



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 140 of 2020

M/s. Apollo Textile Mills Limited

...Appellant

versus

Joint Director/Head of Wing, Listed Companies, Adjudication - I, SECP

...Respondent

Date of hearing:

March 09, 2023

Present:

For the Appellant:

Mr. Hussain Juzer Ali, Company Secretary

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.140 of 2020 filed by M/s. Apollo Textile Mills Limited (the "**Appellant Company**") on behalf of its directors under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "**SECP Act**") against the order dated September 16, 2020 (the "**Impugned Order**") passed by the Joint Director/Head of Wing, Listed Companies, Adjudication-I, SECP (the "**Respondent**") under section 237 of the Companies Act, 2017 (the "**Act**").



Securities and Exchange Commission of Pakistan

2. The brief facts of the case are that the Appellant Company failed to submit its interim financial statements for the 1st quarter of the financial year ended on September 30, 2018 due on October 30, 2018. In view of the foregoing, a Show-Cause Notice dated April 26, 2019 (the “SCN”) was issued to the Chief Executive and Directors of the Appellant Company. Hearing opportunities were provided on August 5, 2019 and August 19, 2019, however, the Appellant Company’s representative failed to appear. Thereafter, a hearing opportunity was provided on June 5, 2020, however, it was adjourned on the request of the Appellant Company’s representative. On August 27, 2020 a final opportunity was provided to the Appellant Company through video link, however, the Appellant Company’s authorized representative did not appear for hearing before the Respondent. Therefore, the matter was disposed of *ex-parte*. The Respondent concluded the SCN proceedings and imposed a fine of Rs.20,000/- (Rupees Twenty Thousand only) on each Director of the Appellant Company (aggregate penalty Rs.140,000/-).
3. The Appellant Company has preferred this appeal *inter alia* on the grounds that:
- i. the Appellant is a dormant company and has ceased its operations since the year 2014 but has still filed its financials from 2014 to June 2018;
 - ii. the winding up petition by the Registrar has also been filed before the Hon’ble High Court of Sindh in 2018 due to dormancy of the Appellant and thus it is unjust to the Appellant that one department of SECP is filing the winding up petition and the other department is demanding to submit financial statements;
 - iii. the Appellant received a letter dated May 29, 2020 for fixation of hearing on June 5, 2020 for which Appellant has never received a SCN dated April 26, 2019. The Appellant responded to the said letter on June 3, 2020 and requested copy of SCN dated April 26, 2019 and the same was provided by the Respondent;
 - iv. the Appellant received a letter dated August 18, 2020 vide the hearing was scheduled through video link on August 27, 2020. The Appellant’s counsel joined the zoom meeting, however, the Respondent did not attend/join the meeting and nonetheless passed an *ex-parte* order against the Appellant and made an untrue statement in Impugned Order that the Appellant failed to appear for hearing.



Securities and Exchange Commission of Pakistan

4. The Respondent rebutted the grounds of the Appeal and put forth the following arguments:

- i. Timely filing of the Accounts was important to ensure transparency and information for the stakeholders.
- ii. That under the law directors were obliged to ensure, that financial and operational reporting of the Appellant Company is timely achieved whilst ensuring due compliance of law.
- iii. The directors of the Appellant Company have deprived the shareholders of their statutory right to receive the interim financial statement of the Company within the prescribed time.
- iv. The preparation and circulation of the quarterly accounts rests with the directors of the Appellant Company who were required to take appropriate action within the time stipulated under the law.

5. The Appellate Bench (the “**Bench**”) has heard the parties and perused the record. In view of the arguments put forth by the parties, the Bench’s analysis and findings are as under:

- i. A public listed company has a higher responsibility to disseminate true and accurate state of affairs to all the stakeholders in a timely manner so that they may take appropriate decisions.
- ii. If a company’s financial statements are not available to the stakeholders within the stipulated time prescribed in law, then its Board is responsible for such default and liable to penal consequences.
- iii. The chief executive and directors of the Appellant Company have committed default in the matter under consideration and have acted irresponsibly by not even seeking extension within the due date.
- iv. The Appellant Company’s argument, that the Company filed its financials from 2014 to June 2018 despite being dormant and cessation of its operation in 2014, does not absolve the Appellant Company from compliance of section 237 of the



Securities and Exchange Commission of Pakistan

- Act whereunder they were obliged to submit interim financial statements for the 1st quarter of the financial year ended on September 30, 2018.
- v. Filing of a winding up petition by the Registrar before the Hon'ble High Court of Sindh in 2018 does not absolve the Chief Executive and Directors of the Appellant Company from their legal obligations.
- vi. The Appellant Company's argument that its counsel joined the zoom meeting on the date of hearing does not substantiate from record and is not tenable as ample hearing opportunities were afforded to the Appellant Company, however, it failed to avail them. Furthermore, for all practical purposes the Bench has provided opportunity of hearing to the Appellant Company so that it may rebut the findings of the Impugned Order. During the hearing the Appellant Company's authorized representative has admitted the default and contended that subsequently the default was rectified.
- vii. That under the Impugned Order, penalty has been imposed on the chief executive and directors of the Appellant Company under section 237 of the Act read with section 479 thereof. The interpretation rendered by the Appellant Company is misconstrued as the latter provision of law envisages the level of penalty on a scale provided therein and does not contain anything whereunder it can be construed that the same is only applicable to a specific person.
- viii. The Appellant Company's argument, that the delay in compliance should be condoned and penalty should not be imposed in all cases where compliance is eventually made, disregards the importance of timely compliance with law and implies that the prescribed timelines do not matter. Any attempt to interpret a past decision of Bench in this manner needs to be discouraged.



Securities and Exchange Commission of Pakistan

6. In view of the above, the Bench does not find any reason to interfere with the Impugned Order and thus uphold the same; resultantly the instant Appeal is **dismissed** with no order as to cost.

(Akif Saeed)
Chairman/Commissioner

(Mujtaba Ahmad Lodhi)
Commissioner

Announced on:

17 APR 2023