



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 104 of 2022

M/s. Fatima Oil & Ghee Mills (Private) Limited

Versus

...Appellant

Director (Adjudication-II)

...Respondent

Date of hearing:

July 9, 2024

Present:

For the Appellant:

Mr. Nauman Ali (Authorized Representative)

For the Respondent:

1. Mr. Hammad Javed, Additional Director, Adjudication Department-II, Adjudication Division, SECP
2. Mr. Sanaullah Jatoi, Deputy Director, Adjudication Department-II, Adjudication Division, SECP
3. Mr. Hifza Riaz, Management Support, Adjudication Department-II, Adjudication Division, SECP

ORDER

1. This Order shall dispose of Appeal No. 104 of 2022 filed by M/s. Fatima Oil and Ghee Mills (Private) Limited (the "Appellant") under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated August 10, 2022 (the "Impugned Order") passed by the Director, Adjudication Department – II (the "Respondent").



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2. The brief facts of the case are that the Appellant was required to maintain cost accounting records. The Securities and Exchange Commission of Pakistan (the "Commission") issued Show-Cause Notice No. Adj-II/250/93/IAN-214/2022/319 dated 4 March 2022 (the "SCN") to the Appellant for failure to maintain cost accounts, in violation of section 220(1) of the Companies Act, 2017 (the "Act") and regulation 3(1), 6(1) and 6(2) of the Companies (Maintenance and Audit of Cost Accounts) Regulations, 2020 (the "Regulations"), as well as failure to intimate appointment of cost auditor to the Commission and to get its cost accounts audited by the cost auditor, in violation of regulations 4(2) and 5(1) of the Regulations, respectively. Based on the Appellant's response to the Show Cause Notice (SCN) and the disclosures in its financial statements for the year ending 30 June 2021, it was clear that the Appellant was required to have its cost accounts audited. The Appellant informed that the cost auditor had been appointed through a board resolution dated 29 March 2021, however, the declaration made by the authorized representative during the hearing that the Appellant started production activities since August 2021 was also not found to be in conformity with the disclosures relating to the sales reported in the financial statements of the Company for the year 2021. Thus, it was established that the Appellant failed to comply with the requirement to audit its cost accounts under Regulation 5. As a result, the Respondent, in accordance with Regulation 7 and section 512 of the Act, imposed a penalty of Rs. 100,000 on the Appellant.

3. The Appellant filed this appeal before the Appellate Bench (the "Bench") *inter alia*, on the grounds that the Impugned Order is against the record and facts, and, prayed to *set it aside*. During the hearing, the Authorized Representative for the Appellant (the "Representative") asserted that the allegations in the Impugned Order arose from a misunderstanding of the Appellant's operational status and its compliance efforts. He further asserted that the financial statements for the year ending June 30, 2021, declared by the Appellant, indicated that it was in the trial production phase with commercial operations that had not yet commenced. The Representative argued that this assertion aligned with the Appellant's situation as it had imported a new plant from China and all production prior to August, 2021 was for trial purposes to test the new equipment. He added that despite reporting local sales of the production, these were sales of trial production samples rather than fully operational outputs. He emphasized that these samples were sold in the market and no tax waivers were applied, the resulting financial figures reflected this transitional phase, and thus no cost audit was conducted for the fiscal year 2021. The Representative asserted that this aspect was not considered by the Commission.



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4. The Representative also highlighted that it had timely conducted and submitted cost audits for the subsequent financial years i.e, 2022 and 2023, demonstrating compliance once actual commercial production began. The Representative iterated that the Appellant had appointed M/s. Zafar Qamar & Co. as its cost auditor via a Board resolution on March 29, 2021 in adherence to regulatory requirements. This appointment was made in good faith with the intention to ensure compliance as soon as commercial production commenced. The Representative argued that any discrepancies observed should be attributed to these operational constraints rather than intentional non-compliance.
5. The Respondent maintained that the financial statements for the year ending June 30, 2021, revealed local sales of production totaling Rs. 24,085,178/-, with a net sales figure of Rs. 20,390,262/- after deducting sales tax and other margins. He argued that the financial data reflected significant sales suggesting operational activities beyond mere testing, challenging its assertion of non-commercial activity. Moreover, the Respondent argued that the regulatory requirements mandate timely and accurate cost audits for each financial year and therefore, the subsequent filing of cost audits for the financial years 2022 and 2023 does not rectify the non-compliances for the year 2021. In summary, the Respondent contended that the Appellant's operational disclosures and financial records for the year 2021, coupled with the failure to conduct a cost audit for that period, clearly demonstrated non-compliance with the Regulations.
6. The Bench carefully considered the arguments presented by both parties and reviewed the relevant records. While it appeared that the Appellant had defaulted under the Regulations, the circumstances of this default required a nuanced assessment. During the proceedings, the Bench sought clarification on whether the Appellant had indicated that the production for the year in question was trial production. The Appellant confirmed this, directing the Bench to note 1.1 of the financial statements, which explicitly stated that the production was in the trial phase.
7. Given this confirmation, the Bench acknowledged that the Appellant's assertion of being engaged in trial production was supported by the financial disclosures and that the reported sales and associated operating expenses were the result of trial production and not full-scale commercial operations. The Bench also took into account that the Appellant had made timely submissions of cost audits for the financial years 2022 and 2023, demonstrating compliance once actual commercial production began. Considering the Appellant's subsequent compliance efforts, the Bench is of the view that the imposition of a penalty for the year 2021 may be

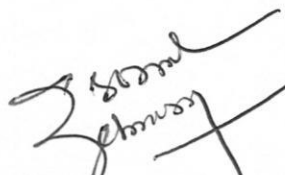


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disproportionate. Therefore, the Bench concluded that a penalty may not serve the intended regulatory purpose and could be unjust given the circumstances.

8. In view thereof, the Bench is inclined to take a lenient view regarding the penalty imposed through the Impugned Order. Therefore, we hereby set aside the Impugned Order in its entirety. Accordingly, the instant Appeal is disposed of on the above terms with no order as to costs.


(Akif Saeed)
Chairman/Commissioner


(Abdul Rehman Warraich)
Commissioner

Announced on: 04 SEP 2024