

2009 C L D 1106**[Karachi]****Before Muharrem G. Baloch, J****ADDITIONAL REGISTRAR OF COMPANIES SECP---Petitioner****Versus****SPEEDWAYS FOUNMETALL (PAKISTAN) LIMITED and 7 others---Respondents**

J. M. No.10 of 2002, decided on 24th April, 2009.

Companies Ordinance (XLVII of 1984)---

----Ss. 309, 305, 231, 261, 208, 195, 473 & 476---Securities and Exchange Commission of Pakistan Act (XLII of 1997), Ss.20 & 30(6)(7)---Petition for winding up of unlisted public limited company by Registrar of Companies Securities and Exchange Commission of Pakistan---Material available on record showed that sanction for winding up proceedings had been granted without affording an opportunity to the company to make a representation of being heard; that there was no investigation to the affairs of the company but it was only on an inspection by the State Bank of Pakistan who was not authorised by the Securities and Exchange Commission of Pakistan; that company being an unlisted public limited company in which no public money was involved and none from the public had made any complaint nor had come forward against the affairs of the company; that State Bank of Pakistan had only identified the irregularities of the company but had not recommended for the sanction of presentation of petition for (finding up of the company; that Registrar of Companies, in view of S. 231, Companies Ordinance, 1984, had not inspected the books of accounts of the company nor had called for any explanation as provided under S.261, Companies Ordinance, 1984 and had also failed to properly exercise the powers under Ss.20 & 30(6)(7) of the Securities and Exchange Commission of Pakistan Act, 1997 and that report of the State Bank of Pakistan revealed that one of the Directors of the Company had withdrawn an amount from the company which was repaid, he had thus violated S.208, Companies Ordinance, 1984 and was liable for fine---Held, that the petition, for winding up for the company was not maintainable in view of non-affording the opportunity to the company of being heard by the Securities and Exchange Commission of Pakistan -- Inspection of the State Bank of Pakistan, in circumstances, could not be treated as inspection by the Commissioner, therefore, the sanction awarded for presentation of the petition for winding up of the company was against the law and deviated from the provisions of the Companies Ordinance, 1984---Director who withdrew the money and re-deposited same was imposed a fine of Rs.1,00,000---Order accordingly.?

Dawood Fibre Mills Ltd. v. Commissioner (Company Law Division) 2006 CLD 283; Karim Cotton Mills Ltd. v. Executive Director (Enforcement and Monitoring) SEC and another 2006 CLD 339; PICIC Commercial Bank Ltd. v. Spectrum Fisheries Ltd. 2006 CLD 440; In the matter of: Messrs Netsol "Technologies Limited 2006 CLD 684; In the

matter of: Messrs S.G, Power Limited 2006 CLD 997 and Northern "Tourism Development (Pvt.) Ltd. v. Executive Director (Company Law) SEC and 2 others 2006 CLD 1204 ref.

S.M. Aamir Naqvi for Petitioner.

Emadul Hassan for Respondents.

Date of hearing: 27th March, 2009.

JUDGMENT

MUHARREM G. BALOCH, J.--The petitioner above named filed this petition for winding up of respondent No.1 company under section 309 read with section 305 of the Companies Ordinance, 1984.

The petitioner pleaded in the petition that the above named company namely Speedways Founmetall (Pakistan) Limited (hereinafter referred to as "the company") was incorporated on 11-3-1999 under the Companies Ordinance, 1984, (hereinafter referred to as "the Ordinance") as a public limited company (not listed) and commenced its business on 22-3-1999. It is further pleaded in the petition that the registered office of the company is situated in Karachi and the nominal capital of the company is Rs.500,000,000 (Rupees five hundred million only) divided into 50,000,000 ordinary shares of Rs. 10 each. The amount of paid up capital or credited as paid up is Rs.12.428 Million. The petitioner further pleaded that the objects for which the company was established are:--

- (i) To carry on the business of discount, acceptance and guarantee house by issue, purchase, sale, distribute arrangement, accept, co-accept, discount rediscount, recourse discount, underwrite and guarantee of securities, certificate of deposit, commercial paper, participation term certificate, term finance certificate, bonds of exchange, hundies, promissory notes, coupons, drafts, bills of landing, railway receipts. Warrants, debentures, whether local or foreign or any financial Instrument, issued in and outside Pakistan.
- (ii) To carry out the business of guarantee house by issuing guarantees in the security of assets of the Companies, entities, establishments whether in or outside Pakistan.
- (iii) To act as consultants and advisers and to provide financial services and/or social sector services to any company or concern or corporation or banks or entities or establishment whether private, semi Government or Government owned and whether local or otherwise.

It was further pleaded that the State Bank of Pakistan (hereinafter referred to as "S.B.P") carried a full scope inspection of the accounts and records as on 30-6-2001 of the company. According to the inspection report of the S.B.P., the overall position of the company was assessed as unsatisfactory. On scrutiny of the investment portfolio of the company, which comprises investments in U.S. Dollar Bonds of Rs.70,998 million and investment in commodity (tobacco) of Rs.3.53 million, it was revealed that the management of the

company i.e. respondents Nos.2 to 8 are involved in highly questionable activities as the company failed to prove the existence of U.S. Dollar Bonds of Rs.70,998 million as well as investment in commodity (tobacco) of Rs.3.53 million. It is further pleaded that the capital position, as shown in the books of the company, grossly differ from the one calculated by the S.B.P. inspection team revealing that the management of the company/respondents Nos.2 to 8 tried to portray a healthy position of the company. Rs. 60 million was shown to have been paid by Mr. Aslam Pervaiz (as per the company he is one of the Members of Board of Directors) in the un-audited accounts. On further scrutiny by the inspection team of S.B.P. it was revealed that the above stated funds were actually received from Messrs Republic Securities (Pvt.) Limited (a brokerage firm located at Karachi Stock Exchange) instead of Mr. Aslam Pervaiz as claimed by the management/respondents Nos.2 to 8. It was transpired that the said money never came into the business as the money belonged to Messrs Republic Securities (Pvt.) Limited and was paid back to them the same day through fictitious purchase of U.S. Dollar Bonds (bearer). The petitioner further pleaded that according to the S.B.P. report the company is not being run on prudent and professional basis. His management/respondents Nos.2 to 8 are running the affairs of the company in a highly questionable, non-transparent and risky manner without adequately adhering to risk management practices. The management/respondents Nos.2 to 8 are also involved in heavy cash deposits/withdrawals reflecting imprudent Banking practices and that the business transactions are neither carried out in the interest of the institution nor being reported properly. It was contended that on investigations by SBP it came to know that the respondent No.2 is one of the partners of Messrs SZ Gulf Money Changer and is running a proprietorship business in the name of Messrs Zaman Import Trade and Export Corporation. It is further pleaded that the above stated facts were not disclosed to the inspection team of S.B.P. by the respondents.

The petitioner further pleaded that respondent No.2 drew out money to the extent of Rs.9.456 million from the company by way of creating fictitious transactions of cash payment by him and then subsequent purchase of U.S. Dollar Bonds worth Rs.10.700 million through the said Messrs SZ Gulf Money Changer. The respondent No.2 from the paid up capital has withdrawn Rs.1.7 million in cash under the head "Advance against Salary". This withdrawal was even before the transfer of share application money to paid up capital inferring that the same money may have been utilized by the respondent No.2 to increase share application money for onward transfer to paid up capital. According to the petitioner on commencement of the inspection by S.B.P. inspection team, interestingly three directors resigned during the month of July and August i.e. on 17-7-2001, 3-8-2001 and 13-8-2001 respectively. The company, thereafter, elected three new directors on 1-11-2001 causing a vacuum of three months when the number of directors was below seven and hence the company has committed offence under section 174 of the Ordinance. It is further pleaded by the petitioner that one of the directors while resigning disclosed that the company is being run as a sole proprietorship and the Chief Executive is doing things to suit: the best interest of his family. He further disclosed that the board of directors is deliberately kept in dark about the company affairs. The business of the company is being conducted in a manner oppressive to its members. It is further alleged that it was required to hold its 1st Annual General Meeting on or before 10-9-2000 and to file Form A under the Ordinance within 30 days of hold of AGM (Annual General Meeting) but the company has not complied with the statutory requirement.. Form 29 filed by the company showing election of directors but has not submitted the said Form A relating to AGM. The company has also committed defaults in filing of Form 28 relating to the election of directors

reported to hold on 31-12-1999. According to the petitioner the company violated section 233(2) of the Companies Ordinance, 1984, and the company failed to maintain the Annual Account and balance sheet for more than twelve months. It was further alleged in the petition that the S.B.P. strongly recommended that the Securities & Exchange Commission of Pakistan (hereinafter referred to as the "SECP") may proceed with the winding up of the company, therefore, in view of the S.B.P. recommendations and various other illegalities, irregularities and lapses committed by the company, the SECP served a show cause notice in terms of section 309(b) of the Ordinance dated 26-11-2001 on the company so as to give the respondents chance of being heard. The respondents replied the show cause notice, the petitioner examined the reply but found unsatisfactory as the answers were general and irrelevant, therefore, the petitioner sent a letter to the SECP for grant and sanction in terms of proviso to clause (iv) of subsection (f) of section 309 of the Ordinance to the SECP Islamabad. SECP granted the sanction for filing petition for winding up as required tinder proviso to clause (iv) of subsection (1) of section 309 of the Ordinance, hence this petition with a prayer that the company Speedways Founmetall (Pakistan) Limited is liable to be wound up by the Court under Companies Ordinance, 1984.

The respondents Nos. 1 to 8 filed their reply denying all the allegations levelled in the petition and taking such preliminary legal objection that filing of the petition under section 309 read with section 305 of the Ordinance, on the basis of report made by the State Bank of Pakistan vide letter dated 24-10-2001 is not maintainable and so also other grounds. It was also preliminary objected that no investigation into the affairs of respondent No. 1 has been carried out by the SECP under section 263 of the Companies Ordinance, 1984 and the provisions of subsection (c) of section 309 of the Ordinance have not been complied with which are matutatory before filing of the petition by the Registrar. It was also pleaded by the respondents that the show cause notice by SECP without appointing ally person or persons to investigate the affairs of the company/respondent No.1 based on the communication addressed by the Registrar is bad in law. The reply submitted on behalf of the respondents refuting each and every allegation as levelled is not considered. Unless the investigation into the affairs of the company has revealed that the business is being conducted in a manner oppressive or any of its members or that its management has been guilty of misfeasance or outer misconduct the petition is not maintainable. Further it was asserted that the respondent No.1 is a public limited company carrying on business in accordance with the rules and regulations and its winding up would unfairly prejudice to its members. Lastly it was pleaded that the report of the S.B.P. is based on surmises and conjectures. Even otherwise if S.B.P. was not satisfied with the working of respondent No. 1 it would have taken remedial measures tinder the provisions of Banking Companies Ordinance, 1962 and, therefore, the petition being not maintainable is liable to be dismissed with special costs.

On merits the respondents have denied the allegations of the petitioner amid pleaded that the U.S.\$ Bonds equivalent to Pak Rs.70.998 Million were lying in sale custody with Messrs S.Z. Gulf Morley Changers, the sister concern of respondent company, and this position was explained to the officials of the Inspection Teak of S.B.P. It was pleaded that: the US\$ Bonds were subsequently encashed and the proceeds including interest and the capital gain total amounting to Rs.79.379 Million was credited in the account of respondent No.1 maintained with Askari Commercial Bank Ltd. The respondents also explained the investment in commodity (Tobacco) of Rs.3.53 Million and reiterated that the investment was genuinely made which was subsequently sold out by Messrs Tariq Traders Mardan.

The respondents further pleaded that none of the directors except respondent No.2 withdrew any amount either in cash or otherwise in an imprudent manner. According to the respondents the amount drawn by respondent No.2 from time to time, total amounting to Rs.9.455 Million was refunded/deposited on 28-6-2000. The respondents also pleaded than respondent No.2 is one of the partners of Messrs S.Z. Gulf Money Changers and partnership of respondent No.2 with Messrs S.Z. Gulf Money Changers has nothing to do with the business carried out by respondent No.1. Moreover, according to the respondents there is no bar that the Chief Executive cannot be a partner in any other business. The respondents also pleaded that resignation tendered by three directors was not surprising matter and in their place new directors were appointed after gap of three months and such position was conveyed to SECP with request to extend the time. According to the respondents the first Annual General Meeting was held within the prescribed period and the issue iris specifically been discussed in the reply to the show cause notice.

In the last the respondents pleaded that the SECP while granting sanction for filing the petition failed to examine whether any investigation was made as required under the law. It was further pleaded that neither SECP nor any person authorized by it is entitled to present the petition for winding up of a company unless an investigation into the affairs of the company has revealed that its business is being conducted in a manner oppressive to its members or the management is guilty of fraud, malfeasance or other misconduct. The inspection carried out by S.B.P. in routine is not an investigation, as required under the law. The sanction granted by SECP is, therefore, against the provisions of law, hence has no force, therefore, the respondents have prayed that this petition is not maintainable, both on the point of fact and law and therefore, the same is liable to be dismissed.

I have heard learned counsel for the parties and perused the material available on record.

Mr. S.M. Amir Naqvi, learned counsel appearing for the petitioner, submitted the same facts and grounds as mentioned in the petition and reference of the same is given above. According to him, the show cause notice dated 26-11-2001 issued by SECP against the respondent No. 1 speaks about the fact that the company is not being run on a prudent and professional basis. The management is running the affairs of the company in highly questionable, non-transparent and risky manner without adequately adhering to risk management practices. Transactions are neither being carried out in the interest of the institution nor being reported fairly and truly. The existence of the assets owned by the company, as per books, remained unverified due to falsification of facts and non-cooperation in providing access to information. Accordingly, there is ground to assume that the company is being run in a non-professional approach and imprudent manner. The purported show cause notice is based on full scope inspection carried out by the State Bank of Pakistan in the affairs of the respondent No. 1.

On the other hand, the respondent No.1 replied the above show cause notice on December 8, 2001, whereby the respondent has taken preliminary objections about the maintainability of the show cause notice and denied the allegations levelled in the notice. In the last it has been replied by the respondents to the show cause notice that since the inception of the company the S.B.P. has been keeping a very close eye upon the affairs of the company and the financial transactions and decision have been taken, executed and finalized under proper intimation to SECP. Moreover since inception of the company S.B.P. has been inspecting the records and books of the company on weekly basis and failed to raise any

tenable objection towards the mannerism in which the company is being operating and functioning, confirming thereby that during these two years the company has been strictly adhering to all the mandatory requirements of S.B.P. and SECP, therefore, in view of its reply the respondent No. 1 has alleged the irregularities as pointed out by the Commission have been clarified.

Mr. S.M. Amir Naqvi, learned counsel for the petitioner, has based the grant of petition on show cause notice in which it has been submitted that there were irregularities in the functioning of the company, therefore it is liable to be wound up.

Mr. Emadul Hassan, learned counsel for the respondents, submitted that the company is a public limited company and unlisted company. He has submitted that the SECP did not carry out the investigation but it was simply an inspection to identify the irregularities, if any, and the petition does not contain full detailed inspection report. It was further contended by the learned counsel that the SECP has forwarded the letter and the SECP has issued show cause notice without going through the details of investigation/inspection. Therefore, according to him on factual side, the petition is not maintainable and so also on legal side, whereby the referred to section 309 of the Companies Ordinance, 1984, which is reproduced as under:--

"309. Provisions as to applications for winding up. An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), or by any contributory or contributories, or by all or ally of the aforesaid parties, together or separately, or by the Registrar, or by the Authority or by a person authorized by the Authority in that behalf:

Provided that---

(a) a contributory shall not be entitled to present a petition for winding up a company unless--

(i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or

(ii) the shares in respect of which he is contributory or some of them either were originally allocated to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have developed on him through the death of a former holder;

(b) the Registrar shall not be entitled to present a petition for the winding up of a company unless the previous sanction of the Authority has been obtained to the presentation of the petition:

Provided that no such sanction shall be given unless the company has first been afforded an opportunity of making a representation and of being heard;

(c) the Authority or a person authorized by the Authority in that behalf shall not be entitled to present a petition for the winding up of a company unless an investigation into the affairs of the company has revealed that it was formed for any fraudulent or unlawful purpose or that it is carrying on a business not authorized by its memorandum or that its business is being conducted in a manner oppressive to any of its members or persons concerned in the formation of the company or that its management has been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; and such petition shall not be presented or authorized to be presented by the Authority unless the company has been afforded an opportunity of making a representation and of being heard;

(d) the Court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the Court.

(e) The Court shall not give a hearing to a petition for winding up a company by the company until the company has furnished with the petition, in the prescribed manner, the particulars of its assets and liabilities and business operations and the suits or proceedings pending against it."

He has also referred to section 305 of the Companies Ordinance, 1984 which also defines as under:--

"305. Circumstances in which company may be wound up by Court.-A company may be wound up by the Court:---

(a) if the company has, by special resolution, resolved that the company be wound up by the Court;

(b) if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting or any two consecutive annual general meetings;

(c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

(d) if the number of members is reduced, in the case of private company, below two or, in the case of any other company, below seven;

(e) if the company is unable to pay its debts;

(f) if the company is ---

(i) conceived or brought forth for, or is or has been carrying on, unlawful or fraudulent activities;

(ii) carrying on business not authorized by the memorandum;

(iii) conducting its business in a manner oppressive to any of its members or persons concerned with the formation or promotion of the company or the minority shareholders;

(iv) run and managed by persons who fail to maintain proper and true accounts, or commit fraud, misfeasance or malfeasance in relation to the company; or

(v) managed by persons who refuse to act according to the requirements of the memorandum or articles or the provisions of this Ordinance or fail to carry out the directions or decisions of the Court or the Registrar or the Authority given in the exercise of powers under this Ordinance;

(g) if, being a listed company, it ceases to be such company:

(h) if the Court is of opinion that it is just and equitable that the company should be wound up."

Learned counsel for the respondents further submitted that it was the SECP who appoints the commission and S.B.P. has not been appointed by the SECP as provided under section 263 of the Ordinance which defines that the authority may appoint one or both competent persons as inspectors to investigate the affairs of any company.

Thus, according to him this provision was not complied with and so also provision of section 231(5) was not complied with and no such report was made to the authority. Learned counsel for the respondents further attacked the petition on the ground that the provisions of section 265(6) were not complied with as no one or more competent persons were appointed as inspectors to investigate the affairs of the company and to report thereon to the authority. He further submitted that the provisions of Rule 779 of the Sindh Chief Court Rules have not been complied with whereby the petition is to be supported by an affidavit and in the present case there is no affidavit in support of the petition. On the issues he submitted that the bonds were lying with the sister concern of the company namely Messrs S.Z. Gulf Money Changers, which was subsequently encashed and lying in the books of accounts. He also defended the withdrawals from the company account by one of its directors namely Aslam Pervaiz was his investment and subsequently he repaid the same. In support of his arguments, he has placed reliance on the following case law:--

(1) Dawood Fibre Mills Limited v. Commissioner (Company Law Division) 2006 CLD 283;

(2) Karim Cotton Mills Ltd. v. Executive Director (Enforcement and Monitoring) SEC and another 2006 CLD 339;

????????????

(3) PICIC Commercial Bank Limited v. Spectrum Fisheries Limited 2006 CLD 490;

(4) In the matter of Messrs Metsol Technologies Limited 2006 CLD 684;

(5) In the matter of Messrs S.G. Power Limited 2006 CLD 997;

(6) Northern Tourism Development (Pvt.) Ltd. v. Executive Director (Company Law) SEC. and 2 others 2006 CLD 1204.

I have considered the arguments of learned counsel for the parties. The petition is based on report dated 24-10-2001 signed by the Senior Joint Director of State Bank of Pakistan Central Directorate. I.I. Chundrigar Road, Karachi, to the Chairman Securities & Exchange Commission of Pakistan, Islamabad in which it was stated that the Bank inspected the accounts books and affairs of the respondent No.1 company and came to the conclusion that the company is not being run on a prudent and professional basis. It was further reported that the management is running the affairs of the company in a highly questionable, non-transparent and risky manner without adequately adhering to risky management practices. Transactions are neither being carried out in the interest of Institution nor being reported fairly and truly. The existence of the assets owned by the company as per books remains unverified due to falsification of facts and non-cooperation in providing access to information and therefore keeping in view the above the State bank of Pakistan in the above report recommended to the SECP to proceed for winding up of the respondent company under the Companies Ordinance, 1984. The SECP on receipt of the above inspection report from the S.B.P. issued show cause notice to the respondents company on 26-11-2001 requiring the respondent company to show cause as to why a sanction may not be granted by the Commission to Registrar under section 309 of the Companies Ordinance for filing a petition for winding up of the company in terms of section 305(h) of the Companies Ordinance, 1984. The show cause notice also stated that if it wanted to be heard in person or through a duly authorized attorney in addition to the written submissions, the same may also be informed. The respondent company through its Advocate replied to the above show cause notice on 8-12-2001 whereby the respondents denied all the allegations including one that though one Director namely M. Aslam Pervaiz was paid Rs.6,000,000 which is confirmed as his investment vide letter dated 26-9-2001 addressed to the Deputy Commissioner, Income Tax, Karachi. It was further replied that the said transaction though informed to the Income Tax Department, but due to oversight the same was not communicated to the SECP and according to the reply the said irregularity is minor in nature and therefore on this score the company cannot be wound up. Furthermore, section 309 of the Companies Ordinance, 1984 provides that application for winding up of the company whose affairs are not on prudent manner and unsatisfactory. The proviso of this section states that the Registrar shall not be entitled to present the petition for winding up of the company unless the previous sanction of the Authority has been obtained to the presentation of the petition and it further provides that no such sanction shall be given unless the company has first been afforded an opportunity of making a representation and of being heard.

According to the material available on record sanction has been granted without affording an opportunity to the respondents to make a representation of being heard. There was no investigation in the affairs of the company but it was only on an inspection by the S.B.P. who was not authorized by the SECP to investigate the company being Commissioner. In such circumstances, the inspection cannot be treated as inspection by the commissioner, therefore, the sanction awarded for presentation of the petition for winding up of the respondent company is against the law and deviated from the provisions of the Ordinance.

It is also an admitted fact that the company is an unlisted public limited company in which no public money is involved and, therefore, none from the public has made any complaint nor has come forward against the affairs of the company. The S.B.P. has only identified the irregularities of the company but not have recommended for the sanction of presentation of petition for winding up of the company.

Section 231 of the Companies Ordinance, 1984 provides inspection of books of accounts by Registrar etc. and the Registrar has not inspected the books of accounts of the company. The Registrar has also neither called for any explanation as provided under section 261 of the Ordinance nor has properly exercised the powers under sections 20 and 30(6)(7) of the SECP Act, 1997, therefore, the very petition is not maintainable and is liable to be dismissed.

Admittedly, the company is unlisted public company in which no money of any person from the public is involved excepting the company's directors themselves. It is also an admitted fact that the investigation as required has not been carried out by the State Bank of Pakistan or the SECP but only an inspection was made by the S.B.P., as stated above. It has been said in the report of the S.B.P. that the Director M. Aslam Perwez has withdrawn the amount which, according to the reply of the respondents, has been repaid and learned counsel for the respondents submitted that it was to be treated as a loan as provided under section 195 of the Ordinance as the same has been deposited by the said director which is confirmed by the books of accounts, therefore, under the provisions of section 473 in which it is stated that in case any default is committed, the same, without prejudice to any liability, is to be complied with the said provisions or requirements within such time as may be specified in the order and or in the alternative the punishment and adjudication of fine or penalty as directed as provided under section 476 of the Ordinance. Thus, since it was minor irregularity and not an offence, therefore, on this score the company cannot be wound up.

In ease of Messrs Netsol Technologies Limited (supra) the lenient view of the matter was taken on such irregularity and even fine was not imposed.

In case of Messrs S.G. Power Limited (supra) the show cause notice issued to the company stated that unauthorized investments were made by the company, therefore, it violated the provisions of section 208 of the Ordinance. According to this judgment the directors of the company admitted withdrawal and were in process of rectifying the default by recovering the balance of trade debts due from its associated company along with outstanding interest and reduce the credit extension period of 120 days in order to bring it close to three years sectoral average being practiced as normal trade credit period. In the above matter the representative of the company had assured that the company would make strict compliance of the provisions of the Ordinance in future.

In the instant, case it is admitted that one of the directors has withdrawn amount from the company and this credited the same into the accounts of the company, therefore, he has violated the provisions of section 208 of the Ordinance, therefore, the said director of the company namely M. Aslam Pervaiz is liable for fine, therefore, taking a lenient view of the default made by Director M. Aslam Pervaiz of the respondent company a fine of Rs. 100,000 is imposed on him.

Consequently, the petition for winding-up of the respondents company is not maintainable in view of non-affording the opportunity to the company of being heard by the SECP, therefore, the petition is dismissed. Order accordingly.

M.B.A.

/A-71

Petition dismissed.

;