



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 02 of 2014

- i. Sind Fine Textile Mills Limited
- ii. Chief Executive Officer and Directors of Sind Fine Textile Mills Limited

.... Appellants

Versus

Head of Department (Enforcement), Securities and
Exchange Commission of Pakistan

.... Respondent

Date of hearings: 14/05/15, 18/08/15

Present:

For Appellants:

- i. Mr. M. Sarfraz, Advocate
- ii. Mr. Iftikhar Ahmed Soomro
- iii. Mr. Imran Mubashir

For Respondent:

- i. Mr. Muhammad Siddique, Executive Director (C&CD)
- ii. Mr. Ali Azeem Akram, Executive Director (CSD)
- iii. Ms. Ayesha Riaz, Joint Director (CSD)

ORDER

1. This order shall dispose of appeal no. 02 of 2014 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 05/12/2013 (Impugned Order) passed by the Respondent.

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2. Brief facts of the case are that The Sind Fine Textile Mills Limited (Appellant no.1) is quoted on Karachi and Lahore Stock Exchanges. Examination of audited accounts for the year ended June 30, 2011 revealed that the auditor of the Company has issued qualified auditor's opinion i.e. adverse opinion for non-compliance of the requirements of applicable International Accounting Standards (IAS) 36 - Impairment of Assets. Therefore, the Respondent sought an explanation vide letter dated 25/11/2011. Appellant no.1 replied and stated that applicable requirements of relevant IAS require heavy cost of consultant which the Appellant cannot afford. Thereafter, examination of annual audited accounts for the year ended June 30, 2012 revealed following qualified opinion by the auditor to members:

"in our opinion the balance sheet, profit and loss account, statement of comprehensive income, cash flow statement and statement of changes in equity together with the notes forming part thereof do not present fairly the state of the Company's affairs as at June 30, 2012 and of the loss, comprehensive income, changes in equity and its cash flow for the year then ended."

The Auditor further stated *"The management has not carried out a review of operating fixed assets to determine the impairment in the carrying values under IAS 36 "impairment of assets". Consequently, the amounts for these assets are stated as per the stated accounting policy and no adjustment has been made in respect of impairment loss, if any Disclosures relating to IFRS-5 not given."*

3. Therefore, the Respondent issued a Show Cause Notice dated 11/12/12 (SCN) under Section 492 read with Section 476 of the Companies Ordinance, 1984 (the Ordinance) to the directors for false or incorrect financial statements for the year ended June 30, 2012. The Chief Executive Officer, Chief Financial Officer and Secretary of the Appellant no.1 replied to the SCN and appeared before the Respondent for personal hearing. They stated that there was no indication of



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impairment and the management has considered internal and external sources of information in terms of IAS-36. They further stated that book value of assets is Rs.1.01 million whereas the rental income of same property is Rs.3.99 million which is more than the book value of the assets and as such there is no impairment in the value of assets. The Respondent being dissatisfied imposed penalty on the directors of the Appellant no.1 as follows:

S. No.	Names of directors	Amount (Rs.)
1.	Mr. Iftikhar Ahmed Soomro, Chief Executive	20,000
2.	Mr. Mohammad Omer Soomro, Director	20,000
3.	Ms. Mona Soomro, Director	20,000
4.	Ms. Huma Soomro, Director	20,000
5.	Mr. Ahsan Najmi, Director	20,000
6.	Mr. Jamil Akber, Director	20,000
7.	Mrs. Nasreen I. Soomro, Director	20,000
Total Amount		140,000

4. The Appellant has preferred the instant appeal against the Impugned Order on the following grounds:
- The Impugned Order was passed without jurisdiction.
 - The Respondent has failed to appreciate the efforts of the Appellants for revival of the project and efforts to meet the commitment with its bankers and creditors and the fact that the project is a going concern.
 - The Respondent has erred to appreciate that the appellant is following the accounting policies and International Accounting Standards consistently.
 - The learned officer has failed to consider the evidence, facts and documents on record.

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- e) The learned officer has not cited a single violation which has been made knowingly or willingly by the appellants and due to which members of the company has been affected directly or indirectly
5. The Respondent rebutted the grounds of appeal in the following manner:
- a) The Impugned Order was passed in accordance with the facts by keeping in view legal provisions therefore, it cannot be considered bad in law.
 - b) The contents of relevant ground of appeal are denied as the Appellant no.1 operations have been halted for more than ten years. The Appellants arguments are contrary to the facts. The auditors' report for the year ended June 30, 2013, stated about inappropriateness of going concern assumption used by the management for preparation of accounts.
 - c) The plea of the Appellants that they have followed the requirements of the referred standards is incorrect because the auditor of the Appellant no.1 has qualified its report for the year ended June 30, 2012 for non-compliance of the referred and applicable international accounting / financial reporting standards.
 - d) The Respondent has considered all the relevant facts and evidence produced by the Appellant during the proceedings, for just decision of the case.
 - e) The argument of the Appellants that the default was not "willful" holds does not hold merit as the Appellants has not exercised due skill and care being directors of the Appellant no.1 at the time of approval and submission of the accounts.
6. We have heard the parties at length and perused the relevant record with the able assistance of the parties i.e. Appellant and Respondent.
7. The Appellants argued the appeal, inter alia, on the ground that Appellant no.1 is a going concern; however, as matter of fact the Appellant no.1 is not a going concern, rather operations of Appellant no.1 have been ceased for more than ten years. The Appellate Bench has perused the Accounts of Appellant no.1 for the year ended

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30/06/12 and found that the main source of income/revenue is rental which implies that it does not have any operating source of revenue. Further the Accounts of the Appellant no.1 depict that it does not have stocks, work-in-progress or finished goods which implies that Appellant no.1 is not a going concern. The Accounts of 2011 reveals the same facts and unpaid balance of the creditors since long. It appears that the creditor claims have not been settled by the Appellant no.1 due to halted operations and sufficient cash balance is also not available. In spite of aforementioned facts preparation of Accounts of Appellant no.1 as a going concern tantamount to false or incorrect presentation of financial statements.

8. Further, the management of the Appellant no.1 has not carried out review of operating fixed assets since 2004 as per IAS 36 which requires that "An entity shall assess at each reporting date whether there is any indication that an asset may be impaired. If any such asset exists, the entity shall estimate the recoverable amount of the asset". This fact has been stated in letter written by Appellant to the Respondent dated 22/12/12. The letter states that as per management assessment there was no indication of impairment in the value of fixed assets therefore no determination of impairment in terms of IAS 36 was made. The basis of assessment made in this regard has not been provided.
9. Keeping in view the above stated admission violation of IAS 36 has been established against the Appellants and the reason provided for non-assessment of fixed assets in terms of IAS 36 is not cogent.
10. Furthermore the members of the Appellant no.1 in their meeting dated 23/12/04 had decided to dispose the entire machinery to settle liabilities of financial institutions however no such disclosure in terms of IFRS 5 (Non-current assets held for sale and discontinued operations) was made. It is also important to note the director's report to members also failed to address the qualification of the auditor in this regard.

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11. In view of the aforesaid, the Respondent has successfully established the default and violation on the part of Appellants. We find no reason to interfere with the Impugned Order dated 05/12/13 passed by the Respondent, therefore appeal is dismissed.

12. Parties to bear their own cost.

(**Fida Hussain Samoo**)
Commissioner (Insurance)

(**Zafar Abdullah**)
Commissioner (SCD)

Announced on: **04 SEP 2015**