



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. IV

In the matter of

Appeal No. 10 of 2014

Tariq Rashid Bhatti (FCA)

.... Appellant

Versus

Head of Department (Enforcement), Securities and

Exchange Commission of Pakistan.

.... Respondent

Date of hearings:

06/04/15, 18/08/15

Present:

For Appellant:

Nemo

For Respondent:

- i. Mr. Ali Azeem Akram, Executive Director (CSD)
- ii. Mrs. Maheen Fatima, Director (CSD)
- iii. Mr. Malik Asim Pervez, Deputy Director (CSD)

ORDER

1. This order shall dispose of appeal no. 10 of 2014, filed by the Mr. Tariq Rashid Bhatti, FCA (the Appellant) under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997, against the order dated 10/01/2014 (Impugned Order) passed by the Respondent. The instant appeal was earlier fixed on 06/04/15 however, the Appellant failed to appear before the Appellate Bench (the Bench). In

Appellate Bench No. IV

Appeal No. 10 of 2014

Page 1 of 1



Securities and Exchange Commission of Pakistan

the interest of justice another hearing opportunity was provided on 18/08/15, the Appellant instead of personal appearance, submitted written submissions through mail and requested to decide the matter on the basis of record, documents and information. The request of the Appellant was acceded by the Bench.

2. Brief facts of the case are that the Appellant audited the accounts of Sarwar Foundation (the Company) for the years ended June 30, 2010, 2011, and 2012 (the Accounts) and issued unmodified audit reports (the Reports). The detailed scrutiny of the Accounts revealed that the Company has failed to follow the International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS) for preparation of Accounts as required by S.R.O 860 (I)/2007 dated August 21, 2007, hence violated Section 255 of the Companies Ordinance 1984 (the Ordinance). Therefore a Show Cause Notice (SCN) dated 02/05/13 was issued to the Appellant. The Appellant replied to the SCN vide letter dated 02/12/13 and stated that the aforesaid S.R.O is not applicable to the Company as it falls under small companies ambit. The Appellant further contended that he has complied with the requirements of Section 255 of the Ordinance and no contravention has been committed willfully. Personal hearing in the matter was fixed on 11/12/13, however the Appellant requested vide letter dated 09/12/13 to decide the matter as per submitted record and information. The Respondent being dissatisfied with the reply and evidence provided by the Appellant, imposed a penalty of Rs10,000 on Mr. Tariq Rashid, principal of Tariq Rashid & Co. Chartered Accountants.
3. The Appellant has preferred the instant appeal against the Impugned Order on a single legal ground that imposition of penalty is a very serious matter and it should be imposed only in cases of proven frauds, or where default is willful. Appellant further relied upon an order of the Enforcement Department passed under section 244 of the Ordinance.

Appellate Bench No. IV

Appeal No. 10 of 2014

Page 2 of 4



Securities and Exchange Commission of Pakistan

4. The Respondent rebutted the grounds of appeal and stated that the Appellant has not complied with the requirements of Section 255 of the Ordinance and S.R.O 860 (I)/2007 dated August 21, 2007, therefore the Impugned Order may be upheld.
5. We have heard the Respondent and perused the memorandum of appeal, documents and information provided by the Appellant. As per record and facts of the case the Company was registered and licensed under Section 42 of the Ordinance, therefore it was required to follow the IAS and IFRS for preparation of its Accounts. However the Company followed Accounting and Financial Reporting Standards (AFRS) issued by ICAP for preparation of Accounts, hence failed to comply with the requirements of S.R.O. 860(I)/2007 dated August 21, 2007 which clearly states

“3.Non-listed companies that are not Medium-Sized companies or Small-Sized companies shall follow the International Accounting Standards and International Financial Reporting Standards notified by the Commission for the listed companies”

6. The plea taken by the Appellant is that the Company is a medium size company, cannot be acceded because the Company is licensed and registered under Section 42 of the Ordinance and such companies drive their income from donations and grants, therefore do not have share capital or annual turnover. As per Section 255(3) of the Ordinance the Appellant was required to conduct the audit in the manner provided therein and to present its opinion to the members on the Accounts after getting the information essential to form its opinion. Section 255 of the Ordinance also requires the Appellant to highlight any non-compliance of the applicable reporting standards; however he failed to highlight the non-compliance of S.R.O. 860(I)/2007. Furthermore, the Appellant also failed to express the reason of non-compliance with the provisions of Sub-section 3 (c) of Section 255 in his Report as required by Sub-section 4 of Section 255 of the Ordinance. The Appellant has violated the requirements of Section 255 by issuing the unmodified Reports, hence failed to perform duties as required by law, therefore the Respondent has rightly penalized the Appellant under Section 260 of the Ordinance.


Appellate Bench No. IV



Securities and Exchange Commission of Pakistan

7. Furthermore, there is no reason to believe that the default of the Appellant in compliance of the required IAS and IFRS was not willful. As per settled case law of City Equitable Fire Insurance Co. Ltd Re, 1925 Ch 407, in case of breach of duty, it will be considered 'willful' even if it arises out of being recklessly careless, even though there may not be knowledge or intent.
8. In view of the aforesaid, the Respondent has successfully established the default and violation on the part of Appellant. We find no reason to interfere with the Impugned Order dated 10/01/14 passed by the Respondent, therefore appeal is dismissed.
9. Parties to bear their own cost.

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

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

Announced on: **04 SEP 2015**