

Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 44 of 2013

Mr. Zahid Mazhar

.... Appellant

Versus

Mr. Ali Azeem Ikram, Head of Department (Enforcement)

.... Respondent

Date of hearing:

13/05/15

Present:

For Appellant:

Ashfaq Tola, FCA

For Respondent:

- i. Ali Azeem Ikram, Director (Enforcement)
- ii. Khalida Perveen, Joint Director (Enforcement)
- iii. Ms. Ayesha Riaz, Joint Director (Enforcement)

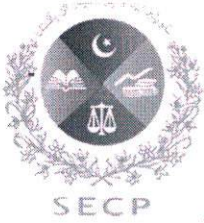
ORDER

1. This order shall dispose of the Appeal No. 44 of 2013 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 05.06.13 (the Impugned Order) passed by the Respondent against Mr. Zahid Mazhar (the Appellant), chief executive of Nadeem Textile Mills Limited (the Company) under section 186 read with section 476 of the Companies Ordinance 1984 (the Ordinance).

Appellate Bench No. IV

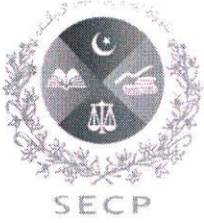
Appeal No. 44 of 2013

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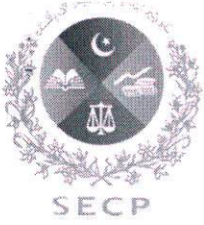
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2. The facts leading to the case are that the last election of the Company directors was held on 30.10.09 and subsequent election was required to be held by 30.10.12 as per section 177 and 180 of the Ordinance, however election of directors was not held within prescribed time. The Company also failed to report circumstances impeding in timely election of directors to the Registrar of Companies (the Registrar) within 15 days of the expiry of the term of the directors as required under section 177 of the Ordinance. The Company informed the Registrar vide letter dated 15.01.13 that election of directors has been deferred by virtue of a compromise between Mr. Zahid Mazhar group and Mr. Shahid Mazhar group before the Sindh High Court on 22.09.12 and 13.10.12, however, no such compromise was produced. The Securities and Exchange Commission of Pakistan (the Commission) sought clarifications from the Appellant vide letter dated 18.01.13 with reference to shareholders complaint regarding the subject matter, however once again reference was made towards the settlement between two major shareholders for not holding the election for time being but no such settlement was produced.
3. In view of the above a Show Cause Notice (SCN) dated 29.04.13 was issued to the Appellant. The Respondent, being dissatisfied with the response of the authorized representative/ Appellant, imposed a penalty of Rs. 10,000/- (Rupees Ten Thousand Only), to be payable by the Appellant from his personal resources and further directed to hold the election of directors within forty five days of the Impugned Order.
4. The Appellant, being aggrieved by the Impugned Order filed an appeal before the Appellate Bench on the following grounds and prayed to set aside the penalty imposed through the Impugned Order;
 - i. The Impugned Order is impractical to implement owing to subsequent developments.
 - ii. It will be difficult to implement the Impugned Order especially finding suitable independent directors to adhere to the Code of Corporate Governance in true spirit.



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5. The Respondent replied and rebutted the grounds of appeal and reiterated the arguments stated in the Impugned Order and prayed to maintain the Impugned Order. The Respondent stated that the direction contained in the Impugned Order has been issued in the best interest of all shareholders of the Company, particularly the minority shareholders. Further, contention of the Appellant that it is impractical to hold election is not acceptable considering the circumstances of the case.
6. We have heard the parties i.e. Appellant and Respondent at length and perused the relevant record carefully with the able assistance of the parties. As per facts of the case and the submissions made before the Appellate Bench by the parties, in our view no case of appeal against the Impugned Order has been made out by the Appellant. The last election of directors of the Company was held on 30.10.09 for a period of 3 years, therefore the retiring directors were required to hold fresh election on or before 30.10.12, however they not only failed to hold election as per prescribed period but also failed to report the impediments, if any, to the Registrar within fifteen days as required under section 177 of the Ordinance.
7. The Appellant has tried to plead his case on the ground that major shareholders have reached to settlement to divide the business into two segments i.e. Sindh and Punjab and as per a caveat of the proposed settlement it was decoded by the shareholders to defer the election of directors. It was further submitted in the grounds of appeal that it is impractical to implement the Impugned Order and difficult to find suitable independent directors to adhere the Code of Corporate Governance. Submission made and defense taken by the Appellant lacks valid and cogent reasoning and as per explicit provisions of law major shareholders of the Company cannot avoid the process of law by their mutual agreement as in the present case they have reached to the settlement not to hold the election of directors. Operation of express provisions of the Ordinance cannot be stopped except as provide therein. Therefore, the Appellant cannot escape from the liability of violations committed in terms of section 177 and 180 of the Ordinance.



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8. In the light of above stated facts default of the Appellant to hold election of directors has been established and admitted by the Appellant in para nine of the memorandum of appeal, therefore in view of above we can safely conclude that the Respondent has rightly imposed the penalty vide the Impugned Order. A similar issue was settled by the Honorable Karachi High Court Sindh (the Court) in case of Central Cotton Mills Ltd. Versus Naveed Textile Mills Ltd (1996 MLD 1943) is was held by the Court that:

“Where two groups of closely related family members were involved in tussle to get controlling power and oust the other one, it was obligatory that all legal requirements were complied with.”

9. In view of the aforesaid, there being no reason to interfere with the Impugned Order dated 05.06.13 passed by the Respondent, therefore appeal is dismissed.

10. Parties to bear their own cost.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Zafar Abdullah)
Commissioner (SCD)

Announced on: 24 JUL 2015