



# Securities and Exchange Commission of Pakistan

## **BEFORE THE APPELLATE BENCH**

In the matter or

### **Appeal No. 137 of 2020**

Mr. Khan Muhammad, Engagement Partner of M/s. Kreston Hyder Bhimji & Co.,  
Chartered Accountants (Auditor of J.A Textile Mills Limited)

..... Appellant

Versus

Executive Director/HOD, Adjudication – I, SECP

..... Respondent

**Date of Hearing:**

November 24, 2025

**Present:**

**For the Appellant:**

1. Mr. Khan Muhammad, Appellant (through Zoom)
2. Mr. Syed Aftab Hameed, Authorized Representative (through Zoom)
3. Mr. Muhammad Sohaib Sheikh, Advocate
4. Mr. Muhammad Ali, Partner

**For the Respondent:**

1. Mr. Mubasher Saeed Saddozai, Executive Director, Adjudication Division, SECP
2. Mr. Sohail Qadri, Director, Adjudication-I, SECP
3. Mr. Muhammad Hammad, Assistant Director, Adjudication-I, SECP

## **ORDER**

1. This Order shall dispose of Appeal No. 137 of 2020 filed by Mr. Khan Muhammad, Engagement Partner of M/s. Kreston Hyder Bhimji & Co., Chartered Accountants (the "Appellant"), auditor of J.A Textile Mills Limited (the "Company"), against order dated September 30, 2020 (the "Impugned Order"), passed by the Executive Director/HOD, Adjudication-I, SECP (the "Respondent"), under Section 253 read with Section 249 of the Companies Act, 2017 (the "Act").
2. Brief facts of the case are that Note 16 to the annual audited financial statements of the Company for the year ended June 30, 2017 (the "Financial Statements") disclosed a total loan



## Securities and Exchange Commission of Pakistan

liability of Rs. 15.111 million, comprising Rs. 4 million under long-term financing and Rs. 11.111 million under short-term loans payable to MCB Bank Limited (the "Bank"). Further, Note 26 to the Financial Statements reflected an amount of Rs. 22.032 million recognized under "Other Income" on account of remission of mark-up/interest pursuant to a Settlement Agreement dated October 16, 2017 (the "Agreement") executed between the Company and the Bank. Note 16.1 to the Financial Statements stated that the Agreement had been entered into subsequent to the balance sheet date, whereby the outstanding loan liability was agreed to be settled at Rs. 15.110 million, including a down payment of Rs. 3.111 million payable within seven days and the remaining balance payable in twelve equal monthly instalments of Rs. 1 million each. The Company recognized the remission of Rs. 22.032 million as other income in the Financial Statements on the basis of the Agreement. Upon regulatory review, the Securities and Exchange Commission of Pakistan (the "Commission") observed that, in terms of clauses 6 and 7 of the Agreement, the remission was expressly conditional upon full realization of the settled amount. It was noted that such realization occurred in October, 2018, whereas the income had been recognized in the Financial Statements for the year ended June 30, 2017. Accordingly, the remission did not meet the criteria of an adjusting event under International Accounting Standard (IAS) 10, and the accrued mark-up ought to have continued to be reflected as a liability in the Financial Statements. The Commission further observed that the Appellant, *prima facie*, failed to identify and report this material misstatement in the audit report issued on October 07, 2017 ("Audit Report"). Consequently, the Financial Statements were, *prima facie*, materially misstated and the Audit Report was not in conformity with Section 249 of the Act, read with the applicable International Financial Reporting Standards (IFRS).

3. Consequently, the Respondent issued a Show Cause Notice ("SCN") dated January 02, 2019 to the Appellant. A hearing in the matter was conducted on September 10, 2020, during which the Appellant furnished written and oral submissions. The Appellant denied any professional lapse and contended that the recognition of income was consistent with the requirements of IAS 10 and the applicable International Standards on Auditing (ISAs). The Respondent concluded the proceedings and imposed a penalty of Rs. 100,000/- upon the Appellant under Section 253 of the Act.
4. The Appellant preferred an appeal against the Impugned Order before the Appellate Bench (the "Bench"), which was dismissed vide order dated June 02, 2025 and the Impugned Order was upheld.
5. Aggrieved by the said order, the Appellant filed an appeal before the Hon'ble Lahore High Court, Lahore, whereby the Hon'ble Court vide order dated October 14, 2025, set aside the Bench's order dated June 02, 2025 and remanded the matter to the Bench for a fresh decision in accordance with the law after affording due opportunity of hearing to the parties. Concluding para of the judgment is reproduced hereunder for ease of reference:

*"5. In view of the foregoing, the instant appeal is allowed, impugned order dated 02.06.2025 is set aside and matter is remanded to the Securities and*



## Securities and Exchange Commission of Pakistan

*Exchange Commission of Pakistan (SECP) Appellate Bench to decide the same afresh after affording the parties due opportunity of hearing, in light of the observations made hereinabove, and to pass a well-reasoned and speaking order strictly in accordance with law. The Appellate Bench is directed to decide the appeal expeditiously, preferably within thirty (30) days from the receipt of certified copy of this judgment."*

6. The Appellant assailed the Impugned Order, *inter alia*, on the following grounds:
- i. The Impugned Order is liable to be set aside as it is contrary to the facts, law, and record of the case, and fails to consider the detailed written submissions, oral representations, and supporting documents duly furnished by the Appellant during the proceedings.
  - ii. Identical responses submitted by the Company regarding the remission of markup and adjustment of loan liabilities were accepted by the Commission without any adverse action, therefore, penalizing the Appellant on the same issue constituted discriminatory treatment in violation of the principles of equity.
  - iii. The Company and the Bank had already concluded a binding settlement prior to issuance of the Audit Report through the Company's offer letter dated August 17, 2017, and the Bank's unconditional acceptance dated September 12, 2017, which constituted the operative settlement for purposes of IAS 10 and IAS 37. The subsequent formal Agreement and the Banking Court decree dated October 24, 2017 merely documented and confirmed the pre-existing settlement and did not create any new obligation.
  - iv. Down payment of Rs. 3.11 million was made on September 25, 2017, i.e., well before the issuance of the Audit Report on October 07, 2017, and that all post-dated cheques deposited pursuant to the Agreement were subsequently cleared in full. The Company had therefore already begun performing its obligations under the Agreement prior to the finalization and authorization of the Financial Statements.
  - v. The Respondent misconstrued IAS 10 and IAS 37 by assuming that only the October, 2017 Agreement and the Banking Court decree constituted the relevant obligation-creating events. The Appellant argued that IAS 10 mandates a 'substance-over-form' assessment, and that the Bank's unconditional acceptance and the Company's down payment of Rs. 3.11 million on September 25, 2017, before issuance of the Audit Report provided reliable evidence of a present obligation, thus constituting an adjusting event.



## Securities and Exchange Commission of Pakistan

- vi. The Respondent failed to consider the legal implications arising from the unauthorized conversion of the loan and the unlawful imposition of compound markup by the Bank, which have been condemned by the Hon'ble Supreme Court of Pakistan in multiple authoritative judgments.
- vii. Markup was consistently disclosed in the company's Financial Statements since 2008 and the remission of Rs. 22.032 million, as recognized in the Financial Statements, was in fact only Rs. 6.951 million after adjusting the cost of funds, which was well within the materiality threshold of Rs. 8.191 million set by the Appellant, thus having no impact on the audit opinion.
- viii. The Respondent wrongly relied on an incorrect amount of Rs. 33.709 million mentioned in the Bank's letter dated September 12, 2017, an amount that was neither part of the Bank's legal pleadings nor raised in the SCN or during the hearing, therefore, making such reliance an afterthought and legally flawed. The Appellant emphasized that there was no misstatement in the Financial Statements as all conditions of the Agreement were fulfilled in letter and spirit, and that the delay in issuance of the NOC and vacation of charge by the Bank was due to routine regulatory formalities, unrelated to the audit process.
- ix. The Appellant relied upon *Muhammad Iqbal (Partner) v. Appellate Bench No. 1, SECP (M.A. No. 11 of 2020)*, wherein the Hon'ble High Court of Sindh held that penal action against auditors cannot be sustained in absence of, *mens rea*, fraud, or willful gross negligence, and further held that when more than one interpretation of an accounting standard is permissible, adoption of a *bona fide*, view does not constitute misconduct. The Appellant submitted that the principle laid down squarely applies to the instant appeal.
- x. The Appellant also denied that there was any failure on the part of the Appellant to collect or verify evidence in accordance with IAS 10 and 37, and that all professional responsibilities were discharged diligently and in compliance with Sections 249 and 253 of the Act. The Appellant thus prayed that the Impugned Order may kindly be set aside.

7. In response to the Appellant's submissions, the Respondent, *inter alia*, submitted that:

- i. The Appeal is devoid of merit and unsupported by any admissible documentary evidence. The Appellant failed to amend the Audit Report for the year ended June 30, 2017, which warranted initiation of proceedings under Section 253 of the Act.



## Securities and Exchange Commission of Pakistan

- ii. The Appellant failed to obtain sufficient appropriate audit evidence, as required under paragraph 9(a) of IAS 10 and paragraph 16 of IAS 37, to determine the existence of a present obligation as at the reporting date.
- iii. The Appellant failed to modify the audit opinion despite the premature recognition of Rs. 22.032 million as “Other Income” on account of remission of mark-up, which constituted a material misstatement in violation of Section 249 of the Act.
- iv. The Respondent stated that the Bank’s letter dated September 12, 2017 reflected total liability of Rs. 33.709 million, including Rs. 18.599 million as mark-up, an amount significantly exceeding the materiality threshold of Rs. 8.191 million as set by the Appellant himself, while the Company had recorded an even higher mark-up in the amount of Rs. 22.032 million.
- v. The Respondent refuted the Appellant’s contention that only Rs. 6.951 million of mark-up along with Rs. 1 million as cost of funds was waived, and termed it misconceived as the amount settled as per Agreement was Rs. 15.111 million which was well above the materiality level.
- vi. The Respondent asserted that the recognition of remission of markup as “Other Income” was premature and inconsistent with the terms of the Agreement, which was not executed before the Audit Report, resulting in a distorted representation of profits in the Financial Statements, which would otherwise had disclosed a significant loss.
- vii. The Respondent contended that the Appellant failed to draw shareholders’ attention to the premature reversal of mark-up in the Financial Statements.
- viii. The Respondent submitted that Clause 11 of the Agreement required reporting of the remission in the Credit Information Bureau (CIB), and the Appellant failed to produce any evidence of such reporting. The Banking Court’s order dated October 24, 2017, which adjourned the matter, *sine die*, subject to restoration in case of breach, further confirmed that the settlement lacked finality and no remission existed at the Audit Report’s date. The Company’s Form-17 filings showed that the Bank’s loan charge was discharged only in 2020, further evidencing that recognition of remission in 2017 was premature, factually incorrect, and legally impermissible.
- ix. The Respondent pointed out that the Agreement was executed on October 16, 2017 and the Banking Court’s decree was passed on October 24, 2017, both



## Securities and Exchange Commission of Pakistan

subsequent to the date of the Audit Report, and therefore, could not be relied upon as adjusting events under IAS 10 or IAS 37.

- x. The Respondent asserted that the twelve post-dated cheques relied upon by the Appellant were delivered on October 24, 2017 and were irrelevant for assessing the Company's financial position as of June 30, 2017, consequently, the recording of the remission of markup in the Financial Statement was based on an unexecuted Agreement, and the Appellant's failure to highlight this material misstatement and to modify the audit opinion constituted a non-compliance with the duties imposed under Section 249 of the Act.
- xi. It was further submitted that the remission of mark-up was contingent upon full compliance with all operative clauses of the Agreement, and that the premature reversal inflated profit after tax by 8.55 times for the year ended June 30, 2017.
- xii. The Respondent submitted that the Appellant recognized income without any legal enforceability of the remission as of the balance sheet date, resulting in a material misstatement of the Financial Statements and a failure to modify the audit opinion in breach of Section 249 of the Act.
- xiii. The Respondent further submitted that the new grounds raised by the Appellant in the Commercial Appeal before the High Court are liable to be rejected, as they were neither pleaded before the lower forum nor in Appeal No. 137 of 2020 before the Bench, and the Appellant was estopped from raising them at this stage. Reliance was placed on *Rahim Dad v. Saeeda Khanum (PLD 2023 Lahore 465)*.
- xiv. The Respondent submitted that liability under Section 253 of the Act arises from non-compliance with statutory obligations and does not require proof of *mens rea*, which applies only in criminal proceedings, as confirmed in *Ali Raza Textile Mills Ltd. v. Director Enforcement, SECP (2014 CLD 299)*. Accordingly, failure to comply with statutory auditing and reporting requirements, whether deliberate or negligent, constitutes a contravention under the law.
- xv. The Respondent submitted that the Appellant, identified under the SCN, remained the sole respondent throughout the proceedings, clearly establishing him as responsible for the alleged violations. Under Section 251(3) of the Act, where the auditor is a firm, the Audit Report must be signed by both the firm and the Engagement Partner, making the Appellant the "auditor concerned" under Section 253(1) of the Act. International and local frameworks recognize the Engagement Partner as professionally accountable for directing, supervising, performing, and



## Securities and Exchange Commission of Pakistan

concluding the audit engagement. Lastly, the Respondent submitted that the appeal may kindly be dismissed.

8. The Bench has heard the parties at length and perused the available record. The primary question which fall for determination is:

- (i) Whether any lapse identified in the Audit Report, if established, gives rise to liability of the individual engagement partner or the audit firm that was appointed as the statutory auditor.

9. The Bench now proceeds to determine the question regarding liability for non-compliance with the provisions of the Act and the applicable accounting and auditing standards. The record makes it abundantly clear that the statutory auditor appointed by the Company was M/s. Kreston Hyder Bhimji & Co., Chartered Accountants (the "Firm"), and not the Appellant in his personal capacity. In compliance with Section 247(2) read with Section 251(3) of the Act, the Audit Report was issued in the name of the Firm, bearing its stamp and seal, with the name of the Appellant as the engagement partner authorized to act and sign on behalf of the Firm. For ease of reference Section 247(2) and 251(3) of the Act are reproduced hereunder:

*"247. Qualification and disqualification of auditors. (1) A person shall not be qualified for appointment as an auditor—*

*(a) in the case of a public company or a private company which is subsidiary of a public company or a private company having paid up capital of three million rupees or more unless such person is a chartered accountant having valid certificate of practice from the Institute of Chartered Accountants of Pakistan or a firm of chartered accountants; and*

*....*  
*(2) Where a partnership firm is appointed as auditor of a company, only the partners who meet the qualification requirements as provided in sub-section (1), shall be authorized to act and sign on behalf of the firm.*

*...."*

*"251. Signature of auditor's report. (1) The auditor's report must state the name of the auditor, engagement partner, be signed, dated and indicate the place at which it is signed.*

*(2)...*

*(3) Where the auditor is a firm, the report must be signed by the partnership firm with the name of the engagement partner."*

10. Under Pakistani law, the liability structure of a partnership firm is expressly governed by Sections 18, 19, 25 and 26 of the Partnership Act. These provisions unambiguously stipulate that:

- (a) every partner is an agent of the firm;



## Securities and Exchange Commission of Pakistan

- (b) an act done by a partner in the usual course of the firm's business binds the firm;
- (c) all partners are jointly and severally liable for acts done by any partner while carrying on the firm's business; and
- (d) wrongful acts of a partner committed in the ordinary course render the firm liable to the same extent.

For ease of reference relevant provisions of the Partnership Act are reproduced hereunder:

**"18. Partner as Agent of the Firm. Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm."**

**19. Implied Authority. (1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.**

**The authority of a partner to bind the firm conferred by this section is called his "implied authority".**

**25. Liability of a partner for acts of the firm.— Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.**

**26. Liability of the firm for wrongful acts of a partner.—Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner."**

11. The Bench observes that issuing a statutory audit opinion is indisputably an act performed in the ordinary course of the business of an audit firm and such acts bind the firm and all its partners. This principle is firmly rooted in Sections 18, 19, 25 and 26 of the Partnership Act, and has been consistently affirmed by the superior courts. In ***UBL v. Credence Electronics (PLD 1998 Karachi 325)***, the Hon'ble Sindh High Court held that:

***"Evidently a partner acts as agent of other partner(s) and any liability incurred by former effectively binds the later. Such principle is evident and is firmly established on the basis of section 18 of the Partnership Act, 1932."***

Similarly, in ***Saudi Pak Commercial Bank v. Sheikh Agro Industries (2016 CLD 521)***, the Hon'ble Lahore High Court held that:

***"9. ... In this regard reference is made to United Bank Ltd. v. Credence Electronics and others (PLD 1998 Karachi 325). In both the referred***



## Securities and Exchange Commission of Pakistan

*judgments it was held that dealing by one partner on behalf of the firm binds all other partners. Learned counsel for the defendants 2 to 4 have made reference to section 19(2)(e) of the Partnership Act to state that they are exempt in view of the said clause. In this regard suffice it to say that the settlement or adjustment was not done in any proceeding but during the day to day affairs of the firm. Therefore, the said provision is not applicable to the case in hand."*

Likewise, in *Commercial Appeal No. 51766 of 2025*, titled "*Mr. Khan Muhammad v. Executive Director/HOD, Adjudication-I, Securities and Exchange Commission of Pakistan, etc.*", filed by the Appellant against the order of this Bench dated June 02, 2025, the Hon'ble Lahore High Court opined that the liability to penalty under Section 253(1) of the Act extends to all partners of a firm. Relevant para of the order is reproduced hereunder:

*"... A plain reading of above referred provision makes it crystal clear that where a firm conducts the audit, the liability for any penalty under Section 253(1) extends to all partners of the firm, unless the proceedings specifically determine and record the individual responsibility of a particular partner. ..."*

Collectively, these authorities reinforce the settled legal position that responsibility for business of the firm rests with the firm as a whole, and not with the engagement partner alone acting in a representative capacity.

12. The Bench further observes that Section 253(1) of the Act clearly mandates that where the statutory auditor is a firm, "*all partners of the firm*" are collectively liable for any non-compliance. The statutory scheme thus assigns responsibility to the Firm as a whole and not to the engagement partner in his individual capacity. In the present case, the Appellant conducted the audit in his representative capacity on behalf of the Firm and did not act as the statutory auditor in his personal capacity. Imposing personal liability on him would be contrary to the said provision of the Act, which expressly distribute responsibility collectively. This approach aligns with the well-established common-law maxim *qui facit per alium facit per se* ("he who acts through another, does the act himself"), which forms the doctrinal foundation of agency and vicarious liability in partnership structures, and recognizes that acts performed by an agent within the scope of ordinary course of business are legally attributable to the principal, not the agent personally. For ease of reference Section 253(1) of the Act is reproduced hereunder:

***"253. Penalty for non-compliance with provisions by auditors.—(1) If any auditor's report or review report is made, or any document of the company is signed or authenticated otherwise than in conformity with the requirements of section 131, sections 249 and 251 or is otherwise untrue or fails to bring out material facts about the affairs of the company or matters to which it purports to relate, the auditor concerned and the person, if any, other than the auditor who signs the report or signs or authenticates the document, and in the case of a firm***



## Securities and Exchange Commission of Pakistan

all partners of the firm, shall be liable to a penalty of level 2 on the standard scale.”

13. Judicial precedents from comparative jurisdictions provide further persuasive weight to this position. The Delhi High Court, in *W.P.(C) 1524/2020* titled *Udayan Sen v. Union of India & Anr. (2025 Latest Caselaw 2032 Del)*, held that an audit firm’s designation as statutory auditor inherently carries the collective responsibilities of all its members. Relevant excerpt from the cited judgment is reproduced below:

*“We also hold that Section 132 is neither an overreach nor can it be said to be arbitrary; it is a necessary mechanism to enforce professional accountability. The firm's designation as an auditor inherently includes the collective responsibilities of its members, making the imposition of a vicarious liability a logical and justified extension of its statutory obligations. Therefore, the contention that the provision is unconstitutional lacks merit and proceeds in ignorance of the operational and legal realities of an audit firm's engagement.”*

14. This judicial approach was further reaffirmed in by the Delhi High Court in case titled *Deloitte Haskins & Sells LLP v. Union of India & Ors (2025) ibclaw.in 211 HC (2025, SCC OnLine Del 641.)*, where the Court underscored that the relationship between a firm and its partners in delivering auditing services is one of complete integration, where roles and responsibilities overlap to ensure the highest levels of professional service. Relevant extract from the judgment is reproduced hereunder:

*“... the relationship between a firm and its members while delivering auditing services is one of complete integration, where roles and responsibilities overlap to ensure the highest levels of professional service. The nature of such services does not permit a firm to distance itself from the actions of its partners, especially when those actions are performed in furtherance of the firm's obligations. Therefore, liability, whether incurred by the firm or its members, cannot operate in silos but is instead a shared and unified responsibility that reflects the cohesive nature of their engagement.”*

15. In view of the statutory framework and the jurisprudence laid down by the courts, the Bench holds that where a firm is appointed as the statutory auditor, the engagement partner acts solely on behalf of the firm in a representative capacity, as envisaged under Sections 247(2) and 251(3) of the Act. Accordingly, any liability arising from non-compliance rests with the firm collectively, i.e., all its partners. The Appellant, therefore, cannot be held personally liable, as the Act imposes liability on all the partners of a firm as a whole rather than on the individual engagement partner.

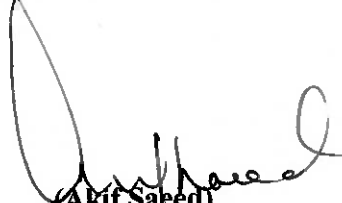
16. Without prejudice to the merits of the case, the Bench sets aside the Impugned Order and remands the matter to the Respondent to decide afresh in accordance with law, after issuing



## Securities and Exchange Commission of Pakistan

a proper SCN to all the partners of the Firm and affording each of them a meaningful opportunity of hearing, in accordance with the settled principles of natural justice.

17. The appeal is disposed of in the above terms with no order as to costs.

  
(Akif Saeed)  
Chairman/Commissioner

  
(Zeeshan Rehman Khattak)  
Commissioner

Announced on:

**10 DEC 2025**