



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 12 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 09, 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

Appellate Bench

Appeal No. 12 of 2021

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1. This Order shall dispose of Appeal No. 12 of 2021 filed by five of the directors including the chief executive officer (Appellants) of M/s. Dadabhoy Cement Industries Limited (the Company) under 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, Adjudication-I SECP, (the Respondent) 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 following periods with the Securities and Exchange Commission of Pakistan (the Commission) within the stipulated time under Section 237 of the Act.

Quarter	Period Ended	Filing due on
2 nd	December 31, 2017	March 1, 2018
3 rd	March 31, 2018	April 30, 2018
1 st	September 30, 2018	October 30, 2018
2 nd	December 31, 2018	March 1, 2019

3. In view of the above violation, the Respondent issued a show-cause notice dated September 13, 2019 (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 a delay in filing the interim financial statements for the periods ended December 31, 2017, March 31, 2018, September 30, 2018 and December 31, 2018 (the Accounts). The Respondent concluded the SCN proceedings and imposed a penalty of Rs. 20,000 for each default period which amounts to Rs. 80,000 on each of the Appellants. (aggregate of Rs.400,000/- (Rupees four hundred thousand only)).
4. The Appellants have preferred this appeal *inter alia* on the grounds that all the events were an 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

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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 interim financial statements for the abovementioned period. The Appellants further stated that the Company has already submitted the interim financial statement for the period September 30, 2018 via e-services on 31, October 2018. 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.

5. 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 interim financial statements. The Respondent stated that timely prepared interim financial statements 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 Respondent submitted that the Appellants have deprived the shareholders of their statutory right to receive the interim financial statements of the Company 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.
6. 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 interim financial statements with the Commission within the stipulated time period, however, it has failed to comply with the express provision of the Act. The Appellants have subsequently transmitted the Accounts for the period ended September 30, 2018 on October 31, 2018, therefore, to this extent the Bench is inclined to take a lenient view. As far as the other default periods are concerned, the Bench is of the view that the reasons for the delay explained by the Appellants are not plausible, hence, failure to file interim financial statements cannot be ignored.

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7. In view of the above discussion, the Impugned Order is maintained except for the penalty of the period ended on September 30, 2018, as the subsequent compliance has been made. In the circumstances, the Appeal is disposed of without any order as to cost.

(Mujtaba Ahmad Lodhi)

Commissioner

(Akif Saeed)

Chairman/Commissioner

Announced on: **26 MAY 2023**