



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

BEFORE APPELLATE BENCH NO. II

In the matter of

Appeal No. 28 of 2007

1. Mr. Jahangir Elahi
2. Mr. Tanvir Elahi
3. Mr. Amir Jahangir
4. Mr. Ahmed Jahangir
5. Mr. Akhlaq Ali Khan

All Directors of Taj Textile Mills Limited, 85-C Model Town, Lahore

..... APPELLANTS

Versus

Executive Director (Enforcement)

Securities and Exchange Commission of Pakistan

NIC Building, Jinnah Avenue, Blue Area, Islamabad

..... RESPONDENT

ORDER

Date of Hearing

10 August 2009

Present:

For the Appellants:

Mr. Muhammad Shoaib
Advocate

For the Respondent Department:

Mrs. Maheen Fatima, Joint Director

Mr. Muhammad Anwar Hashmi, Deputy Director



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

1. This order shall dispose of appeal No. 28 of 2007 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 against the Order (the "Impugned Order") dated 03-09-07 passed by the Executive Director, Enforcement (the "E.D Enforcement").
2. The facts leading to the case are that on examination of annual accounts of Taj Textile Mills Limited ("Taj Textile") for the year ended 30-09-01, it was observed that short term borrowings including bank credit facilities of Rupees 246.853 million had been transferred by Elahi Enterprises (Pvt) Limited ("Elahi Enterprises") to Taj Textile during the years 1998 to 2001. Taj Textile and Elahi Enterprises were associated undertakings at the time of the transfer by virtue of common directors namely: Mr. Jahangir Elahi, Mr. Alamgir Elahi, Mr. Tanvir Elahi and Mr. Akhlaq Ali Khan (the "Common Directors"). Elahi Enterprises suffered a severe set back with respect to its business venture particularly on account of the fact that the long term buyer of its products in France went bankrupt, which caused severe liquidity crunch. Elahi Enterprises and the Common Directors were unable to pay back their loans to various banks. The Board of Directors ("BoD") of Taj Textile passed a resolution authorizing the chief executive to accept shifting of various financial facilities required by various banks from Elahi Enterprises to Taj Textile. The Common Directors took part in the discussion and voted on the resolution. The other interested directors/ officers of Taj Textile and Elahi Enterprises who took part in the board meetings and voted on the resolution regarding transferring of loans of Elahi Enterprises amounting to Rs 246.853 million to Taj Textile held on 20-4-1998, 26-6-1999, 18-10-1999, 3-2-2000 and 2-1-2001 are as under:



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Sr. No	Names	Taj Textile		Elahi Enterprises	
		Designation	Tenure	Designation	Tenure
1	Mr. Jahangir Elahi	Director	March 31, 1996 to the date of SCN	Director	June 24, 1997 to the date of SCN
2	Mr. Alamgir Elahi	Director	March 31, 1996 to May 31, 2002	Director	June 24, 1997 to July 21, 2001
3	Mr. Tanvir Elahi	Director	March 31, 1996 to the date of SCN	Director	June 24, 1997 to the date of SCN
4	Mr. Akhlaq Ali Khan	Director	March 31, 1996 to December 30, 1999	Director	June 24, 1997 to December 30, 1999
5	Mr. Ahmed Jahangir	Director	July 19, 1997 to March 15, 2001	Director	June 24, 1997 to September 15, 2000
6	Mr. Amir Jahangir	Director	July 19, 1997 to the date of SCN	Director	June 24, 1997 to the date of SCN
7	Mr. Humayun Nabi Jan	Company Secretary	July 19, 1997 to September 17, 1998 September 01, 1999 to July 04, 2000	Director	June 24, 1997 to September 15, 2000
8	Mr. Nadir Ali Awan	Director, Chief Financial Officer	December 30, 1999 to March 16, 2001 December 14, 1988 to July 01, 2002	Director	December 30, 1999 to September 15, 2000

The two companies had entered into a conveyance deed dated 21-4-1998 and a supplemental conveyance deed dated 21-9-98 (the "Conveyance") through which the loan liability was transferred from Elahi Enterprises to Taj Textile for consideration including: quota for exports of textile products amounting to Rupees 60 million; margin on trading business transfer amounting to Rupees 50 million; goodwill and low rate of interests enjoyed by Elahi Enterprises on



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

refinance scheme which may be availed by Taj Textiles on account of quota already transferred by Elahi Enterprises to Taj Textile.

3. The Commission issued show cause notice ("SCN") dated 9-1-2003 under the provisions of sub-section (1) of section 193, section 214, sub-Section (1) of section 215, sub-section (1) of section 216 and section 217 of the Ordinance to the six directors of Taj Textile, company secretary and the chief financial officer. The reply of the show cause notice was submitted through M/s Cornelius, Lane & Mufti, Advocates and Solicitors on 22-2- 2003.
4. Hearing in the show cause proceedings were held on 28-03-03 and 29-12-03. During the hearing the Appellants' counsel reiterated the grounds taken in the reply to the SCN. The matter remained pending on account of various related aspects of the case. The case was taken up again in the year 2007 and several opportunities were provided to the Appellants but they failed to appear before the Respondent. The other director namely Mr. Alamgir Elahi was represented by Mr. Fakhar Mahmud Chanda, Advocate who stated that his client had no access to the record and therefore was are unable to clarify his position in the matter.
5. The E.D Enforcement decided to proceed on the basis of the record since the Appellants' counsel failed to appear before him despite numerous opportunities being afforded to him. The E.D Enforcement passed the Impugned Order imposing penalty of Rs 10,000/- each on Appellant No 1 to 5 and Mr. Alamgir Elahi under section 193 of the Ordinance; penalty of Rupees 5,000/- each was imposed on Appellant Nos. 1 to 5 and Mr. Alamgir Elahi under section 214 of the Ordinance; penalty of Rupees 5,000/- each was imposed on Appellant Nos. 1 to 5 and Mr. Alamgir Elahi under section 216 of



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

the Ordinance. No penalty was imposed on the company secretary and chief financial officer, however they were strictly warned to be vigilant in future.

6. The Appellants' preferred the instant appeal against the Impugned Order. The Appellants' counsel as a preliminary objection stated:

a) The Commission did not provide ample opportunity to the directors of Taj Textile to present their case. E.D Enforcement proceeded ex-parte against the Appellants. It was argued that due process rights have been infringed therefore the Impugned Order should be set aside on this ground alone.

7. The Appellants' counsel adopted the arguments made in appeal No 27 of 2007 for the purposes of this appeal and in addition made the following arguments:

a) It is an established law that multiple proceedings may not be instituted against a person for same cause of action. It was contended that on the same cause of action two separate show cause proceedings were initiated against the Appellants. The Impugned Order is therefore liable to be dismissed on this ground. Reliance was placed on case law cited at 2008 PTD 1744, 2009 PTD (Trib) 902, 2004 CLC 1860.

b) That neither the shareholders nor the creditors of Taj Textile raised any concern regarding its affairs and management. Taj Textile also paid dividend to its shareholders and the SCN and Impugned Order issued without any complaint are liable to be set aside.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

8. The departmental representatives, Ms. Maheen Fatima and Mr. Muhammad Anwar Hashmi in response to the preliminary objections stated that:

a) The Appellants were given several opportunities of personal hearings to explain their conduct. The directors of Taj Textile were represented in the show cause proceedings held in the year 2003. The Appellants' counsel, however, failed to appear before the E.D, Enforcement, despite sufficient opportunities given to Appellants on 21-2-07, 1-3-07, 14-3-07, 24-4-07 and 8-5-07. E.D Enforcement passed the Impugned Order ex-parte on the basis of the record available with him.

9. On merits the departmental representatives adopted the arguments made in the appeal No 27 of 2007 and in response to additional arguments stated that:

a) On the issue of multiple proceedings instituted against a person for same cause of action, it was contended that the said transaction had different facets such as the investment was made in the associated company without the approval of shareholders; non disclosure of interest by the directors through a general notice in the relevant board meetings; proceedings of the BoD meeting were in absence of quorum; the investment in the associated company was never disclosed in the accounts of Taj Textile and the receivables and payables were off-set. In view of the above stated violations separate SCN was issued followed by a separate Impugned Order.

b) That the contravention came to light on examination of annual accounts of Taj Textile for the year ended 30-09-01 by the Commission. The contraventions were evident from the accounts of



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Taj Textile and the Commission does not require a complaint from shareholder or a creditor before proceeding against a company.

10. Our findings on the preliminary objection , also raised in appeal No 28 of 2008 is the same and has been reproduced for ease of reference:

- a) The Appellants were given ample opportunities to explain their conduct in the show cause proceedings held in the year 2003. Opportunities for hearings were again provided on 21-2-07, 01-03-07, 14-3-07, 24-4-07 and 08-05-07 but the Appellants' counsel failed to appear before the E.D, Enforcement. E.D Enforcement reached the conclusion that the Appellants have no further arguments and therefore the Impugned Order was passed ex-parte on the basis of the record available with him We do not see any cogent reasons behind non-appearance before the E.D Enforcement. In any case it was made clear to the Appellants' counsel during the hearing that we are providing him the right to agitate whatever he desires.

11. Our para wise findings on the additional arguments of the parties are as follows:

- a) Two SCN were issued on same facts carrying different violations of the Ordinance. The SCN were followed by hearings; both SCN were heard together and seperate orders were passed in each SCN. The first SCN was issued for violation of section 195(1), 188 (1)(c)(ii), 189 and 208(1) of the Ordinance on 22-11-02 to the present Appellants and directors namely: Mr. Alamgir Elahi, Mr. Umer Elahi, Mr. Tariq Latif, Mr. Shahrukh Elahi, Sh. Muhammad Ashraf and Mr. Muhammad



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Asif. The second SCN was issued for violation of section 193, 214, 215, 216, 217 of the Ordinance on 9-1-03 to the present Appellants. In our view one SCN should have been issued covering all the violations followed by an order covering all aspects of the case, however, at this stage when the hearing has been concluded and two separate Impugned Orders have been passed, we do not see any reason to interfere with the Impugned Orders on this ground as no prejudice has been caused to the Appellants as result of separate SCN. Moreover the issuance of more than one SCN on same facts is not barred by any law. We have gone through the case law presented by the Appellant counsel on the issue; in 2008 PTD 1744 the issuance of a vague SCN is declared as defective, invalid and ab initio void; in 2009 PTD (Trib) 902, the issue is whether the department can go beyond charges levied in the SCN; in 2004 CLC 1860 the principle of double jeopardy has been explained. In our view the case law presented by the Appellant counsel is not relevant to the preposition in hand and therefore it cannot be relied upon for deciding the present appeal.

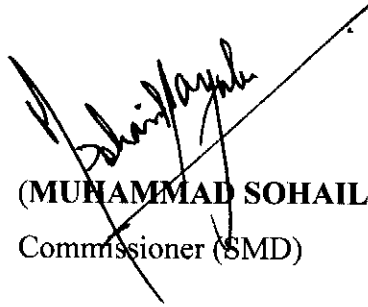
- b) The contraventions of the Appellants came to light on examination of annual accounts of Taj Textile and the Commission took the action in the best interest of the shareholders and the creditors of Taj Textile. The Commission is duty bound to protect the interest of the investor and in the instant case rightly issued the SCN without any complaint from the shareholders or the creditors.
- c) We have already stated in appeal No 27 of 2007 that the present Appellants holding common directorship on the BoD of Taj Textile and Elahi Enterprises acted in their personal interest and transferred the liability of bank loan from Elahi Enterprises, a private limited

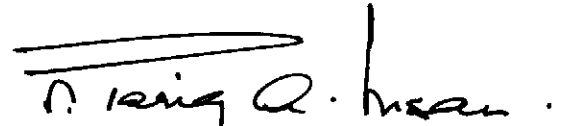


SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

company to Taj Textile which is a public limited company to the detriment of the shareholders of Taj Textile, without adequate and reliable consideration. Moreover the minutes of the BoD along with chart in para 2 above shows that the interested directors participated in the BoD meetings in which the transfer of loan was discussed and the requirements of quorum were also not observed as such the Appellants also acted in violation of section 193, 214 and 216 of the Ordinance.

In view of the above, we do not find any ground to interfere with the Impugned Order. The appeal is dismissed with no order as to cost.


(MUHAMMAD SOHAIL DAYALA)
Commissioner (SMD)


(S. TARIQ ASAF HUSAIN)
Commissioner (LD)

Announced on: 12-11-09