



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 11 of 2021

1. Fazal Karim Dadabhoy CEO
 2. Danish Dadabhoy
 3. Jumma Baig
 4. Shahban Ali
 5. Muhammad Zaman
- (All directors of M/s. Dadabhoy Cement Industries Limited)

...Appellants

Versus

Joint Director, Adjudication-1 SECP, Islamabad

...Respondent

Date of hearing:

March 9, 2023

Present:

For the Appellants:

1. Mr. Ali Lakhani, Advocate
2. Fazal Karim Chief Executive Officer

For the Respondent:

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

ORDER

1. This Order shall dispose of Appeal No. 11 of 2021 filed by five of the directors including the Chief Executive Officer (Appellants) of M/s. Dadabhoy Cement Industries Limited (the Company) under



Securities and Exchange Commission of Pakistan

Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (SECP Act) against the Order dated November 20, 2020 (Impugned Order) passed by the Joint Director (the Respondent) Adjudication-I SECP under Section 237 and Section 479 of the Companies Act, 2017 (the Act).

2. The brief facts of the case are that the Company failed to electronically transmit its interim financial statements for the period September 30, 2019 (the Accounts) with the Securities and Exchange Commission of Pakistan (the Commission) within the stipulated time under Section 237 of the Act. Therefore, the Respondent issued a show-cause notice dated April 22, 2020 (the SCN) to the Appellants. Hearing in the matter was fixed on November 11, 2020, which was attended by the authorized representative of the Appellants (the Representative). The Representative submitted that the sudden demise of the Managing Director of the Company in 2018 caused delay in filing of the Accounts. The Respondent concluded the SCN proceedings and imposed a penalty of Rs. 20,000 on each of the Appellants and on the CFO of the Company (aggregate penalty Rs. 120,000/-).
3. The Appellants have preferred this appeal *inter alia* on the grounds that all the events were inevitable 'Act of God' and were not under the control of the Appellants. The Appellants stated that they are not habitual offenders and the same can be seen by the record of the Company. It is also submitted by the Appellants that the Auditor of the Company resigned in December 2017 and had not completed the audit of the Company, which he was required to complete in June 2017. Therefore, the Company failed to submit the Accounts. Furthermore, the Appellants stated that there is no subsequent non-compliance on the part of the Company. Lastly, the Appellants also submitted that being directors of the Company they are not taking any remuneration from the Company, hence, by considering this factor a lenient view may be taken by waiving the penalty.
4. The Respondent rebutted the grounds of Appeals and put forth the arguments that Section 237 of the Act is unambiguous and explicit with respect to the filing period of the Accounts. The Respondent stated that the Accounts provide its users a reliable source of information regarding the company's financial position and performance. Moreover, the Appellants, being directors of the Company have fiduciary duties towards the Company and its shareholders while providing information to various stakeholders concerning their performance as to how diligently and ethically directors are working. The

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Securities and Exchange Commission of Pakistan

Respondent submitted that the Appellants have deprived the shareholders of their statutory right to receive the Accounts within the statutory timeframe. The Respondent argued during the hearing that the Appellants never mentioned the resignation of the auditor while arguing the case before the Respondent.

5. The Appellate Bench (the Bench) has heard the arguments of both parties and perused the record. The Bench is of the view that Public listed companies have a higher and more significant responsibility towards their stakeholders and are obligated to act in their interest. The law has made it obligatory for the Company to file the Accounts with the Commission within the stipulated time period, however, it has failed to comply with the express provision of the Act. The Bench is of the view that the reasons for the delay explained by the Appellants are not plausible, hence, failure to file the Accounts cannot be ignored.
6. The Bench also noted that, to date, the Appellants have not filed the requisite Accounts with the Commission, which is a glaring attempt to undermine the authority of the Commission vested in it as a regulator. The Respondent has apprised the Bench that the Appellants have provided the Accounts to the Pakistan Stock Exchange (the PSX), however, the same have not been filed with the Commission. In view thereof, the Bench believes that mere filing the Accounts with the PSX does not exempt the Appellants from the mandatory filing requirement with the Commission and cannot be condoned. The Bench has no doubt that the law is very clear and the Appellants were required to comply. In view of the superior courts' decisions whereby it has been held in "*Mir Dost Muhammad v. Govt. of Balochistan*" (PLD 1980 Quetta 1) that "It is well settled principle of law that in a case where statute provides a procedure for doing of a thing in a particular manner, that thing should be done in that manner and in no other way or it should not be done at all". The same has also been held in "*Sharafat Kaleem v. Additional District Judge, Bahawalnagar and 11 others*" (2013 CLC 185), "*Bakht Munir v. Qadir Khan and another*" (PLD 2014 Lahore 87) and "*Zia Ur Rehman v. Syed Ahmed Hussain and others*" (2014 SCMR 1015). Therefore, the Bench is not inclined to exonerate the Appellants from the consequences of the established non-compliance.

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Securities and Exchange Commission of Pakistan

7. In view of the above discussion, the Bench does not find any justification for interference in the impugned order, therefore, while maintaining the Impugned Order, we hereby dismiss this appeal without any order as to cost.

(Mujtaba Ahmad Lodhi)

Commissioner

(Akif Saeed)

Chairman/Commissioner

Announced on:

23 MAY 2023