



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 11 of 2022

M/s. Hamid Textile Mills Limited and others

Versus

...Appellants

Director (Adjudication-I)

...Respondent

Date of hearing:

August 22, 2024

Present:

For the Appellant:

Mr. Muhammad Aslam Awan (Authorized Representative)

For the Respondent:

1. Mr. Muhammad Anwar Hashmi, Additional Joint Director, Adjudication Department-I, Adjudication Division, SECP

ORDER

1. This Order shall dispose of Appeal No. 11 of 2022 filed by M/s. Hamid Textile Mills Limited and others (the "Appellants") under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated January 18, 2022 (the "Impugned Order") passed by the Director, Adjudication Department - I (the "Respondent").
2. The brief facts of the case are that on June 22, 2021, a Show Cause Notice (the "SCN") was issued to Hamid Textile Mills Limited (the "Company") and its directors under Sections 211, 502, and 479 of the Companies Act, 2017(the "Act"). The SCN addressed concerns regarding the repayment



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of loans received from Mr. Dilshad Ali, the Chief Executive Officer (CEO) of the Company, highlighting discrepancies in the manner of repayment, specifically focusing on payments made outside conventional banking channels. In response, the Company submitted detailed records and explanations, including a breakdown of total loan receipts and payments for 2019 and 2020, as well as specifics on transactions made via cash vouchers and cheques not processed through banking channels. It was concluded that the Company had violated Section 211 of the Act, which requires all cash transactions with directors to be conducted through banking channels and a cumulative penalty of Rs. 1,750,000 was imposed vide Order dated January 18, 2022 (the "Impugned Order") as follows:

| Name of Directors | Title | Penalty Imposed |
|-----------------------------|-------------------------|-----------------|
| Mrs. Khushbu Ammad | Chairman | Rs. 500,000 |
| Mr. Dilshad Ali | Chief Executive | Rs. 500,000 |
| Mr. Khawar Almas Khawaia | Director | Rs. 50,000 |
| Mrs. Nighat Khawar | Director | Rs. 50,000 |
| Mr. Muhammad Alamgir | Director | Rs. 50,000 |
| Mr. Abid Hussain | Director | Rs. 50,000 |
| Mr. Zeeshan Ali Qamar | Director | Rs. 50,000 |
| Hamid Textile Mills Limited | Through Chief Executive | Rs. 500,000 |
| Total | | Rs. 1,750,000 |

3. The Appellants filed this Appeal before the Appellate Bench (the "Bench") *inter alia*, on the grounds that the Impugned Order issued by the Director/Head of Department Adjudication-1, Adjudication Division, of the Securities and Exchange Commission of Pakistan (SECP) is contrary to the facts of the case. The Representative of the Appellants (the "Representative") asserted that the majority of the funds contributed by the directors were processed through normal banking channels, contrary to the Impugned Order's implication. He submitted that while some transactions did not adhere to conventional banking methods, a substantial portion of the repayments and



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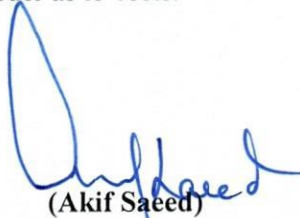
withdrawals were conducted through banking channels. He further submitted that a penalty of Rs. 1,750,000 imposed on the Directors and the Company was harsh given the Company's severe financial constraints, which have been exacerbated by ongoing litigation with the National Bank of Pakistan (NBP) and that the Company had relied heavily on financial support from its sponsoring directors to sustain operations, despite facing adverse auditor opinions on its 'going concern' status over the past seven years. The Representative also argued that the Impugned Order failed to adequately consider these challenging circumstances and the Directors' efforts to keep the Company operational. In light of these factors, he sought a lenient view from the SECP, emphasizing that the transactions were conducted in good faith to maintain the Company's viability.

4. In response to the Representative's arguments, the Respondent maintained that the Impugned Order was issued in full compliance with due process, including thorough consideration of both written and verbal responses from the Appellants. He further submitted that the Appellants' acknowledgment of non-compliance, as reflected in their responses dated November 23, 2020, and December 03, 2021, confirmed that certain repayment transactions were indeed conducted outside conventional banking channels and that this acknowledgment undercut the Appellants' assertion that the penalty was unfairly applied. Furthermore, the Respondent denied the claim that the penalty was disproportionate as Section 479 of the Act provides for a substantial range of penalties i.e. up to Rs. 100,000,000, and the penalty imposed was on the lower-end of this scale and was both appropriate and justified given the facts of the case. The Respondent maintained that the proceedings were conducted with due regard to the applicable provisions and that the penalty was reasonably aligned with the severity of the violations identified.
5. After careful consideration of the arguments presented by both the Appellants and the Respondent, the Bench is of the opinion that the decision rendered in the Impugned Order was well-founded and should be upheld. The Bench concluded that as the Appellants acknowledged that certain repayment transactions were conducted through means other than conventional banking channels, it constituted a breach of Section 211 of the Act and despite the Appellants' claims of financial distress and efforts to maintain operations, the Respondent has appropriately applied the provisions of the Act. The Bench concurred with the Respondent that the penalty was on the lower-end of the spectrum defined by the Act and reflected the gravity of the non-compliance.



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6. In view thereof, the Bench decided that the Impugned Order and the penalty imposed are justified and should be upheld. 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: 25 SEP 2024