



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 12 of 2016

1. Haroon Iqbal
2. Aziz-ul-Haque
(Both directors of Dewan Automotive Engineering Limited)

Appellants

versus

The Commissioner, Securities Market Division, SECP.

Respondent

Date of hearing:

July 20, 2023 and
February 15, 2024

Present:

For Appellants:

1. Syed Muhammad Abbas Hyder, Advocate High Court
2. Syed Muhammad Raza
3. Mr. Muhammad Hanif German

For Respondent:

1. Mr. Hammad Javed, Additional Director, Adjudication-I, SECP
2. Raja Farukh Ahmad, Additional Joint Director, Adjudication-I, SECP
3. Mr. Muhammad Faisal, Assistant Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 12 of 2016 filed under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the Appeal) against the order dated April 5, 2016

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passed by the Commissioner, Securities Market Division (the Respondent) under Section 160 read with Section 100 of the Securities Act, 2015 (the Act).

2. Earlier, this Appeal was dismissed vide order dated March 26, 2019 by the Appellate Bench (the Bench). The Appellants challenged the Bench's order dated March 26, 2019 before the Islamabad High Court, Islamabad (the Court) through F.A.O No. 147 of 2019. The Court vide its order dated December 13, 2022 *set aside* the order dated March 26, 2019 and remanded the matter to the Bench. In view thereof, the Appeal was fixed for hearing on July 20, 2023, however, it was adjourned due to the non-availability of the Appellants' Counsel. Thereafter, the Appeal has been re-fixed for February 15, 2024, which was attended by the parties.
3. The brief facts of the case are that Dewan Automotive Engineering Limited (the Company) was placed on the defaulter counter of PSX on December 8, 2014 and trading in its shares was also suspended since then due to its failure to hold its annual general meeting for two consecutive years and its failure to pay the annual listing fees for two years. The Securities and Exchange Commission of Pakistan (the Commission) issued a direction on September 1, 2015 to the Appellants under Section 100 of the Act (the Direction) to take immediate steps to undo the defaults of the Listing of Companies and Securities Regulations of Karachi Stock Exchange (Listing Regulations) within 14 days of the date of the Direction. The Company failed to comply with the Direction. Therefore, the Respondent issued the Show-Cause Notice dated October 16, 2015 in terms of Section 160 read with Section 100 of the Act (the SCN). The Appellants neither submitted the reply of the SCN nor attended the hearings fixed before the Respondent. The Respondent concluded the SCN proceedings and imposed an aggregate fine of Rs. 35,00,000/- on seven directors of the Company. In view thereof, both Appellants were held liable to pay Rs. 500,000/- each.
4. The Appellants have preferred this Appeal *inter alia* on the grounds that the Respondent issued the SCN and passed the Impugned Order without jurisdiction. The Appellants stated that the issuance of the Direction was unwarranted because the erstwhile Karachi Stock Exchange (the KSE) vide letter dated August 4, 2015 had already extended the suspension period for sixty days to rectify the listing regulations default. The Appellants stated that the KSE further extended the suspension period for sixty days to rectify the Listing Regulations default vide a letter dated

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October 2, 2015, however, the Respondent issued the SCN on October 16, 2015 without any just cause and reason. The Appellants had taken a plea that the KSE had placed the Company on the defaulters' segment and had extended the time to rectify the default, therefore, under the listing regulations only the KSE had the exclusive jurisdiction in the matter.

5. The Appellants submitted that the Respondent seriously erred in law by penalizing the Appellants in their personal capacity as neither the Direction nor the SCN was issued in the name of the Appellants. The Appellants also stated that no hearing notice was sent to them, therefore, the Impugned Order was passed *ex-parte* without affording them an opportunity of a personal hearing. The Appellants stated that the right of a fair trial under Article 10-A of the Constitution has not been provided to them. The Appellants contended that the provisions of the Act have no retrospective effect on the alleged default that occurred before the promulgation of the Act, therefore, the Impugned Order has been passed in violation of Article 12 of the Constitution. The Appellants' representatives also argued that the Company has already been penalized for non-holding the AGM, therefore, passing the Impugned Order on the ground that the Company has not convened its AGM which is tantamount to double jeopardy, which is against settled jurisprudential principles. In view of the aforementioned grounds, the Appellants prayed to *set aside* the Impugned Order.
6. The Respondent rebutted the grounds of Appeal and stated that the Respondent had duly exercised the jurisdiction to pass the Impugned Order. The Respondent stated that the Company was placed on the defaulter counter on December 8, 2014 due to its failure to hold annual general meetings for two consecutive years and its failure to pay the annual listing fees for two years, and, moreover, even after the lapse of eight months, the Company failed to undo the default. The Respondent stated that, vide letter dated December 5, 2014 the KSE initially allowed 90 days' time for rectification of the default and thereafter, extended suspension status of the Company for 60 days unless the default was earlier rectified. The Respondent stated that KSE's letters do not preclude any action under the Securities Act, 2015, accordingly, the Direction was issued and due to non-compliance, the SCN was served and the Impugned Order was passed. The Respondent stated that the Direction, the SCN and hearing notices were addressed to Directors of the Company, however, the Appellants failed to appear before the Respondent for hearings, therefore, the Impugned Order was passed *ex-parte*.

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7. The Respondent stated that the default of the Company and the Act existed at the time when the Direction was passed, therefore, the Appellants' stance regarding the retrospective effect of the Act is misconceived. The Respondent stated that the Impugned Order had been passed on account of violation of the Direction, whereas, the case mentioned by the Appellants pertains to the non-holding of annual general meetings in violation of Section 158 of the Companies Ordinance, 1984, therefore, the Appellant's argument pertaining to 'double jeopardy' is baseless. The Respondent prayed to dismiss the Appeal.
8. The Bench has heard the parties and perused the record. The Bench is not inclined to accept the Appellants' assertion that the Impugned Order has been passed without jurisdiction. The Bench is of the view that being an apex regulator, the Commission is competent to issue directions under Section 100 to undo a default committed by a company under the Listing Regulations. In this case, initial cognizance of the default under the listed regulations was taken by the exchange (KSE), however, due to continuous default, the Commission issued the Direction to the Company to undo the default. Therefore, the Bench finds no reason to doubt the competence of the Respondent to pass the Impugned Order.
9. The Bench also rejects the Appellants' claim that the Direction and SCN was not issued to them. As per the record, the Direction and SCN were duly addressed to the chief executive and directors of the Company, therefore, the Bench categorically rejects this stance. In view thereof, the Bench believes that as the Direction and SCN were issued to the Appellants, therefore, the Respondent was competent to penalize them in their personal capacity. The Bench also rejects the other assertion of the Appellants that no hearing opportunity was provided as five hearing opportunities were provided which the Appellants failed to attend.
10. The Bench also does not accede to the Appellants' plea the Respondent was not competent to invoke the provisions of the Act to penalize the Appellants for the default that occurred before the promulgation of the Act. As a matter of fact, the Impugned Order has been passed due to the non-compliance with the Direction issued under the Act, therefore, the question of retrospective effect does not arise. The Appellants apprised the Bench that the Commission has already penalized the


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Appellants for non-holding of the annual general meeting for the year ended June 30, 2014 through a separate order and, therefore, imposition of penalty on the same ground amounts to the 'double jeopardy' which objection is partially acceptable as the Company was placed on the defaulter counter due to its failure to convene the annual general meeting for the years 2013 and 2014, and the Commission also penalized the Appellants for not holding the annual general meeting for the year ended June 30, 2014. Therefore, no penalty may be imposed to the extent of default for the year 2014. However, the penalty imposed via the Impugned Order does not segregate the years of default and offense-wise amount of penalty, therefore, the Bench cannot segregate penalties at the appellate stage.

11. In reply to a question of the Bench with respect to the requirements of annual general meetings and accounts, the Appellants' representatives stated that currently, the Company is fully compliant and the Company is still on the defaulter counter of the Pakistan Stock Exchange (PSX). The Appellants' representatives assured the Bench that the Company is in the process of meeting the requirements of the Listing Regulations to ensure its trading is restored.
12. In view of the substantial compliance by the Company and in consonance with the Bench's aforementioned observations, we hereby convert the penalty into a warning. In the circumstances, the Appeal is disposed of without any order as to cost.

(Mujtaba Ahmad Lodhi)

Commissioner

(Aamir Khan)

Commissioner

Announced on: 01 JUL 2024