



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 105 of 2020

1. Mr. Waqar Ahmad, Chairman
2. Mr. Naseer Ahmad, Chief Executive Officer
3. Mr. Muhammad Arshad, Director
4. Mr. Zubair Hussain Akhtar, Director
5. Mr. Muhammad Arif, Director
6. Mr. Zafar Iqbal, Director
7. Mian Khalid Nasim, Director

...Appellants

versus

Joint Director/Head of Wing, Listed Companies, Adjudication-I, SECP

...Respondent

Dates of hearing:

March 10, 2022, March 31, 2022
and December 30, 2022

Present:

For the Appellants:

Mr. Muhammad Hamza Khokhar, Advocate High Court

For the Respondent:

1. Mr. Amir Saleem, Additional Director, Adjudication-I, SECP
2. Mr. Sardar Sohaib Amin, Assistant Director, Adjudication-I, SECP
3. Mr. Adnan Naseer, Assistant Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 105 of 2020 filed by the Chairman, Chief Executive Officer, and Directors (Appellants) of M/s. Gulistan Textile Mills Limited (the Company) under Section 33 of

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the Securities and Exchange Commission of Pakistan Act, 1997 (SECP Act) against the order passed under Section 245 of the Companies Ordinance, 1984 on February 17, 2020 (Impugned Order) by the Joint Director/Head of Wing, Listed Companies, Adjudication-I, SECP.

2. The brief facts of the case are that the Company failed to file the interim financial statements for the quarter ended December 31, 2016 and March 31, 2017 (the Accounts). Therefore, a show-cause notice dated January 21, 2019 (the SCN) was issued to the Appellants. Hearing in the matter of SCN was held on February 3, 2020 before the Respondent. The Respondent concluded the SCN proceedings and imposed a fine of Rs. 20,000/- on each Appellant (Aggregate Rs. 140,000/-).
3. The Appellants have preferred this appeal *inter alia* on the grounds that due to financial crunch and inadequate staff, the Company failed to comply with the requirements of Section 245 of the Companies Ordinance 1984 (the Ordinance). The Appellants prayed for a lenient view on account of subsequent compliance, and in support thereof, they relied on the Appellant Bench's orders, cited as 2017 CLD 1715 and 2018 CLD 1031. The Appellants also stated that delay in filing the Accounts had not caused harm to the rights of the stakeholders, therefore, penalties may be waived and be converted into a warning. It has also been argued by the Appellants that the High Court of Sindh has approved a scheme of arrangement with respect to the Company's revival, therefore, this factor may be considered for a lenient view.
4. The Respondent rebutted the grounds of Appeals and put forth the following arguments:
 - i. The compliance history of the Company was not satisfactory. There had been multiple instances of delays and non-compliances and in many cases the compliances were made only after SECP took notice of the matter.
 - ii. The Appellants admitted their failure to comply with the requirement of Section 245 of the Ordinance.
 - iii. The Appellants acted irresponsibly by delaying the filing of the Accounts without seeking extension for filing of the Accounts.

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- iv. Timely filing of the Accounts was important to ensure transparency and information for the stakeholders. In order to foster a culture of compliance, the SECP ought to enforce the relevant legal requirements in an effective manner.
- v. The facts of case laws mentioned by the Appellants are different from the case in hand, therefore, not applicable in this case.

5. The Appellate Bench (the Bench) has heard the parties and perused the record. In view of the arguments put forth by the parties, the Bench's analysis and findings are as under:

- i. A public listed company has a higher responsibility to disseminate true and accurate state of affairs to all the stakeholders in a timely manner so that they may take appropriate decisions.
- ii. If a company's financial statements are not available to the stakeholders within the stipulated time prescribed in law, then its Board is responsible for such default and liable to penal consequences.
- iii. The Appellants have an unsatisfactory compliance history as there have been multiple instances of non-compliance in recent years.
- iv. The Appellants have committed default in the matter under consideration and have acted irresponsibly by not even seeking extension within due date from SECP.
- v. The Appellants have admitted their default however, despite admitting their default, they have not made any payment on account of penalty so far. Due to high inflation in recent years, the delay has already lowered the real value (time value) of the penalty.
- vi. The Appellants' argument, that due to adverse financial conditions the Company had inadequate staff to prepare the financial statements, is unacceptable. Hiring of adequate staff is within the Appellants' control and timely submission of financial statements is the Appellants' responsibility. If such arguments are accepted, all companies will find one reason or another to justify non-compliance with law.
- vii. Approval of the scheme of arrangement by Sindh High Court does not absolve the Appellants from their legal obligations.



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- viii. The Appellants' argument, that the delay in compliance should be condoned and penalty should not be imposed in all cases where compliance is eventually made, disregards the importance of timely compliance with law and implies that the prescribed timelines do not matter. Any attempt to interpret a past decision of Appellate Bench in this manner needs to be discouraged.

6. In view of the above, the Bench decides as under:

- i. The decision made in the Impugned Order is maintained.
- ii. Although the real value (time value) of the penalty amount has significantly reduced due to high inflation, the amount of the penalty is not enhanced by giving due regard to the admission of default by the Appellants.
- iii. The Appeal is dismissed without any order as to cost.

(Mujtaba Ahmad Lodhi)
Commissioner

(Abdul Rehman Warraich)
Commissioner

Announced on:

31 JAN 2023