

Securities and Exchange Commission of Pakistan

APPELLATE BENCH NO. I

In the matter of

Appeal No. 14 of 2016

Morafco Industries Limited

...Appellant

Versus

The Commissioner (Securities Market Division),
Securities and Exchange Commission of Pakistan

...Respondent

Date of Hearing: 05/10/16

Present:

For the Appellant:

- (i) Mr. Abdul Hameed Khan, FCA. Hameed Khan & Company
- (ii) Mr. Javed Iqbal, Director, Morafco Industries Ltd

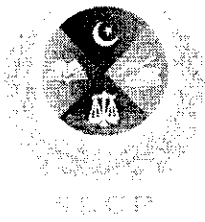
For the Respondent:

- (i) Ms. Ayesha Riaz, Additional Director (SMD)
- (ii) Mr. Haroon Abdullah, Deputy Director (SMD)
- (iii) Mr. Zeeshan R. Khattak, Deputy Director (SMD)

ORDER

1. This order is in appeal No.14 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan (Commission) Act, 1997 against the order dated 05/04/16 (Impugned Order) passed by the Respondent.

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2. Brief facts of the case are that the Commission with a view to restore the normal counter of the PSX in the interest of company shareholders, on 01/09/15, issued a direction to Morafco Industries Limited (Appellant) under section 100 of the Act (Direction) to take immediate steps to undo the defaults of the listing regulations i.e. Clause 5.11.1(b),(e) and (g) of the Karachi Stock Exchange, Clause 30(1)(b),(e) and (g) of Lahore Stock Exchange and Clause 30(1)(b)(c) and (g) of the Islamabad Stock Exchange (Listing Regulations) within 14 days of the date of the Direction. The Appellant vide letter dated 05/09/15 submitted a reply, however, they failed to comply with the Direction or submit any reply thereof.
3. Show Cause Notice dated 16/10/15 (SCN) was issued to the directors of the Appellant in terms of section 160 read with section 100 of the Securities Act, 2015 (Securities Act) calling upon them to show-cause in writing, within 14 days of the date of SCN as to why penal action may not be taken against them, as provided under section 159 of the Securities Act, 2015 for the aforesaid contravention and why they not be directed to comply with the same. The Company Secretary submitted its response vide letter dated 13/11/15. In order to provide an opportunity to the Appellants for appearing in person to explain the reason for not complying with the said provisions of the Securities Act, 2015, the first hearing was fixed on 17/12/15, second hearing was fixed on 20/01/16, third hearing on 27/01/16 and fourth hearing on 09/02/16, on which no one appeared but requested for extension. On fifth hearing held on 03/03/16, Mr. Hameed Khan (Authorised Representative) appeared to plead the case on behalf of the Chief Executive and directors of the Appellant. The Appellant, however, failed to comply with the Commission's Directive.
4. The Respondent dissatisfied with the response of the Appellant's Chief Executive and Directors imposed a penalty of Rs.500,000 on the Chief Executive and directors in exercise of powers under section 159(5)(c) of the Securities Act for their failure to comply with the Direction of the Commission.

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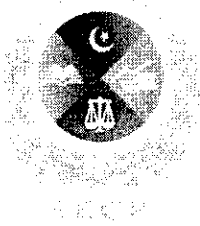
5. The Appellant preferred the appeal on the following grounds:

a) The operations and commercial activities of the Company ceased in May 1997 for privatization through Privatisation Commission, Government of Pakistan (Privatisation Commission). Since the Appellant is on privatisation list, therefore, under Privatisation Commission Ordinance, such entities are bound to seek No Objection Certificate (NOC) from Privatisation Commission for policy decisions. The Appellant is no more a going concern and the revival of its status is not possible due to Government of Pakistan's policy of privatisation of state owned units. The major shareholders of the Appellant are Pakistan Industrial Development Corporation (PIDC) with 43.10% shareholding and paying the general and administrative expenses of the Appellant. There is no trading involved in the shares of the Appellant since its equity is Rs.844.506 million negative as at 30/06/15. The directors of the Appellant could not be held responsible for non-compliance of Respondent's Direction as the respective directors had been passing resolution to comply with Direction by virtue of seeking NOC from Privatization Commission being the necessary party and major stakeholder. This fact can be adduced from the minutes of Board Meetings. The failure to join the Central Depository System (CDS) does not affect the value and trading of the shares. The directors of the Appellant are nominee directors on behalf of the Government and penalty imposed on them is unjustified. Further, the fine of Rs.500,000 imposed on each director is unjustified, harsh and without sufficient grounds. The Appellant has finally received NOC from Privatisation Commission vide letter dated 27/04/16 for its voluntary delisting from the stock exchanges and conversion of its status from public limited company to private limited company.

b) The Appellant has not joined the CDS due to the fact that its securities have not been declared eligible securities by the Central Depository Company (CDC) and the Appellant is in the process of delisting and sale.

In light of NOC from Privatisation Commission for voluntary delisting of

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the Appellant and conversion of its status from public limited to private limited, the Appellant may be allowed waiver to join CDC. The Impugned Order and penalties, therefore, are liable to be set aside.

6. The Respondent rebutted the arguments of the Appellants as follows:

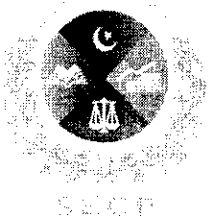
- a) Trading of the shares has nothing to do with the negative equity of the Appellant. Nominee Directors are directors of the Appellant who have the responsibility of overseeing and managing affairs of the Appellant. The directors also have fiduciary duties towards the Appellant and its shareholders. They are, therefore, liable to a higher level of accountability which requires them to be vigilant and must perform their duties with care and prudence. It is mandatory for the directors of a listed company to have knowledge of provisions of the applicable laws even if they are nominee directors. Therefore, merely passing resolutions will not absolve the directors from their statutory duties in terms of applicable laws. Moreover, other stakeholders have 56.9% stake in the Appellant apart from the shareholding of PIDC.
- b) By not joining the CDS, the Appellant has defaulted in complying with Clause 5.11.1(g) of the Listing Regulations of the Karachi Stock Exchange. CDC issued notice of Declaration of their CDS eligibility to the Appellant on 23/06/98 but the Appellant never joined CDS. The Appellant has been on the defaulter counter of the Stock Exchange since 06/08/97 and due to this continued default, the trading in shares was suspended from 01/08/12. Since 2012, the investment of shareholders is stuck with no fair market value discovery for the shares and no way out to dispose of their investments. Further, no information has been shared by the Appellant to date. Default status at Pakistan Stock Exchange (PSX) is the same, however, the Appellant has not joined the CDS.

7. We have heard the parties i.e. the Appellant and the Respondent.

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8. The Appellant has argued that the Appellant has finally received NOC from Privatisation Commission vide letter dated 27/04/16 for its voluntary delisting from the stock exchanges and conversion of its status from public limited company to private limited company. The Appellant is no more a going concern and the revival of its status is not possible due to Government of Pakistan's policy of privatisation of state owned units. The Respondent has argued that the Appellant has defaulted in complying with the Listing Regulations. CDC issued notice of Declaration of their CDS eligibility to the Appellant on 23/06/98 but the Appellant never joined the CDS.
9. We are of the view that given the conduct of the Appellant as a listed company and the violations committed thereof, the Respondent was right in imposing the penalties. Having said that, we have also taken note that the Appellant is in the process of delisting and we have reviewed the NOC dated 27/04/16 from the Privatisation Commission. At this stage it is not meaning full to join CDS as the Privatization Commission and the line ministry have allowed to delist.
10. In view of the above, taking a lenient view in the circumstances, we set aside the Impugned Order to the extent of penalties.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Zafar Abdullah)
Commissioner (SCD)

Announced on:

31 OCT 2016