance of law. In this context the respondents cannot absolve themselves of their statutory duties regarding holding of AGMs and preparing and filing of annual and quarterly accounts in a timely manner as required by the law. It is relevant to note that the Company held its AGM for previous year ended June 30, 2014 with a



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delay of 24 days after the extended time of November 29, 2014. Inordinate delay has also been caused in holding the AGM for the year ended June 30, 2015 which has been convened on April 18, 2016 with a delay of more than five and a half months. During the proceedings against the respondents for delay in holding the AGM for 2014, it was stated by them that the Company was inducting a reporting system for better compliance in future, however, the present default does not support the statement.

6. In view of the foregoing, I have concluded that the provisions of the law have been violated and the respondents are liable to fines in terms of section 158 of the Ordinance. Therefore, in exercise of the powers conferred by sub-section (4) of section 158 of the Ordinance, I hereby impose an aggregate fine of Rs350,000/- (Rupees three hundred fifty thousand only) on the respondents, as under:

Name of Respondents	Amounts in Rupees
Mr. Sh. Nishat Ahmad, CEO	50,000
Mr. Sh. Zafar Iqbal	50,000
Mr. Kashif Tafazzul Warsi	50,000
Mr. Muhammad Asif Balouch	50,000
Mr. Mubashar Hassan Hamadani	50,000
Mr. Muhammad Islam	50,000
Mr. Sarfraz Hassan	50,000
Total	350,000

The aforesaid fines must be deposited in the designated bank account maintained with MCB Bank Limited in the name of the "Securities and Exchange Commission of Pakistan" within thirty days from the receipt of this order and receipted bank vouchers must be furnished to the Commission. In case of failure to deposit of the fine, proceedings for recovery of the fines as arrears of land revenue will be initiated. It may also be noted that the aforesaid fines are imposed on the respondents in personal capacities; therefore, they are required to pay the said amounts from personal resources.


Amina Aziz
Director (CSD)

Announced:
April 7, 2016
Islamabad